



# UPDATES

A special publication by the finex Tax and Legal committee

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# TAX UPDATES

## BIR ISSUANCES HIGHLIGHTS

RR No. 12-2022, September 13, 2022

*This prescribes the policies and guidelines for the availment of incentives under Republic Act No. 9999*

This prescribes the policies and guidelines for the availment of incentives under Republic Act No. 9999.

Lawyers or professional partnerships rendering actual free Legal Services shall be entitled to an allowable deduction from the gross income equivalent to the lower of the amount that could have been collected for the actual free Legal Services rendered or ten percent (10%) of the gross income derived from the actual performance of the legal profession.

The actual free Legal Services shall be exclusive of the minimum sixty (60)-hour mandatory legal aid services rendered to indigent litigants as required under the Rule on Mandatory Legal Aid Services for Practicing Lawyers, under Bar Matter No. 2012, issued by the Supreme Court.

In order to avail of the incentives, the lawyers or professional partnerships shall attach to their ITR for the period when the deduction was claimed the following documents:

a. Certification from the Public Attorney's Office, the Department of Justice or accredited association of the Supreme Court indicating that the legal services to be provided are within the services defined by the Supreme Court, the agencies cannot provide the Legal Services to be provided by the private counsel and the Legal Services were actually undertaken;

b. Accomplished BIR Form No. 1701 (for individual lawyers) or BIR Form No. 1702-EX (for general professional partnership), particularly Schedules 5 and 2, respectively, on "Special Allowable Itemized Deductions; and

c. Sworn Statement of the Lawyer or managing partner (in case of professional partnership) as to the amount that could have been collected for the actual free legal service.

RMC No. 127-2022, September 7, 2022

*This lifts and removes the suspension and prohibition on the issuance of new MOs.*

This lifts and removes the suspension and prohibition on the issuance of new MOs authorizing the conduct of enforcement activities and operations of any kind, and issuance of new MOs authorizing such activities and operations.

RMC No. 131-2022, September 28, 2022

*Availability of Offline Electronic Bureau of Internal Revenue Forms (eBIRForms) Package Version 7.9.3*

This announces the availability of Offline Electronic Bureau of Internal Revenue Forms (eBIRForms) Package Version 7.9.3.

The new Offline eBIRForms Package has the following modifications:

A. Additional Alphanumeric Tax Codes (ATCs) in BIR Form No. 0605 to be used by the International Carriers in paying their taxes in reference to Revenue Memorandum Order No. 37-2022, to wit:

<u>Type of Tax</u>	<u>Tax Type</u>	<u>ATC</u>
	IT	IC 080
Percentage Tax	PT	PT 041
Documentary Stamp Tax	DS	DS 010

B. Revised Terms of Service Agreement (TOSA).

C. Required official e-mail address of the taxpayer to be provided in the eBIRForms profile page. The e-mail shall be used as an additional mode of serving BIR orders, notices, letters, communications and other processes.

RMO No. 37-2022, September 16, 2022

*This amends the policies and guidelines for the issuance of International Carriers Special Certificate.*

This amends the policies and guidelines for the issuance of International Carriers Special Certificate (ICSC).

The application for BIR ICSC requires that the ICSC shall only be issued upon payment of 3% common carrier's tax (Percentage Tax) and 2.5% Income Tax (Gross Philippine Billings) unless the preferential rate is used pursuant to Sections 118(B) and 28(A)(3)(b), respectively, of the 1997 Tax Code, as amended. The Regional Director of RR No. 7A-Quezon City shall, upon application (Annex C) and evaluation of documentary requirements (Annex D), issue the ICSC. The documentary requirements to be submitted before the issuance of ICSC are listed in Section III.C.3 of the Order.

The ₱100 certification fee and ₱30 loose Documentary Stamp Tax (DST) shall be filed electronically using BIR Form No. 0605 through eBIRForms Package and paid online through BIR ePayment Channels separately. For the ePayment of loose DST, constructive affixing of DST on the Certificate shall be done by the concerned office by stamping "DST Paid Online" including the Payment Transaction Number and Date of Payment, at the lower portion of the Certificate.

Online application for International Carrier Service Certificate shall be made through the BIR website at <https://www.bir.gov.ph> under "eServices" icon and by clicking the "eICSC" icon. An application reference number shall be received upon successful submission. The documentary requirements shall be electronically filed thru the BIR ICSC Centralized email address: [icsc\\_1948@bir.gov.ph](mailto:icsc_1948@bir.gov.ph) with "Application for ICSC [REF. NO. \_\_\_\_\_]" as email subject line format. All the required documentary requirements shall be prepared and scanned in PDF copy and compressed into one (1) .zip file which shall not exceed 10MB file size.

RMO No. 40-2022, September 29, 2022

*This prescribes the guidelines and procedures in the conduct of enforcement operations, forfeiture and prosecution of cases.*

This prescribes the guidelines and procedures in the conduct of enforcement operations, forfeiture and prosecution of cases relative to the unlicensed/illicit/unauthorized production, importation, trade sale or possession of articles subject to Excise Tax, including raw materials, packages, cigarette paper, tipping paper, cigarette filter tips, ingredients, machinery, equipment, apparatus, mechanical contrivances, and removable fixture of any sort used for their production, and the unlicensed/illicit/ unauthorized use or possession of false, counterfeit, restored or altered BIR internal revenue stamps, labels or tags.

A BIR STRIKE GROUP shall be composed of two (2) Teams to be constituted by the designated officers who shall be responsible in the conduct of the undertaking.

RMO No. 41-2022, September 29, 2022

*This discontinues the issuance of Tax Verification Notice (TVN) for Estate Tax cases where the decedent has no registered business.*

This discontinues the issuance of Tax Verification Notice (TVN) for Estate Tax cases where the decedent has no registered business. This is in order to comply with the “Ease of Doing Business” under Republic Act No. 11032 in processing requests for issuance of Certificate Authorizing Registration (CAR) related to the transfer of properties left by the decedent.

RMO No. 42-2022, September 29, 2022

*This prescribes the enhanced BIR Digital Transformation Roadmap 2020-2030.*

This prescribes the enhanced BIR Digital Transformation Roadmap 2020-2030.

The BIR Digital Transformation (DX) Program aims to transform the Bureau of Internal Revenue into a data-driven organization through a digitally empowered and resilient workforce utilizing reliable, scalable, and robust digital technologies and infrastructure to innovate BIR services and elevate taxpayer service.

The BIR DX Program is anchored on four (4) major pillars representing the strategic objectives to be pursued under the program, to wit:

1. Pillar I: Strengthening the BIR Organization
2. Pillar II: Modernizing the Digital Backbone of the BIR
3. Pillar III: Enhancing Policies, Governance and Standards
4. Pillar IV: Elevating the Taxpayers Experience and Innovating the BIR Services

RMO No. 43-2022, September 29, 2022

*This prescribes the policies, guidelines and procedures in the issuance and use of Notice to Issue Receipt/Invoice (NIRI).*

This prescribes the policies, guidelines and procedures in the issuance and use of Notice to Issue Receipt/Invoice (NIRI) by the following pursuant to Revenue Regulations (RR) No. 10-2019:

- a. New Business Registrants (NBR) head office and branches by the Revenue District office (RDO) where the taxpayer is registered.
- b. Online sellers and merchants, vloggers, social media influencers, and online content creators earning income from the platform and/or advertising.

"Ask for Receipt" Notice previously issued by the RDO/LT Division to registered business taxpayers based on RR No. 7-2005 shall still be valid until June 30, 2023, and it shall be replaced through staggered issuance of NIRI to the existing business registrants based on the ending digit of the Taxpayer Identification Number (TIN), to wit:

<b>TIN Ending</b>	<b>Month</b>
<b>1 and 2</b>	<b>Beginning October 3, 2022</b>
<b>3 and 4</b>	<b>Beginning November 2, 2022</b>
<b>5 and 6</b>	<b>Beginning December 1, 2022</b>
<b>7 and 8</b>	<b>Beginning January 2, 2023</b>
<b>9 and 0</b>	<b>Beginning February 1, 2023</b>

RR No. 13-2022, October 7, 2022

*This prescribes the guidelines, procedures, and requirements for the proper income tax treatment of equity-based compensation.*

“Equity-based compensation” covers all types of employee equity schemes that come in different forms such as stock options, restricted stock units, stock appreciation rights, and restricted share awards.

It is being granted to existing employees of the grantor as a performance incentive for services rendered by the employees and is typically dependent on performance, outstanding business achievements, and exemplary organizational, technical, or business accomplishments.

The following are the different kinds of Equity-based compensation:

Kinds of Equity-based Compensation	Definition
<b>A. Stock options</b>	Stock options merely entitle the employee to purchase shares at a future date. Thus, unless the options are exercised, the employees do not become shareholders. The period between the grant of stock options and the date when they become exercisable represents the vesting period.
<b>B. Restricted share awards</b>	The awards may or may not be subject to a vesting period, as may be specified in the grant. If subject to a vesting period, any unvested shares shall be forfeited if employment is terminated.
<b>C. Stock Appreciation Rights (SARs)</b>	The terms and conditions are similar to stock options. However, under the SARs, the optionee may receive (a) shares, (b) cash, or (c) a combination of shares and cash, as determined by the grantor.
<b>D. Restricted Stock Units</b>	As with restricted shares, stock units may or may not be subject to a vesting period, as will be specified in the grant. Settlement of vested stock units may be made in the form of (a) shares, (b) cash, or (c) a combination of shares and cash.

RMC No. 136-2022,  
October 14, 2022

*This publishes FIRB Resolution No. 026-2022 extending 70:30 WFH arrangement for RBEs in the IT-BPM sector and allowing the transfer of registration of existing business enterprises in the IT-BPM to BOI.*

The equity grants are considered compensation to be taxed as such under Section 32 of the NIRC of 1997, as amended, and implemented by RR No. 2-98, as amended. This rule will be applied regardless of the employment status of the grantee-employee who could either be rank-and-file or occupying a supervisory or managerial position, as the law applicable does not make any distinction.

FIRB No. 026-22 allowed the 30% of the total workforce to adopt WFH arrangement for Information Technology – Business Process Management (IT-BPM) Registered Business Enterprises (RBEs) within the ecozones or freeport zone, as a temporary measure under Rule 23 of the Corporate Recovery and Tax Incentives for Enterprises Act Implementing Rules and Regulations in view of Presidential Proclamation No. 57 s.2022 from September 13, 2022 until December 31, 2022.

Affected RBEs in the IT-BPM sector may be allowed to transfer their registration to the Board of Investment (BOI) from Investment Promotion Agency (IPA) administering an economic zone or freeport where their project is located until December 31, 2022 to adopt 100% WFH.

RMC No. 137-2022  
October 14, 2022

*This provides clarificatory guidelines on the availment of VAT zero rate (0%) on HMO Plans Acquired by REEs and prescribes the uniform template of "detailed information" thereof.*

This expounds further on the clarification made in Q&A No. 14 of RMC No. 24-2022 on cost items that fall under "other expenditures." The list provided under RMC No. 24-2022 is not "exclusive", hence expenditures not listed therein may be allowed for VAT zero-rating, provided the same can be attributed directly.

Health Maintenance Organization (HMO) plans acquired by Registered Export Enterprises (REEs) may be allowed for VAT zero-rating provided that:

- These are for employees directly involved in the operations of the REEs' registered projects or activities and forming part of their compensation package, for their health maintenance.

- Health benefits are not only an indispensable tool for building a competitive workforce but also ensure continuous and smooth operation of the registered project or activity

HMO plans for employees' dependents and for employees not directly involved in the operations of the registered projects or activities of the REEs are not allowed for VAT zero-rating.

REEs availing of VAT zero-rate on the qualified HMO plans shall provide their suppliers detailed information on the HMO plans acquired to ensure that only HMO expenses for qualified employees are given zero-rating.

RDAO No. 18-2022,  
October 17, 2022

*This delegates to certain revenue officials the authority to sign warrants of distraint, levy/garnishment, notices of tax liens, encumbrance, levy, and seizures, as well as the lifting thereof.*

This delegates to certain revenue officials the authority to sign/approve and serve/execute the following:

1. Warrant of Dstraint and/or Levy;
2. Warrant of Garnishment;
3. Notices of Tax Liens, Notice of Encumbrances, and lifting thereof;
4. Notices of Levy on Real Property and lifting thereof; and
5. Notice of Constructive Dstraint of Personal Property.

The following are the signing authority/approving officers and the offices designated to cause the service (designated office) of the aforementioned documents for the proper enforcement of collection on assessment under the jurisdiction of their respective Offices:

Case Description	Signing/Approving Officer	Designated Office
(1) National Office (NO) Cases other than LT Cases	ACIR – Collection Service (CS) or in his absence the Head Revenue Executive Assistant (HREA)-CS	Accounts Receivable Monitoring Division (ARMD)
(2) Large Taxpayer Service (LT) Cases	ACIR – Large Taxpayer Service or in his absence HREA-LTS (Programs and Compliance Group)	LT-Collection Enforcement Division (LTCED)
(3) Large Taxpayer District Office (LTDO) Cases	Chief-Large Taxpayers District Office (LTDO) or in his absence the Assistant Chief – LTDO	Large Taxpayers District Office (LTDO)
(4) Regional Office (RO) Cases	Regional Director or in his absence the Assistant Regional Director	Regional Collection Division (RCD)

The amount to be reflected in the warrants/notices shall be the total amount of delinquency tax assessed for each type of tax including surcharge and interest, except compromise penalty, against a particular taxpayer as a result of tax investigation or audit, surveillance, etc., or for self-assessed taxes (i.e., returns filed with no payment or underpayment, dishonored checks, etc.)

In undermanned RCDs/LTDOs/LTCED where difficulty in coping with workload is experienced, request for assistance to provide auxiliary revenue officers to aid in the service and execution of the warrants and notices and other processes must be sought from the concerned Revenue Offices/LTS to ensure that the same have been acted upon within the period prescribed by the Tax Code, and revenue issuances.

BIR Ruling No. 403-2022,  
October 05, 2022

*The tax incentive provision under RA 7279 granting exemption from project-related income tax is limited to project contractors on the construction and development of houses and lots or home lots only.*

The BIR ruled that the construction of the J.W.D. Construction of Nueva Viscaya State University IP Student Dormitory is outside the definition of “socialized housing” in relation to the tax incentives for the private sector under Section 20 of the Balance Housing Development Program Amendments or RA No. 7279.

The tax incentive provision, granting exemption from project-related income tax is limited to project contractors on the construction and development of houses and lots or home lots only with a view to reduce the cost of housing units for the benefit of the underprivileged and homeless.

Moreover, Section 20(d)(3) if RA No. 7279, as amended, on the exemption from VAT for the project contractor concerned, was already repealed by Section 86 (tt) and (uu) of RA No. 10963.

RR No. 14-2022,  
November 11, 2022

*This implements the provisions of RA No. 1190, relative to the importation, manufacture, sale, packaging, distribution, use, and communication of vaporized nicotine products, and novel tobacco products.*

This implements the provisions of RA No. 1190, relative to the importation, manufacture, sale, packaging, distribution, use, and communication of vaporized nicotine products, and novel tobacco products.

This regulation prescribes guidelines on the following:

1. Tax rates and bases of excise taxes
2. Compliance and administrative requirements for the manufacturers or importers
3. Online trade
4. Floor price or minimum price of vaporized nicotine and non-nicotine products and novel tobacco products which shall be the total production cost/expense/landed cost of the cheapest brand per tobacco product including the sum of excise tax and VAT.
5. Usage of local tobacco products
6. Penalties for non-compliance

RMC No. 143-2022,  
November 8, 2022

*This clarifies issues relative to RR No. 13-2022 on income tax treatment of equity-based compensation.*

This provides further clarification and guidelines to issues relative to RR No. 13-2022 on income tax treatment of equity-based compensation.

#### 1. Effectivity

- Shall be effective on October 29, 2022 and shall be applied prospectively.
- Any exercise or avilment by employee-grantee (whether rank-and-file or occupying managerial or supervisory position) of the granted equity-based compensation on or before October 29, 2022 shall be considered as compensation subject to withholding tax on compensation.

#### 2. Tax Treatment

<b>Grant of Equity-Based Compensation</b>	No CGT and DST shall be imposed.
<b>Sale or Transfer of Equity-Based Compensation</b>	Treated as sale, barter, or exchange of stocks not listed on the stock exchange. <ul style="list-style-type: none"><li>• <i>With consideration</i> – subject to CGT under Section 24 (C) of the 1997 NIRC.</li><li>• <i>Without consideration</i> – shall be treated as donation of shares of stock subject to donor’s tax.</li></ul>
<b>Exercise of Equity-Based Compensation</b>	Subject to the following taxes, as applicable: <ul style="list-style-type: none"><li>• Income Tax</li><li>• DST</li><li>• Donor’s tax</li></ul>

#### 3. Filing of the required tax returns

RMC No. 148-2022,  
November 12, 2022

*This circularizes the lifting of the suspension on all filed operations and other field operations of the BIR.*

- This circularizes the lifting of the suspension on all filed operations and other field operations of the BIR pursuant to RMC 77-2022.
- All field audit, field operations, or any form of business visitation in execution of Letters of Authority/Audit Notices (LOAs) or Mission Orders (MOs) can be already conducted, and new LOAs/MOs can be further issued.

Check out the latest **Decision Highlights** from the Court of Tax Appeals [HERE](#).

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# LEGAL UPDATES

## SIM Card Registration

The Subscriber Identity Module (SIM) Registration Act (RA 11934) requires the registration of SIM for all electronic devices, including mobile phones and computers. This law aims to deter and to facilitate the resolution of crimes involving the use of such devices.

End users must register their SIMs with the concerned Public Telecommunications Entity (PTE) prior to activation. Foreign nationals are also required to register their SIMs. Under the implementing rules, the SIMs of tourists shall only be active for thirty (30) days, unless there is proof that the tourist has secured an approval on his/her visa extension. Other visa holders are not subject to such limitation.

Existing subscribers must register within six (6) months reckoned from the law's effectivity. The DICT may extend the registration period for four (4) months. Non-registration shall lead to the automatic deactivation of the SIM, which may only be reactivated upon its registration. PTEs shall register their existing postpaid subscribers, who in turn must confirm their registration through the concerned PTE's registration platform or website.

Relevant government agencies and PTEs shall facilitate the registration process in remote areas with limited telecommunication or internet access. In all cases, the registration shall be at no cost to end-users.

End-users (or upon death of end-users, their immediate family, relatives, or guardians) must inform the concerned PTE of any change in information, death of end-user, loss of SIM, or request for deactivation. The PTE must deactivate the SIM within twenty-four (24) hours from the report of death, loss, or upon request for deactivation. The end-user must also register the sale or subsequent transfer of SIM.

PTEs shall secure, protect, and treat as confidential end-users' data. They must comply with the prescribed information security standards. They should not disclose end-user data to any person except under limited instances as provided by law, such as when a subpoena is issued by a competent authority pursuant to an investigation based on a sworn complaint that a specific mobile number was or is being used as a means to commit a malicious, fraudulent or unlawful act, and that the complainant is unable to ascertain the identity of the perpetrator.

The law provides penal sanctions for any violation.

## BSP requirements in the grant of financial products and services

The BSP has issued its amended Financial Consumer Protection (FCP) framework (BSP Circular No. 1160) consistent with the Financial Products and Services Consumer Protection Act (RA 11765). This Circular aims to promote the interests of financial consumers, specifically their right to equitable and fair treatment, disclosure and transparency of financial products and services, protection of consumer assets against fraud and misuse, data privacy and protection, and timely handling and redress of complaints.

The framework applies to all BSP supervised institutions (BSIs), including non-bank financial institutions, such as pawnshops, credit card companies, and trust entities. The SEC, Insurance Commission, and CDA have yet to issue the regulations for their respective supervised institutions.

The Circular provides details of BSIs' duties and responsibilities under the Act, specifically on: Board and senior management oversight, product design and delivery, transparency, disclosure and responsible pricing, fair and respectful treatment of clients, privacy and protection of client data, financial consumer and protection assistance mechanism, and information security standards.

The Board of each BSI must approve and oversee the implementation of its consumer protection risk management system (CPRMS) and financial consumer protection assistance mechanism (FCPAM). The senior management, in turn, must ensure the practices of the BSI and third-party agents are aligned with the said CPRMS and FCPAM.

There must be affordability and suitability assessments of clients for the product or service. Product bundling should consider product suitability. It should not unduly limit consumer choice.

The Act likewise permits BSP to determine the cooling-off period within which the client may consider the costs and risks of the product or service, free from the pressure of the sales team of the BSI. Under the Circular, there should be a mandatory cooling-off period of two (2) banking days in favor of individual retail consumers and MSMEs. A BSI shall provide a longer period not exceeding fifteen (15) days when offering complex and long-term products and services. The Circular also enumerates products and services that are exempt from the cooling-off period requirement.

Responsible pricing requires the adoption of policies and procedures for setting prices. They must consider publicly available information on competitive pricing, except in special instances of tailor-fit and/or pioneering products and services. They must likewise consider the cost to provide the product or service and its affordability to clients. They are required to document the reasons for setting the price. Under the Act, the BSP may determine the reasonableness of interests, charges, or fees for such product or service. The same limitation applies when there is prepayment of loans and other credit accommodations.



Exploration, development, and utilization of kinetic energy sources

The DOJ (in its September 29 opinion) clarifies the Constitution does not impose ownership restriction on the exploration, development, and utilization of kinetic energy sources, in particular: solar, wind, hydro, and ocean or tidal resources.

Natural resources, as contemplated in the Constitution, refer to properties within the State's dominion and susceptible to appropriation, such as lands, fisheries, forests, and wildlife. They are limited and exhaustible resources. Kinetic energy sources, in turn, are inexhaustible under normal circumstances.

The above clarification was issued as basis for the amendment of the IRR of Renewable Energy Act (RA 9513). It did not reverse the rule that the direct harvesting of water from the source for power generation is subject to ownership restriction.

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Mr. Recalde was a recommended lawyer for the practice area of tax by The Legal 500 Asia Pacific for 2020 and 2021. Mr. Recalde is a licensed Certified Public Accountant. He ranked 11th in the September 1996 CPA Licensure Examinations. He also ranked 3rd in the 2022 Philippine Bar Examinations.



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