

2023 QUARTER 2

U P D A T E S

A special publication by the FINEX Tax & Legal Committee



LEGAL UPDATES

By Mata-Perez Tamayo & Francisco (MTF Counsel)

Guidelines on the Issuance of Sustainability-Linked Bonds under the ASEAN Sustainability-Linked Bond Standards in the Philippines SEC Memorandum Circular No. 3, S. 2023, April 5, 2023

- In relation to its role in promoting the use of capital markets in achieving the United Nations Sustainable Development Goals (UN SDG) and the targets under the Paris Agreement to reduce Greenhouse Gas (GHG) emissions to lower the global average temperature to well below 2 degrees Celsius, SEC has adopted the ASEAN Green Bond Standards, the ASEAN Social Bond Standards, and the ASEAN Sustainability Bond Standards to attract sustainable investments in the debt security market and address key areas of environmental and social concern.
- The Guidelines are based on the ASEAN Sustainability-Linked Bond Standards developed by the ASEAN Capital Markets Forum (ACMF).
- The Guidelines shall primarily govern the issuance of the Sustainability-Linked Bonds where the proceeds are intended to be used for general purposes.
- Sustainability-Linked Bonds (SLBs) are any type of bond instrument for which the financial and/or structural characteristics can vary depending on whether the issuer achieves predefined sustainability/environmental, social and governance (ESG) objectives.

What's inside?

SEC Rules & Regulations of the Financial Products and Services Consumer Protection Act of 2022 SEC Memorandum Circular No. 5, S of 2023, April 25, 2023

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- The requirements under the subject Guidelines shall be in addition to the applicable registration requirements under Sections 8 and 12 of the Securities Regulation Code.
- The components of the ASEAN SLBS include the following (1) the selection of key performance indicators (KPI) and calibration of sustainability performance targets (SPT), both of which focus on issuer requirements, (2) required features and disclosures, (3) bond characteristics that involve the financial and/or structural characteristics of the bond, (4) variation of the bond characteristics and disclosure; (5) reporting requirements, which must be published and kept readily available and easily accessible through a publicly available website designated by the issuer throughout the tenure of the ASEAN SLB; and (6) verification, where the issuer must seek independent and external verification of their performance level against each SPT for each KPI by a qualified external review provider with relevant expertise, such as an auditor or an environmental consultant, among others.
- There must also be an external review provider to confirm the alignment of the ASEAN SLB with the five core components of the ASEAN SLBs (such as a second party opinion), prior to the issuance of the ASEAN SLB.
- In certain circumstances, and at the discretion of the SEC, outstanding bonds issued by Philippine-based issuers and/or in instances where the proceeds were used in the Philippines, will be considered for eligibility under the proposed MC, provided the issuance is compliant with the MC's requirements and has received certification from an internationally recognized certifying body.
- Finally, the SEC reserves the right to direct any issuer from using the "Asean Sustainability-Linked Bond" label confirmed by the commission, consistent with public interest and investor protection, as a call for transparency, and to ensure the integrity of the Philippine sustainable finance market.



SEC Rules and Regulations of the Financial Products and Services Consumer Protection Act of 2022 SEC Memorandum Circular No. 5, S of 2023, April 25, 2023

- Pursuant to the Financial Products and Services Consumer Protection Act of 2022, the SEC issued Rules and Regulations covering all financial products and services, and financial service providers under the jurisdiction of the SEC.
- Financial products and services are products and services which may include, but are not limited to, credit, securities, investments, and other similar products and services. This also includes digital financial products or services. Financial service providers are those within the jurisdiction of the SEC, including (1) issuers and dealers of securities; (2) mutual funds; (3) investment advisers; (4) financing and lending companies; (5) MF-NGOs; (6) issuers of proprietary or non-proprietary shares/membership certificates/time shares; (7) FIST corporations; and (8) Others as may be determined and designated by the SEC.

Bases Conversion and Development Authority and John Hay Management Corporation vs. City Government of Baguio City, as represented by its Mayor, City Treasurer, and City Legal Officer

G.R. No. 192694 promulgated on February 22, 2023 [Date Uploaded: 04/24/2023]

License fees and business permit fees, therefore, are not "local taxes" contemplated in tax exemption statutes.

Thus, "local taxes" in the context of tax exemption statutes should only refer to those taxes levied by the local government unit primarily for revenue generation. Exactions made in the exercise of police power, that is, fees levied for a primarily regulatory purpose, are not included in the exemption, unless the statute categorically provides otherwise.

License fees and business permit fees, therefore, are not "local taxes" in tax exemption statutes.





- Investment Advisers or those 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, selling investment products, or issues or promulgates analyses or reports concerning investment products, are required to register with the SEC.
- The Rules also mandate the Board of Directors of financial service providers to approve and implement a Consumer Protection Risk Management System.
- The Rules also strengthen consumer protection thru adequate product suitability and affordability mechanisms, providing for a mandated cooling-off period, transparency, disclosure, and responsible pricing, and prohibition on employment of abusive collection or debt recovery practices.
- Also, the Rules mandate all financial service providers must establish a single consumer assistance mechanism (FCPAM) and provide free assistance to financial consumers on financial transactions concerns. Consumers who are unsatisfied with the financial service provider's handling of their complaints, inquiries and requests, may elevate their concerns to the SEC.
- The Rules also provide stiff penalties for Investment Fraud such as Ponzi schemes and boiler room operations.
- A financial service provider shall be responsible for the acts or omissions of its directors, trustees, officers, employees, or agents in marketing financial products or services and in transacting with a financial consumer. The financial service provider shall also be solidary liable with its authorized third-party service providers.
- Finally, willful violation of the Rules shall be punished by imprisonment of not less than one (1) year, but not more than five (5) years, or by a fine of not less than fifty thousand pesos (Php50,000.00) but not more than two million pesos (Php2,000,000.00), or both, at the discretion of the court.

Securing & Expanding Capital for Farms & Agri-Business Related Modernization Schemes (SEC FARMS), SEC Memorandum Circular No. 08, S. 2023, June 15, 2023

- The SEC adopted guidelines for registration of securities for agri-business companies by using form SEC FARMS, pursuant to its powers under the Revised Securities Regulation Code (SRC), to help support the raising of capital from private sector for agri-business project.
- Simplified Form for Registration. — An agri-business corporation seeking to register its securities may use SEC FARMS in lieu of the current SEC Form 12-1 subject to the following conditions:
 1. A corporation has to be established specific for an agri-business project. All subscribed shares of such corporation must be fully paid.
 2. The amount of securities to be registered shall not exceed the amount of Five Hundred Million Pesos (P500,000,000.00) per project or such other amount the Commission may prescribe, applied in a single or series of registration.
 3. The amount from the proceeds of the securities to be registered and offered represents at most 50% of the total project cost.
 4. A registrant corporation, in order to use the SEC FARMS, must be able to demonstrate that:
 - a. It has already secured and allocated as seed money for the project an amount representing the other 50% of the total project cost. This latter amount shall be put in escrow account or such other arrangement acceptable to the Commission; or
 - b. If the registrant corporation has already started the project, the total of the actual percentage of accomplishment of the project and the funds in possession of the registrant corporation specifically allocated for the project shall be not less than 50% of the total project cost.
 5. A registrant corporation may offer its registered securities in a single offer period or in a continuing offer period based on a reasonable and acceptable schedule but not to exceed one year from the date of the issuance of the Order of Registration and Permit to Sell.

6. A registrant corporation shall submit to the Commission a monthly report on the progress of the project and the offer, indicating the amount raised during the month and a running balance of the total amount raised since the start of the offer.
 7. A registrant corporation shall secure from its stockholder/s, controlling person/s or such other person/s as may be allowed by the Commission, a guarantee for the purpose of covering any shortfall in the target amount intended to be raised from the public. The guarantee shall be in such form and manner approved by the Commission.
 8. A registrant corporation shall engage an underwriter unless it is able to demonstrate that it has the ability to sell all or substantially all of its securities to the public.
- Shortened period. The Commission undertakes to declare the registration statement effective or rejected within twenty-eight (28) days after the date of filing of its SEC FARMS, unless the applicant consents to such later date and the applicant is allowed to amend the registration statement.
 - An agri-business company that would register its securities through SEC FARMS may engage the services of Group B SEC accredited External Auditors or Auditing Firm.

Supreme Court Decisions



Commissioner of Internal Revenue Vs. Parity Packaging Corporation G.R. No. 249045. January 11, 2023 [Date Uploaded: 05/08/2023]

Bare allegation of falsity or fraudulency, without proof, is insufficient to remove a case outside the purview of the three-year prescriptive period under Section 203 of the Tax Code.

Under Section 203 of the National Internal Revenue Code (“Tax Code”), the BIR must generally assess any deficiency internal revenue taxes within three (3) years after the last day prescribed by law for filing the return. Citing CIR v. UniOil Corp., the Supreme Court held that in determining whether the return filed is false or fraudulent, jurisprudence has consistently held that fraud is never imputed. The Court has refrained from sustaining finding of fraud upon circumstances which, at most, create only suspicion. The mere understatement of tax is not itself proof of fraud for the purpose of tax evasion. In this case, the CTA EB correctly observed that CIR did not present any evidence to prove that falsity of PPC’s tax returns in order to justify the application of the ten-year prescriptive period. Thus, there is no basis for applying Section 222 (a) in this case.

Antel Sea View Towers Condominium Corporation Vs. Bureau of Internal Revenue G.R. No. 247770. January 11, 2023 [Date Uploaded: 05/08/2023]

Association dues, membership fees, and other assessments/charges of condominium corporations are not subject to income tax, value-added tax and withholding tax.

The Supreme Court (“SC”) already ruled in the First E-Bank Tower case that association dues, membership fees, and other assessments/charges of condominium corporations are not subject to income tax, value-added tax and withholding tax. The SC stated that association dues, membership fees, and other assessments/charges are not subject to income tax because they do not constitute profit or gain and Association dues, membership fees, and other assessments/charges do not arise from transactions involving the sale, barter, or exchange of goods or property nor are they generated by the performance of services.

TAX UPDATES

By P&A Grant Thornton



BIR ISSUANCES REVENUE REGULATIONS (RR)

Use of constructive affixture of Documentary Stamp as proof of payment of Documentary Stamp Tax (DST) on certificates issued by government agencies or instrumentalities (Revenue Regulations No. 02-2023 issued on 13 April 2023)

In lieu of the loose documentary stamps, all government agencies or instrumentalities shall use the constructive affixture of documentary stamp on the certificates they issue which are subject to DST. These government agencies or instrumentalities shall be constituted as agents of the Commissioner of Internal Revenue for the collection and remittance of such DST to the Bureau of Internal Revenue (BIR).

Constructive affixture of documentary stamp tax refers to the

attachment of the original copy of the government official receipt issued by the government agencies or instrumentalities evidencing payment of the DST on the taxable certificate.

For every issuance of certificate, the government agencies or instrumentalities shall collect from their applicants the corresponding amount of DST due thereon which shall be indicated as one of the items in the government official receipt. The said receipt shall be attached to the taxable certificate as proof of payment of the tax.

The use of one government official receipt in order to cover two (2) or more certificates shall be allowed, subject to the following conditions:

- a. A serial or control number shall be printed and consecutively assigned for every issuance of certificate and the same shall be conspicuously located on the face thereof.
- b. The serial or control numbers of the certificates and the total amount of DST due, among others, shall be clearly indicated in the government official receipt.

The collected DST shall be remitted monthly by filing the Documentary Stamp Tax Declaration/Return (BIR Form No. 2000) and paying the tax through the available payment facilities of the BIR on or before the fifth (5th) day of the following month.

A record of all issued government official receipts shall be maintained by the government agency or instrumentality, in hard and soft copy, which shall contain the following information for each government official receipt:

REVENUE MEMORANDUM ORDERS (RMO)

Amendment to the policies and procedures in the issuance of the Authority to Cancel Assessment (ATCA) as provided in RMO No. 33-2018 (Revenue Memorandum Order No. 18-2023, issued on 19 May 2023)

The issuance of ATCA relative to protested tax assessments has been identified as redundant. Hence, this Order is issued to remove Item III.1 (a) from among the instances requiring the issuance of ATCA as mentioned in RMO No. 33-2018.

Revised policies and procedures relative to the accreditation of Cash Register Machines (CRMs), Point-of-Sale (POS) and Other Similar Sales Machines/Software Generating Invoices/Receipts Including Electronic Invoicing or Electronic Receipting System/Software used under a Subscription-Based Agreement (Revenue Memorandum Order No. 24-2023, issued on 26 June 2023)



- a. Serial or control number of the government official receipt
- b. Serial or control numbers of certificates covered in the government official receipt (in case of two or more certificates issued in one receipt)
- c. Date of issue
- d. Name of applicant to the certificate
- e. Description of the certificate
- f. Amount of DST collected

Said record shall be updated daily and kept at all times at the premises of the government agency or instrumentality premises, for purposes of inspection and verification by the authorized representatives of the BIR.

The government agencies or instrumentalities, in addition to the affixture of government official receipt, shall stamp or print in a clear and readable manner which shall be located conspicuously on the face of the taxable certificate the phrase "DOCUMENTARY STAMP TAX PAID", including the serial number, and date of the government official receipt.

In case a government agency or instrumentality intends to implement an automated constructive affixture of documentary stamp, it shall be registered with the BIR where the government agency or instrumentality is registered as a taxpayer. A revenue issuance prescribing the procedures for this purpose shall be separately issued by the BIR.

The following transitory provisions shall be strictly observed:



- a. A list (See Annex A of the RR No. 02-2023 for the Inventory List of Loose Documentary Stamp Tax format) of the remaining physical inventory of loose documentary stamps in the possession of all government agencies or instrumentalities as of the effectivity of these Regulations shall be submitted to the Revenue District Office (RDO) where they are duly registered as taxpayers, within thirty (30) days after the date of effectivity of these Regulations.

Upon the exhaustion of the inventory, the constructive affixture of documentary stamp prescribed by these Regulations shall be immediately implemented by the government agency or instrumentality.

- b. Any government agency or instrumentality with an existing automated constructive affixture of documentary stamp shall register the same with the RDO where it is duly registered as a taxpayer, within thirty (30) days after the date of effectivity of these Regulations.

These Regulations took effect fifteen (15) days immediately after its publication in Manila Times on April 19, 2023.

BIR prior approval on VAT zero-rating of qualified purchases of Registered Export Enterprises (REEs) no longer required
(Revenue Regulations No. 03-2023, issued on 27 April 2023)

Barangays now included in the coverage of taxpayers required to file returns through Electronic Bureau of Internal Revenue Forms (eBIRForms)
(Revenue Regulations No. 04-2023, issued on 04 May 2023)

Updated requirements for income tax exemption of foreign-sourced dividends received by a domestic corporation
(Revenue Regulations No. 05-2023, issued on 05 May 2023)

Updated guidelines on late filing and out-of-district filing of tax returns
(Revenue Regulations No. 06-2023, issued on 13 June 2023)

REVENUE MEMORANDUM CIRCULARS

(RMC)

Publication of the February 21, 2023 letter from the Food and Drug Administration of the Department Of Health (DOH) endorsing updates to the List of VAT-Exempt Products under RA No. 10963 (TRAIN Law) and RA No. 11534 (CREATE Act)

(Revenue Memorandum Circular No. 42-2023, issued on 04 April 2023)

Updated policies on filing of appeal against Final Decision on Disputed Assessments (FDDA)

(Revenue Memorandum Circular No. 43-2023, issued on 14 April 2023)

Supplemental guidelines in the filing AITR and payment of taxes due thereon for taxable year 2022

(Revenue Memorandum Circular No. 44-2023, issued on 14 April 2023)

Publication of the full text of Fiscal Incentives Review Board (FIRB) Advisory No. 004-2023 clarifying issues on the registration of Information Technology — Business Process Management (IT-BPM) Registered Business Enterprises (RBEs) with the Board of Investments (BOI)

(Revenue Memorandum Circular No. 45-2023, issued on 19 April 2023)

Publication of the full text of Fiscal Incentives Review Board (FIRB) Advisory No. 006-2023 regarding clarifications on the supplemental guidelines on the registration of IT-BPM RBEs with the BOI

(Revenue Memorandum Circular No. 46-2023, issued on 19 April 2023)



Remittance of Withholding Taxes by National Government Agencies and Instrumentalities, LGUs, and GOCCs should be upon payment or accrual, whichever comes first

(Revenue Memorandum Circular No. 47-2023, issued on 03 May 2023)

Availability of additional features and functionalities of Online Registration and Update System (ORUS)

(Revenue Memorandum Circular No. 48-2023, issued on 05 May 2023)

Updated floor price of cigarettes, heated tobacco, vaporized nicotine and non-nicotine products and the reiteration of imposition of corresponding penalties, sanctions and liabilities for noncompliance therewith

(Revenue Memorandum Circular No. 49-2023, issued on 05 May 2023)

Clarifications on Optional filing and payment of monthly VAT returns

(Revenue Memorandum Circular No. 52-2023, issued on 10 May 2023)

Clarifications on the entitlement of economic zone developers and operators to VAT zero-rating on local purchases of goods and services directly and exclusively used in the registered project or activity (Revenue Memorandum Circular No. 53-2023, issued on 11 May 2023).

Use of the Electronic One-Time Transactions (eONETT) System in the filing and payment of ONETT related returns and taxes (Revenue Memorandum Circular No. 56-2023, issued on 19 May 2023).

Clarification on the Policies and Guidelines on the Issuance and Validity of TIN Card and Certificate of Registration (Revenue Memorandum Circular No. 58-2023, issued on 19 May 2023).

Availability of revised BIR Form No. 2550-Q (Quarterly VAT Return) (Revenue Memorandum Circular No. 59-2023, issued on 19 May 2023).

Availability of enhanced BIR registration forms (BIR Form Nos. 1901, 1902, 1903, 1904 and 1905) pursuant to the implementation of Ease of Doing Business and Efficient Government Service Delivery Act of 2018 (Revenue Memorandum Circular No. 60-2023, issued on 23 May 2023).

Procedures in the processing of taxpayer's request for stamping of electronically filed ITRs/AITRs through eBIRForms (Revenue Memorandum Circular No. 61-2023, issued on 24 May 2023).

Availability of BIR Form Nos. 1604-C, 1604-E, 1604-F and 0620 in the Electronic Filing and Payment System (eFPS) (Revenue Memorandum Circular No. 62-2023, issued on 24 May 2023).

Application of Certificate Authorizing Registration (CAR) for real properties in tax-free exchanges now with the RDO where the transferee/surviving corporation is registered, regardless of the number of real properties (Revenue Memorandum Circular No. 65-2023, issued on 08 June 2023).

Clarification on imported goods that will no longer require the issuance of "Authority to Release Imported Goods" by the BIR prior to the release by the Bureau of Customs (Revenue Memorandum Circular No. 68-2023, issued on 13 June 2023).

Reversion of Regular Corporate Income Tax to 10% for proprietary educational institutions and non-profit hospitals, Percentage Tax to 3%, and Minimum Corporate Income Tax to 2%, effective July 1, 2023 (Revenue Memorandum Circular No. 69-2023, issued on 20 June 2023).



Publication of list of additional and delisted Top Withholding Agents on June 22, 2023 (Revenue Memorandum Circular No. 70-2023, issued on 22 June 2023).

Publication of list of additional and delisted Top Withholding Agents on June 22, 2023

(Revenue Memorandum Circular No. 70-2023, issued on 22 June 2023)

Streamlined guidelines and mandatory requirements for claims of VAT Credit/Refund except those under the authority and jurisdiction of the Legal Group

(Revenue Memorandum Circular No. 71-2023, issued on 23 June 2023)

Publication of the May 22, 2023 letter from the Food and Drug Administration of the Department Of Health (DOH) endorsing updates to the List of VAT-Exempt Products under RA No. 10963 (TRAIN Law) and RA No. 11534 (CREATE Act)

(Revenue Memorandum Circular No. 72-2023, issued on 29 June 2023)

FISCAL INCENTIVES REVIEW BOARD (FIRB) ISSUANCES



FIRB ADMINISTRATIVE ORDERS

Guidelines for the suspension or withdrawal of tax incentives and cancellation of Certificate of Registration (COR) of RBEs

(FIRB Administrative Order No. 004-2023, issued on 18 May 2023)

FISCAL INCENTIVES REVIEW BOARD (FIRB) ADVISORIES

Clarifications on the supplemental guidelines on the registration of IT-BPM RBEs with the BOI

(FIRB Administrative Order No. 006-2023, issued on 05 April 2023)

Submission of reportorial requirements under Department of Finance (DOF)-Department of Trade and Industry (DTI) Joint Administrative Order No. 001-2023 (FIRB Administrative Order No. 007-2023, issued on 26 April 2023)

Reminder on strict compliance with the provisions of Republic Act No. 11534 or CREATE Act

(FIRB Administrative Order No. 008-2023, issued on 05 May 2023)

Guidelines on the applicability of the Certificate of Entitlement to Tax Incentives (CETI) template for projects registered under RA No. 9513 or the Renewable Energy (RE) Act of 2008

(FIRB Administrative Order No. 009-2023, issued on 08 May 2023)

Clarifications on the submission of the Annual Tax Incentives Report (ATIR) and Annual Benefits Report (ABR) for the taxable year 2022

(FIRB Administrative Order No. 010A-2023, issued on 09 May 2023)

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