TMAP TAX UPDATES

June 15, 2021, to July 15, 2021

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BIR ISSUANCES

REVENUE REGULATIONS NO. 13-2021

Issue date: June 23, 2021

Subject: Implementing the Penalty Provisions under the TRAIN Law, amending Section 254 and 264 and adding Sections 264-A, 264-B and 265-A to the National Internal Revenue Code, as amended.

Acts penalized:

1. Attempt to evade or defeat tax
2. Violations related to the printing of receipts and invoices
3. Failure to transmit sales data
4. Purchase, use, possession, sale or offer to sell, installation, transfer, update, upgrade, keeping or maintaining of sales suppression devices
5. Offences related to fuel marking

Effectivity: January 1, 2018, the date of effectivity of the TRAIN law.

REVENUE REGULATIONS NO. 12-2021

Issue date: June 23, 2021

Subject: Prescribing the Policies and Guidelines on the Utilization of the Tax Payment Certificate Issued by the Department of Trade and Industry-Board of Investment (DT I-BOI) Evidencing the Availment of the Fiscal Support for Eligible and Registered Participants of the Comprehensive Automotive Resurgence Strategy (CARS) Program Under Executive Order No. 182, Series of 2015

Coverage:

The rule covers the policies and guidelines on the utilization of the Tax Payment Certificates issued by the DTI-BOI to eligible participants of the CARS Program.

Entitled to use the TPC –

Participating Car Maker (PCM) and Participating Part Makers (PPMs)

Taxes covered (excluding any type of withholding taxes) incurred in the course of their operations: (a) Excise Tax; (b) Income Tax; and, (c) Value-Added Tax

All TPCs shall have a validity period of only thirty (30) days counted from date of issue and can only be used once. The date indicated on the face of the TPC shall be presumed to be the date of issuance.

No Double Availment of Incentives. – eligible and registered participants under the CARS Program shall not be allowed to register their activity under any other program granting incentives as a condition for TPC availment.

REVENUE REGULATIONS NO. 11-2021
Issue Date: June 23, 2021
SUBJECT: Implementing the Tax Exemptions and Privileges Granted Under Republic Act No.11523 otherwise Known as the "Financial Institutions Strategic Transfer Act" (FIST Act)

Tax Exemptions Under the Act:
Pursuant to Section 15 of Article IV of the FIST Act, only the following transactions shall be covered by the tax exemptions as provided in Section 4, paragraph (b) of the regulations:

(1) Transfer of an NPL by an FI to a FISTC.
(2) Transfer of a ROPA by an FI to a FISTC.
(3) Dation in payment (dacion en pago) of an NPL by a borrower to an FI.
(4) Dation in payment (dacion en pago) of an NPL by a third-party, on behalf of a borrower, to an FI;
(5) Transfer of an NPL by an FI to an individual;
(6) Transfer of a ROPA by an FI to an individual;
(7) Transfer of an NPL by a FISTC to a third party;
(8) Transfer of a ROPA by a FISTC to a third party;
(9) Dation in payment (dacion en pago) of an NPL by a borrower to a FISTC or an individual;
(10) Dation in payment (dacion en pago) of an NPL by a third party, on behalf of a borrower, to a FISTC or an individual;
(11) Transfer of an NPL by an individual, to a third party; and
(12) Transfer of a ROPA by an individual to a third-partry

For purposes of the foregoing, the term "individual" refers only to a natural person while the term "third-party" refers to any person, natural or juridical, unless specifically excluded in the Act.

The transactions enumerated above shall be exempt from the following taxes, (subject to certain conditions as provided in the Regulations)

(1) Documentary stamp tax (DST) on any document evidencing the transfer or dation in payment as may be imposed under Title VII -the NIRC of 1997, as amended;
(2) Capital gains tax imposed on the transfer of lands and/or other assets treated as capital assets as defined under Section 39(A) (1) of the NIRC of 1997, as amended;
(3) Creditable withholding income taxes imposed on the transfer of land and/or buildings treated as ordinary assets pursuant to RR 2-98, as amended, Provided, That this shall not include exemption from income tax under Title II of the NIRC of 1997. The transfer by an FI or by a FISTC of its NPA which is treated as an ordinary asset shall continue to be subject to the ordinary corporate income tax or minimum corporate income tax, as the case may be, under pertinent provisions of the NIRC of 1997, as amended. In this manner, the FI shall compute the tax gain or loss as the difference between the amount of consideration received from the FISTC and the cost basis of the related NPA, i.e. the unpaid loan amount of the borrower.

(4) Value-added tax on the transfer of NPAs as may be imposed under Title IV of the NIRC of 1997 as amended, or gross receipts tax under Title V thereof, whichever is applicable pursuant to existing revenue regulations: Provided That in case of a VAT-exemption and pursuant to Section 110(A)(3) of the NIRC of 1997, as amended, the following rules shall apply:

(i) if the property being transferred was intended for sale, for conversion into or intended to form part of a finished product for sale, for use as supplies in the sale of services by a VAT-registered person, the input tax which can be directly attributed to the said property shall not be allowed as input tax to the transferor's other VATable activities.

(ii) if the property being transferred is a capital good used in the trade or business of a VAT-registered person, the input tax on the said property shall be allocated as follows: the depreciated book value of the property over its acquisition cost, multiplied by the input tax directly attributed to the said property shall not be allowed as input tax to the transferor's other Vatable: activities; and

(iii) the amount of the unallowable input taxes as determined in paragraphs (i) and (ii) above, if previously debited to "Input Taxes", shall be charged back to the property under the following adjusting entry

Dr. Inventory/Supplies/Asset xxx
Cr. Input Taxes

The conditions and requirements for the availment of the tax exemptions of a FISTC are enumerated under Section 4 (c) and (d) of the Regulations. Additional tax exemptions and privileges of a FISTC are enumerated under Sec. 5 and Sec. 6 of the Regulations.

All sales or transfers of NPAs from the FIs to a FISTC/Individual which is not in the nature of "true sale" as provided in the Act and its implementing rules and regulations shall not qualify for any of the tax exemptions granted.

Investment Unit Instruments (IUIs) refer to participation certificates, debt instruments or similar instruments issued by a FISTC and subscribed by Permitted Investors as provided in Section 11 of the FIST Act pursuant to an Approved Plan: Provided, That these shall not include the instruments to be issued by a FISTC to the selling Fis as full or partial settlement of the NPAs transferred to the said FISTC: Provided, further, That these shall not form part of the capital stock of the FISTC. IUIs issued by a FISTC shall not be considered as deposit substitutes and any interest or other monetary benefit derived from IUIs is not subject to the twenty-percent (20%) final Income Tax under Secs. 24(B)(1), 25(A)(2), 27(D)(1), and 28(A)(7) of the NIRC of 1997, as amended: Provided, however, That the IUI and any such income derived from IUIs shall be subject to the normal Income Tax and/or such other applicable taxes (VAT or GRT), including but not limited to, Documentary Stamp Tax on debt instruments imposed under the NIRC of 1997, as amended, and its implementing regulations.

REVENUE MEMORANDUM CIRCULAR No. 80-2021
Issue Date: June 25, 2021
SUBJECT: Clarifying the Suspension of the Statute of Limitations on Assessment and Collection of Taxes Due to the Declaration of Quarantine in Various Areas in the Country

The Circular was issued to supplement RMC No. 52-2021, which suspended the running of the statute of limitations on assessment and collection of taxes pursuant to Section 223 of the National Internal Revenue Code of 1997, as amended, due to the declaration of Enhanced Community Quarantine in Metro Manila, Bulacan, Cavite, Laguna, and Rizal (NCR Plus), and other applicable jurisdictions.

In Revenue Regulations (RR) No. 12-2020, amending RR No. 1l-2020, the definition of "quarantine" included both enhanced community quarantine (ECQ) and modified enhanced community quarantine (MECQ) since under both levels, there is limited mobility that restricts certain activities. Hence, in conformity with the said definition, the running of the statute of limitations in assessment and collection shall be suspended in areas placed under ECQ, as stated in RMC No. 52-2021, as well as MECQ.

With such suspension, the concerned offices of the BIR was provided with additional days for them to issue the Assessment Notices, Warrants of Distraint and/or Levy, as well as Warrants of Garnishment, to enforce collection of deficiency taxes against taxpayers covered by the ECQ and MECQ declaration, which is equivalent to the number of days the particular area was placed under ECQ and MECQ, plus sixty (60) days from its lifting.

REVENUE MEMORANDUM CIRCULAR NO. 82-2021
Issue Date: July 7, 2021
Subject: Absence of Confirmation/Acknowledge Email After Uploading of Documents to eAFS System

In the absence of confirmation/acknowledgement e-mail after uploading of documents to the electronic Audited Financial Statements (eAFS) System, copies of screenshots from the eAFS clearly showing the details contained in the screenshot, as illustrated in the Circular, are considered sufficient proof of submission to the BIR.

REVENUE MEMORANDUM CIRCULAR NO. 87-2021
Issue Date: July 15, 2021
Subject: Prescribes the acceptance of Philippine Identification (PhilID) Card as an acceptable supporting document for proof of address and valid proof of identification for all transactions or frontline services with the BIR.

Presentation of the PhilID alone is sufficient as a valid proof of identification and there is no need to require additional/other government ID to establish the identity of the taxpayer.

SEC NOTICES

TO: FINANCING COMPANIES AND LENDING COMPANIES
SUBJECT: COMPLIANCE WITH SEC MEMORANDUM CIRCULAR NO. 19, SERIES OF 2019 (Disclosure Requirements on Advertisements of Financing Companies and Lending Companies and Reporting of Online Lending Platforms)
DATE: June 22, 2021

FCs and LCs that own/operate/utilize online lending platforms (e.g., mobile applications, websites, etc.) are warned to strictly comply with SEC Memorandum Circular No. 19, Series of 2019 on the Disclosure Requirements on Advertisements of Financing Companies and Lending Companies and Reporting of Online Lending Platforms (SEC MC 19). SEC MC 19, Sec. 4 lays down the acts and omissions that are considered to be violations of the MC and its prescribed penalties.

CTA CASES

CTA Case No. 9998, June 28, 2021 (Second Division)
British American Tobacco (Philippines), Limited, *Petitioner* v. Commissioner of Internal Revenue, *Respondent*

Having ceased its operations and closed its branch office in the Philippines, British American Tobacco (Philippines), Limited (BATL) sought a tax refund in the aggregate amount of ₱305,823,304.00 representing excise taxes prepaid on internal revenue stamps requisitioned through the BIR's Internal Revenue Stamp Integrated System (IRSIS), the return of spoiled stamps and bad orders consisting of short deliveries, and the unapplied balance of its deposit in the IRSIS. BATL anchored its claim on Section 204(c) of the National Internal Revenue Code of 1997, as amended (NIRC) on the "Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes" and Section 229 of the same Code on the "Recovery of Tax Erroneously or Illegally Collected."

In denying BATL's claim for refund, the Court of Tax Appeals (CTA) held that:

Sections 204(c) and 229 of the NIRC covers the following claims for refund: (1) credit or refund of taxes erroneously or illegally received; (2) credit or refund of penalties imposed without authority; (3) credit or refund of any sum of money alleged to have been excessively or in any manner wrongfully collected; (4) refund of the value of internal revenue stamps when they are returned in good condition by the purchaser; and (5) in the discretion of the Commissioner, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction.

BATL's claim does not fall under any of the first three instances since it was composed of duly made advance deposits that were voluntarily filed and prepaid by BATL. A taxpayer who pays or advances a legally and lawfully due and payable tax to the government is not entitled to recover such tax because the same is neither erroneously nor illegally collected. As regards the spoiled stamps and bad orders which had been credited back by the BIR to BATL's IRSIS, the same does not constitute erroneous or illegal nor excessive collections. In fact, the process of crediting back is a mechanism to conveniently refund any spoiled or bad stamps without going through the judicial process.

Neither does BATL's claim fall under the last two instances, both of which require a showing that the unused internal revenue stamps are in good condition. Under the IRSIS, the running balance in the IRSIS Taxpayer Ledger pertains to the maximum value of stamps a taxpayer can order. Accordingly, any stamp ordered would reduce the running balance. Thus, BATL's claim for refund, which pertains to the running balance of its IRSIS Taxpayer Ledger, is not yet evidenced by any stamp.

Nonetheless, as an exception to the irrevocability rule under Section 76 of the NIRC, it has been held that in the event of cessation of business, a corporation may be allowed to claim the refund of the remaining tax credits even if it previously chose to irrevocably carry-over the same to the succeeding taxable quarters, since there is no more opportunity for it to utilize such excess credits *[Systra Philippines, Inc v. Commissioner of Internal Revenue, 560 Phil. 261 (2007)].* By analogy and based on equity, this principle may be applied to BATL's case. However, BATL should have satisfied the requirements for cessation or dissolution.

Based on Sections 52(C) and 235(e) of the NIRC and Section 136 of the Corporation Code, to be considered legally dissolved for tax purposes, a foreign branch which was given a license to transact business in the Philippines must have secured: (1) a Certificate of Tax Clearance from the BIR, and (2) a Certificate of Withdrawal from the SEC. Absent a Certificate of Tax Clearance from the BIR, BATL cannot be considered as already dissolved to remove it from the application of the irrevocability rule.

CTA EB No. 2253, June 30, 2021 *(En Banc)*
Maria Amparo M. Dato, Marian L. Lagmay, Vergel K. Latay, Shiela Marie F. Mariano, Arlene P. Porras, and Arlene B. Chavez, *Petitioners* v. Commissioner of Internal Revenue, *Respondent*

Petitioners are current and former employees of Asian Development Bank (ADB), an international organization with principal office in Mandaluyong City. On April 12, 2013, the Commissioner of Internal Revenue (CIR) issued Revenue Memorandum Circular No. 31-2013 (RMC) which provides, *inter alia*, that only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax. In compliance with the RMC, petitioners filed their Income Tax Returns and paid income taxes for taxable year 2013. However, on September 30, 2014, the Regional Trial Court of Mandaluyong City, Branch 213 rendered its decision on a petition filed by petitioners' colleagues at the ADB, declaring Section 2(d)(1) of the RMC as void for being issued without legal basis, in excess of authority and without due process of law. The CIR's appeal from the RTC Decision was dismissed by the Court of Appeals on the ground that the appeal should have been brought to the Supreme Court.

Consequently, petitioners filed an administrative claim as well as an Application for Tax Credits/Refunds with the BIR. Later, they filed a Petition for Review which was denied for lack of merit by the CTA's Third Division. With their motion for reconsideration having been likewise denied, they filed a Petition for Review with the CTA *En Banc*.

The CTA *En Banc* denied the Petition for Review on the following grounds:

It was error for petitioners to argue that the CTA in Division had no jurisdiction to rule on the validity of the RMC. As the Supreme Court held in the case of *The Philippine American Life and General Insurance Company v. The Secretary of Finance and the CIR (G.R. No. 210987, November 24, 2014)*, the CTA has the power of *certiorari* in cases within its appellate jurisdiction, and it can rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based. While the *Philam* case involves an assessment, the CTA may apply the doctrine to claims for refund, as in this case, the same being within its exclusive appellate jurisdiction.

Petitioners' argument that a special law should be passed to specifically tax Filipinos working in ADB is unmeritorious. Relevant treaty and legislative provisions demonstrate that Congress intended to tax the salaries and emoluments received by Filipinos from ADB. In Senate Resolution No. 6 dated March 16, 1966, the ADB Charter was ratified and confirmed by the Philippine Government with a reservation of its right to tax the Filipino employees of ADB. Also, under the "Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank," signed on December 22, 1966, the exemption granted to ADB officers and staff from taxation on salaries or emoluments paid by the Bank was made *subject to the power of the Government to tax its nationals*. The Philippine Government, therefore, did not relinquish its power of taxation over its own citizens working in ADB.

In fact, even prior to the 1966 Agreement, the Philippine Government has been exercising its sovereign right to tax its citizens and nationals, pursuant to Section 21, 28 and 29 of the 1939 National Internal Revenue Code (NIRC) by virtue which income tax was levied, assessed, collected and paid annually upon the entire net income of citizens and residents of the Philippines. In the same vein, pursuant to Sections 21, 28 and 29 of the 1977 NIRC, income tax was imposed on the taxable net income received during each taxable year from all sources by every individual, whether a citizen of the Philippines residing therein or an alien residing in the Philippines. Thereafter, pursuant to Sections 23(A), 24(A), 31 and 32 of the 1997 NIRC, as amended, all income of a resident citizen, derived from all sources within and without the Philippines, is subject to tax.

CTA EB Crim No. 079, July 7, 2021 *(En Banc)*
People of the Philippines, *Petitioner* v. Juanchito D. Bernardo, Praxedes P. Bernardo and JDBEC Incorporated, *Respondents*

On September 23, 2010, BIR referred to the Department of Justice (DOJ) the Joint Complaint-Affidavits of its Revenue Officers for preliminary Investigation. In its Resolution dated June 20, 2013, the DOJ found probable cause to indict respondent's violation of Section 255 of the 1997 National Internal Revenue Code, as amended (NIRC), in relation to Sections 253(d) and 256 of the same Code, for failure to supply correct and accurate information in the income tax and value-added tax returns of JDBEC Incorporated (JI) for the years 2006 to 2009. On June 28, 2019, an Information was filed against respondents for failure to supply the correct and accurate information in JI's income tax return covering the taxable year 2008.

The First Division of the Court of Tax Appeals (CTA) dismissed the case *ex-mero motu* on the ground of prescription. Petitioner's subsequent motion for reconsideration (MR) was denied as it was belatedly filed. Petition's second MR was likewise denied for being a prohibited pleading. Petitioner questioned these rulings in a Petition for Review with the CTA *En Banc*. In dismissing the Petition for Review, the CTA *En Banc* held that:

The Petition was filed out of time. Upon receipt of the denial of its first MR, petitioner should have already elevated the case to the Court *En Banc*. Section 7, Rule 15 of the Revised Rules of the Court of Tax Appeals proscribes the filing of a second MR. Thus, petitioner's second *pro forma* MR did not toll the running of the fifteen (15)-day period to appeal. Appeal is not a matter of right and may only be availed in the manner provided by the law and the rules. Even if the Court were to ignore the procedural infirmity, it will still sustain the dismissal of the Petition on the ground of prescription under Section 281 of the 1997 NIRC.

With respect to the prescription of tax offenses, the Court has consistently applied the Supreme Court's pronouncement in *Emilio S. Lim, Sr., et al. v. Court of Appeals, et al. (G.R. Nos. L-48134-37, October 18, 1990),* which provides that *in addition to* the fact of discovery of fraud, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five (5)-year limiting period begins to run. The Supreme Court, thus, held that since preliminary investigation is a proceeding for investigation and punishment of a crime, it was only when the offenses were indorsed to the Fiscal's Office for preliminary investigation that the prescriptive period commenced. Based on Section 354 of the 1939 NIRC (Commonwealth Act No. 466), offenses under the Tax Code are seemingly imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for investigation and punishment *up to* the filing of the information in court does not exceed five (5) years.

The facts in the *Lim* case are on all fours with the case at bar. Section 281 of the 1997 NIRC is also the same as Section 354 of 1939 NIRC. Therefore, the doctrine laid down in the *Lim* case is still controlling. In fact, the ruling in the *Lim* case was formally adopted in Revenue Memorandum Circular No. 101-90. Thus, even the BIR concedes that the five (5)-year prescriptive period under Section 281 of the 1997 NIRC begins to run with the filing of the complaint-affidavits before the DOJ for preliminary investigation.

To sustain petitioner's argument that the filing of the complaint before the DOJ commences and simultaneously interrupts the prescriptive period will render nugatory the provision on prescription. In effect, the running of the five (5)-year prescriptive period will be contingent upon the dismissal of the case for reasons not constituting double jeopardy, which practically removes the period altogether. The lawmakers could not have intended the right of the government to prosecute tax offenses to run perpetually. In statutory construction, there exists a presumption that undesirable consequences were never intended by a legislative measure and that construction that avoids wrongful, objectionable or injurious consequences is favored. Courts are not to give words a meaning that would lead to absurd or unreasonable consequences.