

TMAP TAX UPDATES
(September 16, 2021 – October 15, 2021)

DECISION / ISSUANCE	DATE ISSUED	SUBJECT	PAGE NO.
COURT OF TAX APPEALS DECISION			
Exclusive Networks-PH Inc. formerly Transition Systems Phils. Pte Ltd., Inc. vs. Commissioner of Internal Revenue (CTA Case No. 9689)	September 20, 2021	Only the revenue officer named in the LOA may examine the books of accounts and other accounting records of a taxpayer	3
Commissioner of Internal Revenue vs. Philsaga Mining Corporation (CTA EB Case No. 2262)	September 23, 2021	Issuance of FDDA before lapse of 60-day period for submission of documents in support of a request for reinvestigation is a violation of taxpayer's rights to due process	3
REVENUE MEMORANDUM CIRCULARS			
Revenue Memorandum Circular No. 101-2021	September 21, 2021	Extended deadline for filing of VAT refund claims with VCAD falling due on September 30, 2021; suspension of the 90-day processing period	4
Revenue Memorandum Circular No. 102-2021	September 23, 2021	Important dates for the launching of third generation of internal revenue stamps for ordering and inventory planning of importers and local manufacturers of cigarettes, heated tobacco products and vapor products	4
Revenue Memorandum Circular No. 103-2021	October 01, 2021	Updated and supplemental list of VAT-exempt products pursuant to the TRAIN Law, RA No. 11467 and CREATE Law	5
Revenue Memorandum Circular No. 106-2021	October 13, 2021	Updated list of accredited microfinance NGOs now available	5
FIRB ISSUANCES			
Fiscal Incentives Review Board Resolution No. 19-2021; Memorandum on Guidelines to monitor the	August 2, 2021; September 9, 2021	Guidelines on work from home (WFH) arrangements for registered business enterprises (RBEs) of the IT-BPM sector	5

compliance with the conditions prescribed under FIRB Reso 19-21 re WFH arrangement for RBEs in the IT-BPM Sector			
SEC CIRCULARS/OPINIONS			
SEC OGC Opinion No. 21-10	September 21, 2021	A corporation may redeem its preferred shares even in the absence or lack of unrestricted earnings in its books	6

DISCUSSION

A. COURT OF TAX APPEALS DECISION

1. Only the revenue officer named in the LOA may examine the books of accounts and other accounting records of a taxpayer

A Letter of Authority (LOA) is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer (RO) to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.

In this instance case, the BIR avers that under Revenue Memorandum Order (RMO) No. 8-2006, only one LOA per taxable year may be issued to a taxpayer, thus, there is a need for the issuance of a Memorandum of Assignment to another RO to continue the audit of a previously named RO in each LOA. BIR insists that there is no requirement that the RO must be identified in the LOA to have authority and what is important is that the audit of the taxpayer has been previously authorized by an LOA.

However, the court cited RMO 43-1990 which specified the guidelines in the issuance of LOAs which states that any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require issuance of a new LOA. Hence, the specifically assigned RO must be named in the LOA and that only him or her may examine the books of accounts and other accounting records of a taxpayer pursuant to such LOA. Otherwise, the assessment is a nullity. (*Exclusive Networks- PH Inc. formerly Transition Systems Phils. Pte Ltd., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9689, September 20, 2021*)

2. Issuance of FDDA before lapse of 60-day period for submission of documents in support of a request for reinvestigation is a violation of taxpayer's rights to due process

Taxpayers protesting an assessment may file a written request for consideration or reinvestigation. A protest is a request for reconsideration if there is no submission of additional or supporting documentary evidence. Conversely, if the protest is a request for reinvestigation, the taxpayer is required to submit additional or supporting documents. For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of the protest within 60 days for the date of filing of protest.

In this instance case, the BIR issued the Final Decision of Disputed Assessment (FDDA) before the lapse of the 60-day period or mere forty-three (43) days after the filing of the protest to Formal Letter of Demand (FLD) and Final Assessment Notice (FAN). It contended that that the protest letter of the taxpayer was a request for reconsideration, not a request for reinvestigation, for which the 60-day period does not apply.

However, a careful scrutiny of the protest letter shows that the taxpayer, in its protest letter, indicated that it would furnish the BIR with supporting documents. The taxpayer's manifestation of its intention to submit supporting documents in its letter-protest only goes to show that the taxpayer is seeking a reinvestigation of its tax assessments on the basis of additional evidence to be presented.

By failing to wait for the submission of the supporting documents to the protest to the FLD and FAN, the BIR unduly deprived the taxpayer of a real opportunity to be heard and thereby failing to satisfy the due process requirement under the law rendering the

assessment void. (*Commissioner of Internal Revenue vs. Philsaga Mining Corporation, CTA EB Case No. 2262, September 23, 2021*)

B. REVENUE MEMORANDUM CIRCULAR

1. REVENUE MEMORANDUM CIRCULAR NO. 101-2021 (September 21, 2021) Extended deadline for filing of VAT refund claims with VCAD falling due on September 30, 2021; suspension of the 90-day processing period

- The VCAD is temporarily closed until October 3, 2021 in compliance with existing health protocols for the mitigation of COVID-19 pandemic. Hence, the deadline for application of VAT refund claims falling due on September 30, 2021 shall be extended until October 15, 2021.
- Moreover, the 90-day processing period of all VAT refund claims pending with VCAD is also suspended during the VCAD temporary closure.

2. REVENUE MEMORANDUM CIRCULAR NO. 102-2021 (September 23, 2021) Important dates for the launching of third generation of internal revenue stamps for ordering and inventory planning of importers and local manufacturers of cigarettes, heated tobacco products and vapor products

- The following schedule shall serve as the guidelines during the transition period for the launching of the 3rd Generation Design of Internal Revenue Stamps for affixture to the packaging of all imported and locally made cigarettes, heated tobacco and vapor products for both domestic sale and export:

Last day of ordering for the 2 nd Generation Internal Revenue Stamps	September 25, 2021
Last day of approving the stamp orders	September 28, 2021
Releasing of last stamp orders of 2 nd Generation stamps	October 10, 2021, or 15 days from the date of approval of the stamp order by the BIR
Period of suspension in placing stamp orders	September 26 to October 12, 2021
First day of ordering for the 3 rd Generation Internal Revenue Stamps	October 13, 2021
Start of releasing stamp orders of 3 rd Generation stamps	October 29, 2021, or 15 days from the date of approval of the stamp order by the BIR
Last day of validity of 2 nd Generation Internal Revenue Stamps in the market subject to extension, if warranted	September 29, 2022
Last day for the affixture of 2 nd Generation stamps for locally manufactured products	March 26, 2021 Six (6) months from date of release of stamps by APO
I. Stamps release by (APO Production Unit Inc) APO prior to September 26, 2021	
II. Stamps release after September 26, 2021	
Last day for the affixture of 2 nd Generation stamps for imported products	

I.	Stamps received by APO prior to September 26, 2021	May 26, 2022
II.	Stamps release after September 26, 2021	Eight (8) months from date of release stamps by APO

3. **REVENUE MEMORANDUM CIRCULAR NO. 103-2021 (October 01, 2021)**

Updated and supplemental list of VAT-exempt products pursuant to the TRAIN Law, RA No. 11467 and CREATE Law

- This Circular updates and supplements RMC No. 81-2021, which published the consolidated list of VAT-exempt drugs and products and has become the controlling list insofar as the VAT exemption of items under Sections 109(1)(AA) and 109(1)(BB)(ii) of the Tax Code of 1997, as amended, is concerned.

- The updates to the list of VAT-exempt drugs and products can be accessed through the link:

https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/2021%20RMCs/RMC%20No.%20103-2021%20Updates%20to%20the%20List%20of%20VAT-Exempt%20Products.pdf

4. **REVENUE MEMORANDUM CIRCULAR NO. 106-2021 (October 13, 2021)**

Updated list of accredited microfinance NGOs now available

- The Circular publishes the updated list of microfinance non-government organizations (NGOs) accredited by the Microfinance NGO Regulatory Council (MNRC) as of August 2021.

- Under the implementing rules and regulations (IRR) of Republic Act (RA) 10693, otherwise known as the "Microfinance NGOs Act", a Certificate of Accreditation for the purpose of availing incentives shall be valid for a period of three (3) years from the date of issuance, unless revoked by the MNRC.

- The full list can be accessed via the link below:
https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/2021%20RMCs/RMC%20No.%20106-2021%20Attachment.pdf

C. **FIRB ISSUANCES**

1. **Fiscal Incentives Review Board Resolution No. 19-2021 (August 2, 2021) and Memorandum on Guidelines to monitor the compliance with the conditions prescribed under FIRB Reso 19-21 re WFH arrangement for RBEs in the IT-BPM Sector (September 9, 2021)**

Guidelines on work from home (WFH) arrangements for registered business enterprises (RBEs) of the IT-BPM sector

- RBEs may continue implementing WFH arrangements without adversely affecting their fiscal incentives until March 31, 2022, subject to the following conditions:

- The number of employees under WFH arrangement shall not exceed 90% of the total workforce of the RBE. Beginning January 1, 2022, the ceiling shall be

reduced to 75% until March 31, 2022, However, if the state of calamity is extended beyond January 1, 2022, the ceiling shall be maintained at 90% until March 31, 2022.

- The number of laptops or other equipment of the RBE outside ecozone should not exceed the number of its employees who are under WFH arrangement.
- Bonds shall be posted for all equipment deployed by the RBE to their employees' home. If such equipment is not returned to the site, the bond will be used to pay taxes and duties.
- Revenues from export as required shall be maintained regardless of the allowed ratio of employees who will work from home.
- The RBEs shall submit the following reportorial requirement to their respective Investment Promotion Agencies:
 - On or before September 30, 2021:
 - A list of equipment and other assets brought out of the economic or freeport zones with the following details:
 - a. Quantity of laptops, desktops, or other assets;
 - b. Acquisition cost and book value; and
 - c. Amount of bond paid to cover 150% of the amount of taxes and duties (if imported) and VAT (if locally sourced)
 - The total number of employees and the number of employees under the WFH arrangement
 - A certification that the export requirement and number of employees will be maintained
 - Within 5 days from end of each month:
 - A report on the additional equipment and other assets brought out of the economic or freeport zones and the total number of employees and the number of employees under the WFH arrangement.

➤ Non-compliance with the conditions prescribed may result in suspension, withdrawal or cancellation of tax incentives of the RBE.

D. SEC Opinion

1. SEC OGC Opinion NO. 21-10 (September 21, 2021)

A corporation may redeem its preferred shares even in the absence or lack of unrestricted retained earnings in its books

➤ The general rule for the redemption of preferential shares under Section 40 of the Revised Corporation Code (RCC) is that there must be unrestricted retained earnings before a corporation can redeem, repurchase, or reacquire its own shares.

➤ The exception to the above rule is when the shares to be redeemed are "redeemable" as provided in the articles of incorporation and certificates of stock of the corporation. However, for any redemption of said shares to be valid, there must be sufficient assets to cover the debts and liabilities of the corporation

➤ Redemption may not be made where the corporation is insolvent or if such redemption will cause insolvency or inability of the corporation to meet its debts as they mature.

- Once redeemed, a corporation's redeemable preferred shares become part of the corporation's treasury shares and the same shall be considered retired and no longer issuable, unless otherwise provided in the Articles of Incorporation. Nonetheless, Section 4, Paragraph 2 of the 1982 Rules states that while redeemed preferred shares are considered retired, the same remains in treasury until removed from their treasury status by decreasing the authorized capital stock of the corporation in accordance with Section 37 of the RCC.