TMAP TAX UPDATES

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FEBRUARY 16, 2021 – MARCH 15, 2021

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**DISCUSSION**

**BIR Issuances**

1. **REVENUE MEMORANDUM CIRCULARS**

**REVENUE MEMORANDUM CIRCULAR NO. 21-2021 (February 16, 2021) circularizes Joint Circular No. 001-2021 which prescribes the Implementing Guidelines for Field Testing Under the Fuel Marking Program pursuant to R.A. 10963 (TRAIN)**

* The Circular is promulgated to provide supplemental guidelines on the conduct of Random Field and Confirmatory Testing on gasoline, diesel and kerosene found in warehouses, storage tanks, gas stations and other retail outlets, and in other properties or equipment of persons engaged in the sale, delivery, trading, transportation, distribution, or importation of fuel for domestic market.
* A Field Inspection Unit (FIU) composed of officers from the BOC and BIR shall serve as joint special task force and shall perform field testing activities in locations where fuel is transported, sold, or stored, regardless of whether the facility is open to the public or for use of a limited group or person. The cost of product testing shall be shouldered by the fuel owner.
* Petroleum products found without the official fuel marker or not containing the required level of official fuel marker shall be subject to duties and taxes, inclusive of the appropriate fines and penalties, without prejudice to the confiscation and forfeiture of such unmarked or diluted fuel and the filing of the appropriate criminal case.

**REVENUE MEMORANDUM CIRCULAR NO. 24-2021 (February 24, 2021) circularizes the Nationwide lmplementation of Online Application for Tax Clearance for Bidding Purposes and Tax Compliance Verification certificate (eTCBp/TCVC) through the Bureau's Official Electronic-Mail Address**

* Taxpayers may electronically file the online application for eTCBp/TCVC through the following email addresses: etcvc@bir.gov.ph, etcbp@bir.gov.ph.
* The provisions of Operations Memorandum No. 73-2020 and 74-2020 both dated October 19, 2020 shall be observed in the processing of eTCBp/TCVC in relation to Revenue Memorandum Circular No. 121-2020 dated October 26, 2020.

**REVENUE MEMORANDUM CIRCULAR NO. 25-2021 (February 24, 2021) circularizes the Additional Personal Equity Retirement Account (PERA) Unit lnvestment Trust Fund (UITF) Duly Approved by the Bangko Sentral ng Pilipinas**

* Bases: Rule 1 of the lmplementing Rules and Regulations of R.A. 9505, otherwise known as the Personal Equity Retirement Account (PERA) Act 2008, and Section 9 of Revenue Regulations No. 17-2011.
* Pursuant to the rule that only income earned from the investments and re-investments of PERA assets in duly accredited/approved PERA investment products shall be exempt from income taxes, the BSP approves the additional PERA UITF/ unit product in addition to the list in RMC No. 131-2016 dated December 13, 2016 and RMC No. 30-2077 dated April 12,2017:

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| --- | --- | --- | --- | --- | --- |
| Name of Bank | Name of Fund | Sub-Type | Detailed Type of Fund | Denomination | Date of BSP Approval |
| Philippine National Bank | PNB PERA Bond Fund | Bond | Medium Term PERA Bond Fund | Philippine Peso | January 2, 2021 |

**REVENUE MEMORANDUM CIRCULAR NO. 29-2021 (February 26, 2021) Allowing the Use of Electronic Signature (e-signature) on Certain BIR Forms/Certificates and Providing the Policies and Guidelines Therefor**

* Bases: R.A. 8792, otherwise known as the Electronic Commerce Act of 2000 and R.A. 11032, or the Ease of Doing Business and Efficient Government Service Delivery Act of 2018.
* Withholding agents or duly authorized representatives of withholding agents who issue BIR forms 2304, 2306, 2307 and 2316 may use an e-signature, aside from the manual signature. Approval of the BIR is not necessary in case the withholding agent opts to use an e-signature.
* The e-signature shall give rise to the following presumptions: (a) the e-Signature is that of the person to whom it correlates; (2) the e-Signature was affixed by that person with the intention of authenticating or approving the electronic document to which it is related or to indicate such person's consent to the transaction embodied therein; and (3) the methods or processes utilized to affix or verify the e-Signature operated without error or fault.
* The withholding agent shall make sure that the Form/Certificate with e-Signature shall only be issued once, ln case of re-issuance or the payee requested for another copy, the re-issued Form/Certificate should contain a "RE-PRINT" watermark in Cambria font and font size of 144.
* ln case of falsity or any misrepresentations contained in the issued Form/Certificate, those responsible therefor shall be held criminally, civilly, and administratively liable pursuant to the provisions of the National Internal Revenue Code of 1997, the Revised Penal Code and other applicable laws.

**REVENUE MEMORANDUM CIRCULAR NO. 31-2021 (March 2, 2021) circularizes the Updated List of Accredited Microfinance Non-Government Organizations (NGOs)**

* Basis: R.A. 10693 or the Microfinance NGOs Act.
* The BIR published the updated list of accredited Microfinance NGOs. The Certificate of Accreditation shall be valid for a period of three years from the date of issuance, unless earlier revoked by the Microfinance NGO Regulatory Council.

**REVENUE MEMORANDUM CIRCULAR NO. 32-2021 (March 2, 2021) Standard Guidelines and Mandatory Requirements for the Processing and Issuance of Tax Clearance Certificate for Government-Owned or Controlled Corporations (TCC-GOCCs) relative to the Application for Interim Performance-Based Bonus**

* The Tax Clearance Certificate is one of the requirements for the grant of Interim Performance Bonus for GOCCs. Applications for the issuance of TCC-GOCC, together with the mandatory requirements enumerated below shall be electronically filed with tcc\_gocc@bir.gov.ph with the subject Company Name\_PBB Claim Period using the email address which shall also be used for communication with the taxpayer.
* The documentary requirements are as follows:
	+ duly accomplished and notarized "Application Form for TCC-GOCC” signed by a person authorized through Board Resolution and with proof of payment of documentary stamp tax worth P30.00;
	+ Secretary's Certificate of the minutes/contents of said Board Resolution;
	+ proof of payment of certification fee worth P100.00;
	+ proof of payment of documentary stamp tax with payment confirmation; and
	+ Special Power of Attorney or Authorization Letter signed by the applicant with one photocopy of each valid Identification Cards with three specimen signatures of the applicant and the authorized representative, if applicable.
* The TCC-GOCC shall be issued and released within three working days from acknowledgement of application with the complete attachment of documentary requirements by forwarding a scanned copy to the authorized email address of the taxpayer. The original copy may also be claimed by the taxpayer at the Accounts Receivable Monitoring Division. The List of Tax Clearances shall also be posted in the BIR website for verification with the following information: taxpayer’s name, TIN, Revenue District Office where taxpayer is registered, the Tax Clearance control number and the date of issuance.

**REVENUE MEMORANDUM CIRCULAR NO. 33-2021 (March 3, 2021) Availability of Offline Electronic Bureau of Internal Revenue Forms (eBIRForms) Package Version 7.8**

* The new Offline eBIRForms Package now includes the January 2018 version of BIR Form Nos. 1800 (Donor’s Tax Return), 1801 (Estate Tax Return), 2000-OT (Documentary Stamp Tax Declaration/ Return (One-Time Transactions).
* The deadlines for filing and payment of taxes due are as follows:
	+ BIR Form No. 1800 - within 30 days after the gift or donation is made;
	+ BIR Form No. 1801 - within one year after the decedent’s death;
	+ BIR Form No. 2000-OT - within five days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred.
* Payments of the taxes must be through the Authorized Agent Banks (AABs) located within the territorial jurisdiction of the RDO having jurisdiction, unless there are no AABs, in such case, the return shall be filed and tax due shall be paid with the Revenue Collection Officer.

**REVENUE MEMORANDUM CIRCULAR NO. 34-2021 (March 3, 2021) Circularizing the Availability of the Revised BIR Form No.2200-A [Excise Tax Return for Alcohol Products] January 2020 (ENCS) and BIR Form No. 2200-T [Excise Tax Return for Tobacco, Heated Tobacco and Vapor Products]] January 2020 (ENCS)**

* BIR prescribes the following revised Excise Tax Forms:

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| --- | --- | --- |
| **BIR Form No.** | **Form Name** | **Legal Basis/ Reason for Revision** |
| 2200-A | Excise Tax Return for Alcohol Products January 2020 | R.A. Nos. 10351 and 11467 |
| 2200-T | Excise Tax Return for Tobacco, Heated Tobacco and Vapor Products January 2020 | R.A. Nos. 11346 and 11467 |

* While already available in the BIR website, the revised forms are not yet available in eFPS and eBIRForms. Taxpayers using these systems shall continue using the old versions. Meanwhile, manual filers shall download the PDF from the website, print the form and fill out the applicable fields. Payment of the pertinent taxes may be done manually or online through mobile payment platforms such as GCash or Paymaya or through electronic bank facilities such as Landbank Biz Portal, DBP Tax Online, UnionBank Online Web and Mobile Payment Facility.

**REVENUE MEMORANDUM CIRCULAR NO. 35-2021 (March 3, 2021) circularizes the Availability of the Enhanced BIR Form No. 1601-FQ September 2020 (ENCS)**

* The BIR prescribes the revised BIR Form No. 1601-FQ (Quarterly Remittance Return of Final Income Taxes Withheld) September 2020 to include additional countries which have tax treaties with the Philippines namely Mexico, Qatar, Sri Lanka, and Turkey.
* While already available in the BIR website, the revised forms are not yet available in eFPS and eBIRForms. Filers through eFPS shall use January 2018 version which already includes the additional countries. Meanwhile, manual and eBIRForms filers shall download the PDF from the website, print the form and fill out the applicable fields. Payment of the pertinent taxes may be done as prescribed in RMC No. 34-2021.

**REVENUE MEMORANDUM CIRCULAR NO. 36-2021 (March 5, 2021) Shift from Final to a Creditable System on the Value-Added Tax (VAT) Withheld on Sales to Government or Any of Its Political Subdivisions, Instrumentalities or Agencies, Including GOCCs**

* Bases: Section 37 of RA No. 10963 and Section 4-114-2 of Revenue Regulations (RR) No. 13-2018.
* The old versions of BIR Form Nos. 2550M and 2550Q must be accomplished as follows:

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| --- | --- | --- | --- |
| **BIR Form No.** | **Line/ Schedule Affected** | **Description** | **Remarks** |
| 2550M / 2550Q(v. February 2007) | 20B / 23B | Input tax on sale to Govt. closed to expense (Sch. 4) | Not to be filled out/ To be deactivated from eFPS |
| 2C / 26D | VAT withheld on Sales to Government (Sch. 8) | Where the creditable VAT withheld will be reflected |
| Schedule 4 | Input Tax Attributable to Sale to Government | Not to be filled out/ To be deactivated from eFPS |
| Schedule 8 | VAT withheld on Sales to Government | Where the details of the creditable  |

* The government or any of its political subdivisions, instrumentalities, or agencies, including GOCCs who are required to withhold creditable VAT shall issue to the VAT taxpayer the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) using Alphanumeric Tax Code No. WV010 for purchases of goods or WV020 for purchases of services instead of the Certificate of Final Tax Withheld at Source (BIR Form No. 2306) so that the latter may claim VAT credit.
1. **REVENUE MEMORANDUM ORDERS**

**REVENUE MEMORANDUM ORDER NO. 08-2021 (February 17, 2021) Providing new Policies and Procedure in the Issuance of the Notice of Denial (NOD) of the Application for Compromise Settlement Cases by the Concerned Regional Offices as well as the Issuance of the Authority to Cancel Assessment (ATCA) and Certificate of Approval for Applications Duly Approved by the National Evaluation Board**

* The Order is issued to expedite the procedures in the issuance of NOD, Certificate of Availment (CA), and ATCA.
* To lessen the time that the docket will be travelling to and from the BIR head office, all NODs of applications for compromise settlement resulting from deliberations conducted by the Regional Evaluation Board shall be signed by the Regional Director if the basic deficiency tax is P500,000 and below, and by the Commissioner of Internal Revenue if more than the threshold amount.
* CAs on applications for compromise settlement duly approved by the National Evaluation Board), including cases subject of Judicial Compromise Agreement, shall be signed by the Assistant Commissioner of the Collection Service or by the Assistant Commissioner of the Large Taxpayers Service if involving large taxpayers’ cases. The signed CA together with the entire docket of the case shall then be transmitted back to the office which has jurisdiction thereto.
* ATCAs on applications for compromise settlement duly approved by the NEB shall be signed by the concerned Regional Director or the Assistant Commissioner where the case originated.

**REVENUE MEMORANDUM ORDER NO. 09-2021 (February 19, 2021) prescribes the Simplified Guidelines and Procedures on the Use of Computerized Accounting System (CAS), Computerized Book of Accounts (CBA), and/or its Components, including Electronic Storage System (ESS), Middleware and Other Similar Systems**

* The BIR issued these guidelines to address the issues and concerns particularly on the processing of the applications for Permit To Use (PTU) of large taxpayers and non-large taxpayers intending to use CAS, CBA, and their components as well as taxpayers engaged in business who shall use an Electronic Storage System (ESS), middleware and other similar systems. Rather than applying for a PTU, the taxpayers now only need to inform and register with the Revenue District Office (RDO) / Large Taxpayers Office (LT Office) where it is registered of its intention to use a “System” by submitting the requirements stated on the Checklist of Documentary Requirements (Annex A) manually or via electronic mail.
	+ If a branch office is registering ahead of its head office or is adopting a different system, the registration shall be filed at the RDO where the branch office is registered.
	+ Affiliated companies, sister companies, franchisees, closely held corporations, other similar companies shall register with the RDO/LT Office where the aforesaid companies are registered.
* Within three working days from the submission of the documents, the RDO/LT office shall issue an Acknowledgment Certificate which shall be valid unless revoked by the BIR upon discovery of the taxpayer’s non-compliance with related issuances.
* Tax Service Providers (TSPs) or third-party software providers and the taxpayers availing their services must execute a Joint Sworn Statement with attached Summary of System Description, Commercial Invoices/Receipts/Document Description, Forms/Records and Reports Specification.
* The registration of the Cash Register Machines (CRMs)/ Point-of-Sale (POS) System and Other Sales Receipting System/Software shall be separate from the registration of “System” and shall follow the provisions on the accreditation and subsequent registration of the CRMs/POS Machines and Other Sales Receipting System/Software based on existing revenue issuances.
	+ However, salient details of the CRMs/POS Machines and Other Sales Receipting System/Software that will be linked to any “System” must be declared by the taxpayer in the Annexes of the Sworn Statement at the time of the registration of such “System”.
* If the principal and/or supplementary receipts/invoices are not generated by the registered “System” or if the taxpayer intends to use manual BIR-approved receipts or invoices despite having system-generated versions, the taxpayer should apply for Authority to Print such receipts/invoices based on existing revenue issuances.

**REVENUE MEMORANDUM ORDER NO. 11-2021 (March 3, 2021) Modification of BIR Form No. 0044 (Request for System Access/ Access Revocation)**

* The Order promulgates minor modifications on BIR Form No. 0044 (Request for System Access/ Access Revocation) to address the requirements of the Internal Revenue Integrated System. The modifications to the form shall not affect the existing policies and procedures on the granting and revocation of system access, provided under Revenue Memorandum Order No. 28-2020.
1. **SUPREME COURT CASES**

**Commissioner of Internal Revenue v. Filminera Resources Corp.**

**Supreme Court (First Division) G.R. No. 236325**

**September 16, 2020**

* Proof of actual exportation of goods sold by a VAT-registered taxpayer to a BOI-registered enterprise is necessary for the transaction to be considered zero-rated export sales. The taxpayer claiming a refund or issuance of tax credit certificate for unutilized input VAT attributable to zero-rated sales must submit a certification from the BOI attesting the actual exportation of the products, otherwise the claim shall not be granted.

**Games and Amusement Board and Bureau of Internal Revenue v. Klub Don Juan De Manila, Inc.**

**Supreme Court (First Division) G.R. No. 252189**

**November 3, 2020**

* Regional trial courts cannot issue an injunction against the collection of documentary stamp tax (DST) under Section 218 of the 1997 NIRC.

**Commissioner of Internal Revenue v. East Asia Utilities Corp.**

**Supreme Court (Second Division) G.R. No. 225266**

**November 16, 2020**

* The enumeration in RR No. 11-2005 of the following direct costs that may be claimed as deduction by a PEZA-registered enterprise from its gross income subject to a special tax of 5% is not exclusive.

(1) direct salaries, wages, or labor expense,

(2) service supervision salaries,

(3) direct materials and supplies used,

(4) depreciation of machineries and equipment used in the rendition of registered services, and of that portion of the building owned or constructed that is used exclusively in the rendition of registered service,

(5) rent and utility charges for buildings and capital equipment used in the rendition of registered services, and

(6) financing charges associated with fixed assets used in the registered service business which were not previously capitalized.

* The list is only made by way of example of the nature and type of expenses that may be deducted. Other costs and expenses directly related to the enterprise's PEZA-registered activity and are not administrative, marketing, selling and/or operating expenses or incidental losses shall also be allowed as deductions for purposes of computing the 5% gross income tax.

**Commissioner of Internal Revenue v. Philex Mining Corp.**

**Supreme Court (Second Division) G.R. No. 230016**

**November 23, 2020**

* Under Section 110 (A) of the 1997 NIRC, creditable input taxes must be evidenced by a VAT invoice or official receipt issued in accordance with Section 113 and 237. Sections 4.110-8, 4.113-1 (A) and (B) of RR No. 16-2005 enumerate the documents required and information that must appear on the face of the official receipt to substantiate the input tax on importation of goods other than capital goods on domestic purchases of services. Neither the 1997 NIRC nor RR No. 16-2005 suggests that subsidiary journals and monthly VAT declarations are part of the substantiation requirements that must be complied with to support a claim for tax refund or credit.
* While the law required the keeping of subsidiary journals and the filing of monthly VAT declarations, the CIR and the courts may not deny request for refund on the basis that the taxpayer failed to comply with these requirements since the law does not provide for its compliance to be entitled for a refund.
1. **COURT OF TAX APPEALS CASES**

**Chevron Services Phils., Inc. v. Commissioner of Internal Revenue**

**CTA Case No. 9571**

**February 17, 2021**

* The premature issuance of the Final Assessment Notice, prior to the lapse of the 15-day period given to file reply to the Preliminary Assessment Notice, violates the taxpayer’s right to due process.

**Commissioner of Internal Revenue v. Ale Mart Corp.**

**CTA EB Case No. 1983 (CTA Case No. 8998)**

**February 18, 2021**

* Lack of a definite date of payment of deficiency tax liabilities in the Formal Letter of Demand and Final Assessment Notice would cause the deficiency tax assessment against the taxpayer to be void.

**North Luzon Renewable Energy Corp. v. Commissioner of Internal Revenue**

**CTA Case No. 9886**

**February 19, 2021**

* The Supreme Court laid down the essential elements for the grant of vat zero-rating under Section 15(g) of the Renewable Energy Act of 2008 as follows:

(1) the seller is a Renewable Energy Developer of renewable energy facilities;

(2) it sells fuel or power generated from renewable sources of energy, such as wind;

(3) the seller is a “generation company”, i.e., a person or entity authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity; and

(4) such authority is embodied in a Certificate of Compliance issued by the ERC which must be secured before the actual commercial operations of the generation facility.

**Amadeus Phil., Inc. v. Commissioner of Internal Revenue**

**CTA Case No. 9664**

**February 22, 2021**

* Generally, the presentation of both foreign Articles of Incorporation and SEC Certificate of Non-Registration would suffice to prove that the recipient of goods and services subject of a VAT refund claim is a non-resident foreign corporation not doing business in the Philippines and, hence, the sale of goods or services thereto is zero-rated. However, an agreement that allows the foreign corporation to participate in the marketing and distribution of products in the Philippines is covered by the definition of "doing business" in the Philippines under Section 3(d) of the Foreign Investments Act and therefore, contradicts the claim for VAT refund.

**BAP Credit Bureau, Inc. v. Commissioner of Internal Revenue**

**CTA EB No. 2095 (CTA Case No. 9570)**

**February 23, 2021**

* An unreasonable surcharge may be the subject of abatement or cancellation under Section 204 of the 1997 NIRC but it may not be a subject of a claim for refund or tax credit under Section 229.

**Commissioner of Internal Revenue v. Amparo Shipping Corp.**

**CTA EB No. 2165 (CTA Case No. 9387)**

**February 23, 2021**

* RMO No. 20-1990 requires the CIR or the authorized revenue official to sign the waiver of statute of limitations, which extends the period within which the BIR may issue a deficiency assessment and to indicate that the BIR has accepted and agreed to the waiver on a specific date which must also be clearly stated. Failure to strictly adhere to these requirements prescribed by RMO no. 20-1990 shall cause the waiver to be defective.

**San Carlos Biopower Inc. v. Commissioner of Internal Revenue**

**CTA Case No. 9919**

**March 01, 2021**

* R.A. 1604 provides that the International Finance Corporation (IFC) is exempt from taxation and customs duties which include DST. The immunity from taxation of IFC does not extend to loan agreements that the IFC enter. Applying RR No. 09-00, when one of the parties to the taxable transaction is exempt from DST, the other party who is not exempt shall be the one directly liable.

**Thermaprime Drilling Corp. v. Commissioner of Internal Revenue**

**CTA EB No. 2155 (CTA Case No. 8896)**

**March 02, 2021**

* When the 120-day (now 90-day) period provided in Section 112 of the 1997 NIRC lapses without any action from the CIR on the claim for refund or tax credit of input taxes, the taxpayer must no longer wait for the CIR to come up with a decision since the inaction already amounts to denial. The taxpayer must file an appeal within 30 days from the lapse of the 120-day period, otherwise the claim shall be outside the jurisdiction of the CTA.

**Sonoma Services Inc. v. Commissioner of Internal Revenue**

**CTA Case No. 9808**

**March 02, 2021**

* The presentation of regularly issued Certificates of Creditable Withholding Tax at Source (BIR Form 2307) is sufficient proof that creditable income tax has indeed been withheld from a taxpayer’s income by the payor-withholding agent. It is not necessary for the person who executed the certificate to personally testify as to the authenticity considering that the certificate was executed under the penalties of perjury.

**Ecotechnovations, Inc. v. Commissioner of Internal Revenue**

**CTA Case No. 9701**

**March 03, 2021**

* Based on Section 228 of the 1997 NIRC and RR No. 12-99, as amended by RR No. 18-13, BIR notices may be served through the following modes: (1) primarily, through personal service by personally delivering a copy of the notice; and in case personal service is not practicable, the notice shall be served either (2) by substituted service, or (3) by mail.
* If the taxpayer denies having received the assessment notices, it is incumbent upon the CIR to prove by competent evidence that the assessment notices were indeed received by the taxpayer. Failure to prove receipt of the FLD/FAN would cause the deficiency tax assessment to be null and void for having been issued in violation of the due process requirements.

**Ordoprime Ventures, Inc. v. Commissioner of Internal Revenue**

**CTA Case No. 10042**

**March 03, 2021**

* A compromise settlement falling within the jurisdiction of the National Evaluation Board is valid if it was approved by a majority of all the members of the NEB, and there was full settlement of the offered amount.

**Snowy Owl Energy Inc. v. Commissioner of Internal Revenue**

**CTA Case No. 9618**

**March 03, 2021**

* The important factor that determines the source of income is the place where the services were actually rendered and not the residence of the payor or the place where the contract is entered into or the place of payment. Hence, payments received by a non-resident foreign corporation not engaged in business in the Philippines for services rendered in a foreign country are not subject to income tax and consequently final withholding tax.

**Vestas Philippines, Inc. v. Commissioner of Internal Revenue**

**CTA Case No. 9604**

**March 03, 2021**

* To qualify for VAT zero-rating under RA 9513, the renewable energy developer must prove with sufficient evidence that it has secured Department of Energy (DOE) Certificate of Registration, Registration with the BOI, and Certificate of Endorsement by the DOE.

**National Food Authority v. Municipality of Shariff Aguak**

**CTA AC No.202**

**March 04, 2021**

* Pursuant to Section 206 of the Local Government Code of 1991, every person claiming real property tax exemption must present documentary evidence in support of its claim for exemption within 30 days from the date of the declaration of real property, for the subject property to not be listed in the assessment roll.
* Absent any proof that the property being taxed has been dropped from the assessment roll, taxes must still be paid under protest if the exemption is insisted upon.

**First Gen Hydro Power Corp. v. Commissioner of Internal Revenue**

**CTA Case No. 9889**

**March 05, 2021**

* Section 6 of RA 9136 otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA and Section 4 (a) of Rule 5 of its Implementing Rules and Regulations explicitly state that before a new generation company may commence its commercial operation, it must first secure a Certificate of Compliance (COC) from the Energy Regulatory Commission to carry out such operation. A taxpayer cannot claim that it need not secure a COC since its claim for refund is anchored on Section 108 of 1997 NIRC and not under EPIRA. Between a general law like the 1997 NIRC and a special law like the EPIRA, the latter prevails.

**Marketing Convergence, Inc. v. Commissioner of Internal Revenue**

**CTA Case No. 9379**

**March 08, 2021**

* An appeal to the CTA will not suspend the payment, levy, distraint and/or sale of any property of the taxpayer for the satisfaction of his tax liability. However, if the collection may jeopardize the interest of the taxpayer, the CTA may suspend the collection and require the taxpayer either to deposit the amount claimed or to file a surety bond.
* The CTA may further dispense with the deposit of the amount and the filing of the bond if the method employed by the CIR in the collection of tax is not sanctioned by law.

**International Container Terminal Services, Inc. v. City of Manila**

**CTA EB No. 277 (CTA AC No. 11)**

**March 10, 2021**

* The Supreme Court laid down the following guidelines in relation to judicial claims for refund of local business taxes:
	+ there is no need to comply with the requisite of prior administrative claim of refund filed before the local treasurer; and
	+ the judicial case for refund should be filed within two years from the payment of tax, fee, or charge or from the date when the taxpayer is entitled to a refund or credit.

**Y&R Philippines, Inc. v. Commissioner of Internal Revenue**

**CTA EB No. 2019 (CTA Case No. 9437)**

**March 11, 2021**

* In a decision granting refund of taxes, interest shall not accrue on the amount to be refunded to the taxpayer unless (1) there is a law expressly granting the payment of interest as a form of damages; and (2) the collection of tax was attended by arbitrariness.

**San Miguel Paper Packaging Corporation v. Commissioner of Internal Revenue**

**CTA EB No. 2099 (CTA Case No. 9288)**

**March 15, 2021**

* Good faith and honest belief that a taxpayer is not subject to tax based on previous interpretations of government agencies tasked to implement the tax law are sufficient justification to delete the imposition of surcharges and interest. To maintain said imposition, the CIR must disprove the claim of the taxpayer that in good faith, it believed it was not subject to tax.
* The CIR cannot also impose compromise penalty without an agreement or conformity of a taxpayer.

**FCF Mineral Corp. v. Commissioner of Customs**

**CTA Case No. 8789**

**March 15, 2021**

* Pursuant to the Philippine Mining Act, a Financial and Technical Assistance Agreement (FTAA) contractor is exempt from paying VAT and customs fees on the importation of capital equipment before or during the "Recovery Period." Under Section 7 of DAO No. 2007-12, the “Recovery Period” is defined as a maximum of five years or at a date when the aggregate of the Net Cash Flows from the Mining Operations is equal to the aggregate of its Pre-Operating Expenses, reckoned from the Date of Commencement of Commercial Production, whichever comes first.
* The DENR Secretary and not the CIR is the government official who has the authority to promulgate rules and regulations implementing the intent and provisions of the Philippine Mining Act, including those governing the tax exemption awarded to FTAA contractors.
1. **BUREAU OF CUSTOMS ISSUANCES**

**CUSTOMS MEMORANDUM ORDER NO. 11-2021 (March 15, 2021) Imposition of Definitive General Safeguard Duty on Imported Cement from Covered Countries Pursuant to Department of Trade and Industry Administrative Order NO. 21-02**

* Importers of cement originating from the countries excluded from the imposition of the definitive safeguard duty shall submit a Certificate of Country of Origin (CO) issued by the authorized agency in the country of manufacture subject to affixation of “Apostille” to the document or authenticated by the Philippine Embassy/ Consulate general, as applicable.
1. **BANGKO SENTRAL NG PILIPINAS ISSUANCES**

**CIRCULAR LETTER NO. CL-2021-018 (March 1, 2021) Anti-Money Laundering Council (AMLC) Resolution No. TF-35, Series of 2021**

* Bases: Sections 25 and 36 of the Anti-Terrorism Act of 2020 and the AMLC’s mandate under Section 11 of the Terrorism Financing Prevention and Suppression Act of 2012 (2012 TFPSA).
* All covered persons and relevant government agencies are directed to freeze without delay any funds and other assets that are owned or controlled, directly or indirectly, including funds and assets derived or generated by the designated individuals, groups, undertaking, and entities included in the United Nations Consolidated List under United Nations Security Council Resolutions 1267 (1999), 1989 (2011), 2253 (2015) and 1988 (2011).
* Any person who deals directly or indirectly with any property or funds that he knows or has reasonable ground to believe is owned or controlled by a designated person, organization, association, or group of persons, and makes available any property or funds or financial services or other related services to a designated person, organization, association, or group of persons, will be criminally charged for dealing with a designated person or entity under Section 8 of the 2012 TFPSA.
1. **SEC CIRCULARS/ OPINIONS**

**OPINION No. 21-03 (February 18, 2021) Re: Deed of Trust and Assignment over Share of Stock**

* A company with nominee shareholders can report in its GIS changes in nominee shareholders as long as a Deed of Trust and Assignment is executed instead of a Deed of Sale. That the stock standing on the corporate books is in the name of the person as a mere qualifying shareholder or that the holder of the stock certificate is described merely as a nominee serves as notice to the corporation and third parties that the holder thereof does not hold the share in his own right but holds it only as a nominee for the benefit of the real owner.
* The election of a new nominee director is a circumstance of governance structure that also needs to be reported to the SEC through the GIS as it involves a material change in the Board’s composition.

**MEMORANDUM CIRCULAR NO. 03 Series of 2021 (March 9, 2021) Schedule and Procedure for the Filing of Annual Financial Statements, General Information Sheet and Other Covered Reports**

* Bases: Section 180 of R.A. 11232 (Revised Corporation Code of the Philippines); Sections 7 and 17 of R.A. 11032 (Ease of Doing Business and Efficient Government Service Delivery Act of 2018).
* All corporations registered with the SEC must enroll through the SEC’s Online Submission Tool (OST) and submit the following reports through the OST in the formats indicated as follows:

|  |  |
| --- | --- |
| Audited Financial Statements (AFS)* + - Duly stamped received by the BIR or proof of filing with the BIR should be attached to the AFS
		- Duly signed Auditor’s Report
		- Statement of Management’s Responsibility duly signed by authorized signatories
		- Compliant with all the AFS requirements as stated in the checklist available on the SEC website, and in accordance with the Revised SRC Rule 68, if applicable
 | Multi-Page PDF High Resolution Scan (at least 100x100 dpi) of thedocument with the Signatories Page and the Notarization Page |
| General Information Sheet (GIS) | (a) Multi-Page PDF with Text Layer of the accomplished but unsigned form; and(b) Multi-Page PDF High Resolution Scan (at least 100x100 dpi) of the document withthe Signatories Page and the Notarization Page. |
| Sworn Statement for Foundation (SSF) | Multi-Page PDF High Resolution Scan (at least 100x100 dpi) of thedocument with the Signatories Page and the Notarization Page |
| General Form for Financial Statements (GFFS) | Excel |
| Special Form for Financial Statements (SFFS) | Excel |
| Affidavit of Non-Operation (ANO), to be filed together with the GIS/AFS. Filer may submit a GIS/AFS without any movement/change | PDF |
| Affidavit of Non-Holding of Annual Meeting (ANHAM), to be filed together with the GIS. Also, the filer may submit a GIS, without any movement/change (No Meeting Held). | PDF |

* Hard copies of reports shall not be accepted, as well as submissions through email, mail, courier, and chute box. The SEC Main Office and Extension Offices shall accept submissions of reports over the counter only upon Notice from OST that problems may have been encountered during the process of enrollment and/ or submission.
* The enrollment procedures and requirements are as follows:
1. Fill out the application form online through https://cifss-ost.sec.gov.ph/
2. Attach the following documents:
	1. Board Resolution, as embodied in a Secretary’s Certificate, from the corporation authorizing the Company’s representative to file reports on behalf of the corporation. The prescribed format of the Board Resolution may be downloaded from the OST.
	2. MC28 Report, required under SEC Memorandum Circular No. 28, s. of 2020 or the Requirement for Corporations, Associations, and Individuals to Create and/or Designate E-mail Account Address and Cellphone Number for Transactions with the Commission and/or GIS version 2020 or Notification Update Form (NUF) for Foreign Corporations submitted to the SEC.
3. Upload the application form, together with the attachments.
4. Wait for the approval of the application through email and the access key (User ID and Password) to file reports through the OST. The access key must be always treated as confidential for the security of the company filing the reports.
5. If the application is pending approval, wait for a notification through registered email for compliance with additional requirements, if any. If all the requirements have been complied with, an access key will be issued to the applicant.
6. The issued access key (User ID and Password) shall be used by the filer to access the OST and file the reports.
* In case filers cannot enroll and submit reports through the OST, kiosks shall be provided in SEC offices and other areas as may be designated by the SEC for technical assistance on the use of the OST. The OST kiosks shall be available for nine months from March 15, 2021 to December 15, 2021.