



# UPDATES

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## LEGAL UPDATES

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### A. Financial Products and Services Consumer Protection Act

A welcome development in the financial sector in the second quarter of 2022 was the passage of Republic Act (RA) No. 11765 or the Financial Products and Services Consumer Protection Act, which was signed by President Duterte on May 6, 2022. This law was passed with the goal of ensuring that offered financial products and services are safe and secure for financial consumers by providing a legal framework that will safeguard all financial consumers and prevent them from being unduly prejudiced and taken advantage of by unethical business conduct of some financial service providers or their agents and by fraudulent schemes concocted by unscrupulous individuals or entities.

Fairly recent innovations in the tech industry enabled a significant number of consumers to get into various financial products and services. Financial products and services help provide additional income to individuals

and entities and helped those who suffered losses because of the pandemic get back on their feet. Thus, providers of financial products and services have an opportunity to offer consumers a wide array of financial products and services. Inevitably, with this opportunity also came the emergence of unscrupulous individuals, groups or entities who prey upon financial consumers in need, making such consumers vulnerable to the risk of being taken advantage of.



## Financial Products or Services

Under RA No. 11765, the term “financial product or service” refer to those financial products or services which are developed or marketed by a financial service provider, which may include, but are not limited to, savings, deposits, credit, insurance, pre-need and health maintenance organization (HMO) products, securities, investments, payments, remittances and other similar products or services. This also includes digital financial products or services which pertain to the broad range of financial services accessed and delivered through digital channels.

## Government Agencies Tasked to Enforce RA 11765

Under RA 11765, financial regulators such as the Bangko Sentral ng Pilipinas (BSP), Securities and Exchange Commission (SEC), Insurance Commission (IC), and the Cooperative Development Authority (CDA) are empowered to perform acts necessary for the protection of financial consumers, such as market conduct surveillance and examination, market monitoring, provision of complaints handling mechanism, adjudication and rule-making, among others. RA No. 11765 also prescribes the duties and responsibilities of financial service providers to ensure transparency, adequate disclosure, responsible pricing, privacy and protection of client data, and financial consumer protection assistance, among others, to amply protect financial consumers (Explanatory Note).

## Financial Service Providers’ Responsibilities

Financial service provider refers to persons (natural or juridical), which provide financial products or services, that are under the jurisdiction of the financial regulators. It is worthy to note that Investment Advisors such as those persons who, for compensation, engages in the business of advising others as to the value of investment products or as to the advisability of investing in, purchasing or selling investment products, are also covered by the provisions of RA 11765.

Under RA 11765, financial service providers are also mandated to be fair and respectful towards their clients and to adopt acceptable disclosure principles in their communication and contracts with financial consumers. Their obligations include providing updated and accurate disclosure of information, such as origin or any cost associated with the product or service, in a consistent manner to facilitate a comparison between similar financial products or services. Each financial service provider must also establish a single consumer assistance mechanism for free assistance to financial consumers on financial transactions concerns.

In addition to this, financial service providers are also mandated to adopt a clear “cooling-off period”, to allow a client to consider the costs and risks of a financial product or service and free them from the pressure of the sales team of the financial service provider. During this “cooling-off period”, a financial consumer may cancel or return the contract without penalty; however, the financial service providers are allowed to recover incurred processing costs.

### **Protection of the Rights of the Financial Product Consumer**

Several effective financial consumer protection mechanisms have been inserted in RA No. 11765 which are geared towards protecting the interests of financial consumers. These mechanisms include restrictions on the ability of supervised financial service providers to continue to collect excessive or unreasonable interest, fees or charges under the Philippine Credit Card Industry Regulation Law, the institution of consumer redress or complaints handling mechanism through financial regulators, the adoption of a “cooling off period” by financial service providers, the incorporation of the provisions of the Data Privacy Act in order to protect the data of the financial consumers, among others.

### **Long-term Effects of RA 11765**

By institutionalizing proper mechanisms and safeguards geared towards protecting the rights of financial product consumers, the general public will not only be enticed to invest, but also be more confident in investing in financial products and services. The reinforced confidence in the Philippine financial market will further stimulate economic growth which will have a positive effect on the day-to-day lives of the people in our country in the long run.

## **B. Memorandum Order No. 61: Approving the 2022 Strategic Investment Priority Plan**

In a Memorandum Order dated May 24, 2022, President Rodrigo Duterte approved the the 2022 Strategic Investment Priority Plan (SIPP). The SIPP lists down the activities which are granted investment incentives and tax benefits under the Tax Code as amended by the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act.

### **Importance of the 2022 SIPP**

Through the issuance of an SIPP, the Government is able to lay the necessary groundwork for specific key industries to thrive and develop which has a significant correlative impact on the Philippine economy with the added objective of aiding the Filipino people in select industries due to rising demand such as health care and advancement of green eco-systems.

### **Possible Investment Incentives and Tax Benefits**

Pursuant to Section 294 of the CREATE Act, subject to the conditions and period of availment in Section 295 and 296 thereof, the registered projects or activities may be granted an income tax holiday, duty exemptions, value-added tax exemptions, among others.

### **Changes from the 2020 Investment Priorities Plan to the 2022 SIPP**

Under the 2020 Investment Priorities Plan, preferred activities for investment were enumerated by the President with the initial objective of incorporating a fresh wave of investment in the country in order to boost the Philippine economy in light of the initial onslaught of the COVID-19 Pandemic.

With the 2022 SIPP, the key activities are prioritized and defined under three respective Tiers. The preferred activities under the 2020 Investment Priorities Plan were retained and comprised the registered activities under Tier 1. Several activities were added and defined under Tiers 2 and 3 thereof.

Implication of the 2022 SIPP in light of President Rodrigo Duterte's veto of Several Provisions under the CREATE Act in relation to definition and coverage of activities under the SIPP Section 296(B) of the CREATE Act enumerated the activities of the registered project or activity which shall be prioritized and defined according to the three Tiers. President Rodrigo Duterte vetoed several provisions under the CREATE Act which was propelled by the President's objective of keeping the CREATE Act flexible to be able to keep up with the changing times. Activities and projects should not be hard-coded in the law so that the country does not continue to incentive obsolete industries and close the doors on technological advances and industries of the future.



Among others, the veto of the provisos pertaining to the activities “not classified as critical” and the veto of specific enumeration of activities, in the avilment of incentives for the business enterprises would enable the latter, even if their activities would be classified as not critical, to avail of the incentives in CREATE Act. This would mean that business enterprises' activities in the new SIPP are eligible for the aforesaid incentives.

### Activities in the 2022 Strategic Investment Priority Plan

The activities are divided into three Tiers. The activities under Tier 1 include all activities listed in the 2020 Investment Priorities Plan, as amended by Memorandum Circular No. 2021-005.

In Tier 2, the activities included were envisioned to promote a competitive and resilient economy and fill in gaps in the Philippines' industrial value chains, and are deemed critical in promoting green ecosystems, ensuring a dependable health system, achieving self-reliance in defense systems, and realizing modern, competitive, and resilient industrial and agricultural sectors.

These activities include green ecosystems, which covers electric vehicle assembly and manufacture of its parts, health-related, which is focused in support of the vaccine self-reliance program, defense-related, industrial value-chain gaps, and food security-related activities.

Meanwhile, in Tier III, the activities were projected to accelerate the transformation of the economy primarily through the application of research and development and attracting technology investments. It also includes activities involving the production of equipment parts and services that embed new technologies, and the commercialization of research and development output.

These activities include but are not limited to research & development and activities adopting advanced digital production technologies of the fourth industrial revolution such as, but not limited to robotics, artificial intelligence, data analytics, among others, highly technical manufacturing and production of innovative products and services, and establishment of innovation support facilities.

Lastly, pursuant to Section 302 of the CREATE Act, additional activities that comply with Section 296 of the CREATE Act can qualify under Tiers II and III; Provided that, the additional activities under Tier III are duly endorsed by the relevant agencies such as the Department of Science and Technology.

### C. Total Office Products and Services (TOPROS), Inc. vs. John Charles Chang, Jr., et. al (G.R. No. 200070-71 promulgated on December 7, 2021)[1]

(The doctrine on corporate opportunity is a recognition that fiduciary standards may not be upheld where the fiduciary was acting for two or more entities with competing interests. It rests fundamentally on the unfairness of an officer or director taking advantage of an opportunity for his own personal profit when the interest of the corporation justly calls for protection.)

Facts:

Sometime in 1982, spouses Ty wanted to establish a corporation that would be the sole distributor of Minolta plain paper copiers in the Philippines. Chang, their former employee, was given the duty to manage the new corporation. The spouses gave Chang shares in the corporation in exchange for his exclusive and loyal service thereto.

A year after, TOPROS was incorporated, with Chang being the only incorporator who was not a member of the Ty family. He also served as Corporate Director and officer of the corporation. TOPROS later grew into a multi-million enterprise; but, despite its success, no substantial cash dividends were distributed to the stockholders since the corporation was allegedly investing its funds in several Manila properties according to Chang.

This raised suspicion on part of the spouses, who eventually launched an investigation. They later found out that Chang was siphoning the assets, funds and goodwill of TOPROS into the respondent-corporations which he himself incorporated. Likewise, the products and services from TOPROS were issued receipts and vouchers from respondent-corporations.

Therefore, Chang was alleged to have violated the Doctrine of Corporate Opportunity as an officer and director of TOPROS.

For his part, Chang asserted that the Ty Family knew that he organized the respondent-corporations during his incumbency as President and General Manager of TOPROS. He also explained that he even used his own funds to pay off the liabilities of TOPROS.

Issue: Did Chang violate the Doctrine of Corporate Opportunity?

Ruling: Yes.

As a rule, a director of a corporation holds a position of trust and as such, he owes a duty of loyalty to his corporation. Apart from the duty of loyalty, jurisprudence further provides that

**5** this position of trust also entails a duty of obedience and diligence to the corporation.



The duty of loyalty in particular is codified in Sections 30 and 33 of the Revised Corporation Code. The following are the guidelines in determining whether a claim of damages is proper when a corporate officer or director takes a business opportunity for his own:

- a. The corporation is financially able to exploit the opportunity;
- b. The opportunity is within the corporation's line of business;
- c. The corporation has an interest or expectancy in the opportunity; and

d. By taking the opportunity for his own, the corporate director, trustee, or officer will consequently be placed in a position inimical to his duties to the corporation.

It is to be noted that opportunity is within the corporation's line of business if the involved corporations are in competition with each other, such as that they are engaged in related areas of businesses and producing the same products with overlapping markets.

The Doctrine of Corporate Opportunity was applicable to Chang, and that his actions constituted acts of disloyalty of a director. The records show that: (1) Chang owned majority of the shares in respondent-corporations; (2) the respondent-corporations were in the same line of business as TOPROS; (3) one of the respondent-corporations entered into a service contract with a client at the same time that TOPROS was servicing it; (4) rental payments due TOPROS were instead paid to one of the respondent-corporations; and (5) Chang bought the land where TOPROS' building is located in the name of one of the respondent-corporations.

Moreover, the fact that Chang risked his own funds in running TOPROS, and even if the Spouses Ty knew, tolerated, or even acquiesced to Chang's establishment of the respondent-corporations, which are in the same business as TOPROS, Chang will not be absolved from disloyalty.

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# TAX UPDATES

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## BUREAU OF INTERNAL REVENUE (BIR) ISSUANCES

### A. REVENUE REGULATIONS (RR)

1. Additional guidelines for implementing the tax provisions of the PERA Act of 2008 effectively amending pertinent provisions of Revenue Regulations (RR) No. 17-2011 and revising the provisions of Revenue Regulations No. 6-2021 (Revenue Regulations No. 02-2022 issued on 05 April 2022)

These regulations prescribe additional guidelines for implementing the tax provisions of the Personal Equity and Retirement Account (PERA) Act of 2008.

Specifically, these regulations:

- a. Mention the required reports to be submitted by the PERA Administrators through the PERASys administered by the Bangko Sentral ng Pilipinas and forwarded to the Bureau of Internal Revenue, for approval of the PERA Processing Office, through the ePERA System.
- b. Description, use of, processing, and other relevant issues of the PERA-Tax Credit Certificate (PERA-TCC)
- c. Imposition of penalties for early withdrawal of qualified contributions.

2. Implementation of the provisions of Republic Act (RA) No. 11635, entitled "An Act Amending Section 27 (B) of the National Internal Revenue Code of 1997, as amended, and for Other Purposes" on the income taxation of proprietary educational institutions and hospitals which are non-profit (Revenue Regulations No. 03-2022 issued on 08 April 2022)

These regulations implement the provisions of Republic Act (RA) No. 11635, titled "An Act Amending Section 27 (B) of the National Internal Revenue Code (NIRC) of 1997, as Amended, and for Other Purposes" on the income taxation of proprietary educational institutions and hospitals which are non-profit.

The following institutions shall be covered by the preferential ten percent (10%) Corporate Income Tax rate; Provided, that beginning July 1, 2020 until June 30, 2023, the rate of one percent (1%) shall apply, as imposed under Section 27 (B) of the NIRC, as amended:

- a. Proprietary Educational Institutions;
- b. Hospitals which are non-profit; and,
- c. Non-Stock, Non-Profit Educational Institutions whose net income or assets accrue/inure to or benefit any member or specific person.



After June 30, 2023, the rate shall revert to the preferential Corporate Income Tax rate of 10%.

The twenty-five percent (25%) regular Corporate Income Tax rate prescribed under Section 27(A) of the NIRC, as amended, shall be imposed on the entire taxable income of the institutions mentioned in Section 3 of the Regulations, if their gross income from unrelated trade, business or other activity, as defined herein, exceeds fifty percent (50%) of the total gross income they derived from all sources. Moreover, a Non-Stock, Non-Profit Educational Institution, not falling under Section 3 of these Regulations, shall be subject to the rate of twenty-five percent (25%) regular Corporate Income Tax on the portion of its revenues or assets not used actually, directly, and exclusively for educational purposes, as provided in Section 27(A) of the NIRC, as amended.

3. Implementation of Section 295(F), in relation to Section 294, both of the NIRC of 1997, as amended by RA No. 11534 (CREATE Act), on the tax treatment of the importation of petroleum and petroleum products into, and subsequent transfer, transport and/or withdrawal through and from Freeport Zones and Economic Zones (Revenue Regulations No. 04-2022 issued on 26 May 2022)

These regulations implement Section 295(F), in relation to Section 294, both of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 11534 (Corporate Recovery and Tax Incentives for Enterprises [CREATE Act]), on the tax treatment of the importation of petroleum and petroleum products into, and subsequent transfer, transport and/or withdrawal through and from Freeport Zones and Economic Zones.

These regulations prescribe the following:

- a. the tax administration treatment of all petroleum products entered and/or imported into Philippine Freeport Zones or Economic Zones;
- b. the strict monitoring of the movement of all petroleum and petroleum products within the aforementioned Zones and the subsequent transfer, transport and/or withdrawal of the same therefrom;
- c. the refund of Value-Added Tax (VAT) and Excise Taxes paid for transactions statutorily zero-rated or exempt therefrom.

The regulations likewise require that all tank facilities, depots or terminals throughout the Philippines, including those located within the Freeport Zones as well as within the Economic Zones shall be registered by the owners, lessors or operators thereof with the appropriate BIR Office having jurisdiction over the said facilities, and provides for the responsible BIR offices for registration, based on the Revenue Regions where the storage facilities are located.

4. Implementation of the estate tax exemption under Republic Act No. 11597, otherwise known as "An Act Providing for the Revised Charter of the Philippine Veterans Bank, repealing for the Purpose Republic Act No. 3518, as Amended, otherwise known as 'An Act Creating the Philippine Veterans Bank, and For Other Purposes'" (Revenue Regulations No. 05-2022 issued on 20 June 2022)

All transfers, by way of succession or donation mortis causa, made by a veteran of his/her



shares of stock, common or preferred, with the Philippine Veterans Bank shall not be subject to Estate Tax, provided that the same was made in favor of the veteran's widow, orphan or compulsory heir as determined by existing laws.

For purposes of availing the Estate Tax exemption, the term "veteran or veterans" shall include primarily any person or persons who served in the regularly constituted air, land, or naval services or arms, or in such non-regularly organized military units in the Philippines during World War II, and whose services with such units are duly recognized by the Republic of the Philippines or by the government of the United States of America, and those veterans referred to under RA No. 6948, as amended by RA No. 7696 and RA No. 9396. The term also includes the widow, orphan or a compulsory heir of a deceased veteran, as determined by existing laws.

An electronic Certificate Authorizing Registration (eCAR)/Tax Clearance Certificate (TCC) must be secured with the Revenue District Office where the estate of the decedent is registered before any transfer of share/s is registered in the books of the Philippine Veteran's Bank.

#### 5. Removal of five (5)-year validity period on receipts/invoices (Revenue Regulations No. 06-2022 issued on 30 June 2022)

These regulations shall cover taxpayers who will apply for the Authority to Print (ATP), registration of Computerized Accounting System (CAS)/Component of CAS, and Permit to Use (PTU) Cash Register Machines (CRMs) and Point-of-Sale (POS) machines.



The salient provisions of RR No. 06-2022 are the following:

- a. The phrase showing the 5-year validity period in the manual receipts and invoices (those with ATP) and system-generated receipts/invoices (from CAS/CRM/POS) shall be omitted (or disregarded for existing manual receipts/invoices until they are fully exhausted).
- b. The subsequent printing of manual receipts/invoices upon effectivity of this RR shall no longer reflect the phrase showing/adopting the 5-year validity.
- c. The CAS/CRM/POS with PTU or Acknowledgment Certificate must be reconfigured to omit the printing of the phrase showing the 5-year validity period.

The RR shall take effect 15 days after its publication.

#### 6. Tax incentives under the Renewable Energy Act of 2008 and the policies and guidelines for the availment thereof (Revenue Regulations No. 07-2022 issued on 30 June 2022)

These regulations provide the policies and guidelines for the availment of tax incentives provided under the Renewable Energy Act of 2008 (RE Act). Renewable Energy (RE) developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall

secure the certifications/ accreditations specified in these Regulations before any incentive provided for in the RE Act may be availed of.

In particular, the regulations:

- a. Identify certifications to be secured by existing and new RE developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment (who are required to register with the Department of Energy (DOE), through the Renewable Energy Management Bureau (REMB).
- b. Provide a comprehensive identification of, and other information on the tax incentives, privileges, and treatments on the DOE-certified existing and new RE developers of RE facilities in consultation with BOI, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications

Unless otherwise provided by law, the registration/accreditation to avail of incentives under the RE Act shall disqualify the availment of other tax and non-tax incentives under the NIRC, as amended by Republic Act (RA) No. 11534 (Corporate Recovery and Tax Incentives for Enterprises or CREATE Act). RE developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment availing the incentives provided for in the Act shall comply with the filing and reportorial requirements under RA No. 11534 (CREATE Act). Non-compliance with the filing and reportorial requirements shall be meted with the penalties under the law.

7. Policies and guidelines for the admissibility of sales documents in electronic format in relation to the implementation of Section 237, issuance of receipts or sales or commercial invoices, and 237-A, electronic Sales Reporting System, of the National Internal Revenue Code of 1997, as amended by Republic Act (R.A.) No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion or the "TRAIN Law" (Revenue Regulations No. 08-2022 issued on 30 June 2022)

This RR prescribes the policies and guidelines for the admissibility of sales documents in electric format, particularly in the verification of sales and purchases of the following taxpayer groups (especially during audit or processing of VAT refund claims)

- a. Taxpayers engaged in the export of goods and services;
- b. Taxpayers engaged in e-commerce;
- c. Taxpayers under the LTS; and
- d. Taxpayers who are not included in the number 1-3 (those mandated to adhere to RR No. 8-2022) but have been authorized by the BIR to issue e-Receipts/e-Invoices through the web-based facility of the EIS.

The RR likewise provides that all taxpayers covered shall follow the policies and guidelines as follows:

- a. At the time of tax audit or investigation or verification of the taxpayer, the sales and purchases that will be generated and verified through the EIS are admissible (in lieu of hard copies), provided that these comply with the information requirements under Section 113 of the Tax Code. The requirement for the prominently stamping of the term "zero rated sales" on the face of the receipt or invoices is no longer necessary since separate reporting to EIS for each sales classification (e.g., VAT-able, zero-rated and exempt) is required.

- b. Authorized users of the EIS, whether the web-based format or through Application Programming Interface (API) transmission of sales data, shall not be required to submit printed copies of invoices or receipts issued for their sales.
- c. Printed invoices/receipts for purchases from suppliers using the web-based issuance in the EIS, or through Sales Data Transmission System, will no longer be required to be submitted. However, only purchases data that are validated in the EIS shall be allowed for purposes of claiming input VAT, or for claiming deductible expenses for income tax purposes.
- d. The original form or digital copies, whichever is applicable, must be retained in accordance with the Tax Code, for verification and validation of the sales and purchases data generated through the EIS or submitted electric forms of invoice or receipts.
- e. Subject to approval of the Commissioner of Internal Revenue or his authorized representative, taxpayers may be required to present or submit hard copies of the receipts or invoices or allowed to access to the computerized systems.
- f. Revenue officers are not precluded from accessing the respective CAS or POS/CRM machines of the taxpayers under the EIS to validate whether the sales data transmitted to the EIS matches the sales recorded in their electronic systems, as required under RR No. 09-2009.
- g. Refusal of the taxpayer to allow the revenue officers assigned to access the CAS shall give authority to the revenue officers to employ alternative means in the verification of the records of the taxpayer or may result in possible disallowances or assessments. Any violation of the same provision may result in prosecution of the taxpayer by the BIR and the taxpayer shall be held liable for the penalties under the Tax Code. Moreover, this may also result in the revocation of the Acknowledgement Certificate or PTU CAS of the taxpayer, upon recommendation of the revenue officer.
- h. Sales and purchases not covered by this RR shall be in compliance with the existing policies and procedures for the manual verification of sales and purchases.

The RR shall take effect immediately.

**8. Policies and guidelines for the admissibility of sales documents in electronic format in relation to the implementation of Section 237, Issuance of Receipts or Sales or Commercial Invoices, and 237-A, Electronic Sales Reporting System, of the National Internal Revenue Code of 1997, as amended by Republic Act (R.A.) No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion or the "TRAIN Law" (Revenue Regulations No. 09-2022 issued on 30 June 2022)**

These regulations prescribe the policies and guidelines for the admissibility of sales documents in electronic format in relation to the implementation of Sections 237 (issuance of receipts or sales or commercial invoices) and 237- A (Electronic Sales Reporting System) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 10963, (Tax Reform for Acceleration and Inclusion or TRAIN Law).

The policies and guidelines set forth in these Regulations shall cover the following taxpayer groups:

- 1 a. Taxpayers engaged in the export of goods and services;
- 1 b. Taxpayers engaged in electronic commerce (e-commerce); and

c. Taxpayers under the Large Taxpayers Service.

These regulations also cover taxpayers that are not included in the above group of taxpayers but have been authorized by the BIR to issue electronic sales invoices (SIs)/Official Receipts (ORs) through the web-based facility of the Electronic Invoicing/Receipting and Sales Reporting System (EIS).

Specifically, these regulations mention the rules of admissibility of sales documents in electronic format, in relation to various requirements (such as refunds) and/or audit actions of the Bureau of Internal Revenue (BIR). However, subject to approval of the Commissioner of Internal Revenue or his authorized representative, taxpayers may be required to present or submit hard copies of the receipts or invoices or allowed access to the computerized system under instances mentioned in the regulations.

Finally, the regulations reiterate the authority of Revenue Officers to access the respective CAS or POS/CRM machines of the taxpayer under the EIS to validate whether the sales data transmitted to the EIS matches the sales recorded in their electronic systems as required under Revenue Regulations (RR) No. 9-2009. Inherent in the authority of the Revenue Officers would be the imposition of penalties for failure to allow access.

**9. Guidelines and procedures for requesting Mutual Agreement Procedure (“MAP”) assistance in the Philippines (Revenue Regulations No. 10-2022 issued on 30 June 2022)**

These regulations prescribe the guidelines and procedures to be followed by taxpayers in requesting for Mutual Agreement Procedure (MAP) assistance from the Philippine Competent Authority to resolve disputes arising from taxation not in accordance with the provisions of the relevant Double Taxation Agreement (DTA). The Regulations enumerate some typical examples of taxation that are not in accordance with a tax convention that would necessitate a MAP assistance.

In particular, these regulations mention:

- a. The relevant BIR officials and/or offices to provide MAP assistance;
- b. Procedures for a formal request for MAP assistance (which includes pre-filing consultation);
- c. Requirements for a valid request for MAP assistance;
- d. Required documents to support the request for MAP assistance;
- e. Process flow of the handling of a request for MAP assistance.

**10. Guidelines and procedure for the spontaneous exchange of taxpayer specific rulings (Revenue Regulations No. 11-2022 issued on 30 June 2022)**

These regulations prescribe the guidelines and procedures for the spontaneous exchange of taxpayer specific rulings.

The International Tax Affairs Division (ITAD) of the Bureau of Internal Revenue (BIR), through its Exchange of Information (EOI) Section, shall be responsible for exchanging the taxpayer specific rulings to the foreign tax authority of the potential exchange jurisdictions on or before the prescribed deadline.

The regulations likewise mention the specific rulings within the scope of the transparency framework.

In compliance with the procedure for spontaneous exchange of taxpayer specific rulings, the Philippines shall use the template designed by the Forum on Harmful Tax Practices (FHTP) and the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) (Annex A of these Regulations). Revisions of the template shall always be adopted by the Philippines so long as it is practical and not burdensome on the part of the tax administration.

The regulations further differentiate between “past rulings” and “future rulings” in relation to the transparency framework.

Nothing shall prevent the Bureau, however, from requesting other relevant documents from the domestic and foreign taxpayers to obtain information on the potential exchange jurisdictions, in addition to the usual documents that must accompany every request for confirmatory ruling pursuant to existing revenue issuances.

## B. REVENUE MEMORANDUM CIRCULARS (RMC)

1. Uniform Template for VAT Zero Percent (0%) Certification to be issued by Investment Promotion Agencies (IPAs) in relation to Q&A No. 34 of Revenue Memorandum Circular (RMC) No. 24-2022 (Revenue Memorandum Circular No. 36-2022 issued on 06 April 2022)

In line with Question-and-Answer No. 34 of RMC No. 24-2002, which provides that the concerned IPA shall annually issue a VAT zero percent (0%) certification to registered export enterprises (REEs), the RMC provides the templates for the required certification:

- a. Template 1 to be issued to REEs which are registered under Republic Act (RA) No. 11534, otherwise known as CREATE Act; and
- b. Template 2 to be issued to existing REEs registered prior to the effectivity of the CREATE Act.

The BIR also mandates all IPAs to provide a master list of all REEs which have been issued a VAT zero percent (0%) certification for counterchecking. The master list shall be submitted to the Assistant Commissioner, Assessment Service, Attention: The Chief, Audit Information, Tax Exemption and Incentives Division and email the same to: aiteid\_ies@bir.gov.ph.

2. Clarificatory guidelines on the submission of Certificate of Entitlement to Tax Incentives pursuant to Revenue Memorandum Circular (RMC) No. 28-2022 (Revenue Memorandum Circular No. 37-2022 issued on 06 April 2022)



13 Prior to the filing of their Annual Income Tax Return (AITR), all registered business

enterprises (RBEs) enjoying tax incentives under the transitory provisions of Section 311, Title XIII of the CREATE Act shall apply for a Certificate of Entitlement to Tax Incentives (CETI) with their respective investment promotion agency (IPA) through the Fiscal Incentives Registration and Monitoring System.

For taxable year 2021, RBEs already issued a certificate of entitlement to tax incentives, certificate of available incentives, certificate of registration and tax exemption or any similar certificate in a template/format previously prescribed by the IPA may attach such certification to their AITR in lieu of the Fiscal Incentives Review Board (FIRB) - prescribed CETI.

3. Clarification on the transitory provision for the non-income related tax incentives granted to Registered Export Enterprises (REEs) under Investment Promotion Agencies (IPAs) pursuant to Section 5, Rule 18 of the amended Implementing Rules and Regulations (IRR) of Section 311, Title XIII of the CREATE Act (Revenue Memorandum Circular No. 38-2022 issued on 06 April 2022)

All existing REEs enjoying their income tax incentives prior to CREATE may continue to enjoy VAT zero-rating on local purchases that are directly attributable and exclusively used in the registered project or activity until the expiration of the transitory period, as follows:

REE Category	Period
REEs which are granted only an Income Tax Holiday (ITH)	Until the remaining period of the ITH.
REEs which are granted an ITH and/or five percent (5%) tax on gross income earned	Until the expiration of the ten (10) year limit.
REEs whose income tax incentives expired prior to the CREATE Act	VAT zero-rating on local purchases could no longer be availed.

4. Manner of payment of penalty relative to violations incurred by Registered Business Enterprises (RBEs) under the Information Technology-Business Process Management (IT-BPM) Sector on the conditions prescribed regarding Work from Home (WFH) arrangement (Revenue Memorandum Circular No. 39-2022 issued on 06 April 2022)

Previously, RMC No. 23-2022 provided that the penalty, payment of regular corporate income tax (20% or 25%) for the month when violation was committed, shall be paid in the following manner:

	Manner of Payment
RBEs with current transactions subject to IT	BIR Form 0605
RBEs with no current transactions subject to IT	BIR Form 1702-MX

RMC 39-2021 mandates a uniform manner of penalty payment, as follows:

Form	Field	Tax Type	ATC
0605	Voluntary Payment, "Others"	IT	MC 200
	Indicate in the field "Penalty pursuant to FIRB Res. No. 19-2021"		

RBEs enjoying ITH shall file AITR using BIR Form No. 1702-EX, while RBEs enjoying 5% gross income tax or with mixed transaction shall use the BIR Form 1702-MX. All RBEs are required to complete the information pertaining to allowable deductions pursuant to existing tax

laws and regulations (i.e., Part VI-Schedule 1 for BIR Form No. 1702-EX and Part IV-Schedule 5 for BIR Form No. 1702-MX).

Penalty payment shall be made within 30 days after due date prescribed for payment of the IT. RBEs shall compute the penalty in the following manner, assuming the RBE committed violations for the months of September, October, November and December 2021:

	<b>RBE enjoying ITH</b>	<b>RBE enjoying 5% GIT</b>
Annual Net Taxable <u>Income</u> */12	<u>Php 12,000,000.00</u>	<u>Php 12,000,000.00</u>
Average Monthly Net Taxable Income	<u>Php 1,000,000.00</u>	<u>Php 1,000,000.00</u>
Multiply by the number of months with violation	x4	x4
Taxable Income subject to regular IT	<u>Php 4,000,000.00</u>	<u>Php 4,000,000.00</u>
Multiply by regular income tax rate	x25%	x25%
Income Tax due	<u>Php 1,000,000.00</u>	<u>Php 1,000,000.00</u>
Less: Payments made per AITR		500,000.00**
Income Tax still due and payable	<u>Php 1,000,000.00</u>	<u>Php 500,000.00</u>

\*Annual Taxable Income must be computed based on existing tax laws and policies

\*\* Assuming the Gross Income Tax payable per Annual Income Tax Return (AITR) is Php1,500,000 (inclusive of LGU share), the monthly Gross Income Tax (GIT) paid is Php125,000.00, multiplied by 4 months.

#### 5. Clarifications and guidelines on the use of electronic Audited Financial Statement (eAFS) system (Revenue Memorandum Circular No. 40-2022 issued on 06 April 2022)

Taxpayers may use the eAFS system for the e-filing of their Annual Income tax Return (AITR) and its required attachments for any taxable year and all succeeding fiscal and/or taxable years. The existing procedures on the submission of filed AITR and its attachments to eAFS system shall be observed.

In the same RMC, the BIR clarified that the use of electronic signature applies to all tax returns, attachments and documents required to submit AITR and returns.

#### 6. Clarification on the deadline for filing of Annual Income Tax Returns (AITR) for taxable year ending December 31, 2021, guidelines in the manner of filing and payment thereof, and non-imposition of surcharge on amended returns (Revenue Memorandum Circular No. 42-2022 issued on 12 April 2022)

The Circular reiterates that the deadline of AITR for calendar year (CY) 2021 and the payment of the corresponding taxes due thereon is on 18 April 2022, Monday.

Further, to alleviate the difficulties in beating the deadline on a holiday and considering the challenges encountered in the hybrid work arrangement adapted by most taxpayers, tentative AITR may be filed on or before 18 April 2022. The return may be amended on or before 16 May 2022, without imposition of interest, surcharge, and penalties. Provided that, a taxpayer whose amended returns will result in overpayment of taxes paid can opt to carry over the overpaid tax as credit against the tax due for the same tax type in the succeeding period or file for refund.

Moreover, taxpayers who are required to use or voluntary opt to use the eBIRForms, shall file the tax return through the eBIRForms System. On the other hand, taxpayers who are required to use or voluntary opt to enroll in the eFPS facility, must file the return electronically. However, in case that the newly created tax returns are not yet available in the eFPS facility but already available in the eBIRForms System, taxpayers shall file the said return using the eBIRForms System. The Circular also provided payment options for the CY 2021 AITR.

The Circular also states that pursuant to RA No. 8792, or the Electronic Commerce Act of 2000, all tax returns, attachments, and documents can be signed by the taxpayer or its authorized officer or signatory with an electronic signature. Such electronic signature shall be deemed equivalent to an actual signature or “wet signature” for filing purposes.

The Circular further provides that the submission of required attachments (e.g., BIR Form No. 1709, if applicable, Audited Financial Statements, etc.) to the electronically filed/amended AITR for CY 2021 pursuant to the pertinent issuances shall be made on or before 31 May 2022 to the RDO/LTS/LTDO where the taxpayer is registered or electronically through the eAFS System of the BIR.



#### 7. Non-imposition of surcharge on amended tax returns (Revenue Memorandum Circular No. 43-2022 issued on 12 April 2022)

Under Section 248 (A) of the Tax Code, as amended, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due shall be imposed in the following cases:

- a. Failure to file any return and pay the tax due thereon as required under the rules and regulations on the date prescribed; or
- b. Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
- c. Failure to pay deficiency tax within the time prescribed for its payment in the notice of assessments; or
- d. Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of the tax due for which no return is required to be filed, on or before the date prescribed for its payment.

To reconcile RMC No. 54-2018 and RMC No. 46-99, the Circular provides that 25% surcharge shall not be imposed to an amendment of a tax return if the taxpayer was able to file the initial tax return on or before the prescribed due date for its filing. On the other hand, the 25% surcharge shall be imposed on a tax deficiency found during tax audit if the particular tax return being audited was found to have been filed beyond the prescribed period or due date.

#### 8. Guidelines in the filing of Annual Income Tax Returns and payment of tax due thereon for taxable year 2021 (Revenue Memorandum Circular No. 44-2022 issued on 12 April 2022)



This RMC prescribes guidelines in the filing of AITR and payment of tax due thereon for Taxable Year 2021 and to inform eFPS users/filers that the revised BIR Form No. 1702-RT (January 2018 ENCS version) is now available in the eFPS.

Taxpayers who are manual filers or mandated to use offline eBIRForms Package/eFPS under existing issuances shall file and pay in accordance with the guidelines attached in the RMC.

**9. Clarifications on the deadline of submission of attachments to the 2021 Annual Income Tax Return and other matters in relation to RMC Nos. 42-2022 and 44-2022 (Revenue Memorandum Circular No. 46-2022 issued on 18 April 2022)**

The deadline for submission of the attachments to the AITR is on or before 31 May 2022, whether the electronically filed AITR is an original or an amended return.

The submission shall be made manually to the Revenue District Office or to the Large Taxpayers Division where the taxpayer is registered, or electronically through the Electronic Audited Financial Statements (eAFS) system of the BIR.

**10. Amendment on pertinent portion of the questions and answers (Q&A) in RMC No. 24-2022 to align with the CREATE Act and its Implementing Rules and Regulations (IRR), as well as to reflect the deferment of Revenue Regulations (RR) No. 9-2021 pursuant to RR 15-2021 (Revenue Memorandum Circular (RMC) No. 49-2022 issued on 20 April 2022)**

The RMC introduced the following amendments:

- a. Q&A No. 10 was amended to note that transactions considered by sellers as Value Added Tax (VAT) zero-rated for the period 01 July 2021 to 09 December 2021 shall remain VAT zero-rated. For taxpayers that have declared transactions subject to VAT, the taxpayer may follow the options laid down in Q&A Nos. 8 and 9.
- b. Q&A No. 17 was amended to elaborate the rules and treatment to the Domestic Market Enterprises (DMEs) sale of goods and services if they are registered prior to CREATE Act or during the effectivity of the CREATE Act:

<b>Registered DME Prior to CREATE Act</b>	
Non-export locator under 5% Gross Income Tax (GIT) with sales related to registered activity, whether inside Ecozones, Freeport Zones as well as customs territory	VAT exempt
Non-export locator under 5% with VAT passed on by VAT-registered local suppliers	VAT shall form part of cost or expenses
Non-export locator under Income Tax Holiday (ITH) with sales of goods and services to registered export enterprises directly and exclusively used in the latter's registered project or activity	VAT zero-rated
Non-export locator under ITH, with sales to non-export locators or DMEs within Ecozones and Freeport Zones, as well as enterprises within the customs territory	12% VAT
<b>Registered DME during effectivity of CREATE Act</b>	
Sales to registered export enterprises of goods and services directly and exclusively used in the registered activity	VAT zero-rated
Sales to DMEs within the Ecozones and Freeport Zone, as well as sales to enterprises from the customs territory	Subject to VAT

- c. Q&A No. 31 was amended to clarify that registered export enterprise enjoying 5% GIT or Special Corporate Income Tax (SCIT) regime and has other activities that are subject to VAT (i.e., VAT at 12% and 0%) shall remain as a VAT taxpayer; and
- d. Q&A No. 33 was amended to include provision for sales transactions (by local supplier of goods and services) that are qualified for VAT zero-rating but failed to secure an approved application for VAT zero-rating with the BIR. Prior application may not be required until 09 March 2022, or the effectivity of this RMC.

**11. Suspension of audit and other field operations pursuant to, and under authority of, all Task Forces created thru Revenue Special Orders (RSOs), Operations Memoranda (OM) and other similar orders/directives (Revenue Memorandum Circular No. 76-2022 issued on 30 May 2022)**

The RMC emphasized that no field audit, field operations, or any form of business visitation in execution of Letters of Authority/Audit Notices (LOAs) or Mission Orders (MOs) shall be conducted and that no written orders to audit and/or investigate taxpayers' internal revenue tax liabilities shall be issued and/or served by the said Task Forces relative to examinations and verifications of taxpayers' books of account, records, and other transactions. The said suspension shall take effect immediately until further notice.

A case-to-case review and evaluation of the necessity and progress of each Task Force shall be conducted by the Office of the Commissioner before they are allowed to resume their audit functions and field operations.

**12. Suspension by the Bureau of Internal Revenue effective May 30, 2022 of all pending Letters of Authority/Mission Orders as of May 30, 2022 and Submission of Inventory thereafter (Revenue Memorandum Circular No. 77-2022 issued on 30 May 2022)**

The RMC reiterated that, no field audit, field operations, or any form of business visitation in execution of Letters of Authority/Audit Notices (LOAs) or Mission Orders (Mos) shall be conducted, nor any new LOA/MO shall be further issued. Moreover, no written orders to audit and/or investigate taxpayers' internal revenue tax liabilities shall be issued and/or served, except in the following cases:

- a. Investigation of cases prescribing on or before 31 October 2022;
- b. Processing and verification of estate tax returns, donor's tax returns, capital gains tax return

and withholding tax returns on the sale of real properties or shares of stocks together with the documentary stamp tax returns related thereto;

- c. Examination and/or verification of internal revenue tax liabilities of taxpayers retiring from business;
- d. Audit of National Government Agencies (NGAs), Local Government Units (LGUs) and Government Owned and



- Controlled Corporations (GOCCs) including subsidiaries and affiliates; and
- e. Other matters/concerns where deadlines have been imposed or under the orders of the Commissioner of Internal Revenue.

However, the RMC clarified that service of Assessment Notices, Warrants, and Seizure Notices should still be in effect.

The RMCs shall take effect immediately.

### 13. Clarification on the service of Letter of Authority pursuant to Revenue Audit Memorandum Order (RAMO) No. 1-2000 (Revenue Memorandum Circular No. 82-2022 issued on 30 June 2022)

This Circular is hereby issued to address the issues and concerns on the service of the electronic Letter of Authority (eLA) to the taxpayer within 30 days from its date of issuance under Revenue Memorandum Order (RAMO) No. 1 -2000.

The salient points of the RMC are as follows:

- a. RAMO No. 1-2000 was already amended by RAMO No. 1-2020 which provides that the mandatory 30-day period of serving the eLA to the taxpayer has already been removed.
- b. While there is no timeline required for the service of the eLA, it is still for the best interest of the government that the eLA be served to the taxpayer immediately upon issuance/assignment thereof considering that the entire audit process must be completed within 180 days for RDO cases and 240 days for LT cases from the date of issuance of the eLA. Otherwise, the non-observance on the aforesaid 180-day or 240-day timeline is considered as gross neglect of duty, which is a grave offense subject to appropriate administrative sanctions pursuant to Revenue Memorandum Order No. 53-2010.
- c. The deletion of the 30-day period to serve the eLA shall in no case be an excuse for the concerned revenue officers to delay its service, nor for a taxpayer to refuse its service or to question its validity in case the same is served beyond the 30-day period.

An eLA which remains unserved upon the effectivity of this RMC or has been served beyond the 30-day period from the date of its issuance shall still be considered valid and enforceable, provided that the 180-day/240-day period to complete the audit process has not yet expired.

### 14. Template for Sworn Declaration to be executed by the Registered Business Enterprise (RBE) in Relation to Q and A No. 36 of RMC No.24-2022 (Revenue Memorandum Circular No. 84-2022 issued on 20 June 2022)

## C. FISCAL INCENTIVES REVIEW BOARD (FIRB) RESOLUTIONS

- 1. Grant of authority to implement a 70:30 WFH arrangement (FIRB Resolution No. 017-22, adopted by the Board in its meeting on 21 June 2022, where a quorum was present)

This resolution provides that as a temporary measure under Rule 23 of the CREATE Act IRR, registered business enterprises (RBEs) in the Information Technology-Business Process

Management (IT-BPM) may be allowed by their respective IPAs to continue implementing WFH arrangements without adversely affecting their fiscal incentives under the CREATE Act from 1 April 2022 until 12 September 2022 only.

The number of employees under a WFH arrangement shall not exceed thirty percent (30%) of the total workforce of the RBE, while the remaining seventy percent (70%) of the total workforce shall



render work or service within the geographical boundaries of the ecozone or freeport zone being administered by the IPA with which the project/activity is registered; Provided, That the total workforce shall refer to the total employees that are directly or indirectly engaged in the registered project or activity of the RBE, but excludes third-party contractors rendering janitorial or security services and other similar services.

RBEs in the IT-BPM sector adopting a WFH arrangement exceeding the thirty percent (30%) threshold shall not be entitled to avail of fiscal and non-fiscal incentives for the said month/s of non-compliance.

**2. Extension of the deadline for filing of the Annual Tax Incentives Report (ATIR) and Annual Benefit Report (ABR) (FIRB Resolution No. 020-22, adopted by the Board in its meeting on 21 June 2022, where a quorum was present)**

This resolution provides the approval of the request to extend the deadline for submission of the ATIR and ABR for all registered business enterprises (RBEs) to 15 July 2022 and the deadline for submission of the ATIR for investment promotion agencies (IPAs) to 15 August 2022 without the imposition of the penalty under Section 308 of the National Internal Revenue Code of 1997, as amended by the CREATE Act.

The submissions of the RBEs and the IPAs to the FIRB Secretariat shall be sent to [firbmeg@ntrc.gov.ph](mailto:firbmeg@ntrc.gov.ph).

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