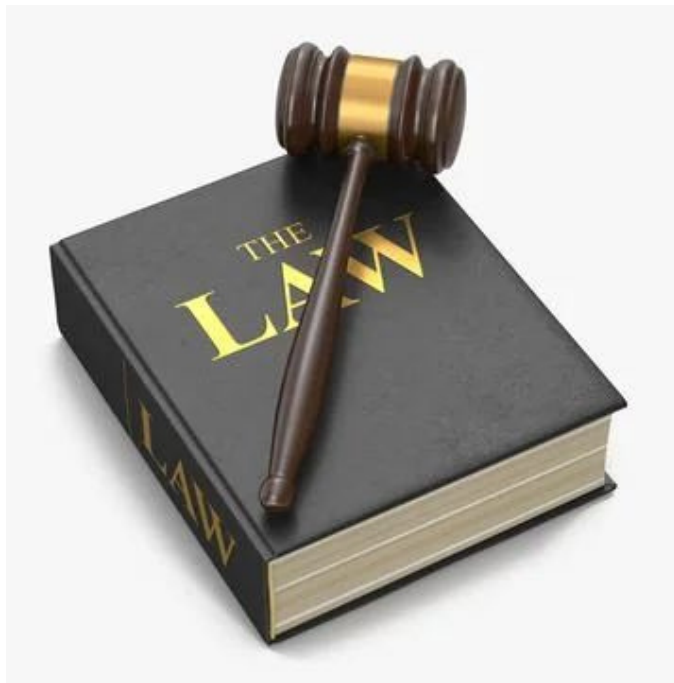


U P D A T E S

A special publication by the FINEX Tax & Legal Committee



LEGAL UPDATES

By Atty. Eric R. Recalde, ACCRALAW

SECURITIES AND EXCHANGE COMMISSION

The Securities and Exchange Commission (SEC) standardized the rules on Declaration of delinquent Status and Revocation of Certificate of Registration

The SEC issued SEC Memorandum Circular No. 19, series of 2023, or the “Guidelines on Declaration of Delinquent Status and Revocation of Certificate of Registration of Corporations” to reflect the amendments made under Sections 21 and 177 of the Revised Corporation Code (“RCC”).

The Guidelines are meant to standardize and govern the declaration of delinquent status and revocation of certificate of registration of corporations. The Guidelines shall apply to (a) non-use of corporate charter; (b) continuous in operation for five (5) years; and (c) non-filing of reportorial requirements.

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Bangko Sentral ng Pilipinas

Circular No. 1178
Memo No. M-2023-023

For non-use of corporate charter, if a corporation does not formally organize and commence its business within five (5) years from the date of its incorporation, its certificate of incorporation shall be deemed revoked as of the day following the end of the five (5) year period.

For continuous operation, the SEC shall send a show cause order by registered mail to any of the corporate officers. The SEC may direct the corporation to show cause within thirty (30) days from receipt of the show cause order why its status should not be declared delinquent.

For the non-filing of reportorial requirements, if a corporation fails to file its financial statements and/or general information sheet three (3) times, consecutively or intermittently, within a period of five (5) years, the SEC shall enter a “delinquent status” in the corporation’s records in the SEC database.

The Guidelines incorporated a new provision which states that a delinquent corporation shall have a period of two (2) years from receipt of an order of delinquency to resume operations and comply with all requirements of the SEC.

SEC continues to embrace digitalization, adopts rules on electronic filing submissions

The SEC issued SEC Memorandum Circular No. 18, series of 2023, or the “Guidelines on the Submission of Digital Copies of Applications, Compliance Documents



and Other Requests” pursuant to principles of sustainability and its mandate to develop and implement an electronic filing and monitoring system under Section 180 of the RCC.

The Guidelines provide that the various SEC Forms, applications, and requests must be submitted to the SEC through email or through its applicable electronic platform. Submissions which do not comply with the Guidelines are considered not filed or not received.

After the lapse of one (1) year from the effectivity of the Guidelines on 9 October 2023, the SEC shall require all documents to be submitted online. It will no longer require or accept hard copy submissions.

SEC extends amnesty application for the final time, or only until 31 December 2023

The SEC issued SEC Memorandum Circular No. 20, series of 2023, or the “Final Extension of Amnesty Applications until 31 December 2023.”

Under the Circular, corporations only have until 31 December 2023 to signify their intent to apply for amnesty and settle corresponding amnesty fees. The subsequent period starting from 1 January to 31 January 2024 shall only be dedicated to the submission of amnesty requirements and supporting documents for corporations whose certificates of incorporation have been suspended or revoked.





BOARD OF INVESTMENTS

Qualified Board of Investments (“BOI”)-registered export enterprises (“REEs”) enjoy value-added tax (“VAT”) zero-rating on all local purchases directly and exclusively used in their registered project or activity

The BOI issued BOI Memorandum Circular No. 2023-007, series of 2023, or the “Guidelines on the Issuance of VAT Zero-Rating Certification on Local Purchases of BOI REEs,” pursuant to Section 294 (E) of the Corporate Recovery and Tax Incentives (“CREATE”) Act. Section 294 (E) of the CREATE Act grants VAT exemption on importation and VAT zero-rating on local purchases.

The Guidelines provide that before the BOI may issue a VAT zero-rating certification to a qualified REE, the exportation of the BOI-REE's final product or service must be at least seventy percent (70%) of its total production or output. Furthermore, the BOI-REE must directly and exclusively use the local purchase of goods and services in its registered project or activity.

BOI issues guidelines for registration of mass housing following adjusted price ceiling

The BOI issued BOI Memorandum Circular No. 2023-005 or the “Amendments to the 2022 Strategic Investment Priority Plan and its Specific Guidelines in relation to Mass Housing.”

The Circular lists the requirements to qualify for registration of economic and low-cost housing projects under the 2022 Strategic Investment Priority Plan (“2022 SIPP”). Among others, the selling price of each housing unit shall not exceed 3 million pesos and shall not fall below the price ceiling of socialized housing, based on the prevailing price ceiling issued by the Department of Human Settlements and Urban Development (“DHSUD”). The DHSUD implemented adjustments to the price ceiling of economic housing from 1.7 million, to 2.5 million pesos.

BOI issued additional guidelines for registration of Energy Efficiency Projects

The BOI issued BOI Memorandum Circular No. 2023-006, which amends the previously issued guidelines for the registration of Energy Efficiency (“EE”) and Conservation Projects under the 2022 SIPP.

The Circular clarifies that self-financed EE projects shall only be entitled to the income tax holiday (“ITH”) incentive and duty exemption on importation of capital equipment, raw materials, spare parts or accessories. The ITH incentive is limited to the prescribed entitlement period under the CREATE Act, or until the recovery of 50% of the registered EE project's capital investment, whichever comes first.

CREDIT INFORMATION CORPORATION

The Credit Information Corporation (“CIC”) issued guidelines for the compliance of all submitting entities

The CIC issued CIC Circular No. 04, series of 2023, or the “Implementing Guidelines for the Compliance of All Submitting Entities under the Credit Information Systems Act.”

Pursuant to Section 4 (a) of Republic Act No. 9510, or the Credit Information Systems Act, all submitting entities that provide credit facilities are required to submit basic credit data and updates thereon on a regular basis to the CIC.

A submitting entity refers to any entity that provides credit facilities such as, but not limited to, banks, quasi-banks, trust entities, investment houses, financing companies, cooperatives, nongovernmental, micro-financing organizations, credit card companies, insurance companies and government lending institutions.

The submitting entity must comply with the three (3) stages of onboarding under the Implementing Guidelines, which includes online registration, testing and validation, and production, i.e., the submission of actual live data to the CIC.

OFFICE OF THE PRESIDENT (“OP”)

Local Government Units prohibited from collecting toll fees and charges upon motor vehicles transporting goods through any national roads

The Office of the President (“OP”) issued Executive Order No. 41, series of 2023, prohibiting local government units (“LGU”) from collecting toll fees and pass-through fees upon all motor vehicles transporting goods and merchandise while passing through any national roads and other roads not constructed or funded by the LGU.

The Order also urged LGUs to suspend or discontinue the collection of any fees that are imposed upon all motor vehicles transporting goods and passing through any LGU-funded public roads.

Import duty on Natural Gypsum and Anhydrite reduced

The OP issued Executive Order No. 46, series of 2023, temporarily modifying the rate of import duty on natural gypsum and anhydrite under Section 1611 of Republic Act No. 10863, or the Customs Modernization and Tariff Act.

The Order aims to help revitalize and increase the competitiveness of the local plasterboard and cement industries and support the country’s housing and infrastructure projects.



TAX UPDATES

By BDB Law



BIR ISSUANCES **REVENUE REGULATIONS (RR)**

Revenue Regulations No. 10-2023 – This amends certain provisions of RR No. 6-2019, as amended, to implement the extension on the period of availment of the Estate Tax Amnesty pursuant to RA No. 11956, further amending RA No. 11213 (Tax Amnesty Act), as amended by RA No. 11569.

Revenue Regulations No. 11-2023 – Prescribes the use of electronic mail (e-mail) and electronic signature as additional mode of service of the Warrant of Garnishment pursuant to Section 208 in relation to Section 244 of the National Internal Revenue Code of 1997, as amended.

Revenue Regulations No. 12-2023 – This implements Section 237 of the Tax Code on the issuance of receipts or sales or commercial invoices by Agricultural Producers

BIR Revenue Regulations No. 13-2023 - The BIR promulgated Revenue Regulations No. 13-2023 to implement the optional VAT registration of registered business enterprises (“RBE”) which are classified as a “domestic market enterprise” (“DME”) and located inside an economic or freeport zone.

An RBE classified as a DME may retain the five percent (5%) tax on gross income earned (“GIE”) incentive during the ten (10) year transitory period under the CREATE Act. An RBE classified as a DME will be allowed to register as a VAT taxpayer, provided it secures from the concerned Investment Promotions Agency a certification excluding VAT from the five percent (5%) GIE in lieu of all taxes incentive.

BIR Revenue Regulations No. 14-2023 - The BIR promulgated Revenue Regulation No. 14-2023 to further implement Section 57 (B) of the Tax Code and amend Revenue Regulations No. 2-98.

The Regulations impose creditable withholding tax on certain income payments by joint ventures or consortiums.

REVENUE MEMORANDUM ORDER (RMO)

Revenue Memorandum Order No. 33-2023 issued on September 29, 2023, reiterates Section 3.J of RR No. 17-2003 on the withholding of taxes for the sale of real property on installment plan.

Revenue Officers assigned in the processing of One-Time Transaction (ONETT) are mandated to strictly monitor all installment sale transactions of real properties and in no case that an electronic certificate authorizing registration (eCAR) be issued to the buyer unless the withholding tax due on the sale, transfer, or exchange of real property, including penalties, if any, has been fully paid.



REVENUE MEMORANDUM

CIRCULARS (RMC)

Revenue Memorandum Circular No. 91-2023 – This circularizes the amendment to Rule 18, Section 5 of the Implementing Rules and Regulations (IRR) of RA No. 11534 (Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act).

Revenue Memorandum Circular No. 97-2023 – This provides tax compliance reminders to all candidates and other participants in any national or local elections, including Barangay or Sangguniang Kabataan (SK) Elections.

Revenue Memorandum Circular No. 112-2023 – This provides clarification on the duty of the FDDA to determine classification of beverages pursuant to Sec. 150-B of the Tax Code

BUREAU OF CUSTOMS (BOC)

Customs Memorandum Order No. 15-2023 dated September 5, 2023 – This further amends Customs Memorandum Order (CMO) No. 04-2020 Re: Establishment of an Electronic Tracking of Containerized Cargo System (E-TRACC System) and Accreditation of a Service Provider for the purpose.

OCOM Memo 58-2023 dated September 5, 2023 – This provides guidance on the strict use of Multi-Currency Counting and Printing Machines in the 100% verification of currencies declared in the Currencies Declaration Form by Travelers and Crew arriving and departing in all seaport and airports.

FISCAL INCENTIVES REVIEW

BOARD (FIRB)

FIRB Advisory 016-2023, September 14, 2023 – This provides guidance on the availability of the updated templates for the Annual Tax Incentives Report (ATIR) and Annual Benefits Report (ABR) of cooperatives.

INSURANCE COMMISSION (IC)

Legal Opinion No. 2023-18 dated September 8, 2023 – This provides clarification that even though the practice of charging higher premiums or limiting coverage for senior citizens may seem unfair on the surface, it is important to consider the actuarial and underwriting principles that underpin such decisions.

BANGKO SENTRAL NG PILIPINAS

BSP Circular No. 1178, August 9, 2023 – This amends and adds to the Guidelines on the Use of Benchmarks for Unit Investment Trust Funds (UITFs).

BSP Memorandum No. M-2023-023, August 18, 2023 – This revises the timeline of the Implementation of the International Transaction Reporting System (ITRS).

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All photos used are from Pinterest.

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