REVENUE MEMORANDUM CIRCULAR NO. 51-2009 issued on September 16, 2009 clarifies the requirement for the submission of Summary Lists of Sales (SLS)/Summary Lists of Purchases (SLP); the imposition of penalties for their non-submission; the issuance of Subpoena Duces Tecum (SDT); and the imposition of penalties for failure to obey summons, pursuant to Revenue Regulations (RR) No. 8-2002, as incorporated in RR No. 16-2005, and Revenue Memorandum Order (RMO) No. 12-2009.

All VAT-registered persons with total quarterly sales/receipts (net of VAT) exceeding ₱2,500,000.00 are required to submit SLSs while all VAT-registered persons with total quarterly purchases (net of VAT) exceeding ₱1,000,000.00 are required to submit SLPs.

The quarterly SLS/SLP, whichever is applicable, shall be submitted to the Revenue District Office (RDO)/Large Taxpayers District Office (LTDO)/Large Taxpayers Audit and Investigation Division (LTAID) having jurisdiction over the concerned taxpayer, on or before 25th day of the month following the close of the taxable quarter (VAT calendar quarter or VAT fiscal quarter).

Any taxpayer who, under established revenue rules and regulations, fails to submit the required SLS/SLP, shall be subject to an administrative penalty in the amount of ₱1,000.00 for each such failure, in accordance with the provisions of RR No. 8-2002, as incorporated in RR No. 16-2005. For this purpose, failure to supply the required information for each buyer or seller of goods and services shall constitute a single punishable act or omission. However, the aggregate amount of penalties to be imposed for such failures during a taxable year shall not exceed ₱25,000.00, in observance of Section 250 of the National Internal Revenue Code (NIRC), as amended. In addition to administrative penalties, the act of non-submission of an SLS/SLP in the format prescribed by the Bureau shall be tantamount to willful failure to supply correct and accurate information, and shall be criminally punishable under Section 255 of the NIRC (as amended). The submission of erroneous/incomplete/falsified information in a particular SLS/SLP shall be considered as an act of non-submission, and therefore subject to the aforesaid penalties.

Every instance of failure on the part of the taxpayer to comply with the requirement to submit the SLS/SLP after due notice shall be considered as sufficient grounds for the issuance of a Subpoena Duces Tecum mandating the immediate submission of the aforesaid SLS/SLP. The issuance of the SDT, however, shall not be negated by mere payment of the administrative penalty. Moreover, upon submission of the required SLS/SLP in compliance with the SDT, the concerned taxpayer must pay a compromise penalty in the amount of ₱10,000.00 for each non-submission of the required SLS/SLP, in accordance with the provisions of RMO No. 12-2009.

If a taxpayer still fails to submit the required SLS/SLP, in the format prescribed by the Bureau, despite the issuance of an SDT, the Revenue District Officer (RDO)/LTDO Head/LTAID Chief concerned shall recommend the filing of criminal action against the taxpayer, for violation of Sec. 255 (Failure to File Return, Supply Correct and Accurate Information), as well as for violation of Sec. 266 (Failure to Obey Summons). If the taxpayer concerned is a corporation, an association or a general co-partnership, the sanctions mandated under Sec. 256 (Penal Liability of Corporations) of the NIRC shall likewise be imposed and invoked in the filing of a criminal case against the taxpayer.

The RDO/LTDO/LTAID having jurisdiction over the taxpayer who fails to comply with the duly-issued SDT shall forward the necessary report to the Regional Director (Attn: The Chief, Legal Division) or to the Assistant Commissioner (ACIR), Legal Service (Attn:
The Chief, Prosecution Division), as the case may be, attesting to the taxpayer’s non-compliance with the SDT and recommending the filing of a criminal case against the taxpayer. Thereafter, the Legal Division of the concerned Region or the Prosecution Division at the National Office, as the case may be, shall be responsible for the institution of criminal action against the taxpayer himself, or in cases where the taxpayer is a juridical entity, the responsible officer of the corporation/association/general co-partnership.

The late submission of an SLS/SLP on or before the deadlines mandated by the Bureau is considered tantamount to non-submission of the said document. Therefore the late submission of an SLS/SLP is also subject to administrative penalties in the amount of ₱ 1,000.00 for each late submission.

Compromise penalties may be imposed, and the Subpoena Duces Tecum issued, for violations pertaining to a period / periods prior to the issuance of RMO No. 12-2009. However, such actions cannot be construed as a retroactive implementation of the RMO inasmuch as the submission of the required SLS/SLP has yet to be complied with by the concerned taxpayer. Therefore, regardless of the period(s) involved, the taxpayer continues to be in violation of existing rules and regulations relative to the submission of SLSs/SLPs. Moreover, RR No. 8-2002, as incorporated in RR No. 16-2005, specifically states that:

“Finally, the administrative penalty shall be imposed at all times, upon due notice and demand by the Commissioner of Internal Revenue. A subpoena duces tecum for the submission of the required documents shall be issued on the second offense. A third offense shall set the motion for a criminal prosecution of the offender.” (Sec. 5 [Penalty Provision], RR No. 8-2002; Sec. 4.114-3. (i) [Penalty Clause], RR No. 16-2005)

The imposition of the appropriate penalties shall be applicable for every non-submission of a Summary List, whether it is an SLS or an SLP, in the format prescribed by the Bureau. Likewise, each non-submission is considered as grounds for the issuance of an SDT.

The signing of SDT may be delegated to the following revenue officials:

a. For the BIR National Office
   • The ACIR, Legal Service;
   • The HREA, Legal Service, or the concerned HREA, Large Taxpayers Service; or,
   • The concerned LTAID Chief/ITDO Head, as may be specially authorized, in writing, by the Commissioner

b. For the Regional Offices
   • The Regional Director, or in his/her absence, the Asst. Regional Director;
   • The Chief, Legal Division; or
   • The concerned Revenue District Officer, as may be authorized by the Regional Director, through the appropriate Regional Delegation Order

RR No. 8-2002 (as incorporated in RR No. 16-2005), mandates that 2 notices must be sent to the taxpayer. The first notice shall notify the taxpayer of his/her failure to submit the pertinent SLS/SLP, as well as of the imposition of the administrative penalty ranging from ₱ 1,000.00 to ₱ 25,000.00 and shall constitute the first offense of the taxpayer. The second notice shall be sent upon the subsequent failure of the taxpayer to submit the required SLS/SLP following the issuance of the first notice and shall contain a warning that non-compliance with the second notice shall be considered as the taxpayer’s second offense, and
that the appropriate SDT shall be issued. Since there is no provision in RMO No. 12-2009 that repeals this requirement, it is therefore considered as valid and applicable.