REVENUE MEMORANDUM ORDER NO. 3-2009 issued on January 23, 2009 amends and consolidates the guidelines in the conduct of surveillance and stock-taking activities, and implements the administrative sanction of suspension and temporary closure of business.

Section 115 of the National Internal Revenue Code (NIRC), as amended, empowers the Commissioner of Internal Revenue or his authorized representative to suspend the business operations and temporarily close the business establishment of any person for any of the following violations:

a. In the case of a Value-Added Tax (VAT)-registered person
   • Failure to issue receipts or invoices;
   • Failure to file a VAT return as required under Section 114; or
   • Understatement of taxable sales or receipts by 30% or more of his correct taxable sales or receipts for the taxable quarter.

b. Failure of any person to register as required under Sec. 236
   The temporary closure of the establishment shall be for the duration of not less than five (5) days and shall be lifted only upon compliance with whatever requirements prescribed by the Commissioner in the closure order.

The Order provides the guidelines governing the enforcement of the administrative sanction of suspension and temporary closure of business relative to the following provisions of the NIRC, as amended:

a. Sec. 113 – Invoicing and Accounting Requirements for VAT-Registered Persons
   i. Invoicing requirements
   ii. Information contained in the VAT Invoice or VAT Official Receipt
   iii. Accounting requirements
   iv. Consequence of issuing erroneous VAT Invoice or VAT Official Receipt
   v. Transitional Period

b. Sec. 114 – Return and Payment of VAT
   i. General provisions
   ii. Where to file the return and pay the tax
   iii. Withholding of VAT

c. Sec. 236 – Registration Requirements
   i. Requirements
   ii. Annual registration fee
   iii. Registration of each type of internal revenue tax
   iv. Transfer of registration
   v. Other updates
   vi.Cancellation of registration
   vii. Persons required to register for VAT
   viii. Optional registration for VAT of exempt person
   ix. Supplying of Taxpayer Identification Number (TIN)

d. Sec. 237 – Issuance of Receipts or Sales or Commercial Invoices

e. Sec. 238 – Printing of Receipts or Sales or Commercial Invoices

All surveillance activities shall be covered by Mission Orders (MOs). The MOs shall be printed as accountable forms to be requisitioned by the Revenue Officials authorized to sign said MOs. The Accountable Forms Division shall be the custodian of blank MOs, and shall maintain a register of all MOs issued to the following authorized Revenue Officials:
The Head of the Investigating Office/Division shall in turn request for MOs from the concerned Regional Director/ACIR.

Overt Surveillance shall be conducted for a minimum period of ten (10) days and a maximum period of thirty (30) days, unless otherwise extended in writing by the authorized signatory. A weekly progress report shall be rendered by the concerned implementing officers to the Head of the Investigating Office/Division. Round-the-clock observation/monitoring shall be done on the target taxpayer’s business if the nature of the business so requires, as in the case of motels and hotels. The findings may be used as the basis for assessing taxes for the other months or quarters of the same or different taxable years, and such assessment shall be deemed prima-facie correct. Implementing officers shall not be assigned new surveillance cases until after they have reported the surveillance cases previously assigned to them.

Before the actual surveillance, the Head of the Investigating Office/Division must:

a. Acquaint himself with the business organization and economic activity of the subject of surveillance (SUBJECT), the location of the stores and outlets, the accounting records used and such other relevant information as may be available and/or necessary. This must be done with relative secrecy to prevent leakage of information to the SUBJECT.

b. Prepare the necessary MO for approval and signature of the concerned Regional Director/ACIR, as the case may be. The number of MOs must correspond to the number of stores and outlets to be observed/monitored in case of overt surveillance. A different set of implementing officers shall be assigned for different stores and outlets of the same SUBJECT.

c. Brief the implementing officer on the acts to be performed in compliance with the MOs. The briefing shall be done within thirty (30) minutes before the actual surveillance. To preserve the confidentiality of the surveillance operation, the identity of the target SUBJECT should be revealed to the implementing officers only upon arrival at the site of operations.

At least two (2) implementing officers comprised of Revenue Officers (ROs) (Assessment/Excise), Intelligence Officers and Special Investigators assigned in the following investigating offices/divisions shall be authorized to conduct surveillance activities on identified business establishment based on a validly issued MO signed by the concerned authorized revenue official:

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<th>Investigating Office/Division</th>
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<td>Special Investigation Division (SID)</td>
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<td>National Investigation Division (NID)</td>
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<td>Policy Cases Division (PCD)</td>
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<td>LT Audit &amp; Investigation Division I (LTAID I - for Regular Large Taxpayers)</td>
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<td>LT Audit &amp; Investigation Division II (LTAID II – for Excise Taxpayers)</td>
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<td>LT Field Operations Division</td>
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<td>LT District Office (LTDO)</td>
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Investigating Office/Division | Authorized Revenue Official
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Revenue District Office (RDO) Special Investigation Division (SID) | Regional Director
National Investigation Division (NID) Policy Cases Division (PCD) | ACIR – ES
LT Audit & Investigation Division I (LTAID I - for Regular Large Taxpayers) LT Audit & Investigation Division II (LTAID II – for Excise Taxpayers) LT Field Operations Division LT District Office (LTDO) | ACIR – LTS

No surveillance activities shall be conducted nor apprehension effected unless the same has been authorized by a Mission Order issued in accordance with the provisions of this Order.

If after the conclusion of the surveillance, there is a sufficient ground for the closure of the establishment, a recommendation shall be made to effect such closure. If the result of the surveillance made likewise indicates that the taxpayer had not been, in fact, correctly reporting income for tax purposes, and that the veracity of his accounting records is not reliable, the Commissioner or Regional Director concerned shall issue a Letter of Authority (LA) for the investigation of the taxpayer. The Revenue Officer named in the LA shall proceed with the audit and cause the assessment of the taxpayer’s internal revenue tax liabilities, based either on: (a) surveillance; (b) best evidence rule; and/or (c) the result of the tax audit.

In order to avoid multiple surveillance activities being conducted upon one taxpayer by several offices of the Bureau and to clearly define which office shall conduct surveillance activities, the following rules shall be observed:

a. If the basis of the surveillance activities comes from information gathered from the internal sources of the Bureau, the surveillance activities shall be conducted by the RDO, LTAID I, LTAID II, or LTDO with respect to taxpayers falling under their respective jurisdictions; and

b. If the basis of surveillance activities comes from confidential information filed by an informer or from other external sources, the surveillance activities shall be conducted by the NID and PCD. The ACIR–ES, however, in consultation with the Head of the Investigating Office, may decide to refer the case to the SID or RDO/LTDO, if the case so warrants.

The following shall be the only grounds for suspension or temporary closure of business:

a. Failure to issue receipts or invoices by a VAT-registered or registrable taxpayer;

b. Failure to file a VAT return;

c. Understatement of taxable sales or receipts by 30% or more of the correct amount thereof in the case of a VAT-registered or registrable taxpayer; or

d. Failure to register.

The recommendation of the concerned head of the investigating office/division to the Regional Director or ACIR – ES or ACIR – LTS, as the case may be, to suspend or temporarily close business shall invariably be accompanied by documentary proof in support of the particular violation, as follows:

a. Failure to issue VAT Invoice/Receipts
   i. A certification by the record custodian concerned to the effect that the Taxpayer Identification Number (TIN) of the taxpayer has been verified as correct;
   ii. The MO issued to the apprehending officer, if any;
iii. Apprehension slip detailing the items seized;
iv. The items seized such as the pad of invoices where duplicate and triplicates are left blank or not filled up;
v. Sworn statement under oath of the apprehending revenue officer stating the circumstances leading to the apprehension; or
vi. Other evidence, if available.

b. Failure to file VAT returns
   i. A certification by the record custodian that the TIN of the taxpayer has been verified as correct;
   ii. A Certification from the Revenue District Officer concerned and/or the accredited banks, collection agent or duly authorized Treasurer of the City or Municipality where the principal office of the offender is located that no return was filed;
   iii. The memorandum report of the Revenue Enforcement Officer narrating the fact of non-filing, the grounds relied upon for such a conclusion, with attachments, if any; or,
   iv. The memorandum report shall be supported by at least a preliminary finding as to the amount of sales and the tax evaded during the quarters under investigation, these to be reflected in the prescribed reportorial forms and working papers.

c. Understatement of taxable sales by 30% or more
   i. The return filed;
   ii. The taxpayer’s records or part thereof which will show or from which it can be shown by other competent evidence that an understatement of sales/receipt has been committed. Invariably, the investigating enforcement officer should take custody over these records under proper receipt as evidence;
   iii. The documents or certified copies thereof obtained through access to records of third persons or entities as provided under Sec. 5 of the NIRC, as amended, which tend to show the actual sales/receipts of the taxpayer;
   iv. The memorandum report of the investigating revenue enforcement officer; or
   v. The prescribed reportorial forms, including working papers reflecting the details of the investigator’s finding of understatement.

d. Failure of a VAT subject person to register
   i. Any one or a combination of the documents which show the line of business of the taxpayer, such as Certificate of Registration with the DTI, SEC, Treasurer’s Office of the concerned LGU, BOI, BIR;
   ii. Any one or a combination of documents showing that the annual gross sales/receipts from VAT-covered transactions of the taxpayer during the previous year exceed ₱1,500,000.00 or have exceeded said amount during the current year, such as the financial statements, income and business tax returns, reports of investigation by revenue enforcement officers, and the taxpayer’s own records. In the case of an importer, the letters of credit opened, import documents, or certifications from the Bureau of Customs/Bureau of Import Service, among others;
   iii. Certification from the Revenue District Officer who has jurisdiction over the taxpayer to the effect that the latter did not register as a VAT person;
   iv. Late registration of business who shall have registered shall carry a penalty of ₱5,000.00.

Consistent with the requirements of due process, the report of the handling Revenue Officer shall be concurred in by the head of the investigating office. The findings of the
investigating office shall be reviewed by a Review Board composed of the following revenue officials:

a. Regional Office Review Board (for Regional cases)
   Chairman : Regional Director
   Members : Chief, Assessment Division
             Chief, Legal Division
             RDO having jurisdiction over the taxpayer

b. National Office Review Board (for National Office cases)
   Chairman  : Asst. Commissioners (ACIRs), ES/LTS
   Members  : Representative, Office of the Commissioner
             Representative, Office of the Deputy Commissioner (Legal and Inspection Group)
             Representative, Office of the Deputy Commissioner (Operations Group)
             Representative, Legal Service

The Commissioner of Internal Revenue shall serve as the Overall Chairman of the Regional Office Review Boards and the National Office Review Board. The Review Boards must act on reports within five (5) days from receipt thereof and shall convene, upon the initiative of the Chairperson, whenever necessary.

If a report is approved by a Review Board, the concerned Regional Director or the ACIR – ES/LTS, as the case may be, shall, in his capacity as Chair of the Review Board, sign and issue to the taxpayer concerned a Forty-Eight (48) Hour Notice, requiring him to explain under oath within forty eight (48) hours why he should not be dealt with administratively, by suspension of business or temporary closure of his establishment, and/or criminally, for violation of pertinent provisions of the Tax Code.

In cases concerning duly validated discrepancies in sales/purchases covered by Letter Notices under the Tax Reconciliation System or the Third Party Information Program, a Letter Notice and follow-up letters sent and duly received by the taxpayer shall be considered as sufficient compliance with the 48-Hour Notice.

Upon the taxpayer’s submission of the explanation, or if none is submitted on or before the deadline, the Review Board headed by the Regional Director or the ACIR, ES/LTS, shall decide whether or not to terminate the case, or to pursue administrative/criminal action against the taxpayer, as the case may be.

If a Review Board deems it necessary to pursue administrative or criminal action against a non-compliant taxpayer, it shall cause the preparation of a 5-Day VAT Compliance Notice (VCN), which shall be issued in lieu of the 10-Day VCN, to expedite the resolution of the case at hand. The 5-Day VCN shall be signed by the Chair of the Review Board concerned.

In the event that a taxpayer: (a) refuses, neglects or fails to submit within the prescribed period, a response to a VCN; (b) submitted a response that was later found to be insufficient; or (c) refuses, neglects or fails to comply with the terms of the 5-Day VCN, the Review Board concerned shall prepare a memorandum report recommending the closure of the establishment, for the approval of the Commissioner. Said report shall include the proposed Closure Order, supported by the necessary documentation, for the approval and signature of the Commissioner.

However, if in the interim, the non-compliant taxpayer rectifies the violation pursuant to Section VII (Compliance by Taxpayer) of this Order, the Chair of the Review Board concerned shall desist from implementing the Closure Order, and shall immediately communicate such information to the Commissioner. The execution of the Closure Order shall consist of the physical closing of the doors or other means of ingress of the establishment, and the sealing thereof, with the appropriate security devices (padlocks, etc.) and the BIR’s official seal. Where
deemed necessary, the execution of the Closure Order shall be carried out with the assistance of elements of the Philippine National Police (PNP) or Barangay Officials in the locality, in accordance with the Memorandum of Agreement between the Bureau of Internal Revenue and the PNP or concerned Barangay Officials.

The implementation of the Closure Order and temporary suspension for a particular taxpayer to be carried out by a team of revenue officials led by the Regional Director/ACIR–ES/LTS, and the head of the investigating office concerned, or in appropriate instances, by the Commissioner of Internal Revenue, must be widely publicized through press releases, press conferences, and, when possible, televised coverage of the actual closure/suspension of business operations of a non-compliant taxpayer.

The closure and temporary suspension of business under a duly-approved Closure Order shall not preclude the BIR from filing the appropriate charges, if evidence so warrants, against the taxpayer concerned, or in the case of corporate taxpayers, against the responsible officers of the corporation, under the Run After Tax Evaders (RATE) Program of the Bureau.

The closure of a business establishment shall last for a period of not less than five (5) days, and shall be in force until the violation is rectified. Upon rectification by the taxpayer of the violation, the Review Board concerned shall prepare a memorandum report recommending the lifting of the closure order, for the approval of the Commissioner. Said report shall include the proposed Lifting of Closure Order, supported by the necessary documentation, for the approval and signature of the Commissioner.

The Closure Order shall only be lifted if the violation/s as stated in the 5-Day VAT Compliance Notice (VCN) is rectified by the taxpayer by:

a. Complying with the registration requirements, in case of failure to register;
b. Complying with the invoicing requirements, in case of failure to issue receipts/invoices;
c. Filing of VAT returns which have not been filed and paying the amount of taxes due thereon;
d. Amending previously filed VAT returns to reflect the correct taxable sales/receipts, which were previously understated.

Nonetheless, the taxpayer is not precluded from amending/filing returns covering other tax liabilities as a result of the BIR findings as aforestated. The original returns/amended returns and payment of the taxes due, inclusive of penalties, shall be filed with the Authorized Agent Banks (AABs) of the BIR office (i.e. RDO or LTDO or LTAID I or LTAID II, whichever is applicable) where the taxpayer is registered or required to be registered. The registration of the business as well as other registration-related activities shall be made with the appropriate BIR office where the taxpayer is required to be registered.

The lifting of the closure order shall be done in cases when there has been:

a. Subsequent filing or amendment of returns with the payment of the tax inclusive of statutory penalties;
b. Subsequent registration with the payment of the corresponding compromise penalties;
c. Payment of deficiency taxes inclusive of penalties corresponding to the sales where no invoices/receipts have been issued; and
d. Payment of deficiency taxes inclusive of penalties corresponding to the understatement of taxable sales or receipts.

If there is no 100% compliance with the tentative amounts provided in the 5-Day VCN/Letter Notice, but the taxpayer partially complies by amending his returns, wherein the amounts reflected in the amended returns are based on the ratio and percentages reflected in the original returns filed, such compliance shall still be considered as basis for the recommendation for the lifting of the closure order. Provided, that the tax payments in the amended returns filed
or on returns initially filed, in case of no previously filed returns, for business tax shall not be less than the following:

- In case of seller of services, 10% of undeclared gross receipts as found by the BIR or 110% of the adjusted basic tax due (after considering underdeclaration), whichever is higher.
- In case of seller of goods, 5% of undeclared gross sales as found by the BIR or 110% of the adjusted basic tax due (after considering underdeclaration), whichever is higher.

Provided, further, that notwithstanding compliance with the 5-Day VCN and the subsequent lifting of the closure order, the taxpayer may still be subjected to audit of returns filed (original or amended returns) and records pertaining to all his tax liabilities.

The lifting order shall not release the taxpayer from the compliance requirements and from the penalties prescribed by the Tax Code for the violation which shall be dealt with by criminal prosecution or by compromise settlement, at the discretion of the Commissioner of Internal Revenue. In case of compromise settlement, however, the same shall be approved by MANCOM. Majority vote of the members of the MANCOM shall, with the concurrence of the Commissioner, constitute a decision of MANCOM.

For closure cases initiated prior to the issuance of this Order but whose disposition have remained pending as of its effectivity, the pertinent provisions herein shall apply to the remaining stages. Thus, in a closure case where the action left to be done prior to the effectivity of this Order is the lifting thereof, the provisions relative to the lifting of the closure order and other procedures to be performed thereafter shall be observed.