TMAP TAX UPDATES
(16 November 2021 – 16 December 2021)

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A. SUPREME COURT DECISIONS

1. The lack of a valid letter of authority (LOA) authorizing a revenue officer to conduct an audit on the taxpayer makes an assessment void. (*Himlayang Pilipino Plans, Inc. vs. CIR, G.R. No. 241848. 14 May 2021*)

A memorandum issued by the Revenue District Officer does not comply with the requirements of Section 13 of the 1997 National Internal Revenue Code, as amended (Tax Code) which requires that a revenue officer must be validly authorized before conducting an audit of a taxpayer. In relation to Section 13 of the Tax Code, Revenue Memorandum Order (RMO) No. 43-90 provides that only the Regional Director, Deputy Commissioners and CIR have the authority to issue and sign LOAs.

2. A representative office is taxed in the same manner as a regional headquarters (RHQ) and not a regional operating headquarters (ROHQ) (*CIR vs. Shinko Electric Industries Co., Ltd. G.R. No. 226287. 06 July 2021*)

A representative office is only allowed under the law to undertake activities such as but not limited to information dissemination, promotion of the parent company's products as well as quality control of products. These activities, while directed to the parent company's clients, are not income generating, similar to the activities of an RHQ and in stark contrast with the qualifying services performed by an ROHQ.

3. **The prevailing rules on prescription for filing a tax refund or credit of excess/unutilized input value added tax (VAT) under Section 112 of the Tax Code is summarized in *Mindanao II Geothermal Partnership v. CIR*** (*Hedcor Sibulan, Inc. vs. CIR, G.R. No. 202093., 15 September 2021*):

Rules on the determination of the prescriptive period:

1) An administrative claim must he filed with the Commissioner of Internal Revenue (CIR) within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.
2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.
3) A judicial claim must be filed with the Court of Tax Appeals (CTA) within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.
4) All taxpayers, however, can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *CIR vs. Aichi Forging Co. of Asia Inc.*, as an exception to the mandatory and jurisdictional 120+30 day periods.

B. COURT OF TAX APPEALS DECISIONS

1. The issuance of the Final Decision on Disputed Assessment (FDDA) before the lapse of the 60-day period to submit supporting documents to protest to the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) is a violation of due process requirement in the issuance of deficiency tax assessments.
[CIR vs. FPIP Developers and Management Corporation, CTA EB No. 2235 (CTA Case No. 8980), 17 November 2021]

If the protest to the FLD/FAN includes a request for reinvestigation, the taxpayer is required to submit additional supporting documents within 60 days from the date of filing of the protest. Despite the taxpayer manifesting in the protest to the FLD/FAN their intention to submit documents within the 60-day period, the BIR issued the FDDA 30 days after the filing of the said protest. By failing to wait for the submission

of supporting documents, the Bureau of Internal Revenue (BIR) unduly deprived the taxpayer of a real opportunity to be heard and thereby failed to satisfy the due process requirement under the law.

2. A waiver is considered valid in case of mutual failure on the part of both the taxpayer and the CIR to comply with the requisites for the validity of the waiver.
[Medicard Philippines, Inc. vs. CIR, CTA EB No. 2158 (CTA Case No. 9094), 17 November 2021]

The general rule is that when a waiver does not comply with the requisites for validity specified under RMO No. 20-90 and Revenue Delegation Authority Order No. 05-01, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, the Supreme Court has provided an exemption to this general rule in *CIR vs Next Mobile Inc, GR No. 212825, December 7, 2015*, following the principles of *in pari delicto* and estoppel.

In this case, the subject waivers were signed by the taxpayer's VP Controller without presenting any notarized written authority to do so for each waiver. The CIR, on the other hand, failed to demand such notarized written authority for the waivers that were executed. The mutual failure on the part of both parties to fulfill their obligations renders them *in pari delicto*. Thus, the parties cannot be allowed to raise the defects in the waivers to their own benefit. Instead, the validity of the waivers shall be upheld consistent with the public policy embodied in the principle that taxes are the lifeblood of the government.

3. It is mandatory for the CIR or his duly authorized representative to prove that the FLD/FAN was issued to, and was received by the taxpayer, in order to comply with the due process requirement in the issuance of deficiency tax assessments. *(10K South Concrete Mix Specialist, Inc. vs CIR, CTA Case No. 9730, 18 November 2021)*

As a general rule, a mailed letter is deemed received by the addressee in the ordinary course of mail. However, if the taxpayer denies receipt of the FLD/FAN, the burden shifts to the tax authorities to prove that the FLD/FAN was issued to, and was received by the taxpayer.

In order to prove the fact of mailing to the taxpayer, the Registry Receipt or Registry Return Card signed by the taxpayer or authorized representative should be presented. If the Registry Receipt or the Registry Return Card could not be located, a certification issued by the Bureau of Posts (now Philippine Postal Corporation) and any other pertinent document executed with its intervention may be presented. These documents must indicate that what was mailed was the FLD/FAN. In order to prove the fact of receipt by the taxpayer, the BIR needs to prove that the name indicated in the proof of mailing documents is an authorized representative of the taxpayer.

As strict compliance with the due process requirements is necessary, failure to prove the fact of mailing to, and actual receipt of FLD/FAN by the taxpayer, renders the issued tax assessment void.

4. Procedural due process is not satisfied with the mere issuance of a Preliminary Assessment Notice (PAN) without any intention on the part of the BIR to actually consider the taxpayer's reply thereto. *(Bac-Man Geothermal, Inc. vs CIR, CTA Case No. 9728, 18 November 2021)*

The issuance of an FLD which: (1) merely repeated the contents of the PAN differing only in the computation of interest, (2) neither referred to nor address the taxpayer's arguments in reply to the PAN, and (3) not accompanied by a computation sheet, constitutes a violation of the due process requirements in the issuance of the tax assessment. The issuance of the FDDA which still merely repeated the contents of the PAN and FLD is a transgression of the BIR's duty to inform the taxpayer of the reasons for the rejection of its arguments in the protest to the FLD. It is not sufficient that the reasons for rejection of the taxpayer's arguments were only known to the BIR in their internal memoranda. Failure to communicate such reasons for rejection in the FLD and FDDA is a wanton disregard of the due process which renders the assessment void and without legal significance.

5. In claims for refund of unutilized input VAT, it is indispensable to prove that the sale of services qualify for VAT zero-rating. *[Proctor & Gamble Asia Pte. Ltd vs CIR, CTA EB No. 2301 (CTA Case No. 7581 and 7639), 24 November 2021]*

Section 108(B) of the Tax Code specifically provides that in order to qualify for VAT zero-rating, the services must be: *(1)* performed in the Philippines by VAT-registered persons *(2)* to a nonresident person not engaged in business who is outside the Philippines, *(3)* the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

It is indispensable for claimant of tax refund to prove that the services it rendered must have been performed or rendered in the Philippines and not abroad as with requirement *(1)* above. The service agreements may not be sufficient if in the document, the services may be rendered not only in the Philippines but also outside the normal place of business of the service provider.

In case of non-resident foreign corporations (NRFCs) doing business outside the Philippines, each entity must be supported, at the very least by both the (1) SEC Certificate of Non-Registration of Corporation/Partnership and proof of foreign incorporation/registration (*i.e.*, Certificate/Articles of Foreign Incorporation/Association or Tax Residence Certificate) to comply with requirement *(2)* above.

To comply with requirement *(3)* above, this must be supported at the very least by Certifications of Inward Remittances which particularly identifies the parts or items corresponding to the alleged zero-rated sales.

6. A conviction of the corporation under Section 254 of the Tax Code is necessary before the penalty may be imposed on its corporate officers under Section 253 of the Tax Code.
(Enviroaire, Inc. vs. People of the Philippines, CTA EB CRIM No. 073 (CTA Crim Case No. O-408), 25 November 2021)

Section 254 of the Tax Code provides that the crime of tax evasion may be committed by any person, including a natural or juridical person. The conviction of a corporation as the "person" offender in Section 254 of the Tax Code is necessary and indispensable before Section 253 of the Tax Code can even be applied to make whatever penalty for the crime imposable upon its officers. This is because there is no criminal offense that directly charges the corporate officers for willful attempt to evade and defeat corporate income tax. Hence, the case against corporate officers alone will be dismissed if the prosecution failed to indict and charge the corporation itself in the Information as part of the requirements of due process.

7. In case of change of residence and/or place of business, the taxpayer is required to give written notice to the Revenue District Officer or district with jurisdiction over his former legal residence.
(Megaconstruct Group, Inc. vs CIR, CTA Case No. 9992, 02 December 2021)

In this case, the taxpayer properly complied with the notification requirements under Revenue Regulations (RR) No. 12-85 regarding its change of address when it sent letters and a copy of the Memorandum approving the transfer of registration. Further, the taxpayer even submitted a request that all letters in relation to the letter of authority be addressed and delivered to its new address. Thus, all communications, including the PAN and FAN should have been served at the taxpayer's new address.

The BIR's failure to prove that the subject PAN and FAN were received by the taxpayer, at their new address, renders the subject tax assessment void for violation of the right to due process of the taxpayer.

C. DEPARTMENT OF FINANCE

1. RR No. 20-2021, 26 November 2021, implements the "Act Taxing Philippine Offshore Gaming Operations"[1], thereby amending for the purpose Sections 22, 25, 27, 28, 106, 108 as well as adding new Sections 125-A and 288(G) of the Tax Code.

Salient points of RR No. 20-2021 are as follows:

- Taxation of POGO entities and their foreign employees as provided under Section 3 of the RR.

[1] Republic Act No. 11590.

A. Offshore Gaming Licensees (OGLs)	Gaming Operations	5% of the Gross Gaming Revenue Receipts (GGR) or 5% of the agreed predetermined minimum monthly revenue from gaming operations, whichever is higher. It shall be directly remitted to the BIR not later than the 20th day following the end of the month.
	Non-Gaming Operations	Philippine-based OGLs - 25% income tax on the taxable income during each taxable year from local and global sources. Foreign-based OGLs - 25% income tax on the taxable income during each taxable year from sources within the Philippines. Non-gaming revenues of all OGLs shall be subject to VAT or Percentage tax, whichever is applicable.
B. Accredited Service Providers	Income Tax	Organized within the Philippines - 25% of the taxable income during each taxable year from local and global sources. Organized outside the Philippines - 25% of the taxable income during each taxable year from sources within the Philippines.
	VAT	Zero-percent (0%) VAT rate shall apply if OGLs pay 5% gaming tax 12% VAT rate shall apply where services provided and goods supplied are used in the non-gaming operations of the OGLs
	Withholding Tax on Purchases of Goods & Services	Applicable withholding taxes for their purchases of goods and services.
C. Alien Individuals Employed by POGO Entities	Final withholding tax of 25% on their gross income; Provided, however, that the minimum final withholding tax due for any taxable month from said persons shall not be lower than PHP12,500.	

- Information required by the BIR under Section 4 of the RR.

  A. Newly established POGO entities shall submit the ***Summary List and Status Update on Foreign Nationals Employed Form*** (Annex A).
  B. All POGO entities shall regularly update the list of foreign employees in the ***Summary List and Status Update on Foreign Nationals Employed Form*** (Annex A).
  C. ***Status Report on OGLs Form*** (Annex B) and ***List of Foreign Nationals with Issued Gaming Employment License (GEL) Forms*** (Annex C & Annex C-1) for each POGO licensing authority not later than the 20th day after the close of each month.
  D. The BIR shall secure from the DOLE the list of foreign nationals employed by POGO entities who secured Alien Employment Permits (AEP).
  E. The BIR shall secure from the BI the list of foreign nationals employed by POGO entities who secured Provisional Working Permits (PWP) and/or 9(g) visas.

- Penalties to be imposed by the BIR and the applicable fees thereof under Section 5 of the RR.

- Section 6 covers the disposition of revenues from gaming tax on OGLs.
- This RR shall take effect immediately.

2. **RR No. 21-2021**, 03 December 2021, implements Sections 294(E) and 295(D) of the Tax Code, as amended by the Corporate Recovery and Tax Incentives for Enterprises (CREATE)[2] Law.

RR No. 21-2021 provides the following:

- The VAT exemption on importation and VAT zero-rating on local purchases shall only apply to goods and services **directly and exclusively used**[3] in the registered project or activity of a registered export enterprise, for a maximum period of 17 years from the date of registration, unless otherwise extended under the Strategic Investments Priority Plan (SIPP).

- The VAT zero-rating on local purchases shall be granted upon the endorsement of the concerned Investment Promotion Agency (IPA), in addition to the documentary requirements of the Bureau of Internal Revenue (BIR).

- Sections 4.106-5 and 4.108-5(b) of RR No. 16-05, as amended, should be read as follows:

Coverage	Amendments introduced by RR No. 21-2021
Zero-rated Sale of Goods or Properties (*Section 4.106-5 of RR No. 16-05, as amended*)	The following sales by VAT-registered persons shall be subject to 0% rate: a. Export sales; xxx xxx xxx b. Sales to persons or entities whose exemption from **direct and indirect taxes** under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate; **c. Sale of raw materials, inventories, supplies, equipment, packaging materials, and goods, to a registered export enterprise**, to be used directly and exclusively in its registered project or activity for a maximum period of 17 years from the date of registration, unless otherwise extended under the SIPP. Provided, that the above-described sales to existing registered export enterprises located inside ecozones and freeport zones shall also be qualified for VAT zero-rating under this sub-item until the expiration of the transitory period.**
Zero-rated Sale of Services [*Section 4.108-5(b) of RR No. 16-05, as amended]*	The following services performed in the Philippines by VAT-registered persons shall be subject to 0% VAT rate: 1. Services other than processing, manufacturing or repacking of goods rendered to a person engaged in business conducted outside the Philippines when the services are performed, the consideration for which is paid for in

[2] Republic Act (RA) No. 11534

[3] *The **direct and exclusive use for the registered project or activity** refers to the raw materials, inventories, supplies, equipment, goods, packaging materials, services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, and other expenditures directly attributable to the registered project or activity without which the registered project or activity cannot be carried out.*

	acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP; 2. Sales rendered to persons or entities whose exemption from **direct and indirect taxes** under special laws or international agreements to which the Philippines is a signatory, effectively subjects the supply of such services to zero percent (0%) rate; 3. **Sale of services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, to a registered export enterprise**, to be used directly and exclusively in its registered project or activity for a maximum period of 17 years from the date of registration, unless otherwise extended by the SIPP. Provided, that the above-described sales to existing registered export enterprises located inside ecozones and freeport zones shall also be qualified for VAT zero-rating under this sub-item until the expiration of the transitory period**; 4. Services rendered to persons engaged in international shipping or air transport operations, including leases or property for the use thereof: Provided, that these services shall be exclusively for international shipping or air transport operations; 5. Transport of passengers and cargos by domestic air or sea vessels from the Philippines to a foreign country. Gross receipts of international air or shipping carriers doing business in the Philippines derived from transport of passengers and cargo from the Philippines to another country shall be exempt from VAT; however, they are still liable to a percentage tax of three percent (3%) as provided for in Sec. 118 of the Tax Code; and 6. Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels: Provided, however that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to sale of services related to the maintenance or operation of plants generating said power.

*** The term "registered export enterprise" shall refer to an export enterprise as defined under Section 4(M), Rule 1 of the CREATE IRR, that is also a registered business enterprise as defined in Section 4(W) of the same IRR.*

RR No. 21-2021 also provides that any rules or regulations, issuances or parts thereof inconsistent with this RR are hereby repealed, amended or modified.

RR No. 21-2021 will be effective immediately upon publication in a leading newspaper of general circulation and shall cover transactions entered into the third quarter of taxable year 2021 and onwards.

D. BUREAU OF INTERNAL REVENUE

1. **RMC No. 115-2021**, 19 November 2021, publishes the letter from the Department of Health on the updated list of VAT-exempt COVID-19 drugs and vaccines under the CREATE Law used for treatment.

2. **RMC No. 117-2021**, 24 November 2021, clarifies the options of the taxpayer when submitting the soft copies of the BIR No. 2307 and BIR No. 2316 mandated under RR No. 15-2015, as amended by RR No. 16-2021.

The taxpayer may use the mode of submissions currently available, such as the electronic Audited Financial Statement System, Universal Storage Bus (USB) memory stick or other similar storage devices in the absence of DVD-Rs. Only one mode/facility shall be used per period of submission.

The USB or other similar storage devices may be used for submission of BIR Form No. 2307, BIR Form No. 2304 and BIR Form No. 2306.

3. **RMC No. 118-2021**, 10 December 2021, publishes the list of registered manufacturers/ importers/ exporters with the corresponding product brands/variants of cigarettes, heated tobacco and vapor products.

4. **RMC No. 119-2021**, 13 December 2021, announces the availability of the following revised manual returns:

Form No.	Description
BIR Form No. 1707	Capital Gains Tax Return (For Onerous Transfer of Shares of Stock Not Traded Through the Local Stock Exchange)
BIR Form No. 1707-A	Annual Capital Gains Tax Return (For Onerous Transfer of Shares of Stock Not Traded Through the Local Stock Exchange)

The forms were revised following the implementation of the CREATE Law. The forms are not yet available in the electronic Bureau of Internal Revenue Forms (eBIRForms). Manual and eBIRForms filers shall download the PDF version of the forms and accomplish it accordingly for filing manually with the Revenue District Office with territorial jurisdiction where the seller/transferor is required to register. This is until such time the forms are available in the Offline eBIRForms Package.

Payment may be made through the following modes:

Mode of Payment	
Manual	Authorized Agent Bank (AAB) located within the territorial jurisdiction of the Revenue District Office where the seller/transferor is required to register; or In places where there are no AABs, with the Revenue Collection Officer under the jurisdiction of the RDO using Revenue Collection Officer System facility.
Online	— Landbank of the Philippines (LBP) Link.Biz Portal — Development Bank of the Philippines (DBP) Tax Online — UnionBank Online Web and Mobile Payment Facility — Mobile Payment (GCash/PayMaya) — Taxpayer Software Provider (MYEG.Ph)

For no payment returns, the taxpayer shall file the return with the RDO with jurisdiction where the seller/transferor is required to register.

5. **RMC No. 120-2021**, 13 December 2021, circulates the amendments to the implementing rules and regulations of RA 11534 or the CREATE Act in relation to the customs and tax incentives. Changes are underlined.

Section	Amendment
Section 4, Rule 2 of the IRR	Registered export and domestic market enterprises shall enjoy exemption from customs duties on their importation of capital equipment, raw materials, spare parts, and accessories for their registered project or activity for a maximum period of seventeen (17) years and twelve (12) years from the date of registration, respectively, unless otherwise, extended under the SIPP; provided that the following conditions are complied with: **xxx xxx xxx**
Section 5, Rule 2 of the IRR	The VAT exemption on importation and VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in the registered project or activity of a registered export enterprise, for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended under the SIPP. The direct and exclusive use for the registered project or activity refers to raw materials, inventories, supplies, equipment, goods, packaging materials, services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, and other expenditures directly attributable to the registered project or activity without which the registered project or activity cannot be carried out; provided, that the VAT zero-rating on local purchases shall be granted upon the endorsement of the concerned IPA, in addition to the documentary requirements of the BIR.
Section 8, Rule 2 of the IRR	All registered business enterprises shall pay all applicable taxes at the regular rates under the Code and other laws after the expiration of the period of incentives of their registered project or activity, unless otherwise provided in these rules.
Section 3, Rule 3 of the IRR	Qualified expansion projects or activities defined under Rule 1, Section 4(U), may be granted three (3) years ITH followed by the enhanced deductions or SCIT, as applicable. The expansion project or activity may also be entitled to duty exemption, VAT exemption on importation and VAT zero-rating on local purchases under Rule 2, Section 4 and 5, respectively; *Provided, that* the application for tax incentives for a qualified expansion project or activity shall be approved by the FIRB or concerned IPA, as the case may be, based on the amount of investment capital of the expansion project or activity under Rule 5, Section 1.
Section 2, Rule 17 of the IRR	Existing RBEs with valid Certificate of Authority to Import (CAI) or Admission Entry whose capital equipment, raw materials, spare parts or accessories were ordered, as reflected in the date of the purchase order or on the date of the opening of the corresponding letters of credit; or loaded, as reflected in the bill of lading date; or are still in transit during the effectivity of Executive Order 85, Series of 2019, shall qualify for the duty exemption until the expiration of the CAI/Admission Entry. ~~or the transitory period under Section 311 of the Code~~.
Section 5, Rule 18 of the IRR	All registered export and domestic market enterprises that will continue to avail of their existing tax incentives subject to Sections 1, 2 and 3 of this Rule, may continue to enjoy the duty exemption, VAT exemption on importation, and VAT zero-rating on local purchases as provided in their respective IPA registrations; *Provided,* that the duty exemption, VAT-exemption on importation, and VAT zero-rating on local purchases shall only apply to goods and services directly attributable to and exclusively

	used in the registered project or activity of said registered export enterprises located inside the ecozones and freeports until the expiration of the transitory period; *provided, further*, that importation of capital equipment, spare parts, and accessories by existing export enterprises and domestic market enterprises registered with the BOI prior to the effectivity of the Act shall continue to be subject to duty exemption for a period of five (5) years from date of registration.
Section 6, Rule 18 of the IRR	Notwithstanding the provisions of Republic Act No. 11590, an offshore gaming license or an accredited service provider defined under Sections 22 (II) and 27 (G) of the Code, as amended, duly registered with, and enjoying incentives granted by an IPA under its charter prior to the effectivity of this Act, shall continue to enjoy said incentives until the expiration of the transitory period in Section 311 of the Code, as implemented by Sections 1, 2 and 3 of this Rule, or the expiry of the license or accreditation of the registered enterprise, whichever comes earlier; provided that, said offshore gaming licensees and accredited service providers shall thereafter be subject to the applicable taxes under Republic Act No. 11590 and its implementing rules and regulations.

The amendments to the IRR will be effective immediately upon publication in a leading newspaper of general circulation.

6. **RMC No. 121-2021,** 14 December 2021, to clarify the taxability of the interest paid by Cooperatives to its member's deposit or fixed deposits (otherwise known as share capital).

   Section 11 of RMC No. 12-10, which circularizes the Joint Rules and Regulations Implementing Articles 60, 61 and 144 of Republic Act No. 9520 (Philippine Cooperative Code of 2008) in relation to RA No. 8424 (National Internal Revenue Code or NIRC, as amended), provides that all members of cooperatives shall be liable to pay all the necessary internal revenue taxes under the NIRC, as amended, except for "any tax and fee, including but not limited to final tax on member's deposits or fixed deposits (otherwise known as share capital) with cooperatives, and documentary tax on transactions of members with the cooperative", among others. Member's deposit refers to savings and time deposits of both regular and associate members while share capital refers to member's paid-up capital.

   Based on the abovementioned provisions, members of the cooperative are not liable to pay any tax and fee on the interest earned on member's deposits and fixed deposits (share capital). Hence, cooperatives are also not liable to withhold tax on the aforesaid interest payments to its members.

7. **RMC No. 122-2021,** 14 December 2021, to clarify the tax treatment of integrating the Domestic Passenger Service Charge (DPSC) and International Passenger Service Charge (IPSC), commonly referred to as terminal fees, into airline tickets at the point of sale.

   The provisions of RMC No. 34-2012 shall also govern the invoicing and recording of integrated IPSC in the books of airline companies and airport authorities. Applying the guidelines laid down in the said RMC, the following are the rules for IPSC collected by Airline Company for Airport Authority:

Process	Guidelines
Collection of IPSC from passengers	The Domestic Airline Companies shall collect the IPSC from passengers and shall include the IPSC in the official receipt to be issued by the Airline Company to the passenger. The VATable and VAT exempt components of IPSC shall be separately reflected in the official receipt. The share of the Airport Authority in the IPSC

Process	Guidelines
	should be shown in the Airline Company's official receipt as part of receipts subject to VAT while the Aviation Security Fee and other fees (PD 1957) should be reflected as VAT exempt. Lastly, the VAT component of the IPSC should be included in the total VAT. However, for International Airline Companies, the collected IPSC from the passengers shall likewise be reflected in its official receipts. The share of the Airport Authority, Aviation Fee and other fees (PD 1957) should be reflected as VAT exempt. The accounts to record the IPSC (Share of Airport Authority, Aviation Security Fee and fees under PD 1957) may be shown in the financial statements as other income/expense.
Remittance of lPSC by Airline Company to Airport Authority	The lPSC collected by the Airline Company shall be paid to the Airport Authority, which in turn, shall issue an official receipt to the Airline Company. The official receipt shall indicate the full amount of the IPSC.
Payment of Service Fees by Airport Authority to Airline Company	Payment of service fees by Airport Authority to Airline Company shall be governed by the rules on government money payments and be subject to Creditable Withholding VAT (CVAT) at the rate of 5% and Creditable Withholding Tax (CWT) of 2% of gross payments. The Airline Company shall issue a VAT Official Receipt to acknowledge receipt of the service fees from the Airport Authority. However, payment of service fees by Airport Authority to international Airline Company shall be treated as other income subject to Corporate Income Tax. The Airport Authority shall remit the five percent (5%) CVAT and the two percent (2%) CWT on payment for service fees and issue the corresponding Certificate of Creditable Tax Withheld at Source (BIR Form 2307) in the name of the domestic airline company or the international airline company that is a resident foreign corporation, as the income recipient.

Section 6 of Revenue Regulations (RR) No. 15-2013 to the contrary notwithstanding, International Carriers exempt under Section 109 of the Tax Code shall be allowed to register for VAT purposes in relation to IPSC, being unrelated to the transport of passengers and cargo.

Moreover, the collection of taxes on IPSC specified under the RMC should be treated independently from the Gross Philippines Billings (GPB) Tax imposed under Section 28(A)(3) of the Tax Code and the 3% Common Carrier's Tax imposed under Section 118 of the Tax Code, as the GPB refers to the amount

of gross revenue derived from carriage of persons, excess baggage, cargo, and mail originating from the Philippines in a continuous and uninterrupted flight, while the Percentage Tax on International Carriers in Section 118 pertains to gross receipts derived from transport of cargo from the Philippines to another.

Considering that the IPSC is a service charge for services performed within the Philippines, then justifiably, it should be treated independently from the taxes imposed on the mentioned revenue from carriage of persons, excess baggage, cargo, and mail originating from the Philippines.

Should the airline company opt to remit the IPSC to the Airport Authority net of the Service Fees charged, the same rules as above shall apply. The Airport Authority shall still issue a VAT Official Receipt to the airline company for the full amount of IPSC and, at the same time, the airline company shall likewise issue a VAT Official Receipt to the airport authority for the service fees. However, to comply with the withholding requirements, the tax to be withheld on the service fees, whether CVAT, CWT, or Final Withholding Tax (FWT), shall be paid back to the Airport Authority for remittance to the BIR.

The recording of collection of IPSC from passengers; remittance of IPSC by Airline Company to Airport Authority; and payment of service fees by Airport Authority to Airline Company are illustrated in the Circular.

8. **RMC No. 123-2021**, 14 December 2021, publishes the letter from the Department of Health on the updated list of VAT-exempt COVID-19 drugs and vaccines under the CREATE Law used for treatment.

9. **RMC No. 124-2021**, 14 December 2021, publishes the letter from the Food and Drug Administration on the updated and consolidated list of VAT-exempt products under Sections 109(1)(AA) and 109(1) (BB) of the Tax Code as amended by RA No. 11534 and implementing rules Revenue Regulations No. 4-2021.

10. **RMC No. 125-2021**, 16 December 2021, informs taxpayers that payments for electronically filed One-Time Transactions (ONETT) may be paid through online payment facilities.

The following are the online payment facilities:

a. Landbank of the Philippines (LBP) Link.Biz Portal
b. Development Bank of the Philippines (DBP) Tax Online
c. UnionBank Online Web and Mobile Payment Facility

E. FISCAL INCENTIVES REVIEW BOARD (FIRB)

FIRB Resolution No. 23-2021, 15 October 2021, reiterates the requirements of the previous FIRB Resolution No. 19-21 and denies the appeal of Philippine Economic Zone Authority (PEZA) to be exempted from the required work from home (WFH) arrangement not exceeding 90% of the total workforce as provided under the said resolution.

FIRB Resolution No. 23-21 enunciates the following:

- FIRB Resolution No. 19-21 allows Registered Business Enterprises (RBEs) of Information Technology – Business Process Management (IT-BPM) sector to continue implementing the WFH arrangements without adversely affecting their fiscal incentives until 31 March 2022. Provided, that the number of employees under such arrangement **shall not exceed 90% of the total workforce of the RBE**; provided further, that beginning 01 January 2022, the ceiling shall be reduced to 75% for the remainder of the period of the temporary measure and that if the State of Calamity due to COVID-19 will be extended to any date beyond 01 January 2022, such ceiling shall be maintained at 90% until 31 March 2022.

- In its letter dated 23 September 2021, PEZA requested to allow 100% WFH and that only 90% of revenue derived from the project or activity be entitled to incentives instead of the 90% total workforce of the RBE, which request FIRB denied.

- The emerging economic strategy of the government is to open the economy while the Inter-Agency Force for the Management of Emerging Infectious Diseases Omnibus Guidelines and Department of Trade and Industry Advisory 21-09 allow Business Process Outsourcing (BPO) establishments and export-oriented business to operate onsite gradually and safely at 100% capacity in all levels of community quarantine.

- Non-compliance with the conditions prescribed under FIRB Resolution No. 19-21 shall be meted with the suspension of the income tax incentive applied on the revenue during the corresponding month/s of non-compliance.