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# TAX JOURNAL

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## *Highlights*

## BIR ISSUANCES

Revenue Régulations (RR)

- RR No. 1-2022- Extends the deadline for the filing of returns and payment of the corresponding taxes due thereon, including submission of required documents (position papers, replies, protests, documents and other similar letters and correspondences in relation to on-going BIR audit investigation), application for tax refund and issuance of Assessment Notices and Warrants of Distraint and Levy for taxpayers within the jurisdiction of BIR Regional and District Offices classified under Alert Level 3 or higher (Page 2)

Revenue Mémorandum Circular (RMC)

- RMC No. 16-2022- Clarifies the scope and coverage of the extension of deadlines granted pursuant to RR No. 1-2022 (Page 2)
- RMC No. 19-2022- Provides clarification and guidance on Section 8 of RR No. 5-2021 on the tax-free exchanges of properties under Section 40(C)(2) of the National Internal Revenue Code (the "Tax Code"), as amended by Republic Act (RA) No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act (Page 3)
- RMC No. 20-2022- Provides guidance on the filing of Requests for Confirmation, Tax Treaty Relief Applications and Tax Sparing Applications (Page 4)
- RMC No. 21-2022- Prescribes the guidelines in the claim of Input VAT on purchases or importations of capital goods pursuant to Section 110 of the Tax Code, as amended by RA No. 10963 or Tax Reform for Acceleration and Inclusion (TRAIN) Law (Page 5)
- RMC No. 22-2022- Provides Tax Compliance Reminders for the May 9, 2022 National and Local Elections (Page 6)

## COURT DECISIONS

CTA Division

- Maersk Global Services Centres (Philippines) Ltd. vs. Commission of Internal Revenue (CIR) (Page 7)

## SEC ISSUANCE

- MC No. 02 s. 2022- Schedules for Filing of Annual Financial Statements and General Information Sheet (Page 8)

# BIR ISSUANCES

## REVENUE REGULATIONS (RR)

**RR No. 1-2022 issued on January 27, 2022**

- This Regulations extends for thirty (30) calendar days from their due dates the statutory deadlines for the following activities falling due during the period declared as Alert Level 3 or higher by the Inter Agency Task Force (IATF) for the month of January 2022:
    a. Submission and/or filing of the documents and/or returns, as well as the payment of the corresponding taxes thereon;
    b. Filing of position papers, replies, protests, documents and other similar letters and correspondences in relation to on-going BIR audit investigation;
    c. Filing of application for tax refund, including Value-Added Tax (VAT) refund, and processing of VAT refund claim; and
    d. Issuance and service of Assessment Notices, and Warrants of Distraint and/or Levy, as well as Warrants of Garnishment, to enforce collection of deficiency taxes.
- The extension applies to all taxpayers within the jurisdiction of the Revenue Regional and Revenue District Offices (RDO) of the BIR classified under Alert Level 3 or higher by the IATF.
- If the extended due dates fall on a holiday or non-working day, the submission and/or filing contemplated herein shall be made on the next working day.
- Affected taxpayers within the RRs and RDOs may file their returns and pay their corresponding taxes due thereon to the nearest Authorized Agent Banks (AABs) or to the BIR Revenue Collection Officer, notwithstanding the covered jurisdiction of the Revenue District Office.

## REVENUE MEMORANDUM CIRCULAR (RMC)

**RMC No. 16-2022 issued on January 31, 2022**

- This Circular clarifies the scope and coverage of the extension of deadlines granted pursuant RR No. 1-2022, Section 2, items (1) and (3) reads:

    > "(1) Submission and/or filing of the documents and/or returns, as well as the payment of the corresponding taxes due thereon;
    >
    > xxx xxx xxx.
    >
    > (3) Filing of application for tax refund, including VAT refund, and processing of VAT refund claim;"

- Section 2, item 1 of RR No. 1-2022, shall include submission of all required documents, including but not limited to Inventory Lists, and all returns, whether tax returns or information returns, including Alphalists, among others. It shall also include registration of books of accounts.
- On the extension of filing of VAT refund claims under Section 2, item 3 of RR No. 1-2022, the extension of thirty (30) days also applies even if the applicant is a registered taxpayer in the area declared as Alert Level 1 or 2 provided that the venue of the filing thereof is in the area declared as Alert Level 3 or higher.

- However, in view of the declaration of Alert Level 3 in the National Capital Region, the processing of the VAT refund claim shall be extended until April 13, 2022 (30 days from March 14, 2022).
- The extension of deadlines covering all the items in Section 2 of RR No. 1-2022 applies to all taxpayers within the jurisdiction not only of the RR and RDO but also of the Large Taxpayers Services Offices of the BIR classified under Alert Level 3 or higher by the IATF this month of January 2022.

**RMC No. 19-2022 issued on February 4, 2022**

- This Circular provides clarification and guidance on Section 8 of RR No. 5-2021 on the tax-free exchanges of properties under Section 40(C)(2) of the Tax Code, as amended by Republic Act No. 11534 or the CREATE Act.
- For proper monitoring of the substituted basis, the parties to the tax-free exchange/reorganization should comply with the following requirements as set forth under RR No. 18-2001:
    a. Each corporation, which is a party to the reorganization, shall file, as part of its return for the taxable year within which the reorganization occurred, a complete statement of all facts pertinent to the non-recognition of gain or loss in connection with the reorganization.
    b. Every taxpayer, other than a corporation, party to the reorganization, who received stock or securities and other property or money upon a tax-free exchange in connection with a corporate reorganization shall incorporate in his Income Tax return for the taxable year in which the exchange takes place a complete statement of all facts pertinent to the non-recognition of gain or loss upon such exchange.
    c. The parties thereto shall include as a note to their respective audited financial statements for the taxable year in which the exchange occurred a statement to the effect that they hold such assets/shares acquired in a tax-free exchange and the year in which such exchange occurred, and in the taxable years until the subject properties are subsequently transferred to another transferee.
    d. The parties shall cause to annotate, at the back of the Transfer Certificate of Title (TCC), Condominium Certificate of Title (CCT), and Certificates of Stock, the date the deed of exchange was executed, the original or historical cost of acquisition of the properties or shares of stock transferred, and the fact that no gain or loss was recognized as a result of such exchange.
    e. A photocopy of the TCT/CCT/Certificate of Stock that bears the annotation of substituted bases of the real properties/shares of stock transferred/ received in connection with the transaction, as duly certified by the Register of Deeds/Corporate Secretary, should be submitted to the RDO which issued the Certificate Authorizing Registration (CAR), within ninety (90) days from the date of the receipt of the CAR, by any of the parties to the exchange transaction. Otherwise, the RDO shall refer the docket of the case to the Legal Division for appropriate action.
    f. Moreover, the shareholders of the absorbed/transferor corporation and the surviving/transferee corporation shall record in their respective books the mandatory accounting entries, as the case may be, under RMC No. 17-2016.
- The transfers of properties in exchange for shares of stocks made under Section 40(C)(2) of the Tax Code, as amended, shall be exempt from the following taxes:
    a. Capital Gains Tax (CGT);
    b. Creditable Withholding Tax (CWT);
    c. Income Tax (IT);
    d. Donor's Tax (DT);

e. VAT; and
f. Documentary Stamp Tax (DST) on conveyances of real properties and shares of stocks.

- However, the original issuance of shares in exchange for the properties transferred shall be subject to the DST under Section 174 of the Tax Code, as amended.
- In case the transaction involves the transfer of multiple real properties and/or shares of stocks situated in various locations covered by different RDOs, the CAR shall be processed with the RDO having jurisdiction over the place where the transferee corporation is registered.
- The CAR should specify, among others, that the transaction involved is a tax-free exchange under Section 40(C)(2) of the Tax Code of 1997, as amended by CREATE, the date of transaction, and the substituted basis of the properties subject therefor.
- Following the issuance of the corresponding CAR on the transactions falling under Section 40(C)(2) of the Tax Code, as amended by CREATE, the concerned RDO shall conduct a post-audit of said transactions pursuant to existing revenue issuances on tax audit and assessment, to determine the taxability thereof.
- If after an audit, the transaction is found to be not entitled to the tax deferment treatment under Section 40(C)(2) of the Tax Code, as amended by CREATE, the transaction shall be subject to the applicable taxes, plus interest, penalty, and surcharge. However, the result of the audit shall not invalidate the CAR previously issued for the transfer of the properties.
- The parties to the transaction are duty-bound to prove compliance with the conditions laid down by the law and the requirements set forth under existing revenue issuances in the availment of the tax exemption.
- In all the foregoing, the taxpayer is not precluded from requesting a ruling/legal opinion
- with the Law and Legislative Division (LLD) of the BIR National Office to clarify
- legal issue/s that may affect the transactions made under Section 40(C)(2) of the Tax Code, as amended, including the taxability of such transaction.

**RMC No. 20-2022 issued on February 17, 2022**

- This Circular prescribes guidance on the filing of Requests for Confirmation (RFC), Tax Treaty Relief Applications (TTRAs), and Tax Sparing Applications.
- Taxpayers who were already issued with a Certificate of Entitlement (COE), which allows the ruling to be applied to subsequent or future income payments, shall no longer file an RFC or TTRA every time an income of similar nature is paid to the same nonresident.
- In applying the confirmed treaty benefit to future income payments, the income payor or withholding agent shall always be guided by the requisites mentioned in the COE. Thus, if the COE mentions tax residency as a requisite for continuous enjoyment of treaty benefit, the income payor must require the nonresident to submit first a Tax Residency Certificate (TRC) for such relevant year before making any payment.
- The foregoing shall also apply to the Certificate of Entitlement to the Reduced Dividend Rate issued by the BIR for tax sparing applications. A new RFC, TTRA, or tax sparing application shall only be filed if any of the requisites mentioned in the certificate is absent.
- The income payor shall submit or present a copy of the duly issued COE and proof of satisfaction of the requisites during a tax audit. Moreover, the tax auditor shall ensure the authenticity of the submitted documents. In case of doubt, the tax auditor may seek the assistance of the International Tax Affairs Division (ITAD).
- For business profits, income from services (dependent or independent), capital gains, income derived by teachers, and such other income from non-recurring transactions, the RFCs or TTRAs shall still be filed following the procedures and requirements prescribed in Revenue Memorandum Order No. 14-2021, as amended by RMC No. 77- 2021.

- As regards the annual updating that is required for long-term contract of services, the taxpayer shall only submit the following:
    a. TRC of the nonresident for the relevant year;
    b. Sworn Certification stating the following:
        i. services provided by the foreign enterprise
        ii. place of performance of such services
        iii. individuals who rendered the services on behalf of the foreign enterprise, their positions/designations and professional background
        iv. duration of stay in the Philippines of said individuals;
    c. A certified true copy of their passports or a Certification duly issued by the Bureau of Immigration stating their dates of arrival in, and departure from, the Philippines;
    d. Certificate of Completion of the project duly signed by the income recipient and duly accepted by the domestic income payor, if applicable;
    e. Invoice(s) duly issued by the income recipient in accordance with the invoicing requirements of the country of residence, if applicable; and
    f. Bank documents/certificate of deposit/telegraphic transfer/telex/money transfer evidencing the payment/remittance of income, if applicable.

**RMC No. 21-2022 issued on February 21, 2022**

- This Circular prescribes the guidelines in the claim of Input VAT on purchases or importations of capital goods pursuant to Section 110 of the Tax Code, as amended by RA No. 10963 or the TRAIN Law.
- Section 35 of R.A. No. 10963 or the TRAIN Law, amending certain provisions of Section 110 of the Tax Code, as amended, and as implemented under Section 4-110-3(c) of RR No. 13-2018, which provides that the amortization of the input VAT shall only be allowed until December 31, 2021, after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same us scheduled until fully utilized.
- In this regard, the following work-around procedures and guidelines are prescribed in the meantime that the BIR Form Nos. 2550Q and 2550M pertaining to Quarterly VAT Declaration and Monthly VAT Declaration, respectively, are undergoing revisions to effect the aforesaid provisions:

| BIR FORM NO. | AFFECTED FIELDS | DESCRIPTION | REMARKS |
|---|---|---|---|
| 2550M *(v. February 2007)* | Schedule 3(A) | Purchases/Importation of Capital Goods (Aggregate Amount Exceeds P1 Million) | Instead of the actual useful life in terms of months, place number "1" under columns "E" and "F" and encode the input tax claimed from purchase/s of capital goods exceeding P1M in Column "G" |
| 2550Q *(v. February 2007)* | Schedule 3(A) | Purchases/Importation of Capital Goods (Aggregate Amount Exceeds P1 Million) | Instead of the actual useful life in terms of months, place number "1" under columns "E" and "F" and encode the input tax claimed from purchase/s of capital goods exceeding P1M in Column "G" |

- Under EFPS and eBIR Forms, the balance of input tax to be carried to the succeeding period is computed automatically by these systems. Hence, for purposes of implementing the provisions in the Tax Code, as amended, that effective January 1, 2022, all input tax on purchases of capital goods shall already be allowed upon purchase/payment, and shall no longer be deferred, the taxpayer shall indicate Roman numeral "1" as the estimated useful and recognized useful life and encode the total input taxes claimed from purchase/s of capital

goods exceeding PIM under Column "G" to show a nil amount of "Balance of Input Tax to be Carried to Next Period" under Column "H" of the monthly and quarterly VAT returns.

- Moreover, taxpayers with unutilized input VAT on capital goods purchased or imported prior to January l, 2022 shall be allowed to amortize the same as scheduled until fully utilized. Hence, Schedule 3(B) shall still be filled out. However, if the depreciable capital good is sold/transferred within the period of live (5) years or prior to the exhaustion of the amortizable input tax thereon. the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made.

**RMC No. 22-2022 issued on February 21, 2022**

- This Circular is being issued in relation to RR No. 8-2009 and RMC No. 3 l-2019 to remind everyone, particularly those who are running as candidates or participating in any other manner in the May 9, 2022 National and Local Elections, of their obligations under pertinent revenue issuances.
- All candidates, political parties/party-list groups, and campaign contributors, are required to register with the BIR, issue official receipts and withhold taxes under RR No. 8-2009, as amended by RR No. 7-2011 and other related revenue issuances. The registration of political parties or party list groups shall be made with the RDO having jurisdiction over their Head Office or principal office.
- All candidates and political parties/party list groups shall pay an Annual Registration Fee (ARF) of five hundred pesos (PhP500) and be issued a Certificate of Registration (COR). COR is no longer required to be issued for individual candidates who are not engaged in business.
- All candidates and political parties/party-list groups shall keep books and other accounting records such as Cash Receipts Journal (the basis for Statement of Contributions for submission to Commission on Elections [COMELEC]), Cash Disbursement Book (the basis for Statement of Expenditures for submission to COMELEC) or their equivalent and register the same to the concerned RDO.
- All candidates and political parties/party-list groups shall also register Non-VAT Official Receipts (ORs) to be issued for every contribution received, whether in cash or kind valued at Fair Market Value. The original copies of such ORs shall be issued to the contributor/donor while the duplicate shall be retained by the issuing candidate/political party/party list. Candidates may opt to buy BIR Printed Receipts or apply for an Authority to Print using BIR Form No. 1906 with the concerned RDO.
- As a general rule, campaign contributions are not included in the taxable income of the candidate to whom they were given, the reason being that such contributions were given not for the personal expenditure/enrichment of the concerned candidate, but to utilize such contributions for his/her campaign. Unutilized/excess campaign funds, as well as donations utilized before the campaign period, net of the candidate's or political party's/party list's campaign expenditures, shall be considered as subject to income tax and as such, must be included in their/his taxable income as stated in their/his Income Tax Return (ITR) under RR No. 7-2011.
- Both Section 94 (a) of Batas Pambansa Bilang 881, otherwise known as the Omnibus Election Code of the Philippines, and the final paragraph of Section 13 of Republic Act No. 7166 provide that contributions in cash or in-kind to any candidates, political parties or party-list groups, duly reported to COMELEC, are exempt from the imposition of Donor's Tax.
- Income payments made by political candidates and political parties/party-list groups on their purchases of goods and services as campaign expenditures and income payments made by individuals or juridical persons for their purchases of goods and services intended to be given as campaign contribution to political parties and candidates shall be subject to five percent (5%) creditable withholding tax pursuant to RR No. 11-2018.

- All political parties/party list groups and candidates shall be responsible for the preservation of records and contributions and expenditures, together with all pertinent documents, shall be retained under the rules on the preservation of books of accounts and other accounting records provided in Section 235 in relation to Sections 203 and 222 of the Tax Code.
- Every candidate and treasurer of the political parties/party-list groups shall submit the Statement of Contributions and Expenditures to COMELEC and RDO where the candidates/political parties/party-list groups are registered within thirty (30) days after the election.

# COURT DECISIONS

## CTA DIVISION DECISION

**Maersk Global Services Centres (Philippines) Ltd. vs. CIR**
CTA Case No. 10022 promulgated on January 26, 2022

*(Sales of services qualify for VAT zero-rating under Section108(8)(4) of the Tax Code, as amended, provided that the subject services are rendered to persons engaged in international shipping.)*

*Facts:*

Petitioner Maersk Global Services Centres (Philippines) Ltd. is a foreign corporation, duly organized and existing under the laws of Hongkong, and licensed to do business in the Philippines as a regional operating headquarters. For taxable year 2017, the petitioner filed its quarterly VAT Returns. On September 12, 2018, the petitioner filed with the BIR VAT Credit Audit Division an application for a VAT refund of the unutilized and excess creditable input taxes attributable to its zero-rated sales for the four quarters of 2017. Subsequently, the petitioner received a letter from the BIR, denying the claim for a VAT refund on the ground that the petitioner's zero-rated sales of services were supposedly rendered to the petitioner's ultimate parent company.

Petitioner claims that it is entitled to a refund or issuance of a tax credit representing unutilized and excess creditable input VAT attributable to export zero-rated sales for the year 2017. In addition, the petitioner maintains that it submitted all the mandatory requirements for VAT refund claims, as evidenced by the receipt by the BIR VAT Credit Audit Division of the Claim for VAT Refund.

On the other hand, Respondent counters that the petitioner is not entitled to the refund of unutilized input tax because it has not presented sufficient proof of entitlement to it before the BIR. Allegedly, the respondent was not able to sufficiently establish that the recipient of the services it rendered is doing business outside the Philippines and that AP Meller Maersk (APMM) cannot be considered as "Other Persons Doing Business Outside the Philippines",

*Issue:*

Were the documents submitted at the administrative level sufficient to justify the petitioner's claim for refund of alleged unutilized input taxes for the year 2017?

Ruling:

Yes. In the instant case, the petitioner presented pieces of evidence to prove that its sole client, Maersk Line, is engaged in the business of international shipping. The said documentary exhibits support petitioner's contention that ML is a corporation organized and existing under the laws of Denmark and its main objects are to carry on shipping,

chartering, and other transport business, commercial, service and industrial activities at home and abroad, investment in fixed assets and financing and other related activities. Likewise, the foregoing establish that ML is indeed an entity created pursuant to a Novation Agreement between APMM, ML and petitioner, whereby the international shipping business of APMM was transferred to ML. The foregoing conclusions are bolstered by the testimony of the petitioner's Finance Accountant, Rochelle V. Duclay, who affirms that the container shipping activities of APMM were transferred to ML starting February 2015, as stated in the Novation Agreement. She likewise testified that the international shipping lines of APMM and ML transport and receive cargoes to and from the Philippines. In addition, the Service Agreement between APMM and petitioner proves that APMM/ML owns container vessels and containers that operate worldwide through its subsidiaries, and is required to handle various back-office tasks including the processing of shipping documents on behalf of its clients. APMM then contracted the petitioner to perform back-office tasks including documentation and certain other processes.

Therefore, upon examination of the submitted documents, this Court finds that all of the petitioner's sales of services to its client ML were properly substantiated and are compliant with the invoicing requirements. Based on the foregoing, the petitioner was able to prove that its sales of services to APMM/ML qualify for VAT zero-rating under Section108(8)(4) of the Tax Code, as amended, considering that the subject services are rendered to persons engaged in international shipping.

## SECURITIES AND EXCHANGE COMMISSION ISSUANCE

**MC No. 02 s. 2022 issued on February 8, 2022**

- The Securities and Exchange Commission (SEC) adopts the use of the Electronic Filing and Submission Tool (eFAST) to adopt measures in the filing of annual reports.
- All corporations, including branch offices, representative offices, regional headquarters, and regional operating headquarters of foreign corporations, whose fiscal year ends on December 31, 2021, shall file their Audited Financial Statements (AFS) depending on the last numerical digit of their SEC registration or license number under the following schedule through the eFAST:
    - July1 –15: 1 and 2
    - July16 –31: 3 and 4
    - August1 –15: 5 and 6
    - August16 –31: 7 and 8
    - September1 –15: 9 and 0
- All corporations shall file their General Information Sheet (GIS) within 30 calendar days from:
    - Stock Corporations – date of actual annual stockholders' meeting
    - Non-Stock Corporations – date of actual annual members meeting
    - Foreign Corporations – anniversary date of the issuance of the SEC License.
- All corporations (stock or non-stock) are required to file their annual reportorial requirements (AFS and GIS) through eFAST by applying the SEC-issued number coding schedule for AFS. Other reports not available in the eFAST may be submitted by sending through email at ictdsubmission@sec.gov.ph.
- All filers of GIS and AFS, regardless of the number of reports to be filed at the SEC, complying with the circularized SEC-issued number coding schedule (for AFS only), shall be accommodated through the eFAST Facility. Submission of reports Over-the-Counter (OTC) and/or through mail/courier via Sec Express Nationwide Submission (SENS) shall no longer be accepted.

- All reports submitted through eFAST are scanned or digital copies of the manually signed or digitally signed reports. The responsibility to ensure the integrity and authenticity of the e-signature rests upon the signatory or authorized signatory of the filer.

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MTF Counsel is a full-service law firm comprised of experienced, multi-disciplined and innovative tax, customs and international trade, corporate, and litigation attorneys.