# TMAP TAX UPDATES

AUGUST 16, 2022 TO SEPTEMBER 15, 2022



## WHAT'S INSIDE?

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## COURT OF TAX APPEALS DECISIONS

### *The City Treasurer's power of examination is extensive to include the nationwide sales and receipts of petitioner.*

Smart Communications, Inc. v. Hon. Judge Augusto Jose Y. Arreza, Hon. Jesusa E. Cuneta, and City of Makati, CTA EB No. 2386(CTA AC No. 228), promulgated on August 15, 2022

The City Treasurer's power to require the submission of documents is necessary to enforce Makati local tax laws through the examination of books of accounts and pertinent records to determine and ascertain the correct tax liability of any person.

In enforcing compliance with local government taxes regulations, respondent Makati City cannot accept petitioner's self-assessment as a true and accurate declaration of its income. Respondent Makati City has the power to issue a Letter of Authority (LOA) for the examination of books, accounts, records in order to ascertain the correctness of the amount paid, under Section 171, Local Government Code and Section 7 A.07, Revised Makati Revenue Code. This examination power is extensive and is not limited to sales and receipts within Makati City.

Thus, the City Treasurer has the power to require the submission of the documents pursuant to an LOA, including documents on SMART's nationwide sales and receipts, and documents on localities other than Makati City. Furthermore, the City Treasurer was correct in requesting RTC-Makati to issue a subpoena duces tecum to compel SMART to submit the requested documents for the determination of the correct basis and computation of deficiency franchise tax, if any, due from SMART.

### *Presentation of the Certificate of Compliance issued by ERC is required to qualify the sale of electricity to entities other than NPC as zero-rated sales*

*First Gen Hydro Power Corporation v. Commissioner of Internal Revenue (CIR), CTA EB No. 2456 (CTA Case No. 9889), promulgated on August 16, 2022*

In every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claim. Hence, it is crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place.

Moreover, the Supreme Court has already clarified that for sales of electricity and generation services to the National Power Corporation (NPC) to qualify for VAT zero-rating, the VAT registered taxpayer needs only show that it is a VAT -registered entity and that it has complied with the invoicing requirements under the National Internal Revenue Code of 1997, as amended, ("Tax Code") in conjunction with Section 4.108-1, Revenue Regulations (Rev. Regs.) No. 7-95. On the other hand, for sales of electricity and generation services to entities other than NPC to qualify for VAT zero-rating, the VAT -registered taxpayer must comply with invoicing requirements under Sections, 108(B)(3), 113, and 237, Tax Code and must submit its Certificate of Compliance (COC) issued by the Energy Regulatory Commission (ERC) as required under Electric Power Industry Reform Act of 2001 (EPIRA).

## *A revised Formal Letter of Demand (FLD) constitutes a final decision on a disputed assessment which is appealable to the Court of Tax Appeals (CTA)*

*CIR v. Ruben U. Yu, CTA EB No. 2352 (CTA Case No. 9595), promulgated on August 16, 2022.*

A revised FLD constitutes a final decision which is appealable to the CTA. Thus, the respondent had the option to file an appeal with the CTA within 30 days from receipt of the final decision, or to file a request for reconsideration with the CIR within 30 days from receipt of the final decision. Since respondent filed a request for reconsideration with the CIR, an appeal to the CTA may only be filed once the CIR issues his decision on the request for reconsideration.

Section 3.1.4, Rev. Regs. No. 12-99, as amended by Rev. Regs. No. 18-2013, provides that if the administrative appeal is not acted upon by the CIR within 180 days **counted from the date of filing of the protest** and the taxpayer fails to appeal to the CTA within 30 days from the expiration of the 180-day period **counted from the date of filing of the protest**, the only remaining option for the taxpayer is to wait for the final decision of the CIR on the disputed assessment and appeal such final decision to the CTA within 30 days from receipt of the decision. To be clear, the 180-day period referred to in Section 228, Tax Code and in Section 3.1.4, Rev. Regs. No. 12-99, as amended by Rev. Regs. No. 18-2013, is confined only to the period within which either the CIR or his/her duly authorized representative may act on the initial protest against the Final Assessment Notice/FLD.

Thus, respondent's only option in this case is to wait for petitioner's decision on his request for reconsideration given that the 180+30-day period is no longer available to respondent. As such, when respondent filed the Petition for Review with the CTA, the same was still premature as respondent still has not received petitioner's decision on his request for reconsideration. Absent any decision from the petitioner, the Court in Division cannot acquire jurisdiction over the case.

## *The CTA is not precluded from accepting evidence that was not presented at the administrative level.*

*CIR v. Philippine Geothermal Production Company, Inc., CTA EB No. 2453 (CTA Case Nos. 9440, 9501, 9534 & 9588), promulgated on August 17, 2022*

It must be emphasized that the CTA, being a court of record, the cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of its case. Thus, the court is not precluded from accepting respondent's evidence assuming these were not presented at the administrative level. The taxpayer-claimant may present new and additional evidence to the CTA to support its case for tax refund. The power of the CTA to exercise its appellate jurisdiction does not preclude it from considering evidence that was not present in the administrative claim in the Bureau of Internal Revenue (BIR). Thus, the court may give credence to all evidence presented by the taxpayer-claimant irrespective of whether or not they were submitted at the administrative level.

### *The attribution of input VAT to the zero-rated sales need not always be direct; Section 112, Tax Code allows the allocation of creditable input VAT which cannot be directly or entirely attributable to zero-rated sales.*

*CIR v. Philippine Geothermal Production Company, Inc., supra*

Based on Section 110, Tax Code, an input VAT evidenced by a VAT invoice or official receipt is creditable against the output VAT not only on the purchase or importation of goods "for conversion into or intended to form part of a finished product for sale including packaging materials," but also those purchase/importation of goods for sale, for use as supplies in the course of business, and for use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code.

The CIR's insistence that "to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production" is not entirely consistent with the Section 110, Tax Code. This provision, as clearly stated, did not limit itself to purchases or importation of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production; but also includes, *inter alia*, purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed; as well as purchase of services for which VAT has been actually paid. As such, provided that the subject input tax is evidenced by a VAT invoice or official receipt issued in accordance with Section 113, Tax Code, the same may be creditable against the output VAT.

Furthermore, Section 112, Tax Code allows the allocation of creditable input taxes which cannot be directly or entirely attributable to zero-rated sales. Thus, it is not required that the claimed input tax be directly attributable to zero-rated sales in order to be creditable.

### *Tax cases are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment does not exceed 5 years*

*People of the Philippines v. Remedios De Juan Pensotes, CTA Crim. Case No. O-685, promulgated August 22, 2022.*

Pursuant to Section 281, Tax Code, the period of prescription for a violation of the provisions of the Tax Code is five (5) years. As held by the Supreme Court in Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.,[1] tax cases are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court does not exceed 5 years. In other words, the period of prescription for a tax case begins to run from the discovery and institution of proceedings for its investigation and shall only be tolled by the filing of an information therefore with the Court.

In view of the foregoing, the filing of a criminal action is prescribed in this case where the Information was filed after more than six (6) years from the filing of the Joint Complaint-Affidavit.

[1] G.R. Nos. L-48134-37, October 18, 1990.

## *An Amended Decision is an entirely new Decision which replaces the old Decision; thus, the failure to timely file a motion for reconsideration to an amended decision will make such final and executory.*

*CIR v. Script2010, Inc., CTA EB No. 2363 (CTA Case No. 9415), promulgated on August 25, 2022*

Under Section I, Rule 8, the Revised Rules of the Court of Tax Appeals (RRCTA}, a timely filed Motion for Reconsideration or Motion for New Trial is a requisite for the perfection of a Petition for Review with the CTA *En Banc*. As such, without a timely filed Motion for Reconsideration or Motion for New Trial assailing a Decision by the Court in Division, an appeal can no longer be made before the Court *En Banc*.

It should be noted that an Amended Decision is an entirely new Decision which replaces the old Decision, to which a Motion for New Trial or Motion for Reconsideration may be filed again. Under Section 1, Rule 15, RRCTA, the period to file a Motion for Reconsideration or a Motion for New Trial is 15 days from the date of receipt of the notice of the decision. Following this, therefore, the party who wants to appeal an Amended Decision by the Court in Division must first timely file (i.e., within 15 days from receipt of the adverse Decision) a prior Motion for Reconsideration or Motion for New Trial with the Court in Division before he or she is allowed to file an appeal (i.e., Petition for Review) before the Court *En Banc*. Failing to comply with this requirement would result in such Decision becoming final and executory on the part of the party who failed to file a Motion for Reconsideration or Motion for New Trial.

## *Issuance of the FLD/FAN prior to the end of the 15-day period to contest the PAN is a violation of the taxpayer's right to due process*

*CIR v. Script2010, Inc., supra*

The BIR should allow a taxpayer the opportunity to contest a PAN within 15 days from receipt thereto. The BIR should wait until such period expires before it issues a FLD/FAN. Failing this would mean that it has prematurely decided on or, worse, did not consider the taxpayer's response to the PAN at all, which are clear violations of due process in tax. Further, it is important to note that the 15-day period starts to run from the taxpayer's receipt of the PAN and not from its date of issuance.

The BIR is not allowed to issue a FLD/FAN prior to the lapse of the period to file a reply to the PAN. Acting otherwise would clearly be a violation of the taxpayer's right to due process in tax assessment proceedings, as he would be prematurely deciding on or not considering respondent's Reply to the PAN and its pieces of evidence.

## *Revenue Memorandum Order (RMO) No. 43-90, on the issuance of Letters of Authority (LOAs), is valid and effective even if it was issued seven years prior to the enactment of the 1997 Tax Code*

*CIR v. Watsons Personal Care Stores (Philippines), Inc., CTA EB no. 2391 (CTA Case No. 9303), promulgated on September 1, 2022*

RMO No. 43-90 was promulgated in September 1990 to prescribe the revised policy guidelines for examination of returns and issuance of LOAs. The CIR argues that RMO No. 43-90 is not an implementing rule of any statute as there was no provision on the issuance of the LOA under the 1977 Tax Code and that such provision was only introduced under the 1997 Tax Code. Thus, RMO No. 43-90 could not have implemented a law which, at the time of the promulgation, was still not in effect.

In consonance with the Supreme Court's decision in CIR v. Mcdonald's Philippines Realty Corp.[2] the CTA *En Banc* resolved that RMO No. 43-90, regardless of being issued seven (7) years prior to the enactment of the 1997 Tax Code, as amended, remains an effective and valid administrative issuance as the provisions contained therein are not repugnant to Sections 6(A), 10 and 13, 1997 Tax Code, as amended.

## *The reassignment or transfer of a Revenue Officer (RO) requires the issuance of a new or amended LOA that will enable the substitute or replacement RO to continue the audit or investigation*

*CIR v. Red Ribbon Bakeshop, Inc., CTA EB No. 2491 (CTA Case No. 9121), promulgated on September 2, 2022*

There must be a grant of authority in the form of an LOA, before any RO can conduct an examination or assessment. Only the ROs actually named under the LOA are authorized to examine the taxpayer. Only the CIR and his/her duly authorized representatives may issue the LOA. The authorized representatives include the Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR.

Moreover, the reassignment or transfer of an RO requires the issuance of a new or amended LOA that will enable the substitute or replacement RO to continue the audit or investigation. A Memorandum of Assignment (MOA), referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. Neither is a Referral Memorandum issued by the Revenue District Officer directing another revenue officer to continue with the examination equivalent to an LOA nor does it cure the revenue officer's lack of authority. In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against the taxpayer, the resulting assessments are void.

## *CIR's voluntary payment of the refund makes the judicial protest moot and academic*

*CIR v. Empress Dental Laboratories, Inc., CTA EB No. 2530 (CTA Case No. 10186), promulgated on September 7, 2022*

One of the tenets of judicial review is that this Court will not rule on moot and academic cases because judicial power is grounded on actual controversies. A moot and academic case is one that ceases to present a justiciable controversy by virtue of *supervening events* so that a declaration thereon will be of no practical use or value. Accordingly, if the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced, this Court will declare it moot and academic.

The CIR's payment of respondent's claim for refund is a *supervening event* that rendered the instant Petition moot and academic. As the claim for refund has already been satisfied, there is no more claim for refund to speak of; it has already ceased to present a justiciable controversy.

[2] G.R. No. 242670, May 10, 2021

## *A grant of authority to an RO through an LOA must be made and proven in court*

*CIR v. Jed Marketing, Corp., CTA EB No. 2377 (CTA Case No. 9687), promulgated on September 12, 2022*

An authority emanating from the CIR or her duly authorized representative is required before an examination and an assessment may be made against a taxpayer. The authority of an RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA. Thus, a grant of authority through an LOA must be made, assigning an RO to perform tax assessment functions, in order that such officer may examine a taxpayer and collect the correct amount of tax, or to recommend the assessment of any deficiency tax due.
As duly found by the Second Division and verified by the CTA *En Banc,* no documentary evidence was presented to support the authority of RO and group supervisor (GS) to examine respondent's accounting records.

Section 34, Rule 132, Revised Rules on Evidence is clear that evidence must be formally offered for it to be considered by the courts; otherwise, it is excluded and rejected. As an exception to this rule, evidence not previously offered can be admitted if: (1) the evidence must have been duly identified by testimony duly recorded; and (2) the evidence must have been incorporated in the records of the case.

In this case, both the general rule and the exception do not apply as no LOA can be found in the BIR Records. As for the Revalidation/Reassignment Notice, although the same had been incorporated in the BIR Records, the CIR did not present any witness to identify them by testimony duly recorded. The Revalidation/Reassignment Notice was not marked considering that it was neither included in the Pre-Trial Briefs nor in the Pre-Trial Order. The same was not offered as an exhibit by the CIR and admitted by the court as evidence. Even the BIR Records itself was not formally offered and introduced as evidence. Hence, the Revalidation/Reassignment Notice is inadmissible and cannot be considered by the CTA *En Banc* in its ruling.

Considering that the examination and assessment were issued without requisite authority, the FAN and FDDA issued against Respondent are null and void.

## *Strict compliance with the substantiation and invoicing requirements in VAT system*

*Pag-asa Steel Works, Inc. v. Bureau of Internal Revenue, CTA EB No. 2410 & 2412 (CTA Case No. 9506), promulgated on September 13, 2022*

The CTA *En Banc* ruled as follows:

- **Sales Discoun**t - Under Section 4.106-9, Rev. Regs. No. 16-05, only those sales discounts granted and indicated in the sales invoice at the time of sales may be excluded from gross sales within the same month or quarter they were given.

- **Sales to Ecozone Enterprise** - Proof of delivery of goods sold to a purchaser located in an ecozone is necessary before such sale may be considered zero-rated.

- **Reimbursement of actual expenses –** The payment is not subject to VAT if it is duly established that: (1) the payment is pure reimbursement of cost, i.e., that the amount paid is exactly the same amount advanced, without any mark-up or profit; (2) the input tax pertaining to the hauling

charges is not claimed by the advancing party, the billing being in the name of the party accommodated; and (3) that the payment of reimbursement is not covered by VAT invoices/ official receipts.

## *Letter of Authority (LOA) vs. Memorandum of Assignment (MOA)*

*CIR v. Integrated Solutions Technology Limited, CTA EB No. 2401 (CTA Case No. 9608), promulgated on September 13, 2022*

The Court En Banc has been consistent in ruling that the RO tasked to examine the books of accounts of taxpayers must be authorized by an LOA. Otherwise, the assessment for deficiency taxes resulting therefrom is void.

An RO must be clothed with authority, through an LOA, to conduct the audit or investigation of the taxpayer. Absent such grant of authority through an LOA, the RO cannot conduct the audit of taxpayer's books of accounts and other accounting records because such right is statutorily conferred only upon the CIR. Petitioner's own rules, specifically, RMO No. 43-90 mandates the issuance of a new LOA in cases of reassignment or transfer of examination to another RO.

In this case, the RO's authority merely sprung from an MOA issued by a Revenue District Officer. The subject MOA does not and cannot confer authority to the new RO and GS to continue the audit or investigation of respondent's books of accounts for TY 2013. As both are not authorized through an LOA, their investigation and subsequent assessment of respondent's tax deficiency could not be sanctioned.

## *The LOA has to be served on the taxpayer within 30 days from its issuance; otherwise, it becomes null and void, unless revalidated*

*CIR v. Joselito Ranada Laraya, CTA EB No. 2490 (CTA Case No. 8890), promulgated on September14, 2022*

Revenue Audit Memorandum Order (RAMO) No. 1-00 mandates that the LOA must be served or presented to the taxpayer within 30 days from the date of its issuance, otherwise, it becomes null and void, unless revalidated. The condition for an LOA to remain valid even if served after the 30-day period is its subsequent revalidation, and not the taxpayer's acceptance thereof. The subsequent acceptance by the taxpayer of the LOA does not cure its defect.

In the instant case, the LOA was issued on May 15, 2009. Applying RAMO 1-00, the subject LOA should have been served within 30 days counted from May 15, 2009, or until June 14, 2009. However, the same was served only 46 days from the date of issuance. Likewise, there is no showing that the subject LOA has been revalidated. Therefore, the LOA has already become void, and was already without force and effect when it was served, for the BIR's failure to observe the 30-day mandatory period. Such being the case, the revenue officers who conducted the audit under the power of the defective LOA are deemed to have no authority at all to carry out the examination of the books of accounts and other accounting records of the petitioner.

## *Failure to consider the Reply to the PAN in the FLD/Assessment Notices renders the assessment void for failure to comply with the due process requirement*

*CIR vs. Chun Lang Chan, then operating under business name TOKAI RUBBER PRODUCTS, represented by Li Chuan Chang, CTA EB No. 2489 (CTA Case No. 9758), promulgated on September 14, 2022.*

Despite Respondent's submission of a Reply to the PAN and supporting documents, the BIR issued the FLD and Assessment Notices which merely reiterated and copied verbatim the assessments in the PAN, except for the amounts of interest. The CIR did not comment or address the matters raised and the documents submitted by respondent. There was no discussion of the petitioner's findings in a manner that respondent may know the various issues involved and the reasons for the assessments.
The Court of Tax Appeals ruled that the FLD/Assessment Notices issued by the BIR are void for failure to comply with the due process requirement. It is true that the CIR is not obliged to accept the taxpayer's explanations, however, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record. The CIR's failure to give due consideration to respondent's defenses, explanations, and supporting documents when she made her conclusion as to respondent's tax liability, could hardly be considered substantial compliance with the due process requirement. The CIR's disregard of the due process standards and rules under Rev. Regs. No. 12-99, as amended, and her failure to sufficiently inform respondent of the reasons for her conclusions under Section 228, Tax Code render the subject deficiency income tax and VAT assessments null and void.

The CTA also noted that under existing revenue issuances, an RO assigned to an audit is duty-bound to render and investigation report within 120 days from the LOA's issuance. The 120-day period for rendering an investigation report was intended as an internal efficiency measure: to expedite the conduct of audits and ensure that BIR examiners regularly report open investigations and their progress.

Clearly, the failure to comply with the 120-day rule does not void LOA ab initio. The expiration of the 120-day period merely renders an LOA unenforceable, inasmuch as the revenue officer must first seek ratification of his expired authority to audit to be able to validly continue investigation beyond the first 120 days.

## *Filing and payment of taxes may not be simultaneous, both must be done on or before the statutory deadline; The imposition of late payment surcharge and interest is mandatory and automatic.*

*CIR v. Tann Philippines, Incorporated, CTA EB No. 2415 (CTA Case No. 9433), promulgated on September 14, 2022*

Under the "pay-as-you-file" principle while the filing and payment of taxes may not be simultaneous, both must be done on or before the statutory deadline.

Considering the express provisions of Section 114, Tax Code and its implementing rules, even if respondent filed its 2013 4$^{th}$ quarterly VAT on January 24, 2014, which is ahead of the January 27, 2014 deadline, it is still liable to pay the late payment penalties because it paid the VAT on January 28, 2014, which is one (1) day after its due date.

The law is clear. The imposition of the 25% surcharge and the 20% interest is mandatory and automatic in case of late payment of taxes due as shown on the filed return. Sections 247, 248 (A)(4) and 249(C)(I),

Tax Code do not require an LOA nor a PAN before the surcharge and the interest can be imposed and collected. Besides, had the law intended that an LOA/PAN is required under Sections 248 (A)(4) and 249(C)(l), Tax Code before the assessment and collection of civil penalties, it must have stated a “notice” as found in Sections 248 (A)(3) and 249 (C)(3), which speaks of a notice of assessment in the case of “deficiency” taxes made known after audit/investigation.

## BUREAU OF INTERNAL REVENUE ISSUANCES[3]

### *Policies and guidelines for the availment of incentives under RA No. 9999 (Free Legal Assistance Act of 2010)*

*Revenue Regulations No. 12-2022 issued on September 13, 2022*

Lawyers or professional partnerships rendering actual free Legal Services shall be entitled to an allowable deduction from the gross income equivalent to the lower of:

a. the amount that could have been collected for the actual free Legal Services rendered; or

b. 10% of the gross income derived from the actual performance of the legal profession.

The actual free Legal Services shall be exclusive of the minimum sixty (60)-hour mandatory legal aid services rendered to indigent litigants as required under the Rule on Mandatory Legal Aid Services for Practicing Lawyers, under Bar Matter No. 2012, issued by the Supreme Court.

In order to avail of the incentives, the lawyers or professional partnerships shall attach to their Income Tax Return (ITR) for the period when the deduction was claimed the following documents:

a. Certification from the Public Attorney's Office, the Department of Justice or accredited association of the Supreme Court indicating that:

   - the legal services to be provided are within the services defined by the Supreme Court;
   - the agencies cannot provide the Legal Services to be provided by the private counsel; and
   - the Legal Services were actually undertaken.

   The Certification from the association and/or organization duly accredited by the Supreme Court shall specify the number of hours actually provided by the lawyer or professional partnership in the provision of the Legal Services.

b. Accomplished BIR Form No. 1701 (for individual lawyers) or BIR Form No. 1702-EX (for general professional partnership), particularly Schedules 5 and 2, respectively, on "Special Allowable Itemized Deductions."

c. Sworn Statement of the Lawyer or managing partner (in case of professional partnership) as to the amount that could have been collected for the actual free legal service.

[3] The digests of the relevant BIR issuances are reproduced from the BIR website, www.bir.gov.ph.

## *Manner of payment of penalty relative to violations incurred by Registered Business Enterprises (RBEs) in the Information Technology-Business Process Management (IT-BPM) sector on the conditions prescribed regarding Work-From-Home (WFH)*

*Revenue Memorandum Circular No. 120-2022 issued on August 18, 2022*

The Fiscal Incentives Regulatory Board (FIRB) allowed the WFH arrangement without adversely affecting their fiscal incentives under the CREATE Act from April 1, 2022 until September 31, 2022 only. The number of employees under the WFH arrangement shall not exceed 30% of the total workforce of the RBE, while the remaining 70% of the total workforce shall render work or service within the geographical boundaries of the ecozone or Freeport being administered by the Investment Promotion Agencies with which the project/activity is registered.

The non-compliance of the RBEs in the IT-BPM sector with the prescribed conditions under FIRB Resolution No. 017-22 for at least one day shall result in the suspension of its Income Tax incentives for the month when the violation took place. In such a case, the RBEs shall pay, as penalty, the regular Income Tax of either 25% or 20%, whichever is applicable, for the aforesaid month. In addition, violations committed beyond September 13, 2022 onwards may subject the RBEs to applicable taxes.

The penalty shall be paid using BIR Form No. 0605, by choosing "Others" under "Voluntary Payment" and by indicating in the field provided the phrase "Penalty pursuant to FIRB Res. No. 017-22". The tax type code shall still be "IT" and the ATC to be indicated is "MC 200." RBEs with violation shall continue to file and pay Quarterly Income Tax Return following their usual procedure of computation of the tax due as if no violation was committed. A separate computation for the penalty on the WFH arrangement shall be provided in an additional schedule to be attached to BIR Form No. 0605, to present the actual tax due.

Net Operating Loss Carry Over (NOLCO) shall not be a part of the computation for penalty and shall not be deducted from the total taxable income. If the violation happened during the last quarter of the fiscal year (e.g., fiscal year ending November, 2022), the penalty shall be computed based on the manner prescribed in Revenue Memorandum Circular (RMC) No. 39-2022. Likewise, for RBEs with violation of the provisions of FIRB Resolution No. 19-21, the same manner of computation, filing and payment of the penalty as indicated in the Circular shall be applied.

To emphasize the manner of payment, the RBE which committed violation shall pay the penalty using BIR Form No. 0605 on or before the due date prescribed for the filing or payment of the quarterly Income Tax, subject to adjustment upon the filing of the Annual Income Tax Return. For the fiscal quarter with month/s subject to penalty that already ended and returns have been filed, RBEs shall file and/or pay their penalty within ten (10) days after the issuance of the Circular. If the same is paid beyond the said period, administrative penalties shall be imposed considering that the penalty pertains to Income Tax.

## *Guidelines on lifting the Suspension of Field Audit and Operations pursuant to RMC No. 77-2022*

*Revenue Memorandum Circular No. 121-2022 issued on August 22, 2022*

RMC No. 121-2022 lifted the suspension of field audit and operations on all outstanding Letters of Authority/Audit Notices, and Letter Notices pursuant to RMC No. 77-2022. The lifting of suspension of

field audit and operations shall be on a per Investigating Office upon approval by the CIR of the Memorandum Request from the following:

| Investigating Office | Requesting Official | Recommending Approval |
|---|---|---|
| Revenue District Offices (RDOs)/Regional Investigation Divisions (RIDs)/VAT Audit Sections/Office Audit Sections | Regional Director | Assistant Commissioner, Assessment Service and Deputy Commissioner - Operations Group (DCIR-OG) |
| National Investigation Division (NID) | HREA, Enforcement & Advocacy Service | Assistant Commissioner, Enforcement & Advocacy Service and Deputy Commissioner-Legal Group (DCIR-LG) |
| Large Taxpayers Audit Divisions/LT VAT Audit Unit | HREA, Large Taxpayers Service - Regular/ Excise/Programs & Compliance Group | Assistant Commissioner, Large Taxpayers Service (LTS) |

Upon the approval of such Memorandum Request by the CIR, the concerned Investigating Office shall immediately resume its field audit and other field operations on all outstanding Letters of Authority/Audit Notices, and Letter Notices.

In any case, no new LOAs, written orders to audit and/or investigate taxpayers' internal revenue tax liabilities shall be issued and/or served except: (a) in those cases enumerated under RMC No. 77-2022; and (b) in case of reissuance/s to replace previously-issued LOA/s due to change of RO and/or GS.

## *Updating of registration information record of taxpayers who will enroll in the Online Registration and Update System (ORUS)*

*Revenue Memorandum Circular No. 122-2022 issued on August 22, 2022.*

All taxpayers who intend to transact online with the BIR thru the ORUS, once available, and those who are currently transacting manually for their registration-related transactions, shall update their registration records, such as e-mail address and contact information using the S1905 - Registration Update Sheet (RUS). The RUS is available at the Client Support Section (CSS) of the Revenue District Office (RDO) and the BIR's Official Website (www.bir.gov.ph) under the Advisory Section.

The designated e-mail address should be the taxpayer's official e-mail address. This shall be used in serving BIR orders, notices, letters and other processes/ communications to the taxpayers. Registered taxpayers shall update their Head Office registration first before updating their branches. In case of employees, employers shall inform their employees regarding this requirement. The RUS may be submitted via e-mail to the concerned RDO where the taxpayer is registered.

## *Clarifying the removal of the five-year validity period on receipts/invoices*

*Revenue Memorandum Circular No. 123-2022 issued on August 31, 2022*

This RMC clarifies the provisions of Rev Regs No. 6-2022 relative to the removal of the 5- year validity period on receipts/invoices, which shall take effect on July 16, 2022 (15 days from the date of its publication, which was July 1, 2022).

All taxpayers who are/will be using Principal and Supplementary Receipts/ Invoices shall be covered by the Rev. Regs. No. 6-2022 or taxpayers with/who will apply for any of the following:

a. Authority to Print (ATP);
b. Registration of Computerized Accounting System (CAS)/Computerized Books of Accounts (CBA) and/or its Components; and
c. Permit to Use (PTU) Cash Register Machines (CRM)/Point-of-Sale (POS) Machines and Other Sales Receipting Software.

All receipts/invoices which have expired on or before July 15, 2022 are no longer valid for use. The Validity Period of receipts/invoices shall be based on the date of issuance of the ATP, as provided below.

| **Date of ATP** | | **Unused Receipts/Invoices as of Expiry Date** |
|---|---|---|
| **Date of Issue** | **"Valid Until" as reflected in ATP/Receipts/Invoices** | **Can they still be issued? (Yes/No)** |
| On or before July 16, 2017 | On or before July 15, 2022 | No |
| July 17, 2017 onwards | July 16, 2022 onwards | Yes |

Pursuant to the provisions of RMO No. 12-2013, all unused and expired receipts/invoices dated on or before July 15, 2022 shall be surrendered, together with an inventory listing, to the RDO where the Head Office or Branch is registered on or before the 10$^{th}$ day after the validity period of the expired receipts/invoices, for the destruction of such receipts/invoices.
Taxpayers with receipts/invoices with existing ATP expiring on or after July 16, 2022 may still issue such receipts/invoices until fully exhausted. The phrase, **"THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE ATP"** and the **"Validity Period"** reflected at the footer of the printed receipts/ invoices shall be **disregarded.**

A taxpayer with ATP expiring on or before July 15, 2022 who failed to apply for subsequent ATP not later than the 60-day mandatory period prior to expiration shall not be liable to pay penalty for late application of ATP.

Taxpayers who used/will use unregistered receipts or invoices and those that expired prior to July 15, 2022 shall be subject to penalty amounting to Php20,000.00 for the first offense and Php50,000.00 for the second offense.

All applications for accreditation of CRM/POS and other Sales Receipting Software shall no longer require the phrases "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE" and the "Valid Until (mm/dd/yyyy)" of PTU to be reflected on the footer of generated receipts/invoices during the evaluation.

For the registration of CAS and/or its Components, the phrase**, "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE ACKNOWLEDGMENT CERTIFICATE"** as previously required in RMO No. 9- 2021 shall no longer be required to be reflected on the generated receipts/invoices.

The taxpayer-user with registered PTU CRM/POS Machines/CAS shall be required to reconfigure their CRM/POS Machines/CAS to remove the phrases **"THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE" / "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE ACKNOWLEDGMENT CERTIFICATE"** and **"Valid Until (mm/dd/yyyy)."** However, it should be noted that a written notification shall no longer be required to be submitted to the concerned RDO although such modifications are considered minor enhancements due to the fact that such modifications were mandated upon the effectivity of Rev. Regs. No. 6-2022.

The CRM/POS and/or CAS and other machines generating receipts/invoices shall have to be reconfigured until December 31, 2022 to comply with the provisions under Rev. Regs. No. 6- 2022.

## *Updates to the "List of VAT-Exempt Medicines"*

*Revenue Memorandum Circular No. 124-2022 issued on September 1, 2022*

Publishes the August 15, 2022 letter from Food and Drug Administration (FDA) Director General Samuel A. Zacate endorsing updates to the "List of VAT-Exempt Medicines" under Republic Act No. 11534 (CREATE Act). The list now includes medicines prescribed for cancer, tuberculosis, and mental illness; and corrects medicines prescribed for diabetes and hypertension.

As clarified under Q&A No. 1 of RMC No. 99-2021, the effectivity of the VAT exemption of the covered medicines and medical devices under the CREATE Act shall take effect on the date of publication by the FDA of the updates to the list.

## *Updates to the "List of VAT-Exempt Medicines"*

*Revenue Memorandum Circular No. 125-2022 issued on September 6, 2022*

Publishes the August 17, 2022 letter from FDA Director General Samuel A. Zacate, endorsing updates to the "List of VAT-Exempt Medicines" under Republic Act No. 11534 (CREATE Act), which deletes certain medicines prescribed for COVID-19 treatment. As clarified under Q&A No. 1 of RMC No. 99-2021, the effectivity of the VAT exemption of the covered medicines and medical devices under the CREATE Act shall take effect on the date of publication by the FDA of updates to the list.

## *Consolidated Price of Sugar at Millsite for the month of July 2022*

*Revenue Memorandum Circular No. 126-2022 issued on September 6, 2022*

Circularizes the Consolidated Price of Sugar at Millsite for the month of July 2022 contained in Operations Memorandum (OM) Nos. 58-2022, 59-2022, 62-2022, 63-2022, and 65-2022. While the weekly Price of Sugar at Millsite issued by the Sugar Regulatory Administration reflects the comparative prices of sugar between the previous year and current year, the consolidated schedule on the said weekly OMs contains only that of the current year for purposes of imposing the one percent (1%) Expanded Withholding Tax on sugar prescribed under Rev. Regs. No. 2-98, as amended by Rev. Regs. No. 11-2014.

## *Lifting the Suspension and Prohibition under RMO No. 77-2022*

*Revenue Memorandum Circular No. 127-2022 issued on September 7, 2022*

Lifts and removes, effective immediately, the suspension and prohibition under RMC No. 77-2022 on the following:

a. All field audit and other field operations of the BIR covered by outstanding Mission Orders (MOs) authorizing the conduct of enforcement activities and operations of any kind, such as but not limited to ocular inspection, surveillance activities, stock- taking activities, and the implementation of the administrative sanction of suspension and temporary closure of business; and

b. The issuance of new MOs authorizing such activities and operations.

All internal revenue officers and others concerned should strictly comply with the existing applicable Rules and Regulations of the BIR on the issuance, conduct, and implementation of such MOs.

## *Revised Guidelines and Procedures in the processing of Authorized Agent Bank's (AAB) request for refund of over-remittance of tax collections*

*Revenue Memorandum Order No. 34-2022 issued on September 1, 2022*

Refund of over-remittance of tax collection by the AABs shall be processed in accordance with the procedures as stated in the Order pursuant to the provisions of Rev. Regs. No. 5-1984 (Sec. 5, A 4 and Sec. 5, B 8), Treasury Circular No. 3-2013 and the Memorandum of Agreement (MOA) among the Bureau of Internal Revenue (BIR), the Bureau of the Treasury (BTr) and the AABs.

Refund of over-remittance by the AABs as collecting agents should not be construed as refund of tax payments of a taxpayer. Erroneous remittance may be adjusted by AABs within five (5) days from date of collection. As prescribed under Part D No. 4 (d) of Treasury Circular No. 3-2013 dated December 11, 2013, adjustments to be made beyond the allowed five (5) banking days from collection date shall have prior clearance from the BTr. The BTr shall acknowledge receipt of adjustment requests from banks and coordinate with the BIR for immediate action and approval.

The letter-request for refund of over-remittance should be made in writing, addressed to the Assistant Commissioner-Collection Service (ACIR-CS), Attention to the Chief, Revenue Accounting Division (RAD), and shall indicate the following:

a. AAB Branch involved;
b. collection date involved;
c. amount of over-remittance;
d. date/s of remittance;
e. amount of collection per BCS-A (Batch Control Sheet-A); and
f. reason(s)/cause(s) of over-remittance.

The letter-request for refund of over-remittance should be submitted, together with the following attachments:

a. Affidavit executed by the AAB Branch Officer indicating the facts/information relative to the case of refund; and
b. Other proof of evidence to further substantiate the claim for refund such as official receipt of other payments (Social Security System (SSS)/ Credit Card Co./etc.) erroneously reported as BIR payment.

The procedures stated in the Order shall apply to all channels of payment that passes through the banking system (whether manual or electronic/online collections).

No request for refund shall be granted unless the collection data, as shown/uploaded in the Collection and Bank Reconciliation System – Integrated Tax System (CBRS-ITS)/ Collection Remittance and Reconciliation–Internal Revenue Integrated System (CRR- IRIS), has just been adjusted/corrected.

It shall be the responsibility of the RDO concerned to adjust/correct the affected BCS-A report uploaded in the CBRS-ITS/CRR-IRIS of over- remittance which resulted from double uploading of collections and/or erroneous inclusion of payments.

The functions and responsibilities of the RDO discussed in the Order shall also mean the functions and responsibilities of the Large Taxpayer Document Processing and Quality Assurance Division (LTDPQAD) and the Large Taxpayer District Office (LTDO) for AABs' large taxpayer collections under their jurisdiction.

## ***Guidelines and procedures on the acceptance of Information and Communications Technology (ICT) Systems/Solutions to be donated by a Third-Party Developer (TPD)/Provider to the BIR.***

*Revenue Memorandum Order No. 36-2022 issued on September 15, 2022*

Interested TPD shall tender a signed Letter of Intent (LOI), addressed to the Commissioner of Internal Revenue, Attention: The Deputy Commissioner of the concerned Process Owner (PO), signifying his/her/its intention to develop a system at no cost to the BIR.

The LOI shall include a Technical Proposal containing, among others, the statement of work, including the following: a) Brief Introduction; b) Purpose/Objective; c) Functional Scope; d) Technical Diagram; e)

Technical Specifications/ Requirements (i.e., hardware and software to be used, security components, etc.); and f) Work Plan containing key activities and timelines. The LOI and the technical proposal shall be assigned to the concerned PO by his/her respective Deputy Commissioner (DCIR).

The PO shall coordinate with the concerned Information Systems Group Project Manager (ISG PM) in evaluating the proposal to ensure that it meets relevant functional and technical requirements of the Bureau, while addressing potential concerns on data privacy, security, interoperability (if necessary), among others.