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BIR ISSUANCES

REVENUE MEMORANDUM CIRCULAR (RMC)

RMC No. 62-2021 issued on May 17, 2021

- This Circular clarifies certain provisions of RR No. 5-2021 relative to Corporate Income Taxation.

HIghlights

- Total assets not more than Php 100M, exclusive of the land as one of the conditions to qualify for the reduced corporate income tax rate of 20%, should be net of depreciation and allowance for bad debts, if any.
- If the cost of acquisition of the land is reflected in the Financial Statement, that cost shall be excluded in determining the total assets, otherwise, the fair market value of the land shall be excluded in the computation.
- The value of the land which shall be excluded is limited to that particular land where the business entity's office, plant and equipment are situated during the taxable year. Land being held primarily for sale or held for investment purposes should not be excluded in the determination of the business entity's total assets.
- On land, if only a portion of the floor area of the building is devoted to the entity's office and the rest of the usable floor areas are on lease, land excluded in the total assets would only be the percentage of the floor area devoted to the entity's office multiplied with the total value of the land.
- If the business is banana plantation or leasing, the value of the land which shall be excluded is limited to that particular land where the business entity's office, plant and equipment are situated during the taxable year.
- Private educational institutions distributing dividends to shareholders are taxable at 25% or 20% Regular Corporate Income Tax, whichever is applicable.
- CREATE law did not prescribe a new tax treatment for proprietary educational institution and private hospital; it merely reduced the tax rate.
- Taxable income under Section 5 of RR No. 5-2021 pertains to the unutilized dividends.
- Tax treatment for dividends received by Domestic Corporation from a Resident Foreign Corporation will depend on the sources of income of the Resident Foreign Corporation, whether within Philippines or not.
- The reckoning date of determining that it is the corporation's fourth year of operation, is the fourth taxable year immediately following the year in which such corporation commenced its business operation. The taxable year in which business operations commenced shall be the year in which the corporation is registered with the BIR.
- The CREATE Law provides no distinction as to which type of industry can claim the additional allowable deduction of 1/2 of the value of labor training expenses; however, the prescribed requirements must be complied. Moreover, since it is required that the training is covered by an apprenticeship agreement, it follows that training expenses which pertain to training of employees under supervisory, managerial, administrative and support functions should not be included in the computation for the additional allowable deduction.

RMC No. 65-2021 issued on May 24, 2021

- This Circular prescribes the guidelines in the filing of Quarterly Percentage Tax Return (BIR Form No. 2551Q), which tax rate has been decreased from 3% to 1% starting July 1, 2020 to June 30, 2023 pursuant to RA No. 11534 or the CREATE Act.

HIghlights

- The following are the guidelines for taxpayers who are going to amend their filed quarterly returns to reflect the excess Percentage Tax payment made and to be carried forward to the succeeding taxable quarter:

  a. For Manual and eBIRForms filers, the BIR Form 2551Q January 2018 (ENCS) shall be used and should specify in the space provided the "Carry-Over Excess Percentage Tax (PT) Paid from Previous Quarter".
  b. For eFPS filers, BIR Form 2551 February 2002 (ENCS) shall be used and should indicate where the amount of Carry-Over Excess Percentage Tax Paid from the Previous Quarter will be reflected.

- To validate the return in eFPS and eBIRForms, the filer shall mark the option "To be issued a Tax Credit Certificate" which is presumed that the taxpayer will carry over the overpaid tax to the succeeding taxable quarter once the said option was chosen. On the other hand, for manual filers, neither of the options "To be Refunded" or "To be Issued a Tax Credit Certificate" shall be marked in the said tax return but rather write the phrase "To be Carried Over" on the return.
- The same procedure shall be undertaken, whether the return was filed manually or electronically, by the taxpayer subject to Percentage Tax until the overpaid amount has been fully utilized.

RMC No. 67-2021 issued on May 24, 2021

- This Circular clarifies the issues relative to the temporary reduction of percentage tax rate imposed under Section 116 of the Tax Code, as amended by RA No. 11534 or the CREATE Act.

HIghlights

- The decrease of Percentage Tax rate from 3% to 1% effective July 1, 2020 until June 30, 2023 applies to both corporate taxpayers and self-employed individuals and professionals whose gross sales or gross receipts are not exceeding the Php3 Million threshold, except for cooperatives and self-employed individuals and professionals availing the 8% Income Tax rate.
- Reduced 1% Percentage Tax rate covers persons exempt from value-added tax (VAT) under Section 109(1)(CC) of the Tax Code and who are not VAT-registered persons because they have not reached the Php 3 Million VAT threshold.
- Taxpayers who filed their 3rd and 4th quarter Percentage Tax Returns (PTR) for 2020 and those who may have filed their 1st Quarter PTR for 2021 using the 3%

rate are required to amend their duly filed PTRs using the 1% rate to reflect the overpaid taxes.

- Amendment of PTRs is not subject to penalty for affected taxpayers which/who will carry over the overpaid Percentage Tax.
- Taxpayer is already precluded from claiming a tax refund for the overpayment.
- Percentage taxpayers who have overpaid taxes as a result of reduced tax rate are allowed for a tax refund if:
  - The taxpayer shifted from non-VAT to VAT-registered; or
  - The taxpayer has opted to avail the 8% income tax rate at the beginning of TY 2021
- For manual filers who shall carry over the overpaid amount, write the phrase "To be Carried Over" on the return.
- For eFPS and eBIRForms filers, the option "To be Issued Tax Credit Certificate" shall be marked as a workaround procedure to proceed with the electronic filing.
- If the percentage taxpayers will carry over the overpayment but has inadvertently marked either tax refund or issuance of Tax Credit Certificate on the return, the Bureau will presume that the overpaid amount will be carried over. Once the overpayment has been carried forward, the option initially chosen shall automatically be superseded.
- Amended PTRs showing the overpayment shall be the basis for the carry-over.
- Withholding agent/government agency shall be responsible for refunding the overpaid taxes of Individuals under the Job Order or Service Contract Agreement, who availed of substituted filing on Percentage Tax. Individual contractors claiming for the refund shall issue authorization and shall surrender the Certificates of Withholding of Percentage Tax (BIR Form 2306) to the withholding agent/government agency. The withholding agent/government agency shall carry over the over-remitted taxes to the next succeeding quarter/s attaching thereto the authorization and the Certificate (BIR Form 2306) from the payee.
- For Percentage taxpayers who are not under substituted filing, the overpayment shall be carried forward to the succeeding quarter/s assuming that the Percentage Taxpayer has not shifted from non-VAT to VAT registration status or did not avail of the 8% income tax rate.
- Government, its instrumentalities, local government units, state universities and colleges, government owned and/or controlled corporations, and government financial institutions shall amend previously filed returns including the respective Alphalists, if any, but the reduction or resulting overpayment shall only be to the extent of the amount to be refunded.
- Existing revenue issuances on Percentage Tax prior to CREATE are automatically repealed.
- If the whole amount of 3% Percentage Tax has been claimed as a deductible expense for purposes of computing the income tax due, the taxpayer shall no longer be allowed to carry over or apply for tax refund/tax credit certificate the alleged overpaid Percentage Tax.

COURT DECISIONS

SUPREME COURT DECISIONS

Manila Electric Company vs. City of Muntinlupa and Nelia A. Barlis
G.R. No. 198529 promulgated on February 9, 2021

Facts:

On January 1, 1994, Municipal Ordinance (MO) No. 93-35 or the Revenue Code of the Municipality of Muntinlupa took effect. Section 25 thereof imposed a franchise tax on private persons or corporations operating public utilities within its territorial jurisdiction at the rate of 50% of 1% of the gross annual receipts of the preceding calendar year. Subsequently, RA 7926 was enacted on March 1, 1995, which converted the Municipality of Muntinlupa into a highly urbanized city.

On June 28, 1999, the City Treasurer sent a letter to A Corp. demanding payment of the franchise tax it owed to Muntinlupa City from 1992-1999 and that a certified statement of gross sales/receipts for the said years be submitted for the computation of the franchise tax due. A Corp. ignored the demand letters for payment of franchise tax on the premise that Muntinlupa City, then a Municipality, did not have the power and authority to impose and collect franchise tax. Pursuant to Section 142 of the Local Government Code (LGC), the power and authority to impose and collect a franchise tax lies with the provinces and cities.

A Corp., thus, instituted a Petition for a Writ of Preliminary Injunction before the Regional Trial Court (RTC) to declare Section 25 of MO 93-35 as null and void. In its answer, Muntinlupa City alleged that Section 137 of the LGC allows the imposition of franchise tax by a local government unit. The RTC ruled in favor of A Corp. and declared MO 93-35 null and void. On appeal, the Court of Appeals ruled that the MO 93-35 was cured of its legal infirmities when the Municipality of Muntinlupa was converted into a highly urbanized city.

Issue:

Is Section 25 of MO 93-35 valid and binding?

Ruling:

No. Section 25 of MO 93-35 is null and void for being ultra vires.

The provisions of the LGC set out that municipalities may only levy taxes not otherwise levied by provinces. Section 137 particularly provides that provinces may impose a franchise tax on businesses granted with a franchise to operate. Hence, since provinces have been vested with the power to levy a franchise tax, it follows that municipalities could no longer levy it. In this case, MO 93-35 was passed by the Municipality of Muntinlupa and took effect in January 1994. This is plainly ultra vires considering that the LGC vested the provinces and cities the power to impose, levy, and collect franchise tax. Muntinlupa, being then a municipality definitely had no power or authority to enact the franchise tax ordinance.

Moreover, the Court ruled that a void ordinance cannot legally exist, it cannot have binding force and effect. Hence, the conversion of Muntinlupa into a highly urbanized city did not cure the infirmity of Section 25 of MO 93-35.

CIR vs. Chevron Holdings, Inc.
G.R. No. 233301 promulgated on February 17, 2020

Facts:

On November 2, 2010, C Corporation filed with the BIR an Application for Tax Credit/Refund of its excess and unutilized input VAT credits for the four taxable quarters of 2009. Petitioner CIR failed to act on the refund of the claim prompting C Corporation to file a Petition for Review before the CTA on March 23, 2011.

The CTA Division partially granted the claim of C Corporation, and did not treat all of C Corporation's alleged zero-rated sales as transactions subject to 0% VAT for failure to prove that the entries to whom it rendered services are all non-resident foreign corporations doing business outside the Philippines.

The CTA *en banc* affirmed the decision of the CTA Division. Hence, a Petition for Review was filed by the CIR before the Supreme Court.

The CIR alleges that C Corporation's petition with the CTA Division was prematurely filed since the 120-day period for Petitioner CIR to decide the administrative claim for refund did not even commence to run for the failure of C Corporation to submit complete documents to support its claim based on RMO No. 53-98.

On the other hand, C Corporation contends that Petitioner CIR did not notify it of the need to submit additional supporting documents to substantiate its claim and in the absence of such notice, the documents it submitted are deemed complete and sufficient.

Issue:

Was the application and supporting documents of C Corporation for tax refund sufficient?

Ruling:

Yes. The Tax Code allows the taxpayer to file an administrative claim for refund with the BIR within 2 years after the close of the taxable quarter when the purchase was made or after the close of the taxable quarter when the zero-rated or effectively zero-rated sale was made. It is undisputed in this case that C Corporation filed an administrative claim for refund with the BIR on November 2, 2010 which was within the 2-year prescriptive period provided by law.

On the issue on whether the failure of the taxpayer to submit all documents enumerated under RMO No. 53-98 is fatal to a claim for VAT refund, RMO No. 53-98 is relevant only on matters pertinent to an audit of tax liabilities and not a claim for refund of input tax. In this case, C Corporation submitted all documents it deemed necessary for the grant of its refund claim and even authorized the

examination of the voluminous supporting documents kept in its office and granted revenue officers access therein.

Notably, Petitioner CIR did not notify C Corporation of the document if failed to submit, if any. In fact, there is not a single letter or notice sent to C Corporation informing it of its failure or submit complete documents or ordering the production of additional documents.

CTA DECISIONS

People of the Philippines vs. Cross Country Oil & Petroleum Corp., Arturo M. Zapata and Jacob Valeriano, Jr.
CTA Crim Case No. O-621 promulgated on May 19, 2021

Facts:

Accused AAA and BBB were the President and Treasurer, respectively, of X Corporation are charged for willfully failing to pay the correct tax under Section 255 of the Tax Code with X Corporation.

In this case, the BIR issued a Preliminary Assessment Notice (PAN) dated May 7, 2012, which assessed X Corporation deficiency taxes in TY 2009. Thereafter, the BIR issued a Formal Letter of Demand (FLD) and Final Assessment Notice (FAN), to which X Corporation filed its protest to the FLD/FAN.

Thereafter, the BIR served the alleged Final Decision on Disputed Assessment (FDDA) to X Corporation. For failure to pay the deficiency taxes, an Information was filed against AAA, BBB, and X Corporation for violation of Section 255 of the Tax Code.

X Corporation denies having received the FDDA from the CIR or its duly authorized representative relative to its Protest to the FLD and FAN. On the other hand, the CIR argues that the FDDA was received by X corporation and presented the Registry Return Receipt and witnesses to prove that X Corporation actually received the FDDA through its alleged authorized representative. Moreover, the prosecution contends the deliberate failure of the X Corporation to pay the deficiency income tax liability despite receipt of the FLD, FAN, and FDDA.

Issue:

Did X Corporation validly receive the FDDA from the CIR or its authorized representative?

Ruling:

No. The evidence in this case failed to satisfactorily prove that the FDDA was actually received by X Corporation.

While the registry receipt may prove the fact of mailing, the CIR fell short in establishing the actual receipt of the FDDA. As regards, the Registry Return Receipt, the same is inconclusive to prove that the FDDA was in fact mailed to X Corporation since it does not indicate the corresponding registry receipt number,

hence, it cannot be confirmed whether the said registry receipt actually pertains to the subject FDDA.

More importantly, the CIR failed to prove that the signature of the recipient of the registry return receipt belongs to X Corporation's authorized representative. The testimonies of the witness BIR officers cannot be given credence since they were not the ones who actually mailed the FDDA.

Hence, since there was no valid service of the FDDA, the legal obligation on the part of X Corporation to pay the subject deficiency tax assessments did not arise and the liability for the crime charged is not present.

Mindanao Mineral Processing & Refining Corporation vs. CIR
CTA Case No. 9643 promulgated on May 19, 2021

Facts:

On April 17, 2013, Petitioner Corporation M received a Letter of Authority from the BIR to examine the books of accounts and other accounting records for all internal revenue taxes for the fiscal year July 1, 2011 to June 30, 2012.

Petitioner Corporation M through its President, executed on two Waiver of defense of prescription under the Statute of Limitations which was accepted by Respondent CIR. In the Waivers, Petitioner Corporation M consented to the assessment/collection of taxes due after investigation not later than December 30, 2016.

Petitioner Corporation M received a PAN dated October 17, 2016 from Respondent CIR assessing them for deficiency taxes for the FY ending June 30, 2012. Thereafter, Petitioner Corporation M received a FLD with Details of Discrepancies and FAN on December 27, 2016.

After Petitioner Corporation M filed its Protest on January 20, 2017, Petitioner Corporation M received Respondent CIR's undated FDDA on July 7, 2017 assessing Petitioner Corporation M for deficiency taxes inclusive of surcharges, interest and penalties. Moreover, Respondent CIR stated, in the FDDA, the Board of Investments (BOI)-registration of Petitioner Corporation M and its entitlement to Income Tax Holiday (ITH) is automatically cancelled since Petitioner Corporation M allegedly misrepresented the start of its commercial operations in 2009, hence, it is subject to 30% corporate income tax.

However, the records show that prior to the receipt of the FDDA, Petitioner Corporation M had already paid the amount covering the assessed deficiency taxes including the corresponding interest thereto.

Thereafter, Petitioner Corporation M filed the Petition for review before the CTA. Petitioner Corporation M insists that the waivers are null and void for having failed to comply with the requirements under Section 222 of the Tax Code, hence, it did not extend the period to assess given to Respondent CIR. On the other hand,

Respondent CIR alleges that the waivers executed by company's President are valid despite not being authorized by a Board Resolution since he is considered a responsible officer under the Tax Code. Moreover, Respondent CIR adds that Petitioner Corporation M is estopped from denying its validity since the company's president executed the waivers voluntarily and even petitioner Corporation M's representative made the necessary transmission of the Waivers to Respondent CIR which was duly signed and notarized.

Moreover, Petitioner Corporation M has a Management Service Agreement (MSA) with A Corp., a non-resident foreign corporation (NRFC). Respondent CIR alleges that the management fees Petitioner Corporation M paid to A Corp. for the supervision and operation of Petitioner Corporation M's mineral processing and refining activities is subject to the final tax of 30% pursuant to Section 28 of the Tax Code. However, Petitioner Corporation M argues that Section 28 of the Tax Code provides that only income earned by a NRFC from sources within the Philippines shall be subject to income tax.

Furthermore, in addition to the management fees, Petitioner Corporation M also paid A Corp. other fees such as back charges, management fees, and other income payments owed by B Corp. under certain contracts and agreements. Thus, such other fees were subjected to the final tax of 30%. However, Petitioner Corporation M clarifies that Petitioner Corporation M and B. Corp has an Agency Agreement and that these payments actually represent fees or payments due from B Corp. and not Petitioner, and it merely functioned as a pass-through entity between B Corp. and its nonresident foreign suppliers/vendors. Specifically, Petitioner would allegedly receive the income payments from B Corp. and simply remit such income payments to B Corp.'s nonresident foreign suppliers/vendors.

Lastly, Petitioner Corporation M was assessed by Respondent CIR with compromise penalty for deficiency taxes in accordance with the provisions of Sections 248 and 249 of the Tax Code.

Issue:

1. Has the period for assessment or collection already prescribed?
2. Was the cancellation of the BOI-registration of the BOI-registration of Petitioner Corporation M, and consequently its entitlement to incentives, by Respondent CIR valid?
3. Are the management fees paid by Petitioner Corporation M to A Corp. subject to 30% final tax?
4. Are the other fees, aside from the management fees, paid by Petitioner Corporation M to A Corp. subject to the final tax of 30%?
5. Was the compromise penalty imposed by Respondent CIR to Petitioner Corporation M valid?

Ruling:

1. No. Petitioner Corporation M is already estopped from questioning the validity of the Waivers. In the case of *RCBC vs. CIR*, the Supreme Court ruled that RCBC, through its partial payment of the revised assessments issued within the extended period as provided for in the questioned waivers, impliedly admitted

the validity of those waivers. Hence, RCBC is estopped from questioning the validity of the waivers.

In this case, the payment of Petitioner Corporation M of the subject deficiency taxes, including the increments thereto, belies its insistence that the Waivers are invalid. Had Petitioner Corporation M truly believed that the Waivers are invalid and that the subject assessments were issued beyond the prescriptive period, then it should have paid the said deficiency taxes, as well as the increments thereon. Thus, Petitioner Corporation M is estopped from questioning the validity of the said Waivers and to hold otherwise will run counter to the principle of equity. Consequently, the Waivers are considered valid.

2. No. Under Article 7 of the Omnibus Investments Code, the power to cancel the registration and suspend the enjoyment of incentives of registered enterprises is vested with the BOI. Hence, Respondent CIR in declaring the BOI-registration of Petitioner Corporation M cancelled, and consequently the incentives it is enjoying is revoked, is ultra vires since such power is reserved exclusively to the BOI.

3. No. It is undisputed that A Corp. is an NRFC. Thus, any income earned by A Corp. from the Philippines is to be taxed pursuant to Section 28(B)(1) of the Tax Code. In this case, the MSA executed by A Corp. and Petitioner Corporation M clearly provides that the services contemplated therein are to be performed by the former in its home office in Australia. Since the management fees paid as compensation for the labor or personal services rendered by A Corp. to Petitioner Corporation M were performed outside the Philippines, then such management fees were properly treated as income from sources without the Philippines in accordance with Section 42(C)(3) of the Tax Code. Consequently, the management fees paid by Petitioner to MML cannot fall within the scope of Section 28(B)(1) of the Tax Code, as the same do not represent income derived by an NRFC within the Philippines, and thus, cannot be subjected to Philippine taxes.

4. Yes. It must be emphasized that Petitioner Corporation M failed to show any proof to support its argument that the income payments made to A Corp., an NRFC, were not from its own account and that it did not benefit from the services rendered by A Corp. The Agency Agreement between Petitioner Corporation M and B Corp. that do not state any agreement that Petitioner Corporation M should act as a mere pass-through entity between B Corp. and A Corp. with the obligation to remit the income payments between the two corporations. Moreover, Petitioner Corporation M did not refute that the services rendered by A Corp. were performed in the Philippines. Hence, even if the income payments did not redound to Petitioner Corporation M's benefit, Petitioner Corporation M being the agent of B Corp. is the entity obligated under RR No. 02-98 to withhold the corresponding tax from such income payments for and on behalf of B Corp. Hence, Petitioner Corporation M is liable as a withholding agent, pursuant to Section 57 of the Tax Code, as implemented by RR No. 02-98. Hence such other fees are subject to the final tax rate of 30% and consequently to the 12% VAT.

5. No. The assessment for the compromise penalty must be cancelled. As a rule, a compromise penalty is only an amount suggested in the settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. Moreover, it is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer. In this case, in the absence of proof that Petitioner Corporation M consented to the compromise penalty, its imposition should be deleted.

SECURITIES AND EXCHANGE COMMISSION ISSUANCES

SEC Opinion No. 21-04 issued on March 30, 2021

- This Opinion answers whether the By-laws of The Infinity Condominium Corporation (TICC) can provide therein and require as quorum for members' meeting the presence of members in good standing representing at least thirty percent (30%) of the relevant number of units entitled to be represented and vote.
- Article VI, Section 5 of the By-laws of TICC provides that the presence of members in good standing representing at least a majority (50% +1) of the relevant number of units entitled to be represented and vote at the meeting shall constitute a quorum.
- TICC intends to amend the afore-quoted provision of its By-laws to: "Section 5. Quorum. The presence of members in good standing representing at least thirty percent (30%) of the relevant number of units entitled to be represented and vote at the meeting shall constitute a quorum.
- Under Section 51 of the Revised Corporation Code (RCC), unless otherwise provided in the RCC or in the bylaws, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock or a majority of the members in the case of nonstock corporations.
- The SEC, citing Section 52 of the Corporation Code (now Section 51 of the RCC), has opined that any corporation, whether stock or non-stock, is authorized to provide in its by-laws a specific number of stockholders or members necessary to constitute a quorum for the transaction of corporate business, except in those instances where the Corporation Code or applicable special law explicitly prescribes the proportion of stockholders or members necessary to resolve or carry out a particular corporate proposal.
- Hence, the SEC opined that the proposed amendment to Section 5 of the By-laws of TICC is allowed.

SEC Opinion No. 21-05 issued on May 7, 2021

- This Opinion answers whether the additional shares of stock that may be issued as a consequence of the increase in authorized capital stock (ACS) of the corporation which is subject to the stockholder's pre-emptive rights need to be registered.

- In this query, the stockholders of an entity engaged in the operation of a hospital and medical center (the "Corporation") have, during the annual stockholders' meeting, ratified a board resolution increasing the corporation's ACS. Moreover, the corporation is planning to include in the shares to be issued relative to the exercise of the stockholder's pre-emptive rights, certain medical benefits which effectively increased the par value of each share. The shareholders of the Corporation wish to exercise their pre-emptive right and to acquire a certain number of shares.
- It is to be noted that the total number of existing investors/stockholders of the Corporation is in excess of the limit set by the Implementing Rules and Regulations (IRR) of the Securities Regulation Code (SRC) i.e., not more than nineteen (19) persons.
- The issue is whether the corporation's increase in shares needs to be registered with the SEC considering that the same will be offered only to the existing stockholders and not to the investing public.
- Sections 10 (e) and (i) of the SRC which covers the sale of unissued shares and sale from the increase in the authorized capital stock, respectively, of a corporation provides for exempt transactions where the requirement for registration also does not apply, to wit:

  Section 10. Exempt transactions. –10.1. The requirement of registration under Subsection 8.1 shall not apply to the sale of any security in any of the following transactions:

  xxx

  (e) The sale of capital stock of a corporation to its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale of such capital stock.

  xxx

  (i) Subscriptions for shares of the capital stock of a corporation prior to the incorporation thereof or in pursuance of an increase in its authorized capital stock under the Corporation Code, when no expense is incurred, or no commission, compensation or remuneration is paid or given in connection with the sale or disposition of such securities, and only when the purpose for soliciting, giving or taking of such subscriptions is to comply with the requirements of such law as to the percentage of the capital stock of a corporation which should be subscribed before it can be registered and duly incorporated, or its authorized capital increased.
- It bears emphasis that the exemptions provided under Section 10.1 (e) and (i) cannot be availed if a commission or fee is paid, directly or indirectly, in connection with the sale of such capital stock, or the corporation incurs an expense in the sale or disposition of such securities. In such case, the sale will have to be registered with the SEC.
- The SEC opined that based on the information provided and in the absence of any showing that the corporation has incurred or will incur expenses in connection with its sale of the capital stocks pursuant to an increase in its authorized capital

stock exclusively to its shareholders, such sale is an exempt transaction that does not require to be registered with the SEC.

BUREAU OF CUSTOMS ISSUANCE

Customs Memorandum Order No. 18-2021 issued on May 19, 2021

- This Circular, which repealed CMO No. 27-2014, aims to provide an alternative mode of payment of duties, taxes, and other charges for all goods declarations lodged through the Bureau of Customs (BOC)'s Electronic-to-Mobile (E2M) System.
- This Order covers goods declarations for consumption (formal), transit, warehousing, export, informal entry, and transshipment.
- Under the new order, any accredited importer or exporter is given an option to open prepayment accounts, through which payment of duties, taxes, and other charges may be made, as an alternative to the Payment Application Secure System Version 5.0 (PASS5) system required to be used by all E2M users.
- Importer or exporter may open and maintain one or more prepayment accounts in any Collection District from which he or she will specify where the payment should be made on a pre-transaction basis. Furthermore, the prepayment account can be used to make payments in any Collection District regardless of where it was opened.
- Furthermore, for consumption, transit (including shipments from local ports to free zones), and warehousing declarations, the accredited importer can open the prepayment account. While for export, the accredited exporter can open the prepayment account. Lastly, for informal entries, the small-value importers and air express cargo operators are the ones who may open the prepayment account.
- Funds in any prepayment account cannot be withdrawn. However, it can be transferred from one prepayment account to another prepayment account that is also under the same holder's name.
- The procedure for opening and the utilization of the prepayment account are set out in RMO No. 18-2021.
- Any importer or exporter may check the balance in his prepayment account by inquiring with BOC's Management Information System and Technology Group-Site Team through the Customer Care Portal System or any other secured BOC prepayment online query by providing the prepayment account number and transaction dates or period covered.
- Moreover, in view of CMO No. 18-2021, all Brokers with depleted accounts may utilize their existing prepayment or prepaid account and deposit the funds therein until June 15, 2021, otherwise the remaining balance after the period may no longer be utilized and may be subject to refund.
- Lastly, Brokers are no longer allowed to open Prepaid Accounts or make a deposit under their existing Prepaid accounts starting May 24, 2021. Only Importers and Exporters are given an option to do so. For Brokers with existing Prepaid accounts, the funds on the said accounts cannot be withdrawn but can still consume their remaining balance in their accounts while we are on transition stage.

MT&F
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ATTORNEYS AT LAW

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