



DEPARTMENT CIRCULAR NO. DC2023-

GUIDELINES ON THE CONDUCT OF AUDIT AND REPORTORIAL AND REMITTANCE OBLIGATIONS OF UPSTREAM CONVENTIONAL AND RENEWABLE ENERGY SERVICE CONTRACTORS, SMALL-SCALE COAL MINING PERMITTEES, ACCREDITED COAL TRADERS, POWER GENERATING COMPANIES, AND ENERGY RESOURCE DEVELOPERS INCLUDING REPORTORIAL OBLIGATION OF COAL END-USERS

WHEREAS, pursuant to Section 5(e) of Republic Act (RA) No. 7638, otherwise known as the "*Department of Energy Act of 1992*", the Department of Energy (DOE) is mandated to regulate private sector activities relative to energy projects as provided for under existing laws.

WHEREAS, pursuant to Section 5(g) of RA No. 7638, and Section 37(l) of RA No. 9136, otherwise known as "*Electric Power Industry Reform Act of 2001*", the DOE is mandated to formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy.

WHEREAS, pursuant to Section 5(k) of RA No. 7638, the DOE is mandated to formulate such rules and regulations.

WHEREAS, pursuant to Section 36 of RA No. 9513, otherwise known as "*Renewable Energy Act of 2008*", the DOE is empowered to impose administrative fines and penalties for any violation of the provisions thereof, its IRR and other issuances relative thereto.

WHEREAS, pursuant to Section 2 of Administrative Order No. 38, the DOE through the Financial Service (FS), is mandated to formulate and implement fiscal policies, programs, and regulations on indigenous energy resource Service Contractors (SCs) and power Generating Companies (GenCos) and Energy Resource Developers (ERDs).

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE FOREGOING PREMISES, the DOE hereby promulgates the following guidelines:

Section 1. Purpose

This Circular is issued providing for timelines and imposition of penalties for non-compliance of the foregoing:

- A. Timelines covering the following:
 - i. Submission of financial reports;
 - ii. Remittance of government share to the DOE by the upstream conventional and renewable energy Service Contractors (SCs), Small Scale-Coal Mining Permittees (SSCMPs) and Accredited Coal Traders (ACTs);
 - iii. Direct remittance of financial benefits to the host local government units and designated beneficiaries by the power Generating Companies (GenCos) and Energy Resource Developers (ERDs); and
 - iv. Audit and validation of said reports and remittances.
- B. Penalties, Surcharges, and Interests for non-compliance of the foregoing.

Section 2. Scope of Application

This Circular shall apply to all entities engaged in the exploration, development and utilization of coal, petroleum, renewable energy resources, and power generation.

Section 3. Reportorial Submissions

All submissions of mandated financial reports shall be complied with in accordance with the prescribed timelines as provided under existing DOE issuances.

GenCos and/or ERDs shall be required to submit to the DOE a duly accomplished Electricity Sales Report and Allocation and Remittance Report on a per power plant basis within sixty (60 days) after the end of each billing quarter of a calendar year.

Section 4. Penalty for Late and Non-submission of Financial Reports

1. Failure to timely submit any financial reports shall be subject to a penalty of Php1,000.00 per quarter per report and any fraction of a quarter is considered one (1) quarter.
2. Late or non-submission of reports after the one (1) year period, may be subject to the initiation of the suspension and/or cancellation of the Coal, Petroleum and RE Service Contracts and/or revocation of permits and accreditation certificates.

For non-compliance of power generation companies and energy resource developers, the DOE shall endorse its recommendation for the suspension or revocation of relevant permits, certificates, *i.e.*, Certificate of Compliance, and other authorizations to the Energy Regulatory Commission (ERC) for its appropriate action.

3. Partial submission shall be considered as non-compliance and shall be treated in delay until such time that the filing of the required reports has been fully complied with.

Section 5. Period to Conduct Audit

The DOE shall commence the audit of the books of accounts of the auditee within thirty-six (36) months following the end of each calendar year. Any audit shall be completed within twelve (12) months from the commencement thereof.

Within forty-five (45) working days following the completion of such audit, the DOE shall issue an initial audit report, including audit exceptions on the reported revenues, expenditures, and electricity sales in kWh, if any.

Section 6. Prescriptive Period of Audit

Pursuant to Section 5 of this Circular, the DOE shall consider the financial reports as deemed correct and validated after the prescribed period.

Section 7. Review and Appeals Process of Audit and/or Assessments

Within thirty (30) calendar days upon receipt of the initial audit report, the auditee may file a Letter of Reconsideration (LR) contesting the exceptions and/or assessment. The LR shall be addressed to the Director of the Financial Services (FS) along with supporting documents, records and/or data.

Unless the auditee timely files an LR, the exceptions and/or assessment in the initial audit report shall be deemed final, due, and demandable. The auditee shall then be given a period of five (5) calendar days from the finality of the exceptions and/or assessment to

pay the amount due without imposition of interest. Failure to pay within the 5-day grace period will result to imposition of interest following the date of finality of the assessment.

When the auditee timely contests the validity of the audit exceptions and/or assessments, the FS Director shall resolve the contested assessment and/or exceptions within thirty (30) working days from receipt of the LR and pertinent documents, records and/or data. Such decision of the FS Director shall become final and executory if not appealed within seven (7) calendar days from receipt thereof by the auditee to the Office of the Supervising Undersecretary of FS.

The concerned Supervising Undersecretary of FS shall resolve within thirty (30) working days the issues raised by the auditee in its appeal. Such decision shall become final and executory if not appealed within five (5) calendar days upon receipt thereof. The auditee shall then be given a period of five (5) calendar days from the finality of the exceptions and/or assessment to pay the amount due.

However, the auditee may further appeal to the Office of the Secretary the decision of the Supervising Undersecretary within five (5) calendar days. The Secretary shall issue its decision within fifteen (15) working days, which shall become final and executory. The auditee shall then be given a period of five (5) calendar days from the finality of the exceptions and/or assessment to pay the amount due.

Process flow is hereby attached as Annex "A".

Section 8. Interest and Surcharge for Failure to Remit the Assessed Government Share on Coal, Petroleum and Renewable Energy Resources Produced, Generated and/or Sold.

For failure to remit the assessed government share, an interest and/or surcharges shall be computed on the day following the date when the assessment has become final and executory.

| INTEREST | |
|---|--|
| Ten percent (10%) interest per annum | For non-remittance of assessed government share which shall be computed on the date when the final assessment was issued by the FS Director and received by the auditee. |
| SURCHARGES | |
| Twelve percent (12%) surcharge per annum | For failure to include in the reported sales proceeds, which have been found to be in the accounting records of the service contractor/operator. |
| Fifteen percent (15%) surcharge per annum | In case the return/ revenue report is not filed, and the corresponding assessed government share is not remitted, which shall be computed on the date when the final assessment was issued by the FS Director and received by the auditee. |
| Twenty percent (20%) surcharge per annum | For failure to record and report certain revenue from the sale of coal, petroleum, and renewable energy resources. This act shall be presumed to have been intended to defraud the government of its lawful share |

| | |
|--|--|
| | of the sales proceeds, and which shall be a ground for the cancellation of the service contract. |
|--|--|

Sample computation is hereby attached as Annex “B”.

Section 9. Interest for Failure to Remit the Reported Government Share on Coal, Petroleum and Renewable Energy Resources Produced, Generated and/or Sold.

A grace period of sixty (60) days from the end of each related calendar quarter shall be given for SCs, ERDs, COCs, SSCMPs, and ACTs, to remit the reported government share.

For failure to remit within the mandated period, a ten percent (10%) interest per annum shall be imposed for non-remittance of reported government share, which shall be computed from the end of each related calendar quarter.

Sample computation is hereby attached as Annex “C”.

Section 10. Interest for Failure to Remit the Assessed and/or Reported Financial Benefits to Host and Designated Beneficiaries under Energy Regulation 1-94

- a) For reported financial benefits, a ten percent (10%) interest per annum shall be imposed for non-allocation and remittance of financial benefits to Host and Designated Beneficiaries or the funds are not set aside or deposited to the required interest-bearing current account established and maintained by the GenCos and ERDs. The interest shall be computed from the end of each related calendar quarter when the reported financial benefits become due and demandable.
- b) While on the assessed financial benefits, a ten percent (10%) interest per annum shall be imposed, which shall be computed on the date when the final assessment was issued by the FS Director and received by the auditee.

Sample computation is hereby attached as Annex “D”.

Section 11. Application of Payment of Government Share Due or Financial Benefits to Host Communities

Payment made shall be applied in the following order: penalty, surcharge, and interest due. Any excess thereof shall be used to settle the principal.

Section 12. Waiver to Submit Financial Reports and Records

The submission of mandatory reportorial obligations may be waived upon favorable endorsement by the FS Director and duly approved by the Supervising Undersecretary, in case of total destruction of financial reports and records due to acts of God, fortuitous event or force majeure, including but not limited to fire, storms or other natural calamities.

For a valid waiver, the Auditee shall give written notice to the DOE stating the occurrence of such force majeure or fortuitous event within fifteen (15) days therefrom, and shall submit a Certification issued by the Local Government Unit (LGU) or Barangay Certificate having jurisdiction over the place where such financial reports and records are kept by the Auditee and other relevant documents to support the same.

Section 13. Transitory Provision. For SCs, ERDs, COCs, SSCMPs, GenCos, and ACTs, who paid interests and surcharges under protest or with pending resolution of assessed government share, as applicable, shall be covered by this Circular.

Section 14. Separability Clause. If for any reason, any provision or section of this Department Circular is declared unconstitutional or invalid, such part not affected shall remain in full force and effect.

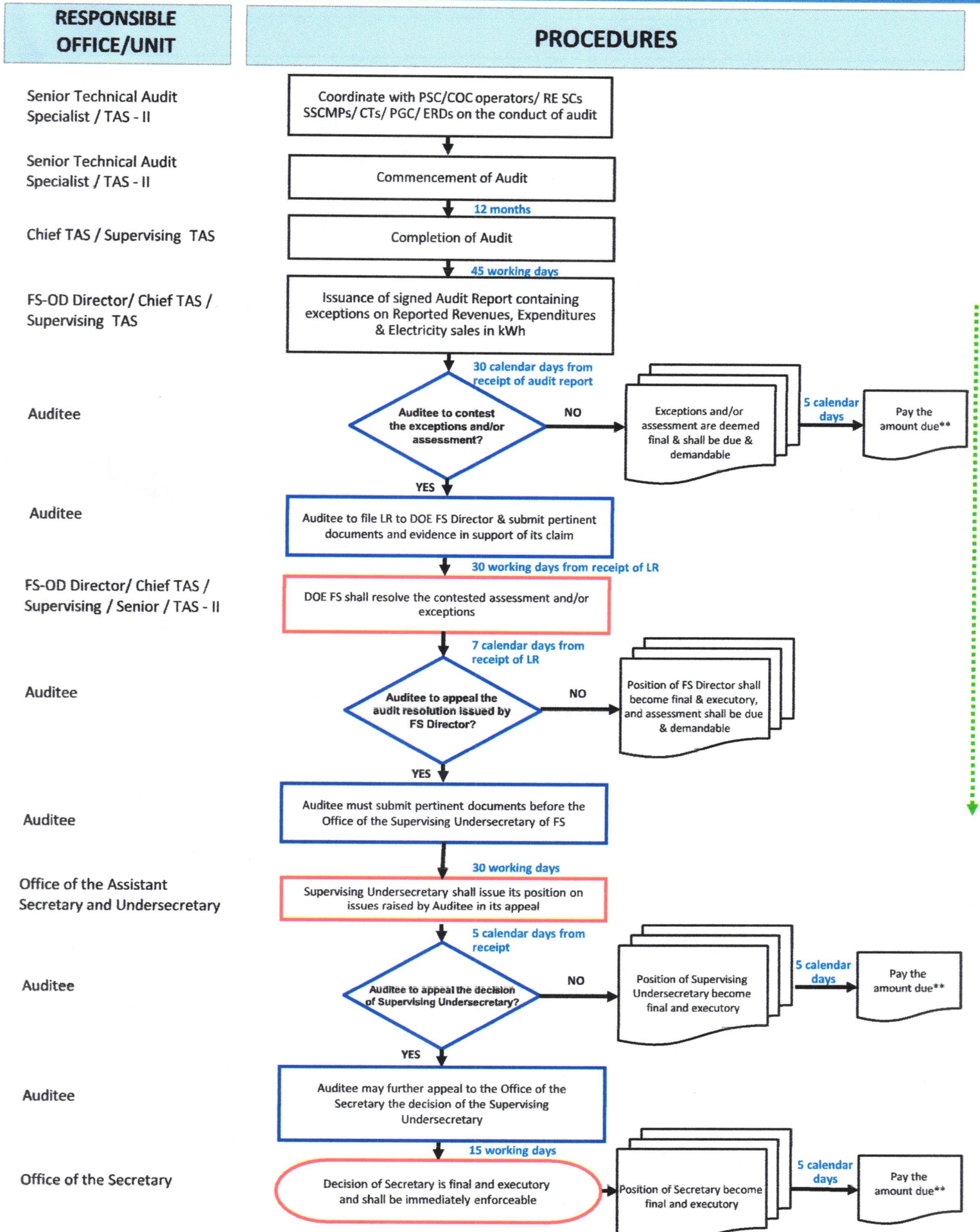
Section 15. Repealing Clause. All DOE issuances that are inconsistent with the provisions of this Department Circular are hereby repealed or amended accordingly.

Section 16. Effectivity. This Circular shall take effect within fifteen (15) calendar days following its publication in the Official Gazette or in at least two (2) newspapers of general circulation. Let copies of this Circular be filed with the University of the Philippines Law Center – Office of National Administrative Register.

Issued this _____ 2023 in Bonifacio Global City, Taguig City, Metro Manila.

RAPHAEL P.M. LOTILLA
Secretary

ANNEX A: REVIEW AND APPEALS PROCESS OF AUDIT EXCEPTIONS AND ASSESSMENTS



LEGEND

Office of the Secretary

Office of the Undersecretary / FS Director

FS-Compliance Divisions

Auditee

**Sec. 8 of DC provides Interest on Assessed Government Share shall be computed from the date when the final assessment was issued by the FS Director and received by the auditee

Annex B:

Sample Computation under Section 8: Interest and Surcharge for Failure to Remit the Assessed Government Share on Coal, Petroleum and Renewable Energy Resources Produced/ Generated and/or Sold.

Sample computation:

Interest on Uncontested Assessed Government Share (Audit Report)

Assessment for CY 2022 Audit

| | | |
|---|---|--|
| Date of Audit Report | : | June 20, 2023 |
| Receipt of the Assessment by the Auditee: | : | June 30, 2023 |
| Audit Assessment deemed final | : | July 30, 2023 (within 30 days) |
| Due Date | : | August 4, 2023 (within 5 days) |
| Payment made | : | September 19, 2023 |
| Period of delay | : | July 31 to September 19, 2023 = 50 days |

Interest due computed as follows:

$$\text{Php}100,000.00 \times 10\% \times 50/365 = \underline{\text{Php}1,369.86}$$

Interest on Contested Assessed Government Share (Resolution-FS Dir)

Assessment for CY 2022 Audit

| | | |
|---|---|---------------------------------------|
| Date of Audit Report | : | June 20, 2023 |
| Receipt of the Assessment by the Auditee: | : | June 30, 2023 |
| Date of Letter of Reconsideration | : | July 15, 2023 (made w/in 30 days) |
| Audit Assessment deemed final | : | July 30, 2023 |
| Date of Audit Resolution | : | August 14, 2023 (within 30 days) |
| Receipt of Audit Resolution | : | August 15, 2023 |
| Audit Resolution deemed final | : | August 22, 2023 (within 7 days) |
| Due Date | : | August 22, 2023 (no 5 days GP) |
| Payment made | : | September 19, 2023 |
| Period of delay | : | July 1 to Sept. 19, 2023 = 80 days |

Interest due computed as follows:

Scenario 1: Resolution resulted in a decrease in the principal assessment.

$$\text{Php}60,000.00 \times 10\% \times 80/365 = \underline{\text{Php}1,315.07}$$

Scenario 2: Resolution has no effect in the principal assessment.

$$\text{Php}100,000.00 \times 10\% \times 80/365 = \underline{\text{Php}2,191.78}$$

Scenario 3: Resolution resulted in an increase in the principal assessment based on the subsequent confirmation of buyers.

$$\text{Php}120,000.00 \times 10\% \times 80/365 = \underline{\text{Php}2,630.14}$$

Interest on Contested Assessed Government Share (Resolution-FS USec.)

Assessment for CY 2022 Audit

Date of Audit Report : June 20, 2023
Receipt of the Assessment by the Auditee: June 30, 2023
Date of Letter of Reconsideration : July 15, 2023 (made w/in 30 days)
Audit Assessment deemed final : July 30, 2023
Date of Audit Resolution (FS Dir.) : August 14, 2023 (within 30 days)
Receipt of Audit Resolution : August 15, 2023
Audit Resolution deemed final : August 22, 2023
Date of LR to FS Usec. : August 20, 2023 (within 7 days)
Audit Resolution FS Usec. : Sept. 19, 2023 (w/in 30 days)
Resol. FS Usec. deemed final : Sept. 24, 2023 (within 5 days)
Due Date : Sept. 29, 2023 (5 days GP)
Payment made : September 30, 2023
Period of delay : July 1 to Sept. 30, 2023 =
91 days

Interest due computed as follows:

Scenario 1: Resolution resulted in a decrease in the principal assessment.

$\text{Php}50,000.00 \times 10\% \times 91/365 = \text{Php}1,246.58$

Scenario 2: Resolution has no effect in the principal assessment.

$\text{Php}100,000.00 \times 10\% \times 91/365 = \text{Php}2,493.15$

Scenario 3: Resolution resulted in an increase in the principal assessment based on the subsequent confirmation of buyers.

$\text{Php}120,000.00 \times 10\% \times 91/365 = \text{Php}2,991.78$

Interest on Contested Assessed Government Share (Resolution- DOE Sec.)

Assessment for CY 2022 Audit

Date of Audit Report : June 20, 2023
Receipt of the Assessment by the Auditee: June 30, 2023
Date of Letter of Reconsideration : July 15, 2023 (made w/in 30 days)
Audit Assessment deemed final : July 30, 2023
Date of Audit Resolution of FS Dir. : August 14, 2023 (within 30 days)
Receipt of Audit Resolution : August 15, 2023
Audit Resolution deemed final : August 22, 2023
Date of LR to FS Usec. : August 20, 2023 (within 7 days)
Audit Resolution FS Usec. : Sept. 19, 2023 (w/in 30 days)
Date of Receipt of FS Usec Resolution : Sept. 20, 2023
Resol. FS Usec. deemed final : Sept. 25, 2023 (within 5 days)
Should be Due Date Resol FS Usec. : Sept. 30, 2023 (5 days GP)

Date of LR to DOE Sec : Sept. 25, 2023
Resol. DOE Sec. : Oct. 10, 2023 (within 15 days)
Date of Receipt of DOE Sec. Resol : Oct. 11, 2023
Due Date : Oct. 16, 2023 (5 days GP)

Payment made : Oct. 17, 2023
Period of delay : July 1 to Oct. 17, 2023 =
108 days

Interest due computed as follows:

Scenario 1: Resolution resulted in a decrease in the principal assessment.

$\text{Php}30,000.00 \times 10\% \times 108/365 = \text{Php}887.67$

Scenario 2: Resolution has no effect in the principal assessment.
 $\text{Php}100,000.00 \times 10\% \times 108/365 = \underline{\text{Php}2,958.90}$

Scenario 3: Resolution resulted in an increase in the principal assessment based on the subsequent confirmation of buyers.
 $\text{Php}120,000.00 \times 10\% \times 108/365 = \underline{\text{Php}3,550.68}$

Surcharges:

| | | |
|----------------------|---|--|
| 12% surcharge | For failure to include in the reported sales proceeds, which have been found to be in the accounting records of the service contractor/operator. | <p>Difference Between Reported and Recorded Sales: $\text{Php}500,000.00$</p> <p>Assessed Government Share on the Difference between Reported and Recorded: $\text{Php}15,000.00$</p> <p>$\text{Php}15,000.00 \times 12\% = \text{Php}1,800.00$</p> |
| 15% surcharge | In case the return is not filed, and the corresponding government share is not remitted. | <p>Assessed Government Share CY 2022</p> <p>Government Share Due: $\text{Php}100,000.00$</p> <p>$\text{Php}100,000.00 \times 15\% = \text{Php}15,000.00$</p> |
| 20% surcharge | For failure to record and report certain revenue from the sale of coal, petroleum, and renewable energy resources. This act shall be presumed to have been intended to defraud the government of its lawful share of the sales proceeds. A repeated commission of this act shall conclusively establish the intent of the service contractor/operator to defraud the government of its lawful share of the proceeds and shall therefore result in the cancellation of the service contract. | <p>Unreported and Unrecorded Sales: $\text{Php}500,000.00$</p> <p>Assessed Government Share on the per Sales Confirmation: $\text{Php}15,000.00$</p> <p>Surcharge due computed as follows:</p> <p>$\text{Php}15,000.00 \times 20\% = \text{Php}3,000.00$</p> |

Annex C:

Sample Computation under Section 9. Interest for Failure to Remit the Reported Government Share on Coal, Petroleum and Renewable Energy Resources Produced, Generated and/or Sold.

On Reported Government Share

1st Quarter Report due on May 31, 20XX

Government Share Due: Php100,000.00

Payment made on June 1, 20XX

Period of delay: April 1 to May 31, 20XX = 60 days

Interest due computed as follows:

$$\text{Php}100,000.00 \times 10\% \times 60/365 = \underline{\text{Php}1,643.84}$$

Annex D:

Sample Computation on Section 10: Interest and Penalties for Failure to Remit the Reported Financial Benefits to Host and Designated Beneficiaries under Energy Regulation 1-94.

Section 10 (a):

For reported financial benefits, a ten percent (10%) interest per annum shall be imposed for non-allocation and remittance of financial benefits to Host and Designated Beneficiaries or the funds are not set aside or deposited to the required interest-bearing current account established and maintained by the GenCos and ERDs. The interest shall be computed from the end of each related calendar quarter when the reported financial benefits become due and demandable.

On Reported Financial Benefits

1st Quarter Report due on May 31, 20XX

Financial Benefits Due: Php100,000.00

Remittance/Deposit made on June 1, 20XX

Period of delay: April 1 to May 31, 20XX = 60 days

Interest due computed as follows:

$$\text{Php100,000.00} \times 10\% \times 60/365 = \underline{\text{Php1,643.84}}$$

Section 10 (b):

On the assessed financial benefits, a ten percent (10%) interest per annum shall be imposed, which shall be computed on the date when the final assessment was issued by the FS Director and received by the auditee.

On Assessed Financial Benefits:

Assessment for CY 20X1 Audit

Receipt of the Assessment by the Auditee: June 30, 20X2

Audit Assessment deemed final : July 30, 2023

Due Date: August 4, 20X2 (5 days)

Remittance/Deposit made on September 19, 20X2

Period of delay: August 4 to September 19, 20X2 = 45 days

Interest due computed as follows:

$$\text{Php100,000.00} \times 10\% \times 45/365 = \underline{\text{Php1,232.88}}$$