

# TAX ALERT

December 2020

## COURT OF TAX APPEALS DECISIONS

**CONDITIONS FOR MERGER TO QUALIFY AS TAX-FREE UNDER SECTION 40 (C)(2) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 (NIRC):** (1) There must be a legal merger, which means that the merger must comply with the relevant provisions of law such as the Corporation Code and relevant rules and regulations; (2) The business restructuring must be for a *bona fide* business purpose such as to reduce costs in the business operation or to improve efficiencies and economies. A later sale of property involved in the merger does not necessarily negate the *bona fide* business purpose of the merger. *Luzviminda Land Holdings, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10035 dated December 03, 2020.*

**COMPENSATION OF FILIPINO EMPLOYEES OF FOREIGN GOVERNMENTS, EMBASSIES, DIPLOMATIC MISSIONS AND INTERNATIONAL ORGANIZATIONS ARE NOT NECESSARILY EXEMPT FROM INCOME TAX DESPITE BEING EXEMPT FROM THE WITHHOLDING TAX SYSTEM SINCE THE WITHHOLDING OF TAX IS MERELY A METHOD OF TAX COLLECTION.** This clarification from Revenue Memorandum Circular No. (“RMC”) 31-2013 merely interprets the existing provisions in the NIRC in relation to the various existing treaty obligations of the Philippines. Failure in the past by the Bureau of Internal Revenue (“BIR”) to take a categorical position on the taxability of such Filipino employees before the promulgation of RMC 31-2013 does not estop the government from correcting the practice and collecting taxes. *Princess O. Lubag v. Hon. Kim S. Jacinto-Henares, CTA EB Case No. 2124 (CTA Case No. 9306) dated December 01, 2020.*

**TO BE EXEMPT FROM REAL PROPERTY TAX UNDER THE OIL DEREGULATION LAW, AN ENTITY MUST BE A PERSON WITH NEW INVESTMENTS AS DETERMINED BY THE DEPARTMENT OF ENERGY (“DOE”) AND REGISTERED WITH THE BOARD OF INVESTMENTS (BOI) IN THE BUSINESS OF REFINING, STORAGE, MARKETING AND DISTRIBUTION OF PETROLEUM PRODUCTS. SATISFACTION OF THESE QUALIFICATIONS IS A QUESTION OF FACT NECESSITATING THE EXPERTISE OF ADMINISTRATIVE BODIES (I.E., LOCAL TREASURER AND/OR ASSESSOR, LOCAL BOARD OF ASSESSMENT APPEALS [LBAA], AND CENTRAL BOARD OF ASSESSMENT APPEALS [CBAA]).** *Jetti Petroleum, Inc. v. Emerlinda S. Talento, CTA EB No. 2093 dated December 17, 2020.*

**A LETTER OF AUTHORITY (LOA), OR THE AUTHORITY GIVEN TO THE APPROPRIATE REVENUE OFFICER ASSIGNED TO PERFORM AN ASSESSMENT, MUST BE PRESENTED TO THE TAXPAYER WITHIN 30 DAYS FROM ISSUANCE; OTHERWISE, THE LOA SHALL BE VOID, AS WELL AS ANY ASSESSMENTS MADE**

**AGAINST THE TAXPAYER BY VIRTUE OF SUCH LOA. *People of the Philippines v. Cross Country Oil and Petroleum Corp., CTA EB Crim Case No. 071 dated December 04, 2020.***

**FAILURE OF THE LOA TO INDICATE THE NAME OF THE REVENUE OFFICERS CONDUCTING THE AUDIT SHALL RENDER THE LOA, AND THE SUBSEQUENT ASSESSMENT, VOID. *Commissioner of Internal Revenue v. Marketing Convergence, Inc., CTA EB No. 2109 (CTA Case No. 9301) dated December 03, 2020.***

**SECTION 6 OF THE NIRC, REFERRING TO METHODS OF SECURING DATA SUCH AS BEST EVIDENCE OBTAINABLE, INVENTORY-TAKING, SURVEILLANCE, ARE SIMPLY METHODS OF EXAMINING TAXPAYERS WHICH NECESSARILY ENTAIL THE ISSUANCE OF AN LOA. THE ABSENCE OF AN LOA WILL CAUSE THE ASSESSMENT ARISING FROM SAID EXAMINATION TO BE A NULLITY. *Salcedo Ristorante Italiano, Inc. v. Commissioner of Internal Revenue, CTA EB No. 1774 (CTA Case No. 8880) dated December 15, 2020.***

**IF THE TAXPAYER DENIES HAVING RECEIVED AN ASSESSMENT FROM THE BIR, IT THEN BECOMES INCUMBENT UPON THE LATTER TO PROVE BY COMPETENT EVIDENCE THAT SUCH NOTICE WAS INDEED RECEIVED BY THE ADDRESSEE.** Part of due process requirement in the issuance of a deficiency tax assessment is the issuance and service of the Preliminary Assessment Notice (PAN). The Commissioner of Internal Revenue (CIR) or his duly authorized representative has the duty to issue and serve the PAN to the taxpayer, at least by registered mail. Direct denial of the receipt of such mail shifts the burden to the CIR, as the sender, to prove that the mailed letter was in fact received. *Johnny M. King Jr. v. Commissioner of Internal Revenue, CTA Case No. 9753 dated December 04, 2020.*

**THERE ARE TWO WAYS OF PROTESTING A FORMAL LETTER OF DEMAND AND FINAL ASSESSMENT NOTICE (FLD/FAN) (1) REQUEST FOR RECONSIDERATION OR (2) REQUEST FOR REINVESTIGATION. THE TWO MODES DIFFER AS TO WHEN THE PERIOD FOR BIR TO ACT ON THE PROTEST STARTS TO RUN.** In a Request for Reconsideration, the BIR will only re-evaluate the existing records while in a Request for Reinvestigation, the BIR will base its decision on newly discovered or additional evidence. Hence, in the first mode of protest, the counting of the 180-day period for the BIR to act on the protest will start from the date of the filing of the protest. In a Request for Reinvestigation, the period shall be counted from the date of the submission of all required documents, which should be within 60 days from the date of filing of the protest. Such 60-day period does not apply to a Request for Reconsideration. *Getz Pharma (Phils.), Inc. v. Hon. Commissioner Kim S. Jacinto-Henares, CTA Case No. 9245 dated December 18, 2020.*

**THERE IS DENIAL OF DUE PROCESS WHEN THE BIR FAILS TO STATE IN THE FLD/FAN THE LAW AND FACTS ON WHICH THE ASSESSMENT IS MADE. *Chun Lang Chan represented by Li Chuan Gang v. Commissioner of Internal Revenue., CTA Case No. 9758 dated December 03, 2020.***

**AN ASSESSMENT IS NOT INVALIDATED BY A DEFECT SUCH AS FAILURE TO STATE THE DATE OF PAYMENT IN THE FINAL DECISION ON DISPUTED**

**ASSESSMENT (FDDA). THE 30-DAY PERIOD TO APPEAL TO THE COURT OF TAX APPEALS (CTA) SHALL BE COUNTED FROM THE RECEIPT OF THE FDDA AND NOT FROM THE REVISED FDDA. THE ABSENCE OF AN ELECTRONIC LOA WOULD ALSO NOT INVALIDATE THE ASSESSMENT. *JG Summit Holdings, Inc. v. Commissioner of Internal Revenue., CTA Case No. 9147 dated December 11, 2020.***

**DEFICIENCY TAX ASSESSMENT ARISING FROM AN ALLOWANCE FOR INVENTORY OBSOLESCENCE THAT WAS NOT CLAIMED AS A DEDUCTION FROM GROSS INCOME IS ERRONEOUS. THE ALLOWANCE FOR INVENTORY OBSOLESCENCE DOES NOT NEED TO BE SUBSTANTIATED AND SHOULD NOT BE DISALLOWED IF IT IS ONLY PRESENTED AS A RECONCILING ITEM. IT IS A NONDEDUCTIBLE EXPENSE AND THE REVERSAL OF WHICH WILL NOT RESULT TO A RECOGNITION OF INCOME. *Classic Fine Foods Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9391 dated December 17, 2020.***

**ASSESSMENT BASED ON UNDERDECLARED PURCHASE OR EXPENSE IS ERRONEOUS SINCE THE UNDER DECLARATION OF EXPENSE DOES NOT BY ITSELF RESULT IN THE IMPOSITION OF INCOME TAX. The three (3) elements in the imposition of income tax are: (i) there must be gain or profit; (ii) that the gain or profit is realized or received, actually or constructively; and (iii) it is not exempted by law or treaty from income tax. *Marionnaud Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9615 dated December 10, 2020.***

**SALE OF GOODS BETWEEN TWO PEZA-REGISTERED ENTITIES IS EXEMPT FROM VAT REGARDLESS OF WHETHER OR NOT THE GOODS ARE TO BE USED FOR PEZA-REGISTERED ACTIVITY. *Wells Fargo Enterprise Global Services, LLC-Philippines, v. Commissioner of Internal Revenue, CTA Case No. EB 2087 dated December 14, 2020.***

**TO CLAIM A REFUND FOR EXCESS OR UNUTILIZED INPUT VAT, THE TAXPAYER MUST BE ABLE TO SUBSTANTIATE THAT THE SALE OF SERVICES QUALIFIES AS ZERO-RATED. First, it must be established that the recipient of the service is a non-resident foreign corporation, or a nonresident person not engaged in business who is outside the Philippines when the services were performed. The status of being a non-resident foreign corporation may be proved by presenting both the SEC Certificate of Non-Registration of Corporation/ Partnership and the proof of incorporation or registration in a foreign country. Second, there must be evidence that payment was in acceptable foreign currency accounted for in accordance with BSP rules such as a Certification by the bank that it received remittances. A contract relating the scope of work may prove the third element that the services are not for processing, manufacturing or repacking of goods. Lastly, specific evidence must be submitted to prove that the services were performed in the Philippines. *Teloworks Philippines Incorporated v. Commissioner of Internal Revenue, CTA Case No. 9380 dated December 11, 2020.***

**A CERTIFICATE OF COMPLIANCE (COC) FROM THE ENERGY REGULATORY COMMISSION (ERC) IS AN INDISPENSABLE REQUIREMENT FOR GENERATION COMPANIES TO CLAIM INPUT VAT REFUND. Republic Act No. 9136 or the Electric**

Power Industry Reform Act states that sales of generated power by generation companies shall be subject to zero-rated value-added tax. The COC serves as proof that a generation facility is authorized by the ERC to generate electricity. Hence, without the COC, the taxpayer shall not be subject to zero-rated VAT. *Hedcor Sabangan, Inc. v. Commissioner of Internal Revenue, CTA EB Case No.2085 dated December 02, 2020.*

**REQUISITES FOR THE GRANT OF REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE:** (1) The claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made; (2) That in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days from the date of submission of complete documents in support of the application, the judicial claim must be filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period; (3) The taxpayer is a VAT-registered person; (4) The taxpayer is engaged in zero-rated or effectively zero-rated sales; (5) For zero-rated sales under Sections 106(A)(2)(a)(1), (2)(b) and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; (6)The input taxes are not transitional input taxes; (7) The input taxes are due or paid; (8) The input taxes claimed are attributable to zero-rated or effectively zero-rated sales; and (9) The input taxes have not been applied against output taxes during and in the succeeding quarters. *Maxima Machineries, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9723 dated December 03, 2020.*

**A TAXABLE CORPORATION HAS TWO OPTIONS WHEN ITS QUARTERLY INCOME TAX PAYMENT IN A GIVEN TAXABLE YEAR EXCEEDS ITS TOTAL INCOME TAX DUE: (1) FILE A TAX REFUND (EITHER IN THE FORM OF CASH OR A TAX CREDIT CERTIFICATE); OR (2) CARRY OVER THE EXCESS CREDIT.** The requisites to claim a refund or credit for unutilized excess CWT are as follows: (1) The claim for refund must be filed within the two-year prescriptive period as provided under Sections 204 (C) and 229 of the NIRC, as amended; (2) The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and (3) The income upon which the taxes were withheld must be included in the return of the recipient. *Arrow Freight Corporation v. Commissioner of Internal Revenue, CTA Case No. 9809 dated December 07, 2020.*

**THE COURT OF TAX APPEALS (CTA) CANNOT PERFORM ANY ACTION OTHER THAN TO DISMISS AN APPEAL THAT WAS NOT TIMELY FILED SINCE THE PERFECTION OF AN APPEAL IN THE MANNER AND PERIOD LAID DOWN BY LAW IS ESSENTIAL FOR THE COURT TO ACQUIRE JURISDICTION.** *The City of Manila v. AV Value Holdings Corporation, CTA EB Case No.2112 dated December 02, 2020.*

**WHAT IS APPEALABLE TO THE CTA IS A DISPUTED ASSESSMENT. AN APPEAL FILED WITHIN 30 DAYS FROM RECEIPT OF THE WARRANT OF DISTRRAINT AND/OR LEVY CANNOT BE ENTERTAINED SINCE THE CHANCE TO CONTEST THE ASSESSMENT HAS ALREADY LAPSED.** *Loadstar Shipping Co. Inc. v. Commissioner of Internal Revenue, CTA Case No.9902 dated December 07, 2020.*

**BIR ISSUANCES**

**POLICIES AND GUIDELINES FOR THE CONDUCT OF ONLINE MEETINGS/ CONFERENCE BETWEEN THE BIR AND THE TAXPAYERS.** Due to the COVID-19 pandemic, face-to-face meetings and conferences are highly discouraged. The policy and guidelines serve to ensure the integrity of information and conversation and to prevent unauthorized recording, production, broadcast, publication, sharing, perpetuation, and use thereof. The meetings/conferences must be pre-approved in writing by the concerned Division Chief for National Office, Regional Director for Regional Offices, Revenue District Officer for Revenue District Offices. The taxpayers or their representative must request a virtual meeting through the BIR eAppointment System or submit a duly accomplished BIR Virtual Meeting Agreement for the BIR offices with no such system. The proceedings must be strictly confidential and should there be any interruptions due to power outages or poor connectivity, the meetings or conferences may be rescheduled on a date and time agreed by the revenue officials with the taxpayers. *Revenue Memorandum Circular No. 130-2020 dated December 10, 2020.*

**REGULATIONS AMENDING THE DEFINITION OF TOP WITHHOLDING AGENTS BY TAKING INTO CONSIDERATION THE CLASSIFICATIONS OF THE REVENUE DISTRICT OFFICES WHERE THEY ARE DULY REGISTERED TO DETERMINE THE APPLICABLE THRESHOLD.** Top withholding agents shall now refer to those taxpayers whose gross sales/receipts or gross purchases during the preceding taxable year shall fall under the minimum thresholds determined according to the existing group classifications of the Revenue District Offices (RDOs) where they are duly registered. The classifications of the RDOs in Groups A to E is provided in Annex A of Revenue Memorandum Order No. 13-18. The previous blanket threshold of twelve million pesos would only apply to RDOs falling under Groups A and B. Meanwhile, taxpayers registered in RDOs classified as Groups C, D and E shall be classified as top withholding agents if their gross sales or receipts or gross purchases is at least five million pesos. *Revenue Regulations No. 31-2020 dated December 18, 2020. (amending Section 2.57.2 of Revenue Regulations No. 92-1998, 17 May 1998)*

**GUIDELINES AND PROCEDURES ON THE SUBMISSION OF BIR FORM NO. 1709 OR THE RELATED PARTY TRANSACTIONS FORM, TRANSFER PRICING DOCUMENTATIONS AND OTHER SUPPORTING DOCUMENTS.** BIR issued these guidelines for it to verify that taxpayers are reporting their related party transactions at arm's length prices and to improve and strengthen the BIR's transfer pricing risk assessment and audit functions. Large taxpayers, taxpayers enjoying tax incentives, taxpayers reporting net operating losses for the current taxable year and the immediately preceding two (2) consecutive taxable years, and related parties are required to submit BIR form 1709 and if they are within materiality thresholds, and to submit also Transfer Pricing Documents (TPDs) under RR No. 02-2013, otherwise known as "Transfer Pricing Guidelines". *Revenue Regulations No. 34-2020 dated December 18, 2020.*

**EXTENSION OF THE STATUTORY DEADLINES TO AVAIL OF TAX AMNESTY ON DELINQUENCIES UNTIL JUNE 30, 2021 OR UNTIL FURTHER EXTENSION IF CIRCUMSTANCES WARRANT SUCH AS IN CASE OF COUNTRY-WIDE ECONOMIC OR HEALTH REASONS PURSUANT TO SECTION 4 (TT) OF REPUBLIC ACT NO.**

**11494 OR THE “BAYANIHAN TO RECOVER AS ONE ACT”. *Revenue Regulations No. 32-2020 dated December 12, 2020.***

**EXTENSION OF THE PERIOD OF AVAILMENT OF THE BENEFITS OF THE VOLUNTARY ASSESSMENT AND PAYMENT PROGRAM (VAPP) PROVIDED UNDER REVENUE REGULATIONS NO. 21 UNTIL JUNE 30, 2021 AND REGULATIONS ON DENIAL OF CERTIFICATE OF AVAILMENT.** The taxpayer must be formally notified by the Division Chief or by the Revenue District Officer where he is registered of the denial of the application or invalidation of a previously issued Certificate of Availment with the reasons for the said denial. Otherwise, the denial shall be void. This gives the taxpayer the opportunity to appeal the denial to the Assistant Commissioner-Large Taxpayer Service (ACIT-LTS) or Regional Director (RD) within thirty (30) days from receipt of such notice. *Revenue Regulations No. 33-2020 dated December 17, 2020.*

**CLARIFICATIONS ON THE POLICIES AND PROCEDURES GOVERNING THE PROCESSING OF CLAIMS FOR VALUE-ADDED TAX (VAT) REFUND OF RESIDENT FOREIGN MISSIONS (RFMs), THEIR QUALIFIED PERSONNEL AND THE PERSONNEL’S DEPENDENTS.** Pursuant to the grant of VAT exemption to RFMs, their diplomatic personnel and the personnel’s dependents under the Vienna Convention on Diplomatic Relations, Vienna Convention on Consular Relations and the principles of international comity and reciprocity, all business establishments are directed to honor and recognize the VAT Certificate or VAT Identification Card issued to them by the BIR when presented at point of sale, irrespective whether the purchase was made online. An invoice/official receipt, be it manual, electronic, loose-leaf or generated from a BIR-registered CRM/POS that is capable of encoding the information of the buyer in the invoice/receipt (tape receipt/invoice), or any tape receipt/invoice issued by the business establishment reflecting the claimant’s name through the use of membership/loyalty card, would serve as sufficient evidence for the RFMs, their diplomatic personnel and personnel’s dependents to claim VAT refunds. The address and tax identification number (TIN) of the purchaser need not be indicated. *Revenue Memorandum Order No. 41-2020 dated November 27, 2020.*

**STREAMLINING THE PROCESS OF ISSUING TAX RESIDENCY CERTIFICATES (TRCs), AMENDING FOR THIS PURPOSE PERTINENT PROVISION OF REVENUE MEMORANDUM ORDER (RMO) NO. 51-2019.** TRCs are issued to Philippine residents deriving income from sources within the jurisdiction of a Contracting State for them to claim tax treaty benefits or preferential tax treatments. Please refer to *Annex A* for the Documentary Requirements and the Procedures for the issuance of the TRCs. In case a resident fails to secure a TRC, the Contracting State shall not accord the taxpayer the benefits provided under the treaty. Tax officers in Philippines shall also not allow as foreign tax credits any taxes paid in the Contracting State for failure of the resident to invoke the provision/s of the treaty and prove his/her/its residency in the Philippines. The remedy of the taxpayer is to secure a TRC and file a claim for refund in the Contracting State. *Revenue Regulations No. 43-2020 dated December 1, 2020.*

**GUIDELINES AND PROCEDURES FOR THE AVAILMENT OF THE REDUCED RATE OF 15% ON INTERCOMPANY DIVIDENDS PAID BY A DOMESTIC CORPORATIONS**

**TO NONRESIDENT FOREIGN CORPORATIONS (NRFCs) PURSUANT TO SECTION 28 (B)(5)(b) OF THE NATIONAL INTERNAL REVENUE CODE (NIRC).** To encourage foreign equity investment in the Philippines, the NIRC prescribes a reduced tax of 15% on dividends earned by the NRFCs from domestic corporations. However, the NRFCs will not benefit from the reduced tax rate since it will not be able to claim tax credit in its home country based on the regular tax rate of 30%. To remedy this, the NIRC provides that the reduced tax rate shall only be allowed if the home country gives a “deemed paid” tax credit equivalent to the difference between the 30% regular tax rate and the 15% reduced rate. Before a domestic corporation may apply the reduced rate on the dividends to be remitted to the NRFCs, it must first determine whether the home country allows the “deemed paid” tax credit. The NRFCs or the authorized representatives must request a confirmation of the applicability of the reduced rate within ninety (90) days from remittance of the dividends or from the determination of the foreign tax authority of the tax credit. Holders of Philippine Depository Receipts (PDRs) may also be entitled to the reduced rate if the PDRs are coupled with a right to repurchase the underlying shares and the right can be legally exercised. *Revenue Memorandum Order No. 46-2020 dated December 23, 2020.*

**CIRCULARIZING JOINT MEMORANDUM CIRCULAR NO. 003-2020 ALSO KNOWN AS “IMPLEMENTING RULES AND REGULATIONS OF HEATED TOBACCO PRODUCTS AND VAPOR PRODUCTS AS PRESCRIBED BY REPUBLIC ACT NOS. 11346 AND 11467.** Manufacturer, distributors and importers of vapor products and heated tobacco products are required to submit to the BIR exact replicas of the packaging and other container of the said products. If the BIR finds the packages duly compliant with the Graphic Health Warning Template and the relevant rules and regulations, it shall affix internal revenue tax stamp. *Revenue Memorandum Circular No. 128-2020 dated December 7, 2020.*

**MEMORANDUM OF AGREEMENT BETWEEN THE BIR AND THE MARITIME INDUSTRY AUTHORITY (MARINA).** *Revenue Memorandum Circular No. 129-2020 dated December 10, 2020.*

**CIRCULARIZING THE FLYERS CONTAINING UPDATED INFORMATION ON REGISTRATION, FILING AND PAYMENT OF TAXES SPECIFICALLY PREPARED FOR PROFESSIONALS, CORPORATIONS AND ONLINE SELLERS.** *Revenue Memorandum Circular No. 131-2020 dated December 10, 2020.*

**CIRCULARIZING THE AVAILABILITY OF THE NEW BIR FORM 2200-C, EXCISE TAX RETURN FOR COSMETIC PROCEDURES.** The excise tax on cosmetic procedures must be filed and paid within ten (10) days following the close of the month with the Excise Large Taxpayers Field Operations Division (ELTFOD) for Large Taxpayers or the concerned RDO for the taxpayers in the National Capital Region (NCR) or Excise Tax Area (EXTA) for taxpayers outside NCR. *Revenue Memorandum Circular No. 132-2020 dated December 11, 2020.*

**CLARIFICATIONS ON THE AVAILMENT AS A DEDUCTION FROM GROSS INCOME OF NET OPERATING LOSS CARRY-OVER (NOLCO) INCURRED DURING THE TAXABLE YEARS 2020 AND 2021 BY TAXPAYERS ADOPTING FISCAL YEAR.** R.A. 11494 or the “Bayanihan to Recover as One Act” provides as a tax relief the carry over as a deduction from gross income of net operating losses for taxable years 2020 and 2021 for the next

five (5) years. If the taxpayer is adopting the fiscal year, the net operating losses shall only be considered to fall within the taxable years 2020 and 2021 if majority of the fiscal year falls in the years 2020 or 2021. This means that companies with fiscal years ending before July 31, 2020 or after June 30, 2022 shall not be considered to have incurred net operating losses during taxable years 2020 and 2021 and shall therefore claim such net operating losses for only the three (3) consecutive years under Section 34 (D) (3) of the NIRC. If the whole fiscal year falls within 2020 until 2021, it is considered to fall in the year, either 2020 or 2021 when more days of the fiscal year will fall, i.e. a fiscal year ending on June 30, 2021 is considered taxable year 2020 since there are more days in 2020 than in 2021. *Revenue Memorandum Circular No. 138-2020 dated December 23, 2020.*

**GUIDELINES ON UTILIZATION OF THE 5% TAX CREDIT PRESCRIBED UNDER REPUBLIC ACT NO. (R.A.) 9505 OR THE PERSONAL EQUITY AND RETIREMENT ACCOUNT (PERA) ACT OF 2008.** R.A. 9505 provides that a contributor shall be given income tax credit equivalent to five percent (5%) of the total PERA contribution. The tax credit may be claimed from any tax payable under the NIRC. To claim the tax credit, the contributor must request from the PERA Administrator the issuance of the PERA Tax Credit Certificate (TCC), which contains security features to ensure its authenticity. The tax credit shall be indicated in the tax return, which shall be submitted with the PERA TCC. Employers who share in the employee's PERA Contribution may claim as a deductible expense from gross sales the amount actually contributed by indicating in the return the phrase "Share in Qualified Employee's PERA Contribution." The use of a spurious PERA TCC shall be punishable with fifty percent (50%) penalty for fraud and twelve percent (12%) interest per annum. *Revenue Memorandum Circular No. 139-2020 dated December 23, 2020.*

*Note:* The information provided herein is general and may not be applicable in all situations. It should not be acted upon without specific legal advice based on particular situations. If you have any questions, please feel free any of the following at the telephone number (632) 8633-9418, or at the indicated e-mail addresses:

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<b>Documentary Requirements to Secure a Tax Residency Certificate</b>	
<i>For Individuals</i>	<i>For Non-individuals</i>
<ol style="list-style-type: none"> <li>1. Duly accomplished BIR Form No. 0902 [Application Form for Tax Residency Certificate (TRC) for Treaty Purposes];</li> <li>2. Certified true copy of the following proofs of income:               <ol style="list-style-type: none"> <li>i. Contract duly signed by both parties, if available, or any competent proof of transaction;</li> <li>ii. BIR-registered invoice/receipt issued by the taxpayer to the income payor and the relevant Authority to Print Receipts and/or Invoices or Permit to Use Computerized Accounting System/Loose-leaf Receipts or Invoices/; and</li> <li>iii. Proof of remittance if the foreign source income was already received by the domestic taxpayer;</li> </ol> </li> <li>3. Photocopy of the passport booklet or Residency Certificate issued by the Barangay Chairman if the applicant never left the Philippines;</li> <li>4. Annual Income Tax Return for the immediately preceding year;</li> <li>5. Notarized Special Power of Attorney (SPA) or authorization letter issued by the applicant to his/her authorized representative(s), which shall expressly state the authority to sign BIR Form No. 0902 as well as to file the TRC application</li> </ol>	<ol style="list-style-type: none"> <li>1. Duly accomplished BIR Form No. 0902, which must be signed by the taxpayer or its authorized representative;</li> <li>2. Proof of establishment in the Philippines (e.g. latest Articles of Incorporation or Partnership);</li> <li>3. Certified true copy of the following proofs of income:               <ol style="list-style-type: none"> <li>i. Contract duly signed by both parties, if available, or any competent proof of transaction;</li> <li>ii. BIR-registered invoice/receipt issued by the taxpayer to the income payor and the relevant Authority to Print Receipts and/or Invoices or Permit to Use Computerized Accounting System/Loose-leaf Receipts or Invoices/; and</li> <li>iii. Proof of remittance if the foreign source income was already received by the domestic taxpayer;</li> </ol> </li> <li>4. List of partners if the applicant is a general professional partnership (GPP);</li> <li>5. Annual Income Tax Return for the immediately preceding year;</li> <li>6. Notarized Special Power of Attorney (SPA) or authorization letter issued by the applicant to its authorized representative(s), which shall expressly state the authority to sign BIR Form No. 0902 as well as to file the TRC application.</li> </ol>

**Procedures to Secure a Tax Residency Certificate**

1. Instead of a letter-request, the applicant shall submit, together with the required attachments prescribed in the preceding table a duly accomplished BIR Form No. 0902, which shall be signed by the taxpayer or his/her/its authorized representative.
2. Upon receipt of the application, the assigned case officer (CO) shall evaluate the completeness of the application and its supporting documents.
3. The CO shall inform the applicant of any deficiency in the accompanying requirements within three (3) working days either via registered mail or electronic mail (e-mail).
4. All TRC applications shall be acted upon within fourteen (14) working days from the submission of complete documentary requirements.
5. The BIR shall continue to issue its own TRC Form, which shall be signed by the Assistant Commissioner for Legal Service only. All TRC applications filed with the Revenue District Offices (RDOs) or Large Taxpayers Divisions (LTDs) shall be immediately indorsed to the ITAD.