Tax Bulletin

August 2020

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Highlights

BIR Administrative Requirements

- Revenue Memorandum Circular (RMC) No. 79-2020 provides the guidelines for the filing of various returns and payment of the tax due thereon by the taxpayers under the jurisdiction of the National Capital Region (NCR), Bulacan, Cavite, Laguna and Rizal during the MECQ for the period of 4 August to 18 August 2020. **(Page 10)**

- RMC No. 82-2020 prescribes the guidelines on the use of the electronic Audit Financial Statements (eAFS) System for the submission of attachments to the Income Tax Returns (ITRs) of taxpayers with fiscal-year accounting period and in the submission of attachments to the quarterly ITRs. **(Page 11)**

- RMC No. 83-2020 circularizes the tax implications of measures being implemented to prevent the spread of New Coronavirus Disease 2019 (COVID-19) on Cross-Border Matters. **(Page 12)**

- RMO No. 26-2020 prescribes the use of the Revised Exchange of Information (EOI) Manual, amending for this purpose RMO Nos. 2-2013 and 3-2013. **(Page 15)**

- RMO No. 27-2020 prescribes the BIR Digital Transformation (DX) Roadmap for 2020-2030. **(Page 16)**

Other BIR Issuances

- RMC No. 80 -2020 provides the Revenue District Offices covered by RMC 79-2020. **(Page 17)**

- Revenue Regulation (RR) No. 20-2020 amends certain provisions of RR No. 6-2013 in relation to RR No. 06-2008 (Consolidated Regulations Prescribing the Rules on the Taxation of Sale, Barter, Exchange or Other Disposition of Shares of Stock held as Capital Assets) relative to the imposition of tax for the sale, barter, exchange or other disposition of shares of stock not traded through the local stock exchange. **(Page 18)**

Banks and Other Financial Institutions

Consumer Assistance Management System with Chatbot Functionality

- Memorandum No. M-2020-059 launches the Consumer Assistance Management System (CAMS) with Chatbot Functionality (CAMS Chatbot) of the Consumer Empowerment Group of the BSP. **(Page 18)**

Electronic Submission of the Annual Report and Audited Financial Statements

- Memorandum No. M-2020-060 provides for guidelines for electronic submission of annual reports (AR) and audited financial statements (AFS). **(Page 19)**

Measurement of Expected Credit Losses and the Treatment of Regulatory Relief Measures

- Memorandum No. M-2020-061 publishes Monetary Board (MB) Resolution No. 967 dated 30 July 2020 approving the supervisory expectations on the measurement of expected credit losses (ECL) and the treatment of regulatory relief measures granted amid the COVID-19 Pandemic. **(Page 20)**

Availability of Financial Services During the MECQ Period

- Memorandum No. M-2020-062, reminds BSFIs to ensure continuous availability of financial services to the general public. **(Page 21)**

Resumption of Submission of Reports to the BSP-Financial Supervision Sector (BSP-FSS)

- Memorandum No. M-2020-063 provides for guidelines on the resumption of submission of reports to the BSP-FSS. **(Page 21)**

Bank Assets as Underlying Collateral for Rediscounting

- Memorandum No. M-2020-064 publishes the guidelines on the use of bank assets (real property in the name of the Bank) as underlying collateral for the rediscounting of unsecured loans with the BSP Procedures. **(Page 22)**

"Complex" Non-stock Savings and Loan Associations

- Memorandum No. M-2020-065 provides for guidelines on the classification of Non-Stock Savings and Loan Associations (NSSLAs) as a "Complex" NSSLA, contained in Circular Nos. 1016 dated 05 October 2018 and 1046 dated 29 August 2019. **(Page 22)**

SMS-based Attacks

- Memorandum No. M-2020-065 provides for guidelines against the increasing Short Message Service or SMS-based attacks targeting BSFI customers as the industry shifts to digital payments and financial services. **(Page 22)**

Reduction in Reserve Requirements

- Circular No. 1092 publishes Resolution No. 423 dated 23 March 2020 approving a reduction of 100 basis points in the reserve requirement (RR) ratios of deposit and deposit substitute liabilities of the thrift banks (TBs), rural banks (RBs) and cooperative banks (Coop banks). **(Page 23)**

Real Estate Limits of Banks

- Circular No. 1093 publishes Resolution No. 1025 dated 13 August 2020 amending Section 363-A and Section 363-B of the Manual of Regulations for Banks (MORB) on the real estate limits of universal and commercial banks (UBs/KBs) and thrift banks (TBs), respectively. **(Page 23)**

Board of Investments

- BOI Notice dated 7 August 2020 prescribes the adjustment of deadlines for the filing of incentives applications and/or submissions of reports with the Incentives Administration Service, in view of the Modified Enhanced Community Quarantine (MECQ) imposed in Metro Manila from 4 August to 18 August 2020. **(Page 24)**

PEZA

- Due to the expiration of PEZA's lease contract with the PNOC complex on 31 August 2020, PEZA management decided to temporarily transfer their head office location to 10F, DoubleDragon Center West Building, DD Meridian Park, Macapagal Avenue, Pasay city. **(Page 25)**

- PEZA MC No. 40 extends the validity of PEZA MC No. 2020-11 on work from home operations until 31 August 2020. **(Page 25)**

- PEZA MC No. 41 outlines the guidelines for PEZA Locators with probable/ suspected or confirmed cases of COVID-19 at the workplace. **(Page 25)**

- PEZA MC No. 43 directs Economic Zone Developers and Economic Zone Locator Enterprises to provide information in connection with the DENR Administrative Order No. 2016-08 (DAO 2016-08) or the "Water Quality Guidelines and General Effluent Standards of 2016." **(Page 28)**

SEC Filing, Payments and Other Deadlines

Submission of Printed/Hard Copies of Annual Report

- SEC Notice issued 11 August 2020 prescribes the Deadlines and Interim Procedures for the Submission of Printed/Hard Copies of Annual Reports. **(Page 28)**

Signatories of the Manual on Corporate Governance and Penalty for Non-compliance with the Requirement

- SEC MC No.19 prescribes rules on the submission of the new Manual on Corporate Governance (MCG) for Public Companies (PCs) and registered issuers (RIs). **(Page 31)**

Guidelines on Posting of Additional Securities Deposit, Substitution of Securities Deposit and Change of Resident Agent

- SEC MC No. 24, extends the deadline for the posting of additional securities deposit and substitution of securities deposit to align the same with the extended deadline of the AFS. **(Page 31)**

Other SEC Updates

Guidelines for Operations in Areas Under Community Quarantine

- SEC Notice Issued 4 August 2020 prescribes the Guidelines for Operations in Areas Under Community Quarantine for Financing Companies (FCs) and Lending Companies (LCs). **(Page 32)**

Contact Numbers and Email Addresses for Queries and Concerns

- SEC Notice Issued 28 August 2020 provides Contact Numbers and Email Addresses for Queries and Concerns of the Public. **(Page 32)**

Number of Independent Director and Sectoral Representatives of Exchanges and Other Organized Markets

- SEC MC No. 20 promulgates the Rules on the number of independent directors and sectoral representatives of exchanges and other organized markets. **(Page 33)**

Rules on Simplified Onboarding Procedures for Low Risk Accounts

- SEC MC No. 21 simplifies the onboarding procedure for low risk customers of Financial Intermediaries ("regulated FIs") such as Broker Dealers in Securities, Government Securities Eligible Dealers, Investment Houses, Underwriters of Securities, Investment Company Advisers and Mutual Fund Distributors in order to achieve financial inclusion. **(Page 34)**

Guidelines on Corporate Term

- SEC Memorandum Circular No. 22 issues guidelines to implement Section 11 of the Revised Corporation Code (RCC) which provides for the perpetual existence of corporations. Republic Act No. 11232, otherwise known as "An Act Providing for the Revised Corporation Code of the Philippines" was signed into law on 20 February 2019 and took effect on 23 February 2019. **(Page 36)**

Rules on Corporate Debt Vehicle

- SEC MC No. 23 promulgates the Rules on Corporate Debt Vehicle (CDV) in order to avert credit and liquidity crises. **(Page 37)**

Supreme Court Cases

Income Tax Exemption and VAT exemptions on Association dues, membership fees, and other assessments/charges charged by a condominium corporation

- "Association dues, membership fees, and other assessments/charges charged by a condominium corporation are not subject to income tax because they do not constitute profit or gain. Instead, they are collected purely for the benefit of the condominium owners and are the incidental consequence of a condominium corporation's responsibility to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance. The association dues, membership fees, and other assessments/charges do not arise from transactions involving the sale, barter, or exchange of goods or property, nor are they generated by the performance of services. As such, they are not subject to VAT." **(Page 43)**

Court of Tax Appeals Cases

Procedure on Tax Assessment

- "The issuance of a Letter of Authority prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment. Since the assessment arose from a mere Letter Notice, without an audit being conducted pursuant to a valid LOA, the assessment that results therefore is a nullity. The obligation to pay the tax is an obligation that is created by law; it does not arise from the criminal offense of violation of the Tax Code, and, as such, is not deemed instituted in the criminal case." **(Page 45)**

- An assessment must contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. An assessment must be sent to and received by a taxpayer and must demand payment of the taxes described therein within a specific period. **(Page 46)**

- The importance of a date certain of when tax liabilities in an assessment should be settled cannot be underscored. This period is indispensable as it dictates the time when the penalties, surcharges and interest imposed under the Tax Code, should begin to accrue. More importantly, it is an essential element of petitioner's demand for payment of tax liabilities. Without such, petitioner cannot be said to have demanded the amount due in a Formal Letter of Demand/Final Assessment Notice contrary to the very nature of a tax assessment, which is a demand to pay taxes. **(Page 48)**

- A significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed in writing of the law and of the facts on which the assessment is made. Such requirement must be embodied not only in the Preliminary Assessment Notice, but also in the Formal Letter of Demand and Formal Assessment Notice. Thus, the issuance of these Notices is indispensable, except in the case of the Preliminary Assessment Notice in certain instances. **(Page 49)**

- The insertion of the notation, "xxx the interest will have to be adjusted if paid beyond the date specified therein." in the FAN merely reminds the taxpayer of the legal consequence of paying beyond the due date in accordance with the Tax Code provision, but it does not detract from the definite amount of basic deficiency taxes, surcharges and interests due for payment on the final date indicated in the assessment notice. **(Page 51)**

- The failure of the revenue officer to revalidate the LOA did not render the same void and, correspondingly, did not affect the validity of the assessment. At most, the consequence of violating the Revalidation Rule is to expose the revenue officer to disciplinary action. Furthermore, it is worth mentioning that nowhere in the BIR General Audit Procedures and Documentation (GAPD) was it mentioned that the Letter of Authority will be rendered invalid or ineffective should the revenue officer fail to follow the Revalidation Rule. Section 228 of the Tax Code provides that an assessment may be protested administratively by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. The implementing rules and regulation mentioned in Section 228 of the Tax Code is RR No. 12-99, as amended by RR No. 18-2013. **(Page 52)**

- When Section 112(C) states that "the taxpayer affected may, within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals," the law does not make the 120+30 day periods optional just because the law uses the word "may." The word "may" simply means that the taxpayer may or may not appeal the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. **(Page 54)**

- Prior to TRAIN Law, the rationale for the mandatory and jurisdictional 120 plus 30-day period is the fact that LFC's inaction within the 120-day mandatory period given him to decide a request for input tax refund/TCC is treated as a denial itself. Hence, a taxpayer need not await an actual denial as its request for input tax refund / TCC has been deemed denied, by express provision of law. **(Page 55)**

- Section 13 of the Tax Code is clear that the authority of a revenue officer to conduct the audit and assessment of a taxpayer should be pursuant to a LOA. To reiterate, the LOA is the authority given by the CIR or his authorized representative to the revenue officer to conduct the audit or assessment of a taxpayer pursuant to Section 6(a) of the Tax Code. In order for new officers not named in the original LOA to continue the audit, a new LOA must be issued in their name, pursuant to Revenue Memorandum Order (RMO) No. 43-90. A document, such as a MOA, may be construed as an equivalent to a new LOA if it contains all the elements necessary to establish a contract of agency between the CIR or his duly authorized representative and the new revenue officer. **(Page 56)**

- An invalid assessment cannot be a basis for the perfection of a tax compromise. A taxpayer that entered into an invalid compromise is entitled to a refund of erroneously paid tax if it complies with the requisites for a refund. **(Page 57)**

Tax Refunds

- The payment and collection of the taxes from the ADB employees is neither erroneous nor illegal. The Government, in entering upon the 1966 Agreement giving the privilege of tax exemption on salaries and emolument paid by ADB to its employees, did not relinquish its power of taxation over its own citizens and nationals. Since the income of the ADB employees was subject to tax based on the Tax Code provisions, the collection of the same was, therefore, grounded on statutory authority.

  In a claim for tax refund for an erroneous or illegal tax there must be proof that the tax levied and collected was without statutory authority, or it was levied upon a property not subject to tax, or it was levied by some officer having no authority to levy the tax, or it is a tax which is in some other similar respect is illegal. Tax refunds are construed strictly against the taxpayer. **(Page 59)**

- The CIR cannot circumnavigate the three-year prescriptive period in the guise that it is merely collecting penalties and not internal revenue taxes. The assessment being issued beyond the three-year prescriptive period under Section 203 of the Tax Code, and not otherwise falling under the exception provided in Section 222, the Court of Tax Appeals could only deem that the subject assessment is void. **(Page 60)**

- A claim for tax refund necessitates only the preponderance of evidence threshold. Once the requirements laid down by laws have been met, a claimant should be considered successful in discharging its burden of proving its right to refund. **(Page 62)**

- The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims. More importantly, it must be emphasized that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory. **(Page 63)**

- According to the Renewable Energy Act of 2008 and Section 108(B)(7) of the NIRC of 1997, as amended, a RE Developer's sale of power or fuel generated through renewable sources, such as geothermal energy, is subject to zero percent (0%) VAT. In relation thereto, Part III, Rule 5 of the Implementing Rules and Regulations of the Renewable Energy Act of 2008 states the condition for the availment of incentives and other privileges under the said law. Section 18(A), (B), and (C) indicates the mandatory submission of the following documents in order to qualify for VAT zero-rating: (1) Department of Energy (DOE) Certificate of Registration; (2) Registration with the Board of Investment (BOI); and (3) Certificate of Endorsement by the DOE. **(Page 65)**

- Sections 113(A)(1), (B)(1), (2)(c), and (3) of the Tax Code, as implemented by Sections 4.113-1(A)(1), B(1), and (2)(c) of Revenue Regulations (RR) No. 16-05, as amended, provide that any VAT registered person claiming VAT zero-rated direct or considered export sales must present, among others, the following documents: (a) The sales invoice as proof of sale of goods; and (b) The bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country. Moreover, the sales invoices supporting the export sales must be duly registered with the BIR and contain all the required information, pursuant to Sections 237 and 238 of the Tax Code. Thus, only export sales supported by above-stated documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the Tax Code. **(Page 67)**

- In order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both a Certification of Non-Registration of Corporation/ Partnership issued by the Philippine Securities and Exchange Commission (SEC), and proof of incorporation/registration in a foreign country (e.g., Articles I Certificate of Incorporation/ Registration and/ or Tax Residence Certificate). As a corollary, there must be no other indication which would disqualify said entity from-being classified as a non-resident foreign corporation. The Philippine SEC's Certification of Non-Registration of Corporation establishes that the recipient of the service has no registered business in the Philippines, and that it is not engaged in trade or business within the Philippines; while the articles of incorporation/ association will prove that the said recipient of the service is indeed foreign. **(Page 70)**

- The following requisites must be satisfied before the sale of services under the said provision may be considered as VAT zero-rated: (a) Services other than processing, manufacturing or repacking of goods rendered by VAT registered persons in the Philippines; (b) The transaction paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations; and (c) The recipient of such services must be performing business outside the Philippines. **(Page 72)**

- There is nothing in Section 112 (A) of the Tax Code, and applicable jurisprudence which require that the input taxes subject of a claim for refund be directly attributable to zero-rated sales or effectively zero-rated sales. Input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfy the requirement of the law. **(Page 73)**

- In a claim for refund, the law merely states that the creditable input VAT should be attributable to the zero-rated or effectively zero-rated sales. The use of the phrase "directly attributable" relates to a situation where the creditable input VAT cannot be directly attributed to any transaction, but does not qualify the preceding sentences of Section 112(A) of the Tax Code, in such a way as to make the refundable input VAT only those which are directly attributable to zero-rated or effectively zero-rated sales. Input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law. **(Page 75)**

- With the laws and jurisprudence unequivocal in the view that an assessment without observance of the due process requirements is a patent nullity. **(Page 76)**

- The Government of the Republic of the Philippines, as signatory to the ADB Charter Agreement and the ADB Headquarters Agreement, retained its right to tax the salaries and emoluments of Filipino ADB employees. **(Page 77)**

- Section 148(e) of the Tax Code does not qualify whether the items subject to excise tax is a primary or secondary product of distillation. Alkylate (a product that qualifies as one similar to naphtha) is subject to excise tax under Section 148(e) in relation to Section 129 of the Tax Code. **(Page 78)**

- The Tax Code does not provide that the input tax needs to be directly attributable or a factor in the chain of production to the zero-rated sale for it to be creditable or refundable. **(Page 79)**

- Section 112 of the Tax Code does not require absolute direct attribution of purchases (the input VAT of which is subject of a refund/TCC claim) to zero-rated sales. **(Page 80)**

- A taxpayer's failure to submit the requirements listed under RMO No. 53-98 is not fatal to its claim for tax refund/credit. RMO No. 53-98 is merely a guide to revenue officers as to what documents they may require taxpayers to present upon audit of their tax liabilities. **(Page 81)**

Distribution of Property Dividends

- Since dividends are distributions from unrestricted earnings arising from the capital invested in the corporation, they cannot be considered donations made out of the liberality of the corporation. **(Page 82)**

Proper Document to prove imposition of VAT

- The proper document to prove the imposition of VAT in every sale of goods is a VAT invoice while a VAT official receipt is the appropriate VATable document for lease of goods and sale of service. These documents may not be interchanged with one another alternatively to prove the imposition of VAT in a transaction where the other is the correct VATable document. **(Page 83)**

Local Business Tax

- Section 133(j) of the Local Government Code (LGC) is a specific provision that explicitly withholds from any Local Government Unit (LGU) the power to tax the gross receipts of transportation contractors, persons engaged in the transportation of passengers or freight by hire, and common carriers by air, land, or water. **(Page 85)**

BIR Administrative Requirements

RMC No. 79-2020 provides the guidelines for the filing of various returns and payment of the tax due thereon by taxpayers under the jurisdiction of the NCR, Bulacan, Cavite, Laguna, and Rizal during the period of MECQ, for the period of 4 to 18 August 2020.

Revenue Memorandum Circular No. 79-2020 issued on 5 August 2020

- All concerned taxpayers duly registered under the jurisdiction of Revenue District Office (RDO) Nos. 24 to 34, and RDO Nos. 38 to 54B may:

    1. File the tax return and pay the internal revenue taxes at the nearest Authorized Agent Banks (AABs), notwithstanding RDO jurisdiction;

    2. File the tax return and pay the corresponding tax due thereon to the concerned Revenue Collection Officers (RCOs) of the nearest RDO even in areas where there are AABs. Provided:

        - That the payment of internal revenue taxes in cash should not exceed Twenty Thousand Pesos (P20,000.00);

        - That those for check payment will have no limitation if the same is made with the RCO in the district office. Provided further, that all check payments shall be made payable to the Bureau of Internal Revenue (with or without "Name and TIN of the taxpayer" written on the check as previously required) and that the name and branch of the receiving AAB may no longer be indicated therein.

    3. For taxpayers enrolled in the Electronic Filing and Payment System (eFPS), they shall continue to settle their tax liabilities with the AAB where the taxpayer is enrolled. Those who will file through the eBIRForms Facility whether mandated or not mandated, may use the following payment options:

        - Development Bank of the Philippines' (DBP) Pay Tax Online (for holders of Visa/Mastercard Credit Card and/or BancNet ATM/Debit Card);

        - LandBank of the Philippines (LBP) Link.biz Portal (for taxpayers who have an ATM account with LBP and/or holders of BancNet ATM/Debit/ Prepaid Cards and taxpayers utilizing the PesoNet facility for depositors of RCBC, Robinson's Bank and Union Bank);

        - Union Bank Online Web and Mobile Payment Facility (for taxpayer who have an account with Union Bank of the Philippines); or

        - Mobile Payment (GCash/PayMaya)

        Taxpayers who will avail of the electronic payment (ePay) may access the abovementioned ePay facilities through the BIR website by clicking the "ePay" icon from which the user shall be directed to the ePayment icons. The taxpayer may also directly access the following AAB links:

        - LBP – www.lbp-eservices.com/egps/portal/index.jsp
        - DBP – www.dbppaytax.com
        - Union Bank – online.unionbankph.com

Taxpayers enrolled in eFPS may manually file and pay the corresponding tax due thereon through the above-mentioned payment venues should they experience difficulties in using the eFPS.

- This Circular shall take effect immediately until the MECQ has been lifted and the General Community Quarantine (GCQ) has been placed in the NCR, Bulacan, Cavite, Laguna, and Rizal.

RMC No. 82-2020 prescribes the guidelines on the use of the eAFS System for the submission of attachments to the ITRs of taxpayers with fiscal-year accounting period and in the submission of attachments to the quarterly ITRs.

Revenue Memorandum Circular No. 82-2020 issued on 11 August 2020

- All concerned taxpayers availing of the eAFS system, whether or not registered under the Large Taxpayers Service, shall scan the required documents and comply with the following procedures:

1. For submission of attachments to ITRs of taxpayers adopting the fiscal-year period, the three categories for each group of scanned documents for manually and electronically filed documents prescribed under the provisions of Item II of RMC No. 49-2020 shall still be observed, except for the naming convention of files as follows:

   - File 1 – Income Tax Return: EAFSXXXXXXXXXITRTYMMYYY
   - File 2 – Audited Financial Statements: EAFSXXXXXXXXXAFSTYMMYYY
   - File 3 – Other Attachments: EAFSXXXXXXXXXOTHTYMMYYY-01

   Where : XXXXXXXXX is the 9-digit TIN number
   : TY is the Taxable Year to identify it as annual submission regardless if Fiscal or Calendar year submission
   : MM is the month end of the taxable year
   : YYYY is the year ended
   : 01 is the first file of other attachments, up to 99 (applicable for File 3 – Other Attachments)

2. For submission of attachments to the quarterly ITRs, the following documents shall be scanned and classified with the corresponding naming conventions of the files:

Document Group and Filename	Manually Filed	Electronically Filed
File 1: EAFSXXXXXXXXX#QMMYYY	Quarterly ITR (BIR Form No. 1701Q or No. 1702Q)	Filing Reference Number/Email Notification
File 3: EAFSXXXXXXXXXOTH#QMMYYY-01 In case of additional file: EAFSXXXXXXXXXOTH#QMMYYY-02 File size should not exceed 4.8 GB	▸ Emailed confirmation receipt of the SAWT in the eSubmission Facility ▸ BIR Form No. 2307 ▸ Tax Debit Memo ▸ Others	▸ Emailed confirmation receipt of the SAWT in the eSubmission Facility ▸ BIR Form No. 2307 ▸ Tax Debit memo ▸ Others

Where : XXXXXXXXX – 9-digit TIN
: # - taxable quarter covered by the attachments
: MM – calendar month ending of the taxable quarter
: YYYY – taxable year covered by the attachments
: 01 – 1st file of the attachments
: 02 – 2nd file of the attachments

- Taxpayers shall keep the original copies of the digitally submitted documents in accordance with Section 203 of the NIRC for the period as prescribed under Revenue Regulations No. 17-2013. Provided that the same shall be presented, upon request, to the BIR.

RMC No. 83-2020 circularizes the tax implications of measures being implemented to prevent the spread of COVID-19 on Cross-Border Matters.

Revenue Memorandum Circular No. 83-2020 issued on 17 August 2020

- This Circular was issued to clarify many international tax issues related to cross-border workers or individuals who are stranded or quarantined in a country that is not their country of residence, and to the unintended creation of permanent establishment (PE) of foreign enterprises as a consequence of the extended stay of their employees in the Philippines and determine impact on the application of the relevant treaty provisions and, ultimately, on the allocation of rights between treaty partners.

- This Circular provides guidelines in addressing the issues and concerns of taxpayers, especially the unplanned tax implications and potential new burdens, arising from the effects of COVID-19.

- For Income from Employment and Special Tax Residency Rules, it provides that:

  Under the effective tax treaties of the Philippines with other countries, the residence State has an exclusive right to tax the employment income derived by its resident taxpayers, except when the employment is exercised in another Contracting State, in which case, the latter State may tax the employment income subject to the provision of relief by the former State.

  However, even if employment is exercised in the Philippines, the employment income will not be subject to tax in the Philippines if the following conditions concur:

  a. The employee has not been present in the Philippines for more than 183 days (more than 120 days for residents of Poland; at least 90 days for residents of the United States of America) in aggregate in the year of income, fiscal year, calendar year, or any twelve-month period, depending on the applicable DTA;

  b. His/her remuneration is paid to him/her by, or on behalf of, an employer that is not a resident of the Philippines; and

  c. His/her remuneration is not deductible against the profits of a permanent establishment which the foreign employer has in the Philippines.

Conversely, the Philippines may tax the employment income of an individual who is a resident of another contracting state only if any of the following three tests is met:

a. The employee is present for more than 183 days (more than 120 days for residents of Poland; at least 90 days for residents of the United States of America) in the Philippines; or

b. The employer is a resident of the Philippines; or

c. A non-resident employer has a permanent establishment in the Philippines which bears the remuneration.

Due to the continuing implementation of measures to prevent COVID-19, treaty provisions will not be strictly applied to mitigate potential tax burdens related to compliance with certain reporting and filing obligations, and the satisfaction of tax-related conditions.

Thus, where an individual is prevented from leaving the Philippines on his or her scheduled day of departure as a result of the travel restrictions imposed by the government as a safety measure to contain COVID19, the individual will not be regarded as being present in the Philippines for tax residence purposes for the period after the scheduled day of departure. The BIR will consider this as "force majeure" for the purpose of establishing such individual's tax residence, provided that he or she leaves the Philippines as soon as the circumstances would permit, such as when the travel restrictions and/or quarantine measures have been lifted.

Whether a taxpayer is a resident for tax purposes in the Philippines is a question of fact that requires consideration of all surrounding circumstances. Each case will be assessed and evaluated independently based on factual and unaltered evidence.

- This Circular also provided guidelines for the inadvertent creation of PE. Pursuant to the OECD, for a permanent establishment (PE) to exist, there must be a place of business with some degree of permanency (not merely temporary or transitory), and through which the business of an enterprise is wholly or partly carried on.

    1. The words "through which" must be given a wide meaning so as to apply to any situation where business activities are carried on at a particular location that is at the disposal of the enterprise for that purpose.

    2. Whether a location may be considered to be at the disposal of an enterprise in such a way that it may constitute a "place of business through which the business of that enterprise is wholly or partly carried on" will depend on that enterprise having the effective power to use that location as well as the extent of the presence of the enterprise at that location and the activities that it performs there.

    3. Hence, for Home Office PE, the BIR is of the view that working from home would not create a PE of the foreign enterprise in the Philippines because the conduct of business activities thereat lacks a certain degree of permanency and the home office is not at the disposal of the foreign enterprise. The intermittent conduct of business of the foreign enterprise at the home office of its employees in the Philippines due to COVID-19 will not, in any way, make such home office a location at the disposal of the enterprise.

4. If, however, the home office is used on a continuous basis for carrying on the business activities of the foreign enterprise even after the COVID-19 crisis, and it is clear from the facts and circumstances that the enterprise has required the individual to use that location to carry on its business, the home office may be considered to be at the disposal of the enterprise.

5. For Construction PE, a site should not be regarded as ceasing to exist when work is temporarily discontinued. Therefore, temporary interruptions of construction activities due to the COVID-19 pandemic should be included in computing the duration of a site and in determining whether such construction site constitutes a PE.

6. For a "dependent agent PE" to apply, the following conditions must be met:

    - A person acts in a Contracting State on behalf of an enterprise;

    - That person habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise. It must be established that the presence of a foreign enterprise in the Philippines is not merely transitory; and

    - These contracts are either in the name of the enterprise or for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or for the provision of services by that enterprise.

7. Thus, where an employee, partner or agent of a non-resident foreign corporation continues to be present in the Philippines and that presence is shown to result from travel restrictions related to COVID-19, the BIR shall disregard such presence in the Philippines for Income Tax purposes for the company on whose behalf the employee, partner or agent has been acting. In other words, the extended period of stay of the employee, partner or agent shall not be considered in counting the taxable presence of the non-resident foreign corporation in the Philippines.

8. In sum, the effects of COVID-19 will not result in the creation of a PE if the following requirements are met:

    - The non-resident foreign company did not have a permanent establishment in the Philippines before the effects of COVID-19;

    - There are no other changes in the company's circumstances save for the extended stay of its employee, partner or agent in the Philippines because of travel restrictions; and

    - The employee, partner or agent should leave the country as soon as the circumstances would permit.

9. A different approach will be applied, however, if the employee, partner or agent was habitually concluding contracts on behalf of enterprise in the Philippines before the COVID19 crisis.

10. In all cases where restrictions imposed by COVID-19 affect the applicability of Philippine tax laws and tax treaties on a taxpayer's tax position, records shall be maintained outlining the circumstances and submitted to the BIR in support of the taxpayer's application for relief from double taxation.

- The Circular also provided for the documentary requirements to prove the extended presence in the Philippines was due to COVID-related travel restrictions. The concerned individual or company shall submit to the satisfaction of the BIR relevant documents, including but not limited to:

    1. Authenticated sworn certification stating the relevant facts and circumstances of the bona fide presence of the employee in the Philippines;

    2. Duly executed contract/s (must be consularized or apostillized if executed/signed in a foreign country);

    3. Certified true copy of the confirmed booking or flight itinerary for the original flight;

    4. Certified true copy of the confirmed booking or flight itinerary for the re-booked flight;

    5. Certified copy of the travel advisory on the cancellation of flight issued by the airline company;

    6. Certified true copy of boarding pass;

    7. Certified true copy of the employee's passport, including blank pages thereof; and

    8. Other documents that the BIR shall deem necessary depending on the circumstances.

- This Circular shall take effect immediately

RMO No. 26-2020 prescribes the use of the Revised EOI Manual, amending for this purpose RMO Nos. 2-2013 and 3-2013.

RMO No. 26-2020 issued on 11 August 2020

- The revised EOI Working Manual now contains the streamlined internal processes related to incoming, outgoing, and spontaneous EOI requests.

- The EOI Working Manual is effected to implement the international standards of transparency and effective exchange of information between contracting states and agencies within it to combat tax avoidance and evasion pursuant to existing Double Taxation Agreements (DTAs), Tax Information Exchange Agreements (TIEAs), the Multilateral Convention on Mutual Administrative Assistance on Tax Matters (MAC), and other related instruments or agreements.

- The EOI ensures the proper allocation of taxing rights between contracting states, the payment of taxes legally and justly due them and provides means for the administrations to uncover tax avoidance and evasion schemes employed by taxpayers.

- The ultimate objective of the EOI is to establish that there are no more safe havens for those who intend to hide their assets and income.

- The EOI Unit of the BIR-International Tax Affairs Division (ITAD) is responsible for carrying out exchanges of information with foreign tax administrations.

- In addressing requests for EOI, the EOI Unit shall seek assistance from the Revenue District Offices (RDOs), the Large Taxpayer Service (LTS) and other relevant offices, the local banks and other financial institutions, other government agencies, and third-party information holders.

- For outgoing EOI requests, Revenue Officers are encouraged to request for information from foreign tax administrations through the EOI Unit. The Revenue Officers should not exchange information directly with foreign jurisdictions as this would be a breach to the DTAs.

- The notable differences in the manual are as follows:

    1. The following officials are now allowed to sign EOI documents on behalf of the Commissioner pursuant to Revenue Delegation Authority Order (RDAO) Nos. 2- 2019 and 3-2020:

EOI Document	Signatory
Acknowledgment letter to foreign tax authority	Division Chief, ITAD
Letter to Government Agencies	ACIR, Legal Service
Letter to BIR Offices	
Partial Reply to Foreign Tax Authority	
Final Reply to Foreign Tax Authority	
Letter to Banks and Other Financial Institution	DCIR, Legal Group

    2. The Request for information may relate to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the exchange of information provision of the relevant tax treaty.

    3. Since the Philippines cannot dispense with the post-exchange notification requirement, the provisions of RR No. 22-2018 are included in the Manual, which mandates the that the taxpayer be notified only after receipt of communication from the requesting jurisdiction that the investigation has already attained finality in cases where:

        - The notification is likely to undermine the chance of success in the investigation conducted by the requesting jurisdiction; and

        - The requesting jurisdiction has sustained its request for a deferment of the notification based on these grounds.

    4. The group request as a manner of initiating an EOI request is also included.

    5. The requested office or taxpayer shall be given a shorter period (usually 30 days) within which to provide the information, subject to extension which shall not exceed 30 days.

RMO No. 27-2020 prescribes the BIR DX Roadmap for 2020-2030.

RMO No. 27-2020 issued on 13 August 2020

- The RMO enumerates the programs, outcomes and corresponding timeline that will help the BIR in carrying out its mission to improve revenue collections to fund the national government programs and initiatives under the 10-point Socio Economic Agenda.

- The BIR DX Roadmap for CY 2020-2030 contains the BIR DX Vision 2030, the DX Strategy Theme with Outcomes, and the Project Timeline to be implemented per DX Phase, to wit:

    1. Phase 1 (2020-2030): Build the DX Foundation -Engage and build the DX culture within the BIR in streamlining current taxpayer services:

        - Theme 1: People first and elevated taxpayer experience (2020-2021)

        - Theme 2: Anytime, Anywhere Taxpayer Service (2022-2023)

    2. Phase 2 (2024-2030): Strengthen DX in BIR- Leverage on data and digital technology within BIR for better taxpayer services:

        - Theme 3: Strengthening the BIR Digital Organization and Infrastructure (2024-2026)

        - Theme 4: Leveraging taxpayer data for managing tax services (2027-2030)

- The BIR DX Roadmap Phases shall be composed of four major programs with corresponding initiatives, as follows:

    1. Innovating TP experience with BIR service processes to elevate taxpayer experience and innovate BIR processes;

    2. Enhancing administrative and support services of the BIR for driving efficiency on BIR internal processes;

    3. Aligning policies to a BIR digital workplace for reformulating BIR policies and national Internal Revenue Code to enable DX in BIR; and

    4. Enabling the digital backbone of the BIR to adopt and integrate digital technology in BIR.

- The Offices concerned shall ensure that all other programs, projects and activities to be undertaken are aligned with the BIR DX Roadmap 2020-2030.

- The programs and initiatives under BIR DX Roadmap for CY 2020-2030 shall be reviewed annually and or updated as the need arises.

Other BIR Issuances

RMC No. 80 -2020 the Revenue District Offices covered by RMC 79-2020.

Revenue Memorandum Circular No. 80-2020 issued on 6 August 2020

- This Circular was issued to amend the second paragraph of RMC No. 79-2020 to read as follows:

    "All concerned taxpayers duly registered under the jurisdiction of Revenue District Office Nos. 24-34; 38 to 57; may."

RR No. 20-2020 amends certain provisions of RR No. 6-2013 in relation to RR No. 06-2008 (Consolidated Regulations Prescribing the Rules on the Taxation of Sale, Barter, Exchange or Other Disposition of Shares of Stock held as Capital Assets) relative to the imposition of tax for the sale, barter, exchange or other disposition of shares of stock not traded through the local stock exchange.

RR No. 20-2020 issued on 17 August 2020

- The prima facie fair market value of shares of stock not listed and traded in the local stock exchanges has been amended, and shall be determined by the following rules:

    1. For common shares, the fair market value is the book value based on the latest available financial statements duly certified by an independent public accountant prior to the date of sale, but not earlier than the immediately preceding taxable year.

    2. For preferred shares, the fair market value is the liquidation value, which is equal to the redemption price of the preferred shares as of balance sheet date nearest to the transaction date, including any premium and cumulative preferred dividends in arrears.

    3. In case there are both common and preferred shares, the book value per common share is computed by deducting the liquidation value of the preferred shares from the total equity of the corporation and dividing the result by the number of outstanding common shares as of balance sheet date nearest to the transaction date.

    4. The book value of the common shares of stock or the liquidation value of the preferred shares of stock need not be adjusted to include any appraisal surplus from any property of the corporation not reflected or included in the latest audited financial statements, in order to determine the fair market value of the shares of stock. The latest audited financial statements shall be sufficient in determining the fair market value of the shares of stock subject of the sale, barter, exchange, or other disposition.

- These regulations shall be effective after 15 days following its publication in the Official Gazette or in a newspaper of general circulation.

(Editor's Note: The RR was published in Malaya Business Insight*, p. A2, on 19 August 2020, and took effect on 03 September 2020)*

Banks and Other Financial Institutions

Consumer Assistance Management System with Chatbot Functionality

Memorandum No. M-2020-059 launches the CAMS with CAMS Chatbot of the Consumer Empowerment Group of the BSP.

BSP Memorandum No. M-2020-059 dated 27 July 2020

- The CAMS Chatbot will allow financial consumers to escalate concerns against any BSP-Supervised Financial Institution (BSFIs) in natural languages (English, Tagalog and Taglish) through webchat, Facebook messenger, and SMS.

- Upon its full implementation, all correspondences will automatically be processed through the system's document tracking system which will record and keep an inventory of said correspondences without delay.

- CAMS Chatbot's name: BOB (short for BSP Online Buddy).

- Pilot Test Phase: 4th week of July 2020. The Pilot Test Phase shall automatically start upon BSP's issuance of an announcement on the same.

- Official Launch: One week after end of Pilot Test Phase.

Electronic Submission of the Annual Report and Audited Financial Statements

Memorandum No. M-2020-060 provides for guidelines for electronic submission of ARs and AFS.

BSP Memorandum No. M-2020-060 dated 05 August 2020

- The following BSFIs shall electronically transmit (in Portable Document Format -PDF) the AR and AFS (as applicable) beginning with the 2019 AR and AFS to the Department of Supervisory Analytics (DSA):

  1. Non-Banks with Quasi-Banking Functions (NBQBs)
  2. Non-Stock Savings and Loan Associations except those with total resources of Php10 million or less
  3. Trust Corporations (TCs)
  4. Non-Bank Financial Institutions w/o Quasi-Banking Functions
  5. Electronic Money Issuers
  6. Virtual Currency Exchanges
  7. Pawnshops which were issued Type C or Type D license
  8. All Money Service Business (MSB): except Type F which are small scale operator/money changer/foreign exchange dealers with average monthly volume of transactions of less than Php50 million and total capital of less than Php10 million.

- The above-listed BSFIs shall comply with the following prescribed guidelines:

Type of Institution	E-mail Address	Report Title	File name
Non-Banks with Quasi-Banking Functions	dsanbqb-ar@bsp.gov.ph	1. Annual Report of Management to Stockholders covering Results of Operations for the Past Year 2. Annual Reports Assessment Checklist (ARAC)	AR ARAC
Trust Corporations	dsatc-ar@bsp.gov.ph	Annual Report of Management to Stockholders covering Results of Operations for the Past Year	AR
Non-Banks with Quasi-Banking Functions	dsanbqb-afs@bsp.gov.ph	1. Audited Financial Statements 2. Certification of the External Auditor 3. Reconciliation Statement including adjusting entries, if any 4. Letter of Comments (LOC) Or Certification by the External Auditor that there are no issues noted in the course of audit to warrant the submission of LOC 5. Copy of the Board Resolutions on action(s) taken by the covered institutions on AFS and LOC, if any 6. Certification by the external auditor of none to report on matters adversely affecting the condition or soundness of the covered institution	AFS-basis AFS-Cert-basis AFS-Recon-basis AFS-LOC-basis or AFS-NLC-basis AFS-BMR-basis AFS-NCS-basis
Non-Stock Savings and Loan Associations	dsanssla-afs@bsp.gov.ph		
Trust Corporations	dsatc-afs@bsp.gov.ph		
Non-Bank Financial Institutions w/o Quasi-Banking Functions	dsanbfi-afs@bsp.gov.ph		
Electronic Money Issuers	dsaemi-afs@bsp.gov.ph		
Virtual Currency Exchanges	dsavce-afs@bsp.gov.ph		
Pawnshops	dsapawnshop-afs@bsp.gov.ph		
Money Services Businesses	dsamsb-afs@bsp.gov.ph		

- Prescribed Format:

  1. For AR: AR<space><BSFI Name>,<space><Reference period in dd Month yyyy>

  2. For AFS: AFS<space><BSFI Name>,<space><Reference period in dd Month yyyy>

- BSFIs shall only use e-mail addresses officially registered with the BSP.
- Banks that are unable to electronically transmit the AR and AFS may use any portable storage device (e.g. USB flash drive) and submit the same to the DSA office within the prescribed deadline
- For AFS submission, only the six required files as described in the abovementioned table shall be submitted.
- The following may result in erroneous or failed submissions, among others:

    1. Failure to use the prescribed filenames;
    2. Failure to use the correct file format;
    3. Failure to use the prescribed subject line or reporting date;
    4. Failure to use an officially registered e-mail address;
    5. Transmitting to the wrong e-mail address; and
    6. Attachments that do not contain the exact number of files.

- Report submissions that do not conform with the above prescribed guidelines shall not be accepted and will be considered non-compliant with the BSP reporting requirements.

Measurement of Expected Credit Losses and the Treatment of Regulatory Relief Measures Granted Amid the Novel Coronavirus Disease 2019 (COVID-19) Pandemic

Memorandum No. M-2020-061 publishes MB Resolution No. 967 dated 30 July 2020 approving the supervisory expectations on the measurement of ECL and the treatment of regulatory relief measures granted amid the COVID-19 Pandemic.

BSP Memorandum No. M-2020-061 dated 03 August 2020

- Treatment of relief measures for purposes of determining the ECL are as follows:

Relief Measure	Treatment
Mandatory 30 day-grace period under the "Bayanihan To Heal As One Act"	Should not be considered as an indicator of significant increase in credit risk and should not trigger migration of the loan accounts to Stage 2 and Stage 3 provisioning. Excluded in the count of number of days of missed payment of the loan. Non-payment of during the mandatory grace period should not lead to the classification of the loan as non-performing.
Granted by BSFIs	Payment loan extensions (e.g. payment holidays, loan payment deferrals) should not automatically be considered as indicator of significant increase in credit risk. Term extension should not automatically be considered as an indicator of significant increase in credit risk if the borrowers continue to exhibit capacity to repay. Term extension granted to borrowers who manifest financial difficulty warrants migration of the accounts to Stage 2 and Stage 3 provisioning. These shall be considered as *restructured loans*.

Relief Measure	Treatment
Government Guarantees (including those extended by Agricultural Guarantee Fund Pool, Agricultural Credit Policy and Philippine Guarantee Corporation)	Risk-free exposures.
Granted by BSP	BSFIs that will avail of the regulatory relief measures to exclude eligible loans from past due and non- performing classifications and to stagger the booking of allowance for credit losses shall continue to report actual past due and non-performing loans and allowance for credit losses in the Financial Reporting Package (FRP) and the Capital Adequacy Ratio (CAR) reports.

The BSP, in Memorandum No. M-2020-062, reminds BSFIs to ensure continuous availability of financial services to the general public, particularly:

Availability of Financial Services During the Modified Enhanced Community Quarantine (MECQ) Period

- Basic cash services in ATM terminals.
- Monitoring of operational issues such as cybersecurity, 3rd party service provider issues, and customer complaints.

Memorandum No. M-2020-063 provides for guidelines on the resumption of submission of reports to the BSP-FSS.

Resumption of Submission of Reports to the BSP-Financial Supervision Sector (BSP-FSS)

Type of Report	Original Due Date	Adjusted Due Date
Level 1 Reports	March 2020 to September 2020 and with deadlines until 31 August 2020	To be submitted in tranches per schedule provided under Annex A of M-2020-063
Level 2 Reports	March 2020 to November 2020	on or before 31 December 2020
Transactional Reports	March 2020 to August 2020	on or before 30 November 2020

- The BSP orders BFSIs without transactions or exposure to submit a Certificate and a list evidencing the absence of transactions/exposure from the President or the President's designated officer declaring absence of affected Level 2 transaction transaction/exposure due within March to December 2020.
- The BSP maintains electronic as the mode of submission with reference to the guidelines prescribed in Memorandum No. M-2020-007.
- The BSP waives the notarization requirement concerning the submission of a Certificate.

Bank Assets as Underlying Collateral for Rediscounting

Memorandum No. M-2020-064 publishes the guidelines on the use of bank assets (real property in the name of the Bank) as underlying collateral for the rediscounting of unsecured loans with the BSP Procedures:

BSP Memorandum No. M-2020-064 dated 17 August 2020

- Banks intending to use bank assets as underlying collateral for the rediscounting of unsecured loans shall submit a Letter of Intent signed by the president or its equivalent rank, to the Department of Loans and Credit of the BSP;
- Banks shall be required to accomplish and to submit the deed of real estate mortgage (REM) in favor of the BSP and the corresponding OCT/TCT/CCT with the register of deeds (RD) for annotation.
- Temporary measures allowed for the duration of the quarantine:

    1. The Bank shall submit an undertaking to cause the registration of the REM on the real property in the name of the Bank within a reasonable time as determined by DLC. Failure of the Bank to register within the said period will cause the related loan to become due and demandable; and

    2. Acceptance of the latest available appraisal report on the real property, either by the Bank's internal appraiser, or an independent appraiser, but prepared not more than 3 years ago, for purposes of determining the value of the real property in the name of the Bank which will serve as basis in determining the loanable amount, subject to review by licensed appraisers of the DLC.

"Complex" Non-stock Savings and Loan Associations

Memorandum No. M-2020-065 provides for guidelines on the classification of NSSLAs as a "Complex" NSSLA, contained in Circular Nos. 1016 dated 05 October 2018 and 1046 dated 29 August 2019.

BSP Memorandum No. M-2020-065 dated 18 August 2020

Complex NSSLAs shall refer to institutions declared by the BSP as such with total assets of at least P5 billion and having at least any one of the following characteristics:

- With extensive membership base such as those whose membership includes employees or retirees of two or more companies/agencies/institutions, and/or their relatives;
- With serious issue(s) on the 'well-defined group" requirement under R.A. no. 8367 (revised NSSLA Act of 1997); or
- With non-conventional business model, such as those using non-traditional delivery platform like electronic platforms and agents.

SMS-based Attacks

Memorandum No. M-2020-065 provides for guidelines against the increasing Short Message Service or SMS-based attacks targeting BSFI customers as the industry shifts to digital payments and financial services.

BSP Memorandum No. M-2020-066 dated 19 August 2020

- BSP's ongoing cyberthreat surveillance shows two predominant types of attacks carried out through the SMS system:

    1. SMiShing – a form of phishing activity where fraudsters trick users to click or download a malicious link or acquire information such as passwords and/or one-time PINs (OTP) through SMS.

2. SMS spoofing – the SMS sender ID is altered so that the message appears to be coming from a financial institution or entity. This is normally executed in combination with SMiShing.

- The BSP advises BSFIs to revisit multi-factor authentication (MFA) controls implementation, adopt multi-layer controls and act immediately on customers' verification requests and complaints to minimize financial losses.

Reduction in Reserve Requirements

Circular No. 1092 publishes Resolution No. 423 dated 23 March 2020 approving a reduction of 100 basis points in the RR ratios of deposit and deposit substitute liabilities of the TBs, RBs and Coop banks.

BSP Circular No. 1092 dated 27 July 2020

- Section 251 of the MORB, as amended, provides that the rates of required reserves against deposit and deposit substitute liabilities in local currency of banks effective reserve week 31 July 2020 shall be, as follows:

Reservable Liabilities	UBs/ KBs	TBs	RBs/Coop Banks
a. Demand Deposits	12%	3%	2%
b. NOW accounts	12%	3%	2%
c. Savings Deposits (excluding basic deposit accounts)	12%	3%	2%
d. Time Deposits, Negotiable CTDs, Long-term Non-negotiable Tax Exempt CTDs	12%	3%	2%
e. xxx	xxx	xxx	xxx
f. Deposit Substitutes (DS)	12%	3%	NA
xxx	xxx	xxx	xxx

Real Estate Limits of Banks

Circular No. 1093 publishes Resolution No. 1025 dated 13 August 2020 amending Section 363-A and Section 363-B of the MORB on the real estate limits of UBs/KBs and TBs, respectively.

BSP Circular No. 1093 dated 20 August 2020

- The total real estate loans limit of UBs/KBs shall now be twenty five percent (25%) of the total loan portfolio, net of interbank loans.

- Prudential limits on other real estate property for UBs/KBs and TBs shall be removed.

- Real estate exposures on real estate loans of UBs/KBs and TBs shall exclude residential real estate loans granted to individual households for occupancy.

- A UB/KB, including its subsidiary TB, which does not meet either or both the Real Estate Stress Test (REST) Limits shall incorporate assessment of risks from this exposure in its Internal Capital Adequacy Assessment Process (ICAAP); while a TB that is not a subsidiary shall incorporate the same in its capital planning process.

Board of Investments

The BOI prescribes the adjustment of deadlines for the filing of incentives applications and/or submissions of reports with the Incentives Administration Service, in view of the MECQ imposed in Metro Manila from 4 August to 18 August 2020.

BOI Notice dated 7 August 2020

- The following deadlines are adjusted as follows:

INCENTIVE / REPORT	PRESCRIBED DEADLINE	ADJUSTMENT/ EXTENSION
Income Tax Holiday: a) New applications b) Applications that were provisionally accepted on 14 July 2020	 Within 30 days from filing of ITR with the BIR On or before 14 August 2020	 Within 15 days from the lifting of the MECQ if the deadline falls within MECQ On or before 14 September 2020
Tax & Duty Exemption on Imported Spare Parts & Supplies under Art. 39(l)	Within 15 days from date of transfer of shipment to bonded warehouse	Within 15 days from the lifting of MECQ if the deadline falls within the MECQ
Conversion of Probationary to Indefinite Special Investor's Resident Visa (SIRV)	Within 6 months from grant of Probationary SIRV	Within 15 days from the lifting of MECQ if the deadline falls within the MECQ
Annual Report for SIRV holders	On or before expiration of SIRV ID	Within 15 days from the lifting of MECQ if the deadline falls within the MECQ

- For the following incentives and other requests with no prescribed deadlines, acceptance and processing of applications would continue within the MECQ period:

1. Duty/Tax Exemption on Imported Capital Equipment under E.O. 85, R.A. 9513, and R.A. 8479;
2. Unrestricted Use of Consigned Equipment;
3. Employment of Foreign Nationals (47(a)2 Visa);
4. New Probationary SIRV and other related requests (e.g. SIRV ID renewal, certifications, etc.);
5. Endorsement for VAT-zero Rating; and
6. Garments and Textile Import Services (i.e. BMW License Renewal, CBMW Membership Accreditation, Accreditation and Registration of Subcontractors).

PEZA

Due to the expiration of PEZA's lease contract with the PNOC complex on 31 August 2020, PEZA management decided to temporarily transfer their head office location at 10F, DoubleDragon Center West Building, DD Meridian Park, Macapagal Avenue, Pasay city.

PEZA Head Office Transfers to DoubleDragon Building in Pasay City

- PEZA will temporarily lease office spaces at the 8th, 9th and 10th floor of DoubleDragon Center.
- The head office telephone landlines will not be changed.
- The formal opening of the PEZA's head office will be on 28 September 2020.

PEZA MC No. 40 extends the validity of PEZA MC No. 2020-11 on work from home operations until 31 August 2020.

PEZA MC No. 40 Series of 2020 dated 31 July 2020

- PEZA-registered Ecozone Information Technology (I.T.) Enterprises which have implemented or will implement the movement of their equipment and other assets and assignment of personnel from their PEZA-registered I.T. Center/ Building locations to Work from Home operations or to non-PEZA registered sites up to 31 August 2020 shall submit to PEZA the required documents provided in PEZA MC No. 2020-11 not later than 31 August 2020 including the required Bond. The required period for submission of required documents after the actual withdrawal of equipment and assets from the PEZA-registered I.T. Center/Building location of the I.T. Enterprise is also hereby extended up to 31 August 2020.
- Effective 01 September 2020, all withdrawal / movement of equipment and other assets from the registered PEZA I.T. Building/Center location of the PEZA I.T. Enterprise shall be subject to standard PEZA requirements prior to the withdrawal of its equipment/assets from their registered PEZA I.T. Building/ Center location.
- PEZA I.T. Enterprises are allowed to engage in Work From Home operations to the extent of up to 90% of their total revenues, up to 31 December 2020. The corresponding guidelines shall be issued by PEZA in a separate circular.

PEZA MC No. 41 outlines the guideline for PEZA Locators with probable/suspected or confirmed cases of COVID-19 at the workplace.

PEZA Memorandum Circular (MC) No. 41 Series of 2020 dated 30 July 2020

- For purposes of this MC, the definitions are as follows:

  1. Close contact – a person who may have come into contact with the probable or confirmed case two days prior to onset of illness of the confirmed COVID-19 case if symptomatic or use date of sample collection for asymptomatic cases as basis, until the time the patient is isolated, contact is further defined as:
     - Face-to-face contact with probable or confirmed case within 1 meter and for more than 15 minutes;
     - Direct physical contact with a probable or confirmed case; and
     - Living together or direct care at home for a patient with probable or confirmed case .
  2. Confirmed COVID-19 case – any individual who tested positive for COVID-19 through laboratory confirmation at the national reference laboratory, subnational reference laboratory, or a DOH-certified laboratory testing facility.

3. Probable COVID-19 case – a suspect case whose COVID-19 test is inconclusive; tested positive for COVID-19 by a laboratory other than those mentioned for confirming cases; suspect case who exhibited COVID-like symptoms but who died without undergoing any confirmatory testing.

4. Suspected COVID-19 case – a suspect case exhibits sever acute respiratory illness (SARI) or has influenza-like illness (ILI) or exhibits fever with cough or shortness of breath or other respiratory symptoms and classified as vulnerable group or health care worker.

- Reduce risk of COVID-19 transmission in the workplace through the following:

  1. Remind all employees and personnel to:

     - Practice good physical hygiene
     - Practice physical distancing
     - Monitor their health including temperature checks at least twice daily
     - If unwell, do not go to work and/or go on sick leave. In addition, visit a healthcare professional immediately and inform their supervisors or the HR department/administrators immediately

  2. Explore alternative work arrangements.

  3. Perform enhanced disinfection of workplace premises.

- Manage probable / suspected / confirmed COVID-19 case in the workplace

  1. Immediate isolation of an employee feeling unwell, exhibiting COVID-19 symptoms, or one who receives positive COVID-19 test results whether through RT-PCR or swab test and cordon-off the workplace area of the employee and close contacts.

  2. Conduct of preliminary contact tracing of close contacts using the policy provided by the DOH where they will be advised to be on home quarantine for 14 days from last exposure to the confirmed case.

  3. Reporting to the Local Government Unit through the Barangay Health Emergency Response Team (BHERT) and to the City or Municipal Health Officer.

  4. Cooperate and provide the necessary assistance and support to the BHERT or MHO / CHO contact tracing team by helping identify any persons at the workplace who may have had close contact with the confirmed case. The BHERT is also tasked with the issuance of Certificate of Quarantine Completion, thus, the patient and close contacts will need to coordinate with their respective BHERTs for their place of residence.

  5. Assistance in safe transport of the patient and close contacts bearing in mind the safety protocols that need to be followed to ensure that the driver will have minimal exposure.

  6. Immediately vacate and cordon-off the prescribed section of the workplace premises where the confirmed case worked. There is no need to vacate the building or the whole floor if there had been no sustained and close contact with the confirmed case;

7. Carry out a thorough cleaning and disinfection of that section of the workplace premises particularly those that come in frequent contact, using 0.1% bleach.

8. Enable flexible work arrangements or treat such absences in accordance with Department of Labor and Employment guidelines for employees who may not be able to remain physically at their workplaces if they have been asked to vacate their work stations or are pending assessment by the LGU's contact tracing officers.

9. Provide timely information to employees on latest developments and reassure employees and other relevant persons, e.g. customers, of the measures being taken to ensure their well-being at the workplace.

10. Regularly keep in touch with an employee who is a suspect or confirmed case or was placed on quarantine.

11. The right to privacy of health information of the patient and close contacts shall be protected at all times in accordance with the Data Privacy Act. Processing of health information is allowed for the purpose of contact tracing and monitoring, quarantine and isolation, mandatory reporting to the public health authorities or treatment and coordination purposes.

- Requirements for return-to-work of COVID case and close contacts

1. The DOH policy on expanded testing no longer requires testing of symptomatic COVID-19 patients who have clinically recovered and have completed at least 14 days of isolation with no symptoms provided that a license medical doctor clears the patient.

2. For asymptomatic patients and close contacts, they may be released from quarantine without the need for testing after 14 days as long as they remain asymptomatic for the entire duration of the quarantine. It is suggested that the patient and close contacts shall secure the Certificate of Completion of Quarantine from the BHERT.

- Role of IT Building Owners / Operators in reducing transmission

1. Identify suspected cases early on to prevent infections; body temperature measurement helps to minimize the risk of infection in buildings.

2. Enable physical distancing by not allowing individuals to enter an area which has reached the maximum numbers that will ensure the required minimum distance between people.

3. Regularly clean and disinfect buildings, focusing more on jointly used areas.

4. Cooperate and provide the necessary assistance and support to the joint DOH and LGU's contact tracing team by helping identify any persons at the workplace who may have had close contact with a confirmed case.

5. Aside from the preventive measures to mitigate the spread of the COVID-19 as stated above, we also encourage all IT developers/operators to allocate a decent space within the IT Park/Center for the use of its tenants who wish to conduct COVID testing for its employees. If this is not possible, the IT developers/operators shall allow PEZA-registered enterprises to conduct the COVID testing within their office premises and also allow the service vehicle of medical professionals to use the tenant's parking spaces.

- Notification of the Zone Manager and the PEZA Head Office

  All ecozone developers/operators/locators shall immediately inform their PEZA Zone Manager and the PEZA Head Office through email of any confirmed COVID cases within the PEZA economic zone.

  The Environmental Safety Group (ESG) at Head Office will collate the data as part of new reporting requirements required from Investment Promotion Agencies (IPAs) as part of the REBUILD PH! Strategy, please provide a copy of the accomplished report to ensd@peza.gov.ph

PEZA MC No. 43 directs Economic Zone Developers and Economic Zone Locator Enterprises to provide information in connection with the DENR Administrative Order No. 2016-08 (DAO 2016-08) or the "Water Quality Guidelines and General Effluent Standards of 2016."

PEZA MC No. 43 Series of 2020 dated 11 August 2020

- All Economic Zone Developers and Economic Zone Locator Enterprises who have wastewater treatment plants (WTPs) and who have secured the approval of the Compliance Action Plan (CAP) are directed to provide the following information:

  1. Name of Establishment;
  2. Date of Approval of CAP;
  3. Number of Years of Grace Period Granted; and
  4. Status of Implementation of CAP (% completion).

- This is in connection with PEZA's request with the DENR-EMB for an extension of the grace period for the implementation of EMB MC 2019-001 or the "Supplementary Clarification on the Coverage of DAO 2016-08 relative to the Granting of Not More than 5 Years Grace Period." The EMB granted extension only upon presentation and review of the above information by PEZA.

- Affected enterprises under the jurisdiction of the Laguna Lake Development Authority (LLDA) are encouraged to submit the same information since the past, the LLDA fully adopts DENR policies on the implementation of the Clean Water act.

- Without the formal grant of extension, the EMB has emphasized that companies may be issued with a Notice of Violation for the delay in the implementation of the CAP or be imposed with penalties up to PHP10,000 per day under the Clean Water Act.

- All affected enterprises are urged to submit the above information to the Environmental Safety Group at ensd@peza.gov.ph not later than 14 August 2020.

SEC Filing, Payments and Other Deadlines

The SEC Prescribes the Deadlines and Interim Procedures for the Submission of Printed/Hard Copies of Annual Report.

SEC Notice Issued 11 August 2020

- The deadlines and filing procedures provided herein shall be observed by the following for the submission of printed/ hard copies of AFS and GIS to the SEC Main Office and Extension Offices:

  1. All corporations with fiscal years ending 30 November 2019, 31 December 2019, 31 January 2020, 29 February 2020, 31 March 2020, 30 April 2020, 31 May 2020 and 30 June 2020; and

2. All corporations, which held their annual stockholder's/ members' meetings during the prior ECQ and MECQ in NCR and other cities or provinces, where their principal offices are located.

- The following corporations shall continue complying with SEC MC No. 5 Series of 2020 and SEC MC No. 17, Series of 2020 in relation to their filing of annual reports:

  1. Publicly-listed companies (PLCs);
  2. Issuers of registered securities other than PLCs; and
  3. Public companies.

- Adjusted Deadlines for AFS

  1. Corporations whose fiscal years ended on 30 November 2019 or 31 December 2019, regardless of their SEC registration or license numbers, shall have until 30 September 2020 to submit the printed/ hard copies of their AFS to the SEC Main Office and Extension Offices.

  2. The filing schedule based on the last digit of corporations' SEC registration or license numbers, as provided in previous notices, shall no longer apply.

  3. Corporations whose fiscal years ended between 31 January 2020 and 30 April 2020 shall have 30 more days to file the printed/hard copies of their AFS from the filing deadlines previously provided in SEC Memorandum Circular No. 17, Series of 2020, as follows:

FISCAL YEAR END	PREVIOUSLY ADJUSTED DEADLINE	NEW FILING DEADLINE
21 JANUARY 2020	29 JULY 2020	28 AUGUST 2020
29 FEBRUARY 2020	72 AUGUST 2020	28 SEPTEMBER 2020
31 MARCH 2020	27 SEPTEMBER 2020	27 OCTOBER 2020
30 APRIL 2020	12 OCTOBER 2020	11 NOVEMBER 2020

  4. Corporations with fiscal years ending 31 May 2020 and 30 June 2020 shall likewise have 30 days from the original deadline to submit the printed/ hard copies of their AFS, as follows:

FISCAL YEAR END	ORIGINAL DEADLINE	NEW FILING DEADLINE
31 MAY 2020	28 SEPTEMBER 2020	29 OCTOBER 2020
30 JUNE 2020	28 OCTOBER 2020	27 NOVEMBER 2020

- Adjusted Deadlines for the General Information Sheet

  1. Corporations, which held their annual stockholders' or members' meetings during the previously imposed ECQ and MECQ, shall have until 30 September 2020 to submit the printed or hard copies of their GIS to the SEC Main Office and Extension Offices.

- Modes of Filing

    1. SEC Main Office: Submissions to the SEC Main Office shall be made through courier or registered mail only under SEC Express Nationwide Submission (SENS).

        - Corporations may request for their return copies by including in their submissions prepaid return envelopes with stamps. Alternatively, corporations may request for plain or authenticated copies of their AFS, GIS and other documents through the SEC Express System at https://secexpress.ph after two months from receipt.

        - In view of the reimposition of MECQ in NCR, the transacting public is advised to submit their reports through courier or registered mail only upon easing or lifting of the travel restrictions.

    2. SEC Extension Offices: Corporations headquartered outside NCR may submit the printed/ hard copies of their AFS and GIS to the nearest SEC Extension Office in person, subject to any travel restrictions and public health protocols being implemented in the city or province or by the SEC Extension Office concerned.

        - Corporations may likewise submit the printed/ hard copies of their reports to the SEC Extension Offices through courier or PHLPost without using the SENS facility.

        - Corporations shall submit 4 copies of each report or 5 copies should they wish to receive a return copy.

        - Corporations may request for their return copies by including in their submissions prepaid return envelopes with stamps. Alternatively, corporations may request for plain or authenticated copies of their AFS, GIS and other documents from the concerned SEC Extension Office after 2 months from receipt.

    3. Email Submissions (Optional): Corporations may send, in advance, the scanned copies of their duly signed and, if applicable, notarized reports through email provided on the SEC Notice.

        - The reports shall be considered received on the date stated in the Acknowledgment Receipt that the Commission shall send through email in the prescribed addresses.

        - The printed/ hard copies of the reports, together with the Acknowledgment Receipt, shall still be submitted to the SEC Main Office through SENS or to the SEC Extension Office concerned in person or through courier or mail on or before the adjusted deadlines provided above. Failure to submit the printed/ hard copies of the reports before the deadlines, notwithstanding the submission of the reports through email, shall be subject to penalties.

Signatories of the Manual on Corporate Governance and Penalty for Noncompliance with the Requirement

SEC MC No.19 prescribes rules on the submission of the new MCG for PCs and RIs.

SEC Memorandum Circular (MC) No. 19 Series of 2020 dated 06 August 2020

- PCs and RIs are mandated to submit a new MCG pursuant to SEC MC No. 24 series of 2019, within 6 months from the effectivity date thereof, or until 12 July 2020. The deadline for submission is extended to 30 September 2020.
- Signatories of the MCG shall be the company's Chairman of the Board and Compliance Officer. MCGs submitted with incomplete and/or incorrect signatories shall be deemed as not filed.
- The imposable penalties for non- or late submission of the MCG shall be as follows:

    1. Basic Penalty: Php 10,000.00
    2. Monthly Penalty: Php 1,000.00

- PCs and RIs which are publicly listed in the Philippine Stock Exchange shall not be covered by this MC and shall continue to be governed by SEC MC No. 19, Series of 2016, or the Code of Corporate Governance for Publicly-Listed Companies, and related issuances.
- This MC shall take effect 10 days after its publication in 2 newspapers of general circulation.

Guidelines on Posting of Additional Securities Deposit, Substitution of Securities Deposit and Change of Resident Agent

SEC MC No. 24, extends the deadline for the posting of additional securities deposit and substitution of securities deposit to align the same with the extended deadline of the AFS, subject to the following guidelines:

SEC Memorandum Circular (MC) No. 24 Series of 2020 dated 24 August 2020

- Posting of additional securities deposit for branch offices whose submission of AFS was extended pursuant to MC Nos. 17 and 18 shall be extended until 29 October 2020.
- Securities deposit that matured during the period of extension pursuant to MC Nos. 17 and 18 shall likewise be extended until 29 October 2020.
- The extension for posting of additional securities deposit and substitution of securities deposit shall automatically be applied without the need for a request from the affected branches.
- Pursuant to the directive under the Bayanihan to Heal As One Act (RA No. 11469), the statutory deadline under Section 185 of the Revised Corporation Code (effective 23 February 2021) for corporations affected by the new requirements is extended. As such, for corporations incorporated prior to 23 February 2019, the adjustment in the computation of additional securities deposit based on the new figures of Sec. 143 of the Revised Corporation Code (RCC) and compliance with the increase in initial deposit amounting to PHP500,000 will commence on 1 August 2021, unless the foreign corporation opts to comply with the minimum amount of PHP500,000 imposed by the RCC.

- For foreign corporations licensed on 23 February 2019 or onwards, the minimum of PHP500,000 shall be imposed, as required by Sec. 143 of the RCC. Any additional securities deposit for these corporations shall adopt the adjustment in the computation based on the figures of Sec. 143 of the RCC.

- In relation to the change of resident agent, the following applications will not incur penalty if payment of appropriate fees are made on or before September 30, 2020:

    1. Applications on request for change of resident agent filed and reviewed before 16 March 2020 with issued Payment Assessment Form (PAF);

    2. Applications on request for change of resident agent filed before the quarantine period (ECQ, MECQ, GCQ, MGCQ) but issued a PAF during the quarantine period; and

    3. Applications on request for change of resident agent filed and reviewed during the quarantine period but without issuance of PAF.

- Please note that for change of resident agent, the approval of SEC through a Petition for Change of Resident Agent is required and within 30 days upon SEC approval, a GIS should be filed. Otherwise, penalties will be incurred.

- Penalty is PHP 1,000/month. Fraction of a month is considered as 1 month. Despite the community quarantine, online payment centers are readily available.

Other SEC Updates

SEC Rules on the Number of Independent Director and Sectoral Representatives of Exchanges and Other Organized Markets

SEC Prescribes the Guidelines for Operations in Areas Under Community Quarantine for FCs and LCs.

SEC Notice Issued 4 August 2020

- Effective 4 August 2020, FCs and LCs located in all geographical areas placed under Modified Enhanced Community Quarantine (MECQ) and General Enhanced Community Quarantine (GCQ) are allowed to operate at 50% operational capacity.

- FCs and LCs located in all geographical areas under Modified General Community Quarantine (MGCQ) are allowed to work at full operational capacity.

- For areas placed under Enhanced Community Quarantine (ECQ), the operation of FCs and LCs shall remain prohibited.

- This is based on the inclusion of lending companies as "Other financial services" under Category III Business Establishments/Activities per DIT MC No. 20-44, Series of 2020 dated 31 July 2020.

Contact Numbers and Email Addresses for Queries and Concerns of the Public

SEC Notice Issued 28 August 2020 provides Contact Numbers and Email Addresses for Queries and Concerns of the Public.

SEC Notice Issued 28 August 2020

- The SEC Main Office, Satellite Offices and Extension Offices will continue to operate at limited capacity and implement alternative work arrangements while quarantine measures remain in place across the country due to the COVID-19 pandemic.

- The public may reach the SEC through the email addresses and interim hotline numbers for queries and other concerns during office hours provided in the issuance. The Commission will set up more interim hotlines and update the SEC Contact Center accordingly.

SEC MC No. 20 promulgates the Rules on the number of independent directors and sectoral representatives of exchanges and other organized markets.

SEC Memorandum Circular (MC) No. 20 Series of 2020 dated 13 August 2020

- Section 1. Coverage. These Rules shall cover the number of independent directors and total representatives in the BOD of exchanges and other organized markets in the Philippines.

- Section 2. Definitions of Terms.

    1. "Independent Director" is a person who, apart from his or her fees and shareholdings, is independent of management and free from any business or other relationship which could, or could reasonably be perceived to, materially interfere with his or her exercise of independent judgment in carrying out his or her responsibilities as a director and includes, among others, any person who:

        - Is not a director or officer of the covered company or of its related companies or any of its substantial shareholders except when the same shall be an independent director of any of the foregoing;

        - Does not own more than two percent (2%) of the shares of the covered company and/or its related companies or any of its substantial shareholders;

        - Is not related to any director, officer or substantial shareholder of the covered company, any of its related companies or any of its substantial shareholders. For this purpose, relatives include spouse, parent, child, brother, sister, and the spouse of such child, brother or sister;

        - Is not acting as a nominee or representative of any director or substantial shareholder of the covered company, and/or any of its related companies and/or any of its substantial shareholders, pursuant to a Deed of Trust or under any contract or arrangement;

        - Has not been employed in any executive capacity by the covered company, any of its related companies and/or by any of its substantial shareholders within the last two (2) years;

        - Is not retained, either personally or through his or her firm or any similar entity, as professional adviser, by that covered company, any of its related companies and/or any of its substantial shareholders, within the last two (2) years; or

        - Has not engaged and does not engage in any transaction with the covered company and/or with any of its related companies and/or with any of its substantial shareholders, whether by himself/herself and/or with other persons and/or through a firm of which he or she is a partner and/or a company of which he or she is a director or substantial shareholder, other than transactions which are conducted at arm's length and are immaterial, within the last two (2) years.

    2. "Sectoral Representatives" refers to persons who represent the interests of issuers, investors, and other market participants.

- Section 3. Number of Independent Directors – Independent Directors shall constitute at least one-third (1/3) of the members of the BOD of exchanges and other organized markets.

    1. In addition to the qualifications of an independent director provided for in applicable regulations and SEC issuances, an independent director of an exchange and other organized market shall have the relevant experience in or working knowledge of the capital or financial markets for at least 3 years prior to his election.

- Section 4. Number of Sectoral Representatives – There shall be at least 4 persons representing the interests of issuers, investors, and other market participants, with each sector having at least one representative, in the board of directors of an exchange or other organized market.

    1. A person who is elected as director to represent any of these sectors in the board of an exchange or other organized market shall have had the relevant experience in or working knowledge of the related sector and the capital or financial markets for at least 3 years prior to the person's election.

    2. A person may be elected as a director representing any of these sectors for a maximum period of 10 years with a mandatory cooling off period of at least 1 year after the first 5 years.

- Section 5. Repealing clause. – All existing rules, circulars, orders and other related issuances inconsistent with these Rules are hereby revoked or modified accordingly.

- Section 6. Effectivity – These Rules shall take effect immediately upon publication in 2 newspapers of general circulation.

Rules on Simplified Onboarding Procedures for Low Risk Accounts

SEC Memorandum Circular No. 21 Series of 2020 dated 11 August 2020

The SEC simplifies the onboarding procedure for low risk customers of Financial Intermediaries ("regulated FIs") such as Broker Dealers in Securities, Government Securities Eligible Dealers, Investment Houses, Underwriters of Securities, Investment Company Advisers and Mutual Fund Distributors in order to achieve financial inclusion.

- Low risk account – an account opened and maintained by an individual investor with an initial and subsequent deposit, investment or re-investment amounting to an aggregate of not more than PHP50,000.

    1. An investor with a low risk account shall be allowed to invest in excess of the prescribed limit only for the purpose of exercising his right as a holder of securities, e.g., participation in a stock rights offering, exercise of pre-emptive right, and other similar acts, the non-exercise of which shall result in the dilution or diminution of his holdings.

    2. Subject to SEC's prior approval, a regulated FI may be allowed to prescribe a different threshold amount in determining an account as being low risk.

- Only individual Filipino investors shall be allowed to open low risk accounts in accordance with this Circular. These investors shall be presumed to beneficially own the said accounts.

- The process for the opening of an account by any legal person such as a corporation or a trust shall follow the regular requisites and procedures required by the concerned regulated FI in accordance with the relevant rules and regulations and its internal procedures.

    1. Nothing herein prevents a regulated FI from adopting a different risk-based approach following the said regular requisites and procedures in determining other accounts as being low-risk accounts.

- Minimum account opening information for low risk accounts:

    1. Complete Name of Customer
    2. Birthdate of customer
    3. E-mail of address
    4. Residential/business address
    5. Mobile and/or Landline Number
    6. Source of Income
    7. Copy of a verifiable identification card or document with photo
    8. Signature card

- The account opening may be allowed and transaction may be commenced once the customer has declared in writing, digitally or through a physical medium, the above information, provide the required documents and at least two responsible staff and/or officers of a regulated FI, acting as checker and maker, have vetted the whole process.

- A regulated FI shall implement the necessary measures to establish the true identity and existence of its customers. This may be conducted before, during or after the opening of the account but not later than 15 days from the date the account is opened.

- A regulated FI shall adopt the necessary policies and processes in systemically reviewing the low risk accounts. All reviews done by an FI and the decisions made as to whether to retain the low risk status or elevate the same to a normal/regular or high risk status shall be documented and the same be made available for review.

- Upon determination that an account ceases to be a low risk account, normal/regular or enhanced customer due diligence (CDD) shall be immediately conducted in compliance with the requirements of relevant rules and regulations (SRC, AMLC, AML/CFT). The conduct of said CDD shall be completed within 1 month.

- Notwithstanding, if, based on the information provided by the customer, or based on circumstances known or information available to the regulated FI, there is reasonable ground to consider the customer as high risk or that the transaction may be suspicious, the regulated FI shall conduct normal or enhanced CDD, as the case may be.

- A low risk account showing more than average active trading activities shall be automatically be the subject of review of its low risk status.

- A regulated FI is still required to comply and institute the necessary measures to ensure compliance with the requirements on suitability and on prompt payment and delivery of obligations and other requirements under the SRC and the 2015 SRC Rules that are not inconsistent with this Circular.

    1. A regulated FI operating an online trading or investing system which allows for a direct customer-controlled process of ordering a securities transaction and with established procedures for the pre-payment and pre-delivery of the cash and securities of said transaction shall be deemed to have complied with the requirements on suitability and on prompt payment and delivery of obligations under the 2015 SRC Rules.

- Any violation of the above rules shall be subject to sanctions and penalties pursuant to the applicable provisions of the Securities Regulation Code, as amended, P.D. 129 or The Investment Houses Law, the Investment Company Act and their respective Rules and Regulations.

Guidelines on Corporate Term

SEC issues guidelines to implement Section 11 of the Revised Corporation Code (RCC) which provides for the perpetual existence of corporations. Republic Act No. 11232, otherwise known as "An Act Providing for the Revised Corporation Code of the Philippines" was signed into law on 20 February 2019 and took effect on 23 February 2019.

SEC Memorandum Circular No. 22 Series of 2020 dated 18 August 2020

- Section 1. Corporations incorporated under the RCC shall have perpetual existence unless the articles of incorporation provide a specific corporate term.

- Section 2. Corporations incorporated under B.P. No. 68 (Corporation Code of the Philippines) and Act No. 1459 (The Corporation Law) and which continue to exist, shall be deemed perpetual upon the effectivity of the RCC, without any action on the part of the corporation.

    1. The corporation may amend Article Four to reflect its perpetual corporate term in its Articles of Incorporation, by a vote of majority of its Board of Directors or Trustees and by a vote of its stockholders representing a majority of its outstanding capital stock including the non-voting shares, or a majority of the members, in case of a non-stock corporation.

        - For other provisions to be amended in one same amended articles of incorporation, the required vote should be majority vote of the Board of Directors or Trustees and vote of its stockholders representing 2/3 of its outstanding capital stock, in case of a non-stock corporation.

    2. A corporation with certificate of incorporation issued prior to the effectivity of the RCC and which continues to exist, that elects to continue with their present corporate term shall notify the Commission by filing a Notice with attached Directors' Certificate, certifying that the decision to retain the specific corporate terms as specified in the Articles of Incorporation was approved in a meeting duly held for the purpose by majority vote of the Board of Directors or Trustees and by a vote of the stockholders representing a majority of its outstanding capital stock, including the non-voting shares, or a majority of the members, in the case of a non-stock corporation.

        - The Notice must be signed by at least a majority of the members of the Board of Directors or Trustees, and attested by the Corporate Secretary. Sample format is available.

- The Notice must be submitted to the SEC, CMRD, any SEC Satellite Office or SEC Extension Office, within a period of 2 years from 23 February 2019, or until 23 February 2021, pursuant to Section 185 of the RCC. A Certificate of Filing Notice to Retain Specific Corporate Term shall be issued to the corporation.

- Corporations which fail to comply with the required Notice shall be treated as having perpetual corporate term.

- Section 3. Amendment of articles of incorporation to extend or shorten the specific corporate terms pursuant to Section 11, paragraph 3 of the RCC must be approved by vote or written assent of a majority of the Board of Directors or Trustees and a vote or written assent of the stockholders representing at least 2/3 of the outstanding capital stock of the corporation.

    1. Extension shall be made not earlier than 3 years prior to the original or subsequent expiration date of the corporate term, unless there are justifiable reasons for extension as may be determined by the Commission.

    2. Extension of corporate term shall take effect only on the day following the original or subsequent expiry date/s.

- Section 4. Amendment to change specific corporate term to perpetual corporate term must be approved by vote or written assent of majority of the Board of Directors or Trustees and vote or written assent of the stockholders representing at least 2/3 of the outstanding capital stock of the corporation.

- Section 5. Amendment to change perpetual corporate term to specific corporate term must be approved by vote or written assent of the stockholders representing at least 2/3 of the outstanding capital stock of the corporation.

- Section 6. Any change in the corporate term pursuant to Section 11 shall be without prejudice to the appraisal right of dissenting stockholders in accordance with the provision of the RCC.

Rules on Corporate Debt Vehicle

The SEC, pursuant to the powers vested upon it by the ICA and the SRC, and in response to the dampened economy brought about by the COVID-19 pandemic, promulgates the Rules on CDV in order to avert credit and liquidity crises.

SEC Memorandum Circular (MC) No. 23 Series of 2020 dated 18 August 2020

- The rules apply to a CDV classified as a closed-end Investment Company that offers shares or units of participation with the objective of investing in portfolios of corporate debt papers of (1) large corporations and medium-sized enterprises operating or deriving income in the Philippines; or (2) any company guaranteed by a large or medium-sized domestic corporations or by the Philippines government and/or its agencies or by multilateral agencies involving exempt securities under SRC Rule 9.1.2.3.

- Minimum Requirements and Registration of closed end CDV

    1. A CDV may only be offered by a closed-end investment company with the primary objective of investing in portfolios of corporate debt papers. A CDV may offer different share of unit classes with similar investment objective but managed as separate asset pools.

2. Minimum requirements for the incorporation and registration of an Investment Company organized as a CDV:

   - File documentary requirements for the registration of its Articles of Incorporation (AOI) and By-Laws (BL);
   - File SEC Form ICA-CDV and pay the filing fee of PHP10,000.00 plus a Legal Research Fee (LRF);
   - The name of the corporation shall contain "*Corporate Debt Vehicle*" or "*Unitized Corporate Debt Vehicle*" in case of those offering units;
   - The primary purpose clause of the AOI shall state the CDV's classification as a closed-end investment company and provide the specific primary objective of investing in corporate debts;
   - For CDV offering share/unit classes – the AOI shall indicate its structure as such, as well as the nature, type of classes, rights, privileges and restrictions of their holders;
   - The AOI shall provide that any amendment to the CDV's investment policies and objectives shall require prior approval of its shareholders representing a majority of its outstanding capital stock.
   - All shares shall be common and voting and, in general, redeemable only after the end of the term of the fund share/unit class as disclosed in the Prospectus. For CDVs that will issue units, the unitholders shall have no voting rights but are entitled to be notified of any material change to the Prospectus, Product Highlight Sheet and the subscription agreement;
   - All members of the Board of Directors shall be Filipino citizens;
   - It shall have a minimum subscribed and paid-up capital of PHP50 million. However, if the CDV is one of or part of a group of investment companies to be created or already in existence to be managed or under management by the same Fund Manager with a track record of at least 5 years, the subscribed and paid-up capital shall not be lower than PHP1 million;
   - The original proponents of a newly formed CDV, which is not related to an existing fund or Fund Manager with a track record of at least 5 years, shall not be allowed to sell, transfer, convey, encumber or otherwise dispose of their securities within 12 months from the registration of the CDV;
   - The preemptive right of stockholders to all issues of disposition of shares in proportion to their respective shareholdings shall be denied in the AOI of an Investment Company; and
   - In the case of a CDV with share/unit classes, the BL must expressly provide for the power of the Board of Directors to create and set up new classes of shares/units not exceeding the total number of shares/units approved or confirmed by the Commission.

- Disclosure Requirements in the Simplified Prospectus

1. A notarized simplified Prospectus and Product Highlight Sheet shall be submitted to and approved by the Commission prior to commencement of the offer. It must be prepared in accordance with the requirements set out in the Guidelines for CDV.

- Offering of the CDV

    1. Product Feature

        - A CDV is a closed-end fund and subscription is done only on initial public offering and redemption at maturity.

        - The CDV may offer several share or unit classes managed as separate asset pools with the same investment objectives.

        - A CDV may make periodic distribution of income to investors of the fund on a pro-rata basis; provided, that the distribution of income shall be made only from cash received from interest income earned after deduction of applicable taxes and expenses. For CDV issuing units of participation, it shall be exempt from SEC MC No. 11, series of 2008 or any amendment thereto.

        - The CDV may pay out the value of the underlying investments of each share/unit in a class upon maturity of said underlying investments.

        - The accounting business model of the corporate debt portfolio shall follow the Hold-to-Collect Business Model considering that the investments are held to maturity. The business model for the corporate debt portfolio is amortized cost, in which the contractual cash flows under the instruments represent Solely Payments for Principal and Interest (SPPI).

        - The CDV need not be listed or traded in an exchange.

        - The sale of CDV securities to any number of any qualified buyers (QBs) and/or non-qualified buyers (non-QBS) not exceeding 19 persons in the Philippines during any 12-month period are exempt from registration requirement under Section 8.1 of the SRC.

    2. Target Investors

        - A CDV may only be offered to any number of QBs under private placements; however, CDV securities may also be offered to non-WBs not exceeding 19 in number in the Philippines during any 12-month period.

        - Every investor shall be given an evidence of participation, which clearly indicates the terms and conditions of the CDV.

    3. Distribution of CDV Securities

        - Shares or units of a CDV may be issued in tranches at more than one instance after the securities have been approved or confirmed by the Commission, subject to compliance with the requirements in these Rules and the payment of filing fee.

- The first tranche of CDV securities must be issued within 6 months from approval of the Commission while the subsequent tranches shall be issued within 3 months from the submission of the Current Report and Updated Simplified Prospectus.

- At least 30 days prior to the offering or sale of the securities of the subsequent tranches, the CDV shall inform the Commission through a Current report of the material changes in the Simplified Prospectus previously approved or confirmed by the Commission; submit and reflect such changes in the Simplified Prospectus; and update those being distributed to prospective investors, including the relevant information in the website and other selling or advertising materials.

- The initial minimum investment and additional investment by any single investor in any CDV shares or units issued shall be provided in the Simplified Prospectus.

- CDV securities shall be sold on a cash basis, unless otherwise provided in the prospectus and approved by the Commission.

- The distribution shall be performed only be a registered Mutual Fund Distributors and Certified Investment Solicitor.

4. Payment of Filing Fees

   - The approval or confirmation by the Commission of the CDV shares as an exempt transaction shall be subject to a fee equivalent to 1/10 of 1% of the maximum aggregate price based on the net asset value per share (NAVPS) of the CDV plus LRF but in no case shall be less than PHP1,000.

   - Fees for issuance of units – the processing fee for every application for approval of units of participation shall be PHP10,000 plus LRF, or such amount as may be prescribed by the Commission, regardless of the quantity of units to be confirmed or approved.

   - In case of shares intended to be issued in tranches at more than one instance after the Prospectus has been approved or confirmed by the Commission, the filing fee shall be paid as follows:

     a. Upon filing of the Prospectus, a filing fee of 1/10 of 1% of the issued value based on the NAVPS of the CDV of the first tranche of securities shall be paid.

     b. The filing fees for the subsequent tranches shall be payable within 20 days prior to the commencement of the offer/sale of the particular tranche of the securities.

c. The registrant shall execute an undertaking to:

- Pay the remaining registration fees no later than 30 business days prior to the expiry of the 3-year period reckoned from the date of the approval or confirmation of the Prospectus; and

- Not offer the unpaid portion of the securities to the public until the payment of the required fees.

5. Permissible Investments

- Proceeds from the issuance of CDV securities shall be invested in corporate debts of large corporations and medium-sized enterprises; however, pending the deployment of the CDV in accordance with its investment objectives, the CDV can invest in deposits and money market instruments.

- The Investment Company/CDV and Fund Manager must ensure that the proceeds from the issuance of CDV securities are used in accordance with the investment policies and objectives provided in the Prospectus.

- The remaining term of corporate papers where the fund invests must not exceed the term of the CDV offered. In case of unit/share class, the corporate papers where the CDV invests shall not also exceed the term of such unit/share class.

- The Investment Company and/or Fund Manager must ensure that the issuer of the corporate debt security is regulated by the relevant regulatory authority.

6. Investment Limitations

- Value of a CDV's investments in Corporate Debt issued by a single enterprise must not exceed 25% of the fund's NAV and 50% in single group entities.

- The single issuer limit may be increased to 30% if either the Corporate Debt or the issuer is assessed by any domestic or global rating agency with the highest credit rating, or may be waived if the CDV has a capital protection feature in which the return of the investor's capital is guaranteed at a predetermined date in the future, with some returns, if any.

- The CDV shall be prohibited from investing in the securities it is issuing.

- The CDV shall not invest in corporate debts of corporations in which any of its directors or officers or directors or officers of its investment advisor/s, manager/s or distributor/s are members.

7. Other Limitations

    - The total operating expenses of the CDV shall not exceed 10% of its average investment fund or net worth as shown in its previous audited financial statements (AFS) covering the immediately preceding year.

    - The CDV may borrow, on a temporary basis, for the purpose of meeting redemptions and bringing requirements provided that the borrowing period should not exceed one month, and the aggregate borrowing shall not exceed 10% of the net assets of the CDV.

8. Parties to the Offer

    - Fund Manager;
    - Mutual Fund Distributor;
    - Certified Investment Solicitor;
    - Transfer Agent;
    - Independent NAV Calculator; and
    - Custodian Bank, as applicable

- Reports and Records Requirements

    1. A CDV shall submit to the Commission a Monthly Report showing the net assets of the CDV, details of corporate debts acquired for the month, the outstanding balance of the investments held in the portfolio and the total number of individual and institutional account holders or investors as of the reporting period.

    2. Annual AFS and Interim Financial Statements must present a combined statement of net assets and include a detailed breakdown of the financial statement for each class of share/unit.

    3. A CDV shall submit a report on the commencement and completion of the termination of the fund disclosing the actual date of commencement and termination period of the offering including the securities offered under a share/unit class and number and total amount of CDV securities sold.

    4. A CDV shall submit other reports and records as may be required by the Commission.

    5. An Investment Company that offers CDV securities and/or a Fund Manager that manages a CDV shall ensure proper booking and recording of transactions to separate the assets, liabilities, income and expenses corresponding to each type of securities issuance.

    6. The daily NAVPS/Net Asset Value Per Unit (NAVPU) of the CDV securities shall be posted on the Fund Manager's and distributor's website/s provided the NAVPS/NAVPU must be calculated for each of share/unit.

Supreme Court Cases

Income Tax Exemption and VAT exemptions on Association dues, membership fees, and other assessments/charges charged by a condominium corporation

In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 "Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/Charges Collected by Condominium Corporations"

Consolidated Cases of Bureau of Internal Revenue, as herein represented by its Commissioner Kim S. Jacinto-Henares vs. First E-Bank Tower Condominium Corp. and First E-Bank Tower Condominium Corp. vs. Bureau of Internal Revenue, as herein represented by its Commissioner Kim S. Jacinto-Henares

Supreme Court First Division G.R. Nos. 215801 and 218924 promulgated on 15 January 2020

Association dues, membership fees, and other assessments/ charges charged by a condominium corporation are not subject to income tax because they do not constitute profit or gain. Instead, they are collected purely for the benefit of the condominium owners and are the incidental consequence of a condominium corporation's responsibility to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance.

The association dues, membership fees, and other assessments/ charges do not arise from transactions involving the sale, barter, or exchange of goods or property, nor are they generated by the performance of services. As such, they are not subject to VAT.

Facts:

First E-Bank Tower Condominium (or First E-Bank) filed a Petition for Declaratory Relief assailing Revenue Memorandum Circular (RMC) No. 65-2012 dated 31 October 2012 entitled "Clarifying the Taxability of Association Dues, Membership Fees and other Assessments/Charges Collected by Condominium Corporations" issued by BIR Commissioner Kim Jacinto-Henares.

The RMC clarified that association dues, membership fees, and other assessments/ charges collected by a condominium corporation from its members, tenants and other entities are subject to income tax (because the dues, fees and charges constitute income payments or compensation for beneficial services provided by the condominium corporation to its members and tenants), value-added tax (VAT) (because the dues, fees and charges are in consideration for services rendered by the condominium corporation to its members and tenants) and withholding tax.

The Makati Regional Trial Court ruled in favor of First E-Bank by invalidating RMC 65-2012 because it purportedly expanded the law, created an additional tax burden on condominium corporations, and was issued without the requisite notice and hearing.

Issue:

Is RMC 65-2012 valid?

Ruling:

RMC 65-2012 is invalid.

While certiorari or prohibition, and not declaratory relief, is the proper remedy to assail the validity or constitutionality of executive issuances, the petition may be treated as one for prohibition as RMC 65-2012 has far-reaching ramifications among condominium corporations which have proliferated throughout the country. Numerous Filipino families, professionals, and students have, for some time now, opted for condominium living as their new way of life. The matter of whether the contributions of unit owners solely intended for maintenance and upkeep of the common areas of the condominium building are taxable is imbued with public interest.

A condominium corporation is not designed to engage in activities that generate income or profit.

The collection of association dues, membership fees, and other assessments/ charges is purely for the benefit of the condominium owners. It is a necessary incident to the purpose to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance.

Any profit that would be derived by a condominium corporation would merely be incidental, if not accidental. A condominium corporation is especially formed for the purpose of holding title to the common area and exists only for the benefit of the condominium owners.

RMC 65-2012 invalidly declares that the amounts paid as dues or fees by members and tenants of a condominium corporation form part of the gross income of the latter, thus, subject to income tax, value-added tax (VAT), and withholding tax. The reason given in the circular is that a condominium corporation furnishes its members and tenants with benefits, advantages, and privileges in return for such payments, consequently, these payments constitute taxable income or compensation for beneficial services it provides to its members and tenants, hence, subject to income tax, VAT, and withholding tax.

This is not correct.

First. Capital is a fund or property existing at one distinct point in time while income denotes a flow of wealth during a definite period of time. Income is gain derived and severed from capital.

The National Internal Revenue Code of 1997 (or Tax Code) defines taxable income as the pertinent items of gross income specified in the Code, less the deductions authorized for such types of income by the Code or other special laws.

Section 32 of the Code does not include association dues, membership fees, and other assessments/charges collected by condominium corporations as sources of gross income.

RMC 65-2012 expanded, if not altered, the list of taxable items in the law. Hence, it is void. Where the basic law and a rule or regulation are in conflict, the basic law prevails.

The expenditures incurred by condominium corporations on behalf of the condominium owners are not intended to generate revenue nor equate to the cost of doing business.

Association dues, membership fees, and other assessments/charges are not subject to income tax because they do not constitute profit or gain. Instead, they are collected purely for the benefit of the condominium owners and are the incidental consequence of a condominium corporation's responsibility to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance.

Second. Association dues, membership fees, and other assessments/charges do not arise from transactions involving the sale, barter, or exchange of goods or property. Nor are they generated by the performance of services. As such, they are not subject to VAT per Section 105 of the Tax Code.

There is also no mention under the Tax Code of association dues, membership fees, and other assessments/charges collected by condominium corporations being subject to VAT. And rightly so. For when a condominium corporation manages, maintains, and preserves the common areas in the building, it does so only for the benefit of the condominium owners. It cannot be said to be engaged in trade or business, thus, the collection of association dues, membership fees, and other assessments/charges is not a result of the regular conduct or pursuit of a commercial or an economic activity, or any transactions incidental thereto.

Neither can it be said that a condominium corporation is rendering services to the unit owners for a fee, remuneration or consideration. Association dues, membership fees, and other assessments/charges form part of a pool from which a condominium corporation must draw funds in order to bear the costs for maintenance, repair, improvement, reconstruction expenses and other administrative expenses.

Hence, the nature and purpose of a condominium corporation negates the application of the VAT provisions on its transactions and activities.

RMC No. 65-2012 illegally imposes VAT on association dues, membership fees, and other assessments/charges collected and received by condominium corporations.

Third. The withholding tax system was devised for three (3) primary reasons, namely (1) to provide taxpayers a convenient manner to meet their probable income tax liability; (2) to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns; and (3) to improve the government's cash flow. This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies. Withholding tax is intended to facilitate the collection of income tax. If there is no income tax, withholding tax cannot be collected.

Fourth. Section 4 of the Tax Code empowers the BIR Commissioner to interpret tax laws and to decide tax cases. But the Commissioner cannot, in the exercise of such power, issue administrative rulings or circulars inconsistent with the law to be implemented.

As shown, the BIR Commissioner expanded or modified the law when she declared that association dues, membership fees, and other assessments/charges are subject to income tax, VAT, and withholding tax.

The issuance of a Letter of Authority prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment. Since the assessment arose from a mere Letter Notice, without an audit being conducted pursuant to a valid LOA, the assessment that results therefore is a nullity.

The obligation to pay the tax is an obligation that is created by law; it does not arise from the criminal offense of violation of the Tax Code, and, as such, is not deemed instituted in the criminal case.

Court of Tax Appeals Cases

Procedure on Tax Assessment

People of the Philippines vs. Corazon C. Gernale
CTA *En Banc* Criminal Case No. 063 (CTA Crim Case No. O-336) promulgated on 30 July 2020

Facts:

An Information was filed with the Court of Tax Appeals (CTA) accusing Corazon C. Gernale (Gernale), as the alleged treasurer and responsible officer of the Gernale Electrical Contractor Corporation (GECC), for violation of Section 255, in relation to Section 253 (d) of the Tax Code. Gernale was eventually acquitted for failure to prove beyond reasonable doubt that she was guilty of the crime charged. A Motion for Reconsideration (MR) was, thereafter, filed to appeal on the civil aspect of the Decision, but the same was denied.

Issue:

Was Gernale guilty of the civil aspect of the Criminal Case?

Ruling:

No. Gernale cannot be held civilly liable with GECC for GECC's alleged deficiency income tax and VAT for taxable year 2003.

Records disclosed that the Final Assessment Notice (FAN) was issued to GECC pursuant to a Letter Notice (LN) dated 27 October 2004, which was based on the alleged discrepancies in GECC's reports sales vis-à-vis the purchases declared by its customers for taxable year 2003. There is nothing in the record which would show that the said LN was converted into a Letter of Authority (LOA) for purposes of auditing GECC's records and verifying the alleged discrepancies as stated in the LN.

The Tax Code is clear and categorical in requiring an authority from the Commissioner of Internal Revenue (CIR) or from his duly authorized representatives before an examination of a taxpayer may be made.

A LOA is indispensable for a Bureau of Internal Revenue (BIR) officer to subject a taxpayer to audit as emphasized under Section 13 of the Tax Code. The issuance of a LOA prior to the conduct of an examination of a taxpayer's books and other accounting records by any revenue officer is indispensable to the validity of an assessment.

Since the assessment arose from a mere LN, without an audit being conducted pursuant to a valid LOA, the assessment that results therefore is a nullity and no civil liability for deficiency income tax and VAT may be adjudged against GECC and upon Gernale.

Even assuming that the FAN is valid, respondent should not be held civilly liable for the deficiency taxes of GECC, for it is trite that the civil liability of a corporate taxpayer, being personal to it, may not be enforced against its corporate officers.

It is imperative to stress that the Court may not impose against respondent, as GECC's Treasurer, any civil liability arising from a criminal violation of the Tax Code. In fact, there is nothing on record to show that respondent, as the Treasurer of GECC, committed a criminal violation when she refused to pay the deficiency taxes assessed against GECC pursuant to a void FAN.

In Gaw vs. Commissioner of Internal Revenue (GR BO. 222837 dated 23 July 2018), the Supreme Court elucidated on the nature of civil liability arising from a criminal violation of the Tax Code. The obligation to pay the tax is an obligation that is created by law; it does not arise from the criminal offense of violation of the Tax Code, and, as such, is not deemed instituted in the criminal case.

An assessment must contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. An assessment must be sent to and received by a taxpayer and must demand payment of the taxes described therein within a specific period.

Meridien Business Leader, Inc. vs. Commissioner of Internal Revenue
CTA Case No. 9316 promulgated 29 July 2020

Facts:

Meridien Business Leader Inc. (Meridien) is a domestic corporation primarily engaged in the business of trading garments, accessories, shoes and toys on wholesale and retail.

The Commissioner of Internal Revenue (CIR) issued a Letter of Authority (LOA) authorizing the examination of Meridien's books of accounts and other accounting records for all internal revenue taxes covering the period calendar year (CY) 2010.

In the course of the audit, Meridien executed three (3) Waivers of the Defense of Prescription, extending the period to assess the alleged deficiency taxes until September 30, 2014.

Meridien later on received a Preliminary Assessment Notice (PAN) followed by a Final Letter of Demand and Audit Result/Assessment Notice (FLD/FAN), both with Details of Discrepancies.

Subsequently, Meridien received the Final Decision on Disputed Assessment (FDDA) with Details of Discrepancies, finding it liable for alleged deficiency taxes, including penalties and interests, for CY 2010.

Meridien filed the instant petition for review with the Court in Division.

Issue:

Was Meridien liable to the alleged deficiency income tax, expanded withholding tax, VAT, withholding tax on compensation, fringe benefit tax and compromise penalty, inclusive of 25% surcharge, 20% deficiency and delinquency interest for CY 2010?

Ruling:

No. The Tax Code mandatorily requires that the taxpayer must be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment is void. The law imposes a substantive, not merely a formal requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations - that taxpayers should be able to present their case and adduce supporting evidence. The requirement of informing the taxpayer of the law and the facts upon which the assessment is based, is in compliance with the Constitutional right of the taxpayer to due process for this will enable the taxpayer to intelligently prepare and file his/her protest.

It is on this account that an assessment must contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer. An assessment must be sent to and received by a taxpayer and must demand payment of the taxes described therein within a specific period.

The issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. Due process requires that it must be served on and received by the taxpayer.

A careful scrutiny of the FLD in this case reveals that while the same provides for the computation of petitioner's tax liabilities, the amounts thereof remain indefinite, since the amount due is still subject to modification. The FDDA also provides for indefinite amounts. The FLD and the FDDA cannot be deemed a valid tax assessment as described under pertinent law and prevailing jurisprudence, which requires "a due tax liability that is there definitely set and fixed." Both the FDDA and FLD failed to contain a definite and fixed amount of tax liability which must be paid by petitioner within a date certain. In the absence of these requisites, the subject tax assessments are void, and thus, bear no valid fruit.

As part of the due process requirement in the issuance of a deficiency tax assessment, the decision of respondent must state the facts, the applicable law, rules and regulations, or jurisprudence, on which such decision is based; otherwise, the said decision shall be deemed void. Hence, the decision issued by the CIR was void as this lacked the requirements of the law.

Commissioner of Internal Revenue vs. ALE Mart Corporation
CTA *En Banc* No. 1983 (CTA Case No. 8998) promulgated 29 July 2020

The importance of a date certain of when tax liabilities in an assessment should be settled cannot be underscored. This period is indispensable as it dictates the time when the penalties, surcharges and interest imposed under the Tax Code, should begin to accrue. More importantly, it is an essential element of petitioner's demand for payment of tax liabilities. Without such, petitioner cannot be said to have demanded the amount due in a Formal Letter of Demand/Final Assessment Notice contrary to the very nature of a tax assessment, which is a demand to pay taxes.

Facts:

ALE Mart Corporation (AMC) received on September 23, 2011 a Letter of Authority (LOA) authorizing revenue officers to conduct an examination of AMC's books of accounts and other accounting records for all internal revenue taxes for the period calendar year (CY) 2010.

On 13 June 2014, AMC received a Preliminary Assessment Notice (PAN) with Details of Discrepancies.

On 30 June 2014, AMC received a Formal Letter of Demand (FLD), Details of Discrepancy and Assessment Notices for deficiency income tax, VAT, expanded withholding tax (EWT), and withholding tax on compensation (WTC), inclusive of interest and surcharge, for CY 2010. AMC accordingly protested the FLD.

There being no action taken by the Commissioner of Internal Revenue (CIR), AMC filed a Petition for Review before the Court in Division. The Court in Division found AMC liable for deficiency income tax, VAT, EWT and WTC, inclusive of 25% surcharge. Thereafter, the Court in Division issued an Amended Decision cancelling the entire deficiency tax assessment on the basis that the FLD and the accompanying Assessment Notices issued by the CIR did not provide a specific period within which the alleged deficiency taxes should be paid. The Motion for Reconsideration filed by the CIR was denied by the Court in Division. The CIR filed in the instant Petition for Review.

Issue:

Was the FAN issued by the CIR void for allegedly not containing a definite due date for payment of the tax liabilities?

Ruling:

Yes. A perusal of the FLD, Details of Discrepancy and Assessment Notices issued against AMC shows that the CIR failed to demand payment of the tax due within a specific period. While the last paragraph of the FLD states that AMC must pay its deficiency tax liabilities, it does not, however, indicate the specific period when the payment should be made. The accompanying Assessment Notice did not also show specific dates of payment.

The importance of a date certain of when tax liabilities in an assessment should be settled cannot be underscored. This period is indispensable as it dictates the time when the penalties, surcharges and interest imposed under the Tax Code, should begin to accrue. More importantly, it is an essential element of petitioner's demand for payment of tax liabilities. Without such, petitioner cannot be said to have demanded the amount due in an FLD/Final Assessment Notice contrary to the very nature of a tax assessment, which is a demand to pay taxes.

The deficiency tax assessment against respondent was invalidly issued for failure to provide a definite date for its payment. Consequently, collection cannot be pursued from said tax assessment.

Paymentwall, Inc. vs. Commissioner of Internal Revenue and Regional Director of Revenue Region No. 8, Makati City
CTA Case No. 9727 promulgated 28 July 2020

A significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed in writing of the law and of the facts on which the assessment is made. Such requirement must be embodied not only in the Preliminary Assessment Notice, but also in the Formal Letter of Demand and Formal Assessment Notice. Thus, the issuance of these Notices is indispensable, except in the case of the Preliminary Assessment Notice in certain instances.

Facts:

Paymentwall Inc. (Paymentwall) is a domestic corporation providing business process outsourcing only to non-Filipino companies. It is a business-to-business service company where it is contracted by other businesses to do customer service and risk and fraud analysis.

Paymentwall received a Letter of Authority (LOA) authorizing the examination of its books of accounts and other accounting records for the taxable period 1 January 2015 to 31 December 2015. Paymentwall submitted to the Bureau of Internal Revenue (BIR) the following: unused booklets of official receipts, general ledger, cash receipt book, cash disbursement book and journal.

RO Trazona submitted its Memorandum Report (denominated as *Request for a 48 Hour Notice*) against Paymentwall which Request was approved by the BIR Regional Evaluation Board.

Subsequently, Paymentwall received a 48-Hour Notice from the Regional Director (RD) informing Paymentwall that it has failed to comply with the following: (a) issue sales invoices or receipts; (b) pay VAT; and (c) reflect the correct taxable sales/ receipts Paymentwall, then, submitted its Reply to the said 48-Hour Notice, stating that its transactions are zero-rated, pursuant to Section 108(B)(2) of the Tax Code.

Thereafter, Paymentwall received the RD's letter finding Paymentwall's Reply "without basis," together with a 5-day VAT Compliance Notice. In the said 5-day VAT Compliance Notice, the RD reiterated the supposed violations of Paymentwall and demanded from the latter to rectify within 5 days from receipt of the letter, the said violations by paying the VAT due, inclusive of increments.

Paymentwall submitted its Reply to the 5-day VAT Compliance Notice, re-emphasizing the basis of the zero-rated nature of its transactions.

The RD reiterated its position that Paymentwall should pay the VAT.

Thereafter, Paymentwall received CIR's Closure Order.

Paymentwall, then, filed with the Court of Tax Appeals (CTA) the instant Petition for Review.

Issues:

1. Were the 48-Hour Notice, the Five-Day VAT Compliance Notice and the Closure order valid?

2. Was Paymentwall liable to pay the deficiency VAT?

Ruling:

1. No. the issuance of the 48-Hour Notice, the 5-Day VAT Compliance Notice and the Closure Order violated Paymentwall's right to due process.

   It is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law.

   The BIR's power to collect taxes must yield to the above fundamental. The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.

   In this case, however, the BIR clearly failed to observe the prescribed procedure in the issuance of the subject 48-Hour Notice, 5-day VAT Compliance Notice, and Closure Order. Particularly, the BIR did not fully comply with the procedure prescribed under Revenue Memorandum Order (RMO) No. 3-2009 in the issuance of the said notices, which requires for the BIR to initially conducted a surveillance or stocktaking, before a taxpayer, to be considered as "non-compliant." The surveillance, in turn, must be covered by, or authorized through, a Mission Order duly issued under RMO No. 3-2009.

   In this case, however, the BIR does not deny that no surveillance was ever conducted against petitioner before the issuance of the subject 48-Hour Notice, 5-day VAT Compliance Notice, and Closure Order. In fact, the BIR even further admitted that there was no Mission Order issued against Paymentwall.

   Thus, for purposes of RMO No. 3-2009, Paymentwall cannot be considered as a "non-compliant taxpayer", warranting the issuance of the said Notices against it.

2. No. The absence of a Preliminary Assessment Notice (PAN) and Formal Letter of Demand (FLD) renders void the collection of the deficiency VAT, inclusive of increments.

   As a general rule, the concerned taxpayer must first be informed of the findings of the BIR which warrant the assessment of proper taxes. Thereafter, it is required that an assessment be issued, informing the concerned taxpayer, in writing, of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

   On the basis of the foregoing provision, parts of the due process requirement in the issuance of a deficiency tax assessment are the following: (a) the issuance of a PAN, unless the case falls under any of the above-enumerated exceptions; (b) the issuance of a FLD and Final Assessment Notice (FAN); and (c) the said FLD and FAN must call for the payment of the taxpayer's deficiency tax or taxes, and must state the facts, the law, rules and regulations, or jurisprudence, on which the assessment is based; otherwise, the assessment is void.

In case the BIR failed or effectively failed to observe the said requirements. No PAN or FAN was issued in this case. It must be emphasized that the issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Since the collection of Paymentwall's deficiency VAT was not preceded by a PAN, FAN and FLD, the same must fail.

Western Guaranty Corporation vs. Commissioner of Internal Revenue
CTA Case No. 9338 promulgated 24 July 2020

The insertion of the notation, "xxx the interest will have to be adjusted if paid beyond the date specified therein." in the FAN merely reminds the taxpayer of the legal consequence of paying beyond the due date in accordance with the Tax Code provision, but it does not detract from the definite amount of basic deficiency taxes, surcharges and interests due for payment on the final date indicated in the assessment notice.

Facts:

Western Guaranty Corporation (WGC) is a domestic corporation, which received a Letter of Authority (LOA) authorizing the examination of its books of accounts and other accounting records for all internal revenue taxes examined for calendar year (CY) 2011.

Thereafter, WGC received a Preliminary Assessment Notice (PAN) finding WGC liable for deficiency income tax, VAT, percentage tax, expanded withholding tax (EWT), withholding tax on compensation (WTC), final withholding VAT (FWVAT) and documentary stamp tax (DST), including interests and compromise penalties, for CY 2011. WGC filed a letter rebutting the findings stated in the PAN.

Subsequently, WGC received a Final Assessment Notice (FAN) with attached Assessment Notices and Details of Discrepancies for CY 2011. WGC filed a request for reconsideration/reinvestigation to the said FAN.

Thereafter, WGC received the Final Demand on Disputed Assessment (FDDA) with Details of Discrepancies and Audit Results/Assessment Notices, finding WGC liable for VAT, DST, EWT and FWVAT for CY 2011. The income and percentage taxes were not anymore included because of the adjustments made by the Commissioner of Internal Revenue (CIR) and payment made by WGC, respectively. WGC also made a series of partial payments on several deficiency taxes in the FAN.

WGC filed the instant Petition for Review.

Issue:

Were the FAN and FDDA issued against WGC valid?

Ruling:

Yes.

The FAN is valid. Upon a closer look at the FAN with its attached Assessment Notices and Details of Discrepancies, the following features are revealed:

a. There are definite deficiency tax computations for income tax, VAT, percentage tax, EWT, FWVAT, DST and compromise penalty.

b. The factual findings were specifically explained and the legal bases of said deficiency tax assessments, i.e., relevant sections of the Tax Code and applicable revenue regulations and revenue memorandum orders, were cited in the Details of Discrepancies which was attached as Annex A to the FAN; and

c. There was a definite due date for payment for the deficiency income tax, VAT and FWVAT as shown on the face of their respective assessment notices.

Apparent from the computation of the interest charges on the deficiency taxes was the cut-off date of 31 March 2015 which was just consistent with the Due Date of Payment indicated on the assessment notices. Thus, the insertion of the notation, "xxx the interest will have to be adjusted if paid beyond the date specified therein.", in the FAN merely reminds the taxpayer of the legal consequence of paying beyond the due date in accordance with the Tax Code provision, but it does not detract from the definite amount of basic deficiency taxes, surcharges and interests due for payment on the final date indicated in the assessment notice. Hence, the FAN was not defective and therefore found to be valid.

The FDDA, however, was defective for failure to indicate the due date for payment. The FDDA with Details of Discrepancies as Annex A substantially mirrored the FAN and its Details of Discrepancies. The difference in the computed deficiency taxes was attributed to the installment payments made by petitioner for the previous deficiency tax dues found in the FAN and the increased amount of interest penalties due to the additional year of delay in the payment of said taxes, i. e., from 2015 to 2016. Thus, the FDDA did not have any new explanation on the resulting deficiency tax assessments other than the installment payments made by the petitioner earlier and the imposition of surcharge and interest penalties on the earlier basic taxes settled. What stands out as a glaring defect in the FDDA was the absence of a fixed date for payment of the deficiency taxes. The phrase, "xxx be paid immediately upon receipt thereof.", cannot be deemed as the final date of payment. Sans such element in the FDDA, the decision is deemed void.

In issuing the FDDA, the CIR additionally assessed the same with: (1) surcharges; and (2) interests from 31 March 2015, the due date stated in the FAN until the dates of payment. The deficiency VAT and DST assessments were maintained in the FDDA, albeit in the reduced amount by virtue of the previous payments made by WGC. However, as clearly stated in the BIR Forms No. 0605, some of the payments made by WGC only referred to the basic tax due. Thus, it was erroneous for the CIR to apply a portion of the amounts paid to the interest when the BIR Forms No. 0605 only applied the payments to the basic tax due.

The assessment issued by the CIR against WGC for CY 2011 covering the compromise penalty is cancelled and set aside, while the assessments for deficiency VAT and DST and penalties on deficiency EWT and FWVAT are upheld.

The failure of the revenue officer to revalidate the LOA did not render the same void and, correspondingly, did not affect the validity of the assessment. At most, the consequence of violating the Revalidation Rule is to expose the revenue officer to disciplinary action. Furthermore, it is worth mentioning that nowhere in the BIR General Audit Procedures and Documentation (GAPD) was it mentioned that the Letter of Authority will be rendered invalid or ineffective should the revenue officer fail to follow the Revalidation Rule.

Section 228 of the Tax Code provides that an assessment may be protested administratively by filing a request for reconsideration or reinvestigation within (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. The implementing rules and regulation mentioned in Section 228 of the Tax Code is RR No. 12-99, as amended by RR No. 18-2013.

Tektite Insurance Brokers Inc. vs. Commissioner of Internal Revenue
CTA *En Banc* No. 1923 promulgated 23 July 2020

Facts:

Tektite Insurance Brokers Inc. (Tektite) is engaged in the business of insurance brokerage and is authorized to render such services by the Insurance Commission.

Tektite received a LOA authorizing the examination of its books of accounts and other accounting records for taxable year (TY) 2010. Tektite also received a Checklist of Requirements for Presentation of Records.

Tektite subsequently received a Notice of Informal Conference, to which Tektite filed its Reply. Tektite also submitted to the BIR a letter, attaching thereto a copy of its 2009 Annual Income Tax Return.

Thereafter, Tektite executed a Waiver of the Defense of Prescription under the Statute of Limitations, extending the prescriptive period to assess Tektite for all internal revenue taxes for TY 2020 until 31 October 2014.

Subsequently, Tektite received a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies. Tektite file a letter in protest to the PAN.

Tektite, then, received Assessment Notices and Formal Letters of Demand assessing it for deficiency income tax, interest and compromise penalty for failure to submit Summary List of Income Payments, Summary List of Sales and Summary List of Purchases for TY 2010. Tektite filed a letter in protest to the FAN.

Tektite received a letter from Regional Director Misajon informing Tektite that its request for reinvestigation of the assessment for TY 2010 was not in compliance with the provisions of Revenue Regulation (RR) No. 12-99, as amended by RR No. 18-2013. In view thereof, the FAN and FLD have become final, executory, and demandable. The Letter further states that it is the BIR's final decision on the matter.

Aggrieved, Tektite filed a Petition for Review before the Court of Tax Appeals (CTA) Division, which denied the petition. Later, the CTA Division modified the computation of deficiency and delinquency interest in the light of the effectivity of the TRAIN Law.

Issue:

Were the assessments issued to Tektite valid?

Ruling:

Yes. The failure to revalidate the LOA did not affect its validity. Hence, the assessments issued against Tektite were valid.

The failure of the revenue officer to revalidate the LOA did not render the same void and, correspondingly, did not affect the validity of the assessment. At most, the consequence of violating the Revalidation Rule is to expose the revenue officer to disciplinary action. Furthermore, it is worth mentioning that nowhere in the BIR General Audit Procedures and Documentation (GAPD) was it mentioned that the LOA will be rendered invalid or ineffective should the revenue officer fail to follow the Revalidation Rule. Therefore, on the basis of the foregoing, the failure of the BIR to revalidate petitioner's LOA did not affect its validity nor the assessment made pursuant to the same.

Regarding the Waiver, the Court noted that the one who signed the Waiver was none other than petitioner's President, Mr. Antonio Reyes-Cuerva. Considering that he is a responsible officer of the petitioner, a notarized Board Resolution is neither required nor necessary to give authority to Mr. Reyes-Cuerva to execute the Waiver, as laid down in Stanley Works Case (GR No. 187589 3 December 2014) which only requires a Board Resolution when the signatory of the Waiver is a representative other than a responsible officer of the Company.

On the other hand, Tektite is mistaken in its contention that the Revenue District Officer is not one of the authorized officers who can sign the Waiver for the BIR. As correctly ruled by the Court in Division, RDAO No. 05-01 is clear to the letter that the Revenue District Officer has the pre-requisite authority to sign the Waiver since the audit investigation of the petitioner is still pending at the Revenue District Office level. Moreover, the Supreme Court in the Stanley Works Case provided that the Revenue District Officer is the authorized officer to sign the Waiver on behalf of the BIR. Considering that the Waiver was executed on 11 February 2014, the applicable form of the Waiver to be followed is the one prescribed under RDAO No. 05-01,

which does not prescribe that the amount of taxes but only the type of taxes. Hence, the Court found that since the Waiver did not indicate the type of taxes, the same is defective consistent with its ruling in Commissioner v. La Frutera, Inc. (CTA EB Case No. 1011, 4 August 2014). Further, since the Waiver is not duly notarized, contrary to the third requisite laid down in the Stanley Works Case, the Waiver is defective.

The defects noted by the Court in the Waiver are, however attributable to the fault of both parties, and the parties in this case are *in pari delicto* or in equal fault, hence the exception in the Next Mobile Case (GR No. 212825, 7 December 2015) applies to this case. In addition, Tektite is in estoppel as it allowed respondent to rely on the said Waiver and failed to raise any objection against its validity until the assessment reached the CTA Division. Lastly, Tektite cannot assert that it did not benefit from the issuance of the Waiver. In the said extended period, the petitioner was given the opportunity to contest the assessment issued by the BIR against it and postpone the payment of its taxes. Hence, the waiver is considered to have validly extended the period to assess Tektite.

As correctly decided by the CTA Division, the FAN has already become final and executory for failure of the petitioner to file a valid Protest to the FAN within (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

In this case, Tektite received the FAN on 18 June 2014. On 24 June 2014, it filed its Protest to the FAN dated 20 June 2014, however, the Protest to the FAN submitted by the petitioner is not compliant with the form prescribed under RR No. 18-2013. In fact, the Protest to the FAN only consisted of one page. Neither did the petitioner submit supporting documents for its request for reinvestigation within sixty (60) days from the date of the filing of the Protest to FAN, as mandated by RR No. 18-2013.

This Court affirms the findings of the CTA Division, specifically: (a) the Protest to the FAN erroneously referred to it as the PAN; (b) Tektite failed to state the newly discovered or additional evidence that it intends to present in support of its request for reinvestigation; and (c) the Protest to the FAN failed to mention the applicable law, rules and regulations, or jurisprudence on which Tektite's protest is based. Considering Tektite's Protest to the FAN failed to comply with the form and manner of protesting an assessment, the same is void and without force and effect. Consequently, since the Protest to the FAN is void, the FAN has already become final, and therefore its validity can no longer be questioned on appeal.

When Section 112(C) states that "the taxpayer affected may, within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal

the decision or the unacted claim with the Court of Tax Appeals", the law does not make the 120+30 day periods optional just because the law uses the word "may". The word "may" simply means that the taxpayer may or may not appeal the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period.

Lapanday Foods Corporation vs. Commissioner of Internal Revenue
CTA *En Banc* No. 2032 promulgated 22 July 2020

Facts:

Lapanday Foods Corporation (LFC) is engaged in the production and export of fruits and other agriculture products, the sales of which are classified as zero-rated in accordance with Section 106 (A) (2) (a) (1) of the Tax Code.

In 2009, LFC filed with the Bureau of Internal Revenue (BIR) successive applications for administrative claims for the issuance of tax credit certificates (TCCs), pursuant to Section 112(C) of the Tax Code. The TCCs sought were to cover the excess and unutilized input value-added tax (VAT) from zero-rated sales for the four quarters of taxable year (TY) 2007.

Thereafter, LFC received a Notice of Denial, stating that its applications for the issuance of TCC are all denied for failure of petitioner to substantiate its claim. Prior to that LFC received two Notices from the BIR for additional documents in support of its application for TCCs.

Within thirty (30) days from receipt of the Notice of Denial, LFC filed a Petition for Review before the Court of Tax Appeals (CTA) Division. The CTA Division denied the petition for being filed out of time.

Issue:

Was LFC entitled to its application for issuance of TCCs?

Ruling:

No. In plethora of cases, the Supreme Court consistently made categorical that the 120-day and 30-day reglementary periods in refund or tax credit cases, pursuant to Section 112(C) of the Tax Code, are both mandatory and jurisdictional.

When Section 112(C) states that "the taxpayer affected may, within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals", the law does not make the 120+30 day periods optional just because the law uses the word "may." The word "may" simply means that the taxpayer may or may not appeal the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period.

LFC's contention that it had the right to wait for the CIR's decision and from said decision reckon the 30-day period to appeal is specious. The CIR's decision appealable to this Court is one issued within the 120-day period. The absence of the decision issued within the 120-day period should have been LFC's cue to deem the inaction as denial of its claims (that resultantly ripened its right to file judicial claim before this Court). There is no alternative option to wait for the CIR's decision beyond the 120-day period as LFC claims.

Considering that the administrative claims, which were filed within two years from the close of the taxable quarter when sales were made, were filed in 2009, LFC had until 2009 also to file the judicial claim, applying the 120+30 day period. Since Petition for Review (covering the four quarters of TY 2007) was only filed in 2018, short of a decade thereafter, the Court cannot now entertain LFC's judicial claim.

Lapanday Foods Corporation (formerly merged with Malalag Ventures Plantation, Inc.) vs. Commissioner of Internal Revenue
CTA EB No. 2181 promulgated 21 July 2020

Prior to TRAIN Law, the rationale for the mandatory and jurisdictional 120 plus 30-day period is the fact that LFC's inaction within the 120-day mandatory period given him to decide a request for input tax refund/TCC is treated as a denial itself. Hence, a taxpayer need not await an actual denial as its request for input tax refund / TCC has been deemed denied, by express provision of law.

Facts:

Lapanday Foods Corporation (LFC), a domestic corporation, filed its administrative claims for issuance of tax credit certificates (TCCs) for its excess and unutilized input taxes on account of zero-rated sales for the 1st, 2nd, and 3rd quarters of taxable year (TY) 2007. The Commissioner of Internal Revenue (CIR) did not act upon the said claims until 4 October 2018, when it issued a Denial Letter denying all three administrative claims.

On 20 November 2018, LFC filed the Petition for Review before the Court of Tax Appeals (CTA) in Division which was denied.

Issue:

Did LFC timely filed its Petition for Review?

Ruling:

No. Section 112 (C) of the Tax Code (prior to TRAIN Law), does not provide alternative remedies to the taxpayer. Under the same provision, taxpayers cannot opt to wait for an actual adverse decision by respondent despite the lapse of the 120-day mandatory period given to LFC to act before filing a judicial claim before the CTA. Otherwise, such judicial action is belatedly filed, which results in CTA's losing its jurisdiction to try the judicial claim for input tax refund / TCC.

The rationale for the mandatory and jurisdictional 120 plus 30-day period is the fact that LFC's inaction within the 120-day mandatory period given him to decide a request for input tax refund/TCC is treated as a denial itself. Hence, a taxpayer need not await an actual denial as its request for input tax refund / TCC has been deemed denied, by express provision of law.

Commissioner of Internal Revenue vs. Travellers International Hotel Group
CTA *En Banc* No. 2047 promulgated 17 July 2020

Section 13 of the Tax Code is clear that the authority of a revenue officer to conduct the audit and assessment of a taxpayer should be pursuant to a LOA. To reiterate, the LOA is the authority given by the CIR or his authorized representative to the revenue officer to conduct the audit or assessment of a taxpayer pursuant to Section 6(a) of the Tax Code. In order for new officers not named in the original LOA to continue the audit, a new LOA must be issued in their name, pursuant to Revenue Memorandum Order (RMO) No. 43-90. A document, such as a MOA, may be construed as an equivalent to a new LOA if it contains all the elements necessary to establish a contract of agency between the CIR or his duly authorized representative and the new revenue officer.

Facts:

Travellers International Hotel Group, Inc. (Travellers) is a domestic corporation which is engaged in the establishment and operation of casinos within the PAGCOR's regulatory and licensing authority under Presidential Decree (PD) No. 1869 (PAGCOR Charter).

Travellers received a Letter of Authority (LOA) authorizing the examination of the company's books of accounts and other accounting records for taxable year (TY) 2010.

Subsequently, Travellers received a Preliminary Assessment Notice (PAN) assessing the company for deficiency income tax, VAT, expanded withholding tax (EWT), withholding tax on compensation (WTC), documentary stamp tax (DST) and final tax, inclusive of interest and penalties. Travellers paid a portion of the income tax assessment and the entire assessments for VAT, EWT, WTC, DST and final tax, inclusive of penalties and interests. Travellers filed a letter to the Commissioner of Internal Revenue (CIR), informing him that the company already paid part of the assessment, as well as protesting the remaining deficiency income tax related to the disallowance of certain expenses and gaming revenue.

Thereafter, a Formal Assessment Notice (FAN) with the Details of Discrepancies and the Assessment Notice were issued against Travellers. Travellers was assessed for deficiency income tax arising from its gaming revenues. Travellers protested the FAN.

Subsequently, Travellers received the Final Decision on Disputed Assessment (FDDA), denying the protest filed by Travellers. Travellers filed a Request for Reconsideration on the FDDA, followed by a Supplemental Request for Reconsideration.

Travelers, then, received from the CIR a letter (Final Decision) sustaining the FDDA and holding it liable for deficiency income tax.

Travelers filed before the Court of Tax Appeals (CTA) the instant petition for review.

Issue:

Was the assessment issued against Travellers valid?

Ruling:

No. The Revenue Officer (RO) did not have the pre-requisite authority to conduct Traveller's audit, hence, the assessment is void.

Records disclose that the audit of the respondent was initially assigned to RO Malik Dimakuta and Group Supervisor (GS) Oscar Sable by virtue of LOA. Subsequently, the audit of the respondent was reassigned to RO Larah N. Vito and GS Ma. Amable Tan pursuant to Memorandum of Assignment which was signed by the Officer-in-Charge of Regular LT Audit Division.

Section 13 of the Tax Code is clear that the authority of a revenue officer to conduct the audit and assessment of a taxpayer should be pursuant to a LOA. To reiterate, the LOA is the authority given by the CIR or his authorized representative to the revenue officer to conduct the audit or assessment of a taxpayer pursuant to Section 6(a) of the Tax Code. In order for new officers not named in the original LOA to continue the audit, a new LOA must be issued in their name, pursuant to Revenue Memorandum Order (RMO) No. 43-90.

A document, such as a MOA, may be construed as an equivalent to a new LOA if it contains all the elements necessary to establish a contract of agency between the CIR or his duly authorized representative and the new revenue officer. Included in these elements is the authority of the person issuing the LOA.

The Tax Code grants upon the Revenue Regional Director, as the CIR's representative, the authority to issue LOAs. The position equivalent to a Revenue Regional Director for the Large Taxpayers Division, who is authorized to issue the LOA, is identified in RMO No. 29-07. Under RMO No. 29-07, it is the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayer Division of the BIR who are authorized to issue and approve LOAs. Here, the MOA was only signed by Mr. Edwin T. Guzman, OIC-Chief of Regular LT Audit Division. He is neither the CIR, Revenue Regional Director, nor an Assistant Commissioner/Head Revenue Executive Assistant. Thus, RO Vito and GS Tan have no authority to continue respondent's audit. The assessment against Travellers is void.

Further, Travellers is exempt from income tax on its gaming operations. In the case of Bloomberry Resorts and Hotels Inc. vs. Bureau of Internal Revenue (GR No. 212530, 10 August 2016), it was held that all contractees and licensees of PAGCOR, upon payment of 5% franchise tax, shall be exempted from all other taxes, including corporate income tax realized from the operation of casinos.

The absence of a Letter of Authority from the BIR renders the assessment void as it denies due process to the taxpayer.

An invalid assessment cannot be a basis for the perfection of a tax compromise. A taxpayer that entered into an invalid compromise is entitled to a refund of erroneously paid tax if it complies with the requisites for a refund.

ED & F Man Philippines, Inc. vs. Commissioner of Internal Revenue
CTA (Second Division) Case Nos. 9577 and 9739 promulgated 5 August 2020

Facts:

Respondent CIR assessed Petitioner ED & F Man Philippines, Inc. (EMPI) for deficiency income tax and VAT for the fiscal year ended 31 October 2008. EMPI settled the assessed deficiency taxes and received a termination letter from the BIR on 16 March 2010. Thereafter, EMPI received a Letter Notice (LN) authorizing the investigation of the company's VAT transactions for the same period. After a tax audit, it was assessed for deficiency VAT anew on 6 November 2013.

EMPI argued that it could not be made liable again for VAT for the same taxable year.

The BIR upheld the finality of the VAT assessment and enforced collection against EMPI. The company filed an application for compromise on 18 December 2015 invoking doubtful validity of the assessment and paid 15% of the basic deficiency VAT assessed. It was constrained to pay to facilitate the renewal of its Importer's Clearance Certificate.

The Regional Evaluation Board later denied the compromise application for failure of EMPI to pay the minimum 40% of the basic tax deficiency assessed. EMPI filed a second compromise application on 10 April 2017, paying the balance of 25% of the basic deficiency VAT assessed.

On 18 December 2017, EMPI filed an administrative claim for refund with the BIR for the first compromise payment made on 18 December 2015. To toll the 2-year prescriptive period, EMPI also filed a judicial claim at the CTA through a Petition for Review.

Issues:

1. Is the assessment valid?
2. Is the compromise settlement valid?
3. Is EMPI entitled to the refund?

Rulings:

1. No. The right of the BIR to assess EMPI for deficiency VAT has prescribed. As the VAT is filed on a quarterly basis, the last day to assess the 4th quarter VAT was on 25 November 2011, well beyond the issuance of the Final Assessment Notice on 6 November 2013. As there was no waiver executed and there was no false or fraudulent return filed to justify the use of the extraordinary 10-year prescription, the prescriptive period has set in.

   The absence of a Letter of Authority also renders the assessment void as it denies EMPI the due process to which it is legally entitled. Under Revenue Memorandum Order 12-98, one LOA for each taxable year should be issued. The issuance of an LOA for a taxable year is counted as one audit. The BIR cannot circumvent such limitation by carrying out the assessment only by virtue of an LN and giving it the effect of an LOA.

2. No. Since the second assessment is void, it necessarily follows that there is no basis for the compromise settlement. Quoting the Supreme Court's ruling in *CIR vs. Azucena T. Reyes, G.R. No. 159694 promulgated on 27 January 2006*, the CTA held that an invalid assessment cannot be used as a basis for the perfection of a tax compromise.

3. Yes. The CTA ruled that EMPI sufficiently proved its entitlement to its claim for refund for erroneously paid taxes under Section 204, in relation to Section 229, of the NIRC. It complied with the requisites for refund of taxes erroneously or illegally paid, namely: (1) the filing of a written claim for refund with the BIR within 2 years from the date of payment of the tax; (2) if denied or not acted upon, the filing of a petition for refund with the CTA within 30 days from the receipt of the adverse decision or in case of inaction, within the 2-year prescriptive period; (3) the claim for refund must be a categorical demand for reimbursement; (4) there is proof of payment of the erroneously collected taxes; and (5) the refund did not result in the availment of incentives pursuant to special laws where no actual payment was made.

Tax Refunds

Leah Empesando et al vs. Commissioner of Internal Revenue
Commissioner of Internal Revenue vs. Leah Empesando, et al
CTA *En Banc* No. 1995 (CTA Case No. 9093) promulgated 30 July 2020
CTA *En Banc* No. 1996 (CTA Case No. 9093) promulgated 30 July 2020

The payment and collection of the taxes from the ADB employees is neither erroneous nor illegal. The Government, in entering upon the 1966 Agreement giving the privilege of tax exemption on salaries and emolument paid by ADB to its employees, did not relinquish its power of taxation over its own citizens and nationals. Since the income of the ADB employees was subject to tax based on the Tax Code provisions, the collection of the same was, therefore, grounded on statutory authority. In a claim for tax refund for an erroneous or illegal tax there must be proof that the tax levied and collected as without statutory authority, or it was levied upon a property not subject to tax, or it was levied by some officer having no authority to levy the tax, or it is a tax which is in some other similar respect is illegal. Tax refund are construed strictly against the taxpayer.

Facts:

Leah Empesando and others are all Filipinos and regular employees of the Asian Development Bank (ADB) at the time they paid their respective income taxes for taxable years 2012 and 2013. They argue that since the ADB started in 1966 up to 2013, Filipino ADB employees were exempted from payment of income tax on their salaries received from the ADB, pursuant to the Agreement Establishing the Asian Development Bank (ADB Charter).

On 12 April 2013, the Commissioner of Internal Revenue (CIR) issued Revenue Memorandum Circular (RMC) No. 31-2013 which provides, among others, that only the officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.

In compliance with RMC No. 31-2013, which was given a retroactive application, Empesando and others paid their respective income taxes for 2012 and 2013 salaries.

Two ADB employees questioned before the Regional Trial Court (RTC) the legality of the said RMC. The RTC declared the said RMC as void for being issued without legal basis in excess of authority and/or without due process of law and in absence of legislation and/or regulation to the contrary. The RTC also denied the Motion for Reconsideration filed by the CIR. The Court of Appeals also denied the appeals filed by the CIR. The case is still pending before the Supreme Court.

Armed with the favorable decision of the RTC, Empesando and others filed administrative claims for refund with the Bureau of Internal Revenue (BIR). A judicial claim for refund was also filed. The Court partially granted the claim for income tax refund. Both Empesando and others, and the CIR filed their Petitions for Review with the Court of Tax Appeals.

Issue:

Are Empesando and others entitled to their claims for refund of allegedly erroneously paid income tax on their salaries received from the ADB as employees of ADB?

Ruling:

No. Empesando and others, who are claiming for refund of allegedly erroneously and/or illegally collected income tax under Section 229 of the Tax Code, are Filipino employees of the ADB.

First, a review of the relevant treaty and legislative provisions demonstrate that the Congress certainly intended to tax the salaries and emoluments received by the Filipino employees of the ADB.

Second, with regard to RMC No. 31-2013, it only reiterates the general principles laid down in the Tax Code which was already effective in 1998. The ABS-CBN case (ABS-CBN vs, Court of Tax Appeals) cited by Empesando and others in defending that RMC No. 31-2013 should not be applied retroactively and cannot be applied to the ADB employees' case. RMC No. 31-2013 was issued merely to construe the existing provisions of the Tax Code in relation to the various existing treaty obligations of the Philippines. The RMC was not issued or intended to impose additional tax burdens not otherwise found in the law.

Third, construction of the executive branch of the government of a particular law although not binding upon courts must be given weight as the construction came from the branch of the government called upon to implement the law. RMC No. 31-2013 was issued to fill in the details and manner of enforcement of Sections 23 (A) and 24 (A) (1) (a) pursuant to Section 4 of the Tax Code. RMC No. 31-2013 is an interpretative rule issued by the administrative agency.

Fourth, even assuming that in the past, there was failure on the part of the CIR to take a categorical position on the taxation of Filipino ADB employees, this does not operate to estop the government from correcting the same. Prolonged practice of non-collection of certain taxes, if proven to be erroneous, does not ripen into validity as the Supreme Court *En Banc* held in the consolidated cases of La Suerte Cigar and Cigarette Factory vs. Court of Appeals, et al (GR No. 125346 dated 11 November 2014).

Fifth, in a claim for tax refund for an erroneous or illegal tax there must be proof that the tax levied and collected as without statutory authority, or it was levied upon a property not subject to tax, or it was levied by some officer having no authority to levy the tax, or it is a tax which is in some other similar respect is illegal. Tax refunds are construed strictly against the taxpayer. Here, the payment and collection of the taxes from the ADB employees is neither erroneous nor illegal. The Government, in entering upon the 1966 Agreement giving the privilege of tax exemption on salaries paid by ADB to its employees, did not relinquish its power of taxation over its own citizens and nationals. Since the income of the ADB employees was subject to tax based on the Tax Code provisions, the collection of the same was, therefore, grounded on statutory authority.

Zenith Foods Corporation vs. Commissioner of Internal Revenue
CTA Case No. 9165 promulgated 29 July 2020

The CIR cannot circumnavigate the three-year prescriptive period in the guise that it is merely collecting penalty and not internal revenue taxes. The assessment being issued beyond the three-year prescriptive period under Section 203 of the Tax Code, and not otherwise falling under the exception provided in Section 222, the Court of Tax Appeals could only deem that the subject assessment is void.

Facts:

Zenith Foods Corporation (ZFC) is a corporation registered with the Securities and Exchange Commission (SEC) and the Bureau of Internal Revenue (BIR) with a primary purpose to engage in the planting, raising, culture, harvesting and processing of agricultural and fishery products into semi-processed or finished products, and to engage in other farm activities.

ZFC's books of accounts and accounting records for calendar year (CY) 2004 were subjected to an audit investigation pursuant to a Letter of Authority (LOA).

On 5 March 2008, ZFC availed of tax amnesty under Republic Act (RA) No. 9480 covering taxable years (TY) 2005 and prior years, thus constraining BIR Revenue District Office (RDO) No. 56 to limit its audit to withholding tax liabilities for CY 2004.

Thereafter, the Commissioner of Internal Revenue (CIR) issued a Preliminary Assessment Notice (PAN). Subsequently, ZFC received from Revenue Region (RR) No. 9 a Formal Letter of Demand/Final Assessment Notice (FLD/FAN), demanding payment of the alleged deficiency expanded withholding tax (EWT), final withholding tax (FWT), and fringe benefit tax (FBT). ZFC filed a Protest Letter to the FLD/FAN requesting for the reinvestigation and/or reconsideration of the assessment for CY 2004.

ZFC, then, received a Preliminary Collection Letter (PCL), seeking collection of ZFC's alleged tax liability for CY 2004. ZFC thereafter received a Final Notice before Seizure (FNBS) giving it the final opportunity to settle its deficiency tax liability. ZFC responded to the FNBS through a letter.

ZFC, then, paid a reduced amount as embodied in the Agreement Form which ZFC's representative and the Revenue District Officer signed. Furthermore, the said reduction was evidenced by Authority to Cancel Assessment (BIR Form No. 1402) to cover the following tax types: EWT and FBT.

The Regional Director of RR No. 9 issued a final decision on the deficiency tax liabilities of ZFC for CY 2014, which ZFC received.

Thereafter, ZFC received a Notice of Dis-Accreditation from the Bureau of Customs – Accounts Management (BOC-AMO). ZFC, likewise, received a Preliminary Notice of Dis-Accreditation as Imported from the BIR Accounts Receivable Monitoring Division (ARMD).

On September 23, 2015, ZFC received a Notice of Dis-Accreditation from the Bureau of Customs-Accounts Management Office (BOC-AMO). On 8 October 2015, ZFC likewise received a Preliminary Notice of Dis-Accreditation as Importer from the BIR-Accounts Receivable Monitoring Division (BIR-ARMD).

ZFC then paid the delinquent account for CY 2004 to avert its dis-accreditation as importer. Subsequently, the CIR issued a Certification stating that ZFC had settled its deficiency liabilities. ZFC filed an administrative claim for refund or issuance of tax credit certificate (TCC) pursuant to Section 229 of the Tax Code. Within thirty days from the receipt of the final decision, ZFC filed a Petition for Review before the Court of Tax Appeals (CTA).

Issue:

Was ZFC entitled to a refund representing payment for illegally assessed and collected tax?

Ruling:

Yes, the assessment for CY 2004 was void.

Based on the facts, the FLD was issued only on 10 July 2008 or after 4 years from the filing of the monthly EWT returns. Obviously, the assessment was issued beyond the three-year prescriptive period. Likewise, it is noted that the FLD merely impose a 25% surcharge thus implying that the neglect was not willful and there was no allegation of fraud.

The CIR cannot circumnavigate the three-year prescriptive period in the guise that it is merely collecting penalty and not internal revenue taxes. The assessment being issued beyond the three-year prescriptive period under Section 203 of the NIRC of 1997, as amended, and not otherwise falling under the exception provided in Section 222, the CTA could only deem that the subject assessment is void.

Even assuming *arguendo* that the period to assess ZFC did not prescribe or lapse, the assessment is still void as the FLD failed to provide a definite amount demanded of ZFC.

A perusal of the FLD/FAN shows that the amount being demanded from ZFC is not definite. The computation of interest as shown in the enclosed Assessment Notices covered only the period from 10 January 2005 to 10 July 2008, while the deadline for payment indicated in the said notices was 8 August 2008. Evidently, no interest was computed from 11 July 2008 up to the deadline on 8 August 2008. Although there was a caveat in the FLD that "the interest and the total amount due will have to be adjusted if paid beyond due date", there is still a gap period of 28 days wherein no interest is due. Such gap will result in an absurd situation wherein the taxpayer who wishes to pay within the prescribed period would still need to have the total amount due adjusted, lest the payment of the amount reflected on the FLD will result in deficiency. It is rather illogical for the CIR to set a deadline within which to settle the deficiency taxes due, but the amount remained variable. At the very least, the CIR should have computed the interest up to the deadline for payment, with caveat for adjustment of interest if paid beyond the deadline.

Commissioner of Internal Revenue vs. Air Philippines Corporation (APC)
CTA *En Banc* No. 2064 (CTA Case No. 7872, 7883, 7922, 7929 and 7952) promulgated 29 July 2020

A claim for tax refund necessitates only the preponderance of evidence threshold. Once the requirements laid down by laws have been met, a claimant should be considered successful in discharging its burden of proving its right to refund.

Facts:

Air Philippines Corporation (APC) is a domestic corporation engaged in the business of air transportation of passengers and cargo to and from points within and outside the Philippines. In accordance with its franchise, APC is entitled to the same tax exemption privileges granted to Philippine Airlines (PAL). PAL has the option to pay the lower amount between the (a) basic corporate income tax of 30% based on its net taxable income or (b) franchise of two percent (2%) based on its gross revenues in lieu of all other taxes, duties and fees. A Letter of Instruction (LOI) withdrew PAL's tax exemption privilege with respect to its purchase of domestic petroleum products for use in its domestic operations. A BIR ruling was issued in 1999 confirming PAL's stance that petroleum products purchased or imported by it from abroad for use in its domestic operations are not subject to tax. Thereafter, a BIR ruling was issued in 2000 affirming APC's position that it is exempt from all taxes imposed by the Tax Code on its importation of petroleum products. In 2003, a BIR ruling was addressed to APC, PAL, Cebu Pacific Air, and Pacific Airways Corporation, stating that their importations and purchases of petroleum products from abroad would no longer be exempt from all taxes imposed by the Tax Code, it appearing that aviation gas, fuel and oil used in domestic operation were locally available in reasonable quantity, quality and price as certified by the Department of Energy.

Based on the foregoing, the Commissioner of Internal Revenue (CIR), acting through the Commissioner of Customs (COC), started to assess APC for specific taxes on importations of fuel used for its domestic operations. From January to July 2007, APC imported fuel for its domestic operations and paid specific taxes under protest assessed by the Collector of Customs of the Port of Batangas, Batangas City. Subsequently, APC filed with the District Collector of Customs of the Port of Batangas formal written protests for the refund of the specific taxes paid under protest paid during taxable year 2007. Due to the COC's failure to act on the above protests, APC filed written claims for refund with the CIR. Thereafter, separate Petitions for Review were filed by APC, which were denied

for insufficiency of evidence. However, the Motion for Reconsideration filed by APC was decided in its favor, whereby the CIR and COC were ordered to refund APC the specific taxes paid under protest corresponding to its importation of aviation fuel for its domestic operations covering the period January to July 2007. The Motions for Reconsideration filed by the CIR and COC were denied. The CIR filed in the instant Petition for Review.

Issue:

Was APC entitled to its claim for refund?

Ruling:

Yes. APC had proven its claim for refund by the required quantum of evidence. The records of the case had proven that the imported aviation fuel was used for APC's domestic flight operations. The ATRGIs, together with supporting documents, show that the imported fuel was used in APC's domestic operations. The Court relied on the case of Commissioner of Internal Revenue vs. Philippine Airlines Inc. and Commissioner of Customs vs. Philippine Airlines Inc. (CTA EB Nos. 1752 and 1756 dated 10 May 2019) in giving weight to ATRIGs.

Note that the Court did not decide on the issue of the actual use of the imported fuel since it was the first time that the CIR raised such issue.

The Court ruled that the Air Transport Office (ATO) certifications presented by APC prove that the imported fuel is not locally available in reasonable quantity, quality or price. The Court relied on the case of Commissioner of Customs vs. Air Philippines Corporation (CTA EB Case No2 1704 and 1707 dated 2 May 2019) in giving credence to the ATO certificates.

The ATO certification made APC compliant with the third requisite for tax exemption, specifically, that the imported articles, supplies or materials are not locally available in reasonable quantity, quality or price. Thus, APC is entitled to the refund of excise taxes on imported Jet A-1 aviation fuel for its domestic flight operations.

The term 'non-resident foreign corporation' applies to a foreign corporation not engaged in trade or business within the Philippines". Thus, to be considered as such corporation, (1) it must be a foreign corporation; and (2) it must not be engaged in trade or business within the Philippines.

The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims. More importantly, it must be emphasized that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.

Nippon Express Corporation vs. Commissioner of Internal Revenue
CTA Case No. 9873 promulgated 27 July 2020

Facts:

Nippon Express Philippines Corporation (Nippon) is a corporation duly organized and existing under and by virtue of the laws of the Philippines. It filed with the Bureau of Internal Revenue (BIR) its administrative claim for the refund and/or issuance of tax credit certificate (TCC) allegedly representing excess/unutilized input VAT from 1 January to 31 December 2016 [calendar year (CY) 2016].
Thereafter, an investigation was conducted pursuant to a Tax Verification Notice.

The CIR denied Nippon's claim for refund/TCC.

Nippon, then, filed before the Court of Tax Appeals (CTA) the instant Petition for Review.

Issues:

Was Nippon entitled to its claim of refund/issuance of TCC?

Ruling:

No. Nippon failed to establish that it is engaged in zero-rated sales or effectively zero-rated sales during the four (4) quarters of CY 2016.

Under Section 112 (A) of the Tax Code, the following must be complied with in a claim for refund/issuance of a TCC:

1. the refund claim is filed with the BIR within 2 years after the close of the taxable quarter when the sales were made

2. in case of full or partial denial of the refund claim, the judicial claim has been filed with this Court, within 30 days from receipt of the decision

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 Section 106(A)(2)(1) and (2); 106(B); and 108(B) (I) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (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. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters

Relative to the fourth and seventh requisites, the invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims. More importantly, it must be emphasized that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.

Nippon claims that during CY 2016, the services it rendered to non-resident and Philippine Economic Zone Authority (PEZA)-registered clients are subject to zero percent (0%) VAT pursuant to Section 108(B)(2) and (3) of the Tax Code. Nippon presented various Certifications of Non-Registration of Company issued by the Securities and Exchange Commission (SEC) to the effect that the records of the latter do not show the registration of Nippon's clients as a corporation or as a partnership.

However, the said SEC Certifications of Non-Registration are inadequate proof that Nippon's clients are non-resident foreign corporations doing business outside the Philippines.

Under Section 22(I) of the Tax Code, "[t]he term 'non-resident foreign corporation' applies to a foreign corporation not engaged in trade or business within the Philippines". Thus, to be considered as such corporation, (1) it must be a foreign corporation; and (2) it must not be engaged in trade or business within the Philippines.

In this regard, Nippon failed to discharge the burden of proving that its clients are doing business outside the Philippines.

Nippon also failed to present any evidence to show that the subject services are other than "processing, manufacturing or repacking of goods", that such services were performed in the Philippines; and that the payments therefor are in acceptable foreign currency accounted for in accordance with BSP rules and regulations.

Moreover, Nippon failed to substantiate its alleged zero-rated sales of services by failure to present the corresponding zero-rated sales of services by failure to present the corresponding VAT zero-rated official receipts issued for the said clients.

For its sales to PEZA-registered entities, Nippon presented the Certifications issued by the PEZA to prove that its clients are duly registered with the PEZA. However, Nippon failed to present as evidence the VAT zero-rated official receipts to substantiate its alleged zero-rated sales to PEZA-registered entities. Thus, Nippon's sales of service to the said PEZA-registered entities cannot be considered as subject to the zero percent (0%) VAT.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions. It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.

Philippine Geothermal Production Company, Inc. vs. Commissioner of Internal Revenue
CTA Case Nos. 9208 & 9274 promulgated 24 July 2020

According to the Renewable Energy Act of 2008 and Section 108(B)(7) of the NIRC of 1997, as amended, a RE Developer's sale of power or fuel generated through renewable source such as geothermal energy is subject to zero percent (0%) VAT. In relation thereto, Part III, Rule 5 of the Implementing Rules and Regulations of the Renewable Energy Act of 2008 states the condition for the availment of incentives and other privileges under the said law. Section 18(A), (B), and (C) indicates the mandatory submission of the following documents in order to qualify for VAT zero-rating: (1) Department of Energy (DOE) Certificate of Registration; (2) Registration with the Board of Investment (BOI); and (3) Certificate of Endorsement by the DOE.

Facts:

Philippine Geothermal Production Company, Inc. (PGPC) is a corporation duly organized and existing under Philippine laws.

On 30 June 2015, PGPC filed with the Large Taxpayers Excise Audit Division I of the Bureau of Internal Revenue (BIR) its administrative claim for refund and its Application for Tax Credits or Refunds covering its unutilized input taxes for the second quarter of taxable year (TY) 2013 pursuant to Sections 112(A) and 108(B)(7) of the Tax Code, and as implemented by Section 4.108-5(b)(7) of Revenue Regulations (RR) No. 16-2005. Likewise, on September 30, 2015, PGPC filed its Application for Tax Credits or Refunds covering its unutilized input taxes for the third quarter of TY 2013.

However, PGPC received a letter from the BIR denying its claim for VAT refund for the second quarter of TY 2013. Another letter was received by PGPC, denying its claim for refund for the third quarter of TY 2013.

PGPC filed before the Court of Tax Appeals (CTA) the Petition for Review for the two claims.

Issue:

Was PGPC entitled to its claims for refund of unutilized input taxes attributable to its zero-rated sales for the second and third quarters of TY 2013?

Ruling:

No. Petitioner failed to establish that part of its declared sales/receipts for the subject period of claim qualifies for VAT zero-rating.

Under Section 112 (A) of the Tax Code, the following must be complied with in a claim for refund/issuance of a TCC:

1. the refund claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made

2. in case of full or partial denial of the refund claim, the judicial claim has been filed with this Court, within 30 days from receipt of the decision

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 Section 106(A)(2)(1) and (2); 106(B); and 108(B) (I) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (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. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters

In its Amended Quarterly VAT Returns for the second and third quarters of TY 2013, the total declared sales/receipts consist of zero-rated sales/receipts and VATable sales/receipts.

PGPC's witness testifies that PGPC is a Renewable Energy (RE) Developer. Thus, its sale of steam generated through renewable geothermal energy should be considered as VAT zero-rated, pursuant to Section 15(g) of Republic Act (RA) No. 9513 otherwise known as The Renewable Energy Act of 2008.

According to the Renewable Energy Act of 2008 and Section 108(B)(7) of the NIRC of 1997, as amended, a RE Developer's sale of power or fuel generated through renewable source such as geothermal energy is subject to zero percent (0%) VAT.

In relation thereto, Part III, Rule 5 of the Implementing Rules and Regulations of RA No. 9513 states the condition for the availment of incentives and other privileges under the said law. Section 18(A), (B), and (C) indicates the mandatory submission of the following documents in order to qualify for VAT zero-rating:

1. Department of Energy (DOE) Certificate of Registration;
2. Registration with the Board of Investment (BOI); and
3. Certificate of Endorsement by the DOE.

In this case, PGPC was able to present its Certificates of Registration issued by DOE certifying that PGPC is duly registered as a RE Developer of Geothermal Energy Resources.

PGPC was also able to submit its Certificates of Registration with the BOI. However, the CTA noted that both Certificates were only issued on 15 April 2014, which is obviously outside the period of claims (second and third quarters of TY 2013). Thus, no evidence was presented in this case showing that PGPC was registered with the BOI for the subject period of claims.

The records of the case are likewise bereft of any showing that a Certificate of Endorsement has been issued by the DOE in its favor for the subject period of claims.

Thus, for PGPC's failure to present all the above-stated documentary evidence, PGPC's reported zero-rated sales/receipts cannot qualify as VAT zero-rated sales.

Oceanagold (Philippines), Inc. vs. Commissioner of Internal Revenue
CTA Case Nos. 9207, 9277 & 9416 promulgated 24 July 2020

Sections 113(A)(1), (B)(1), (2)(c), and (3) of the Tax Code, as implemented by Sections 4.113-1(A)(1), B(1), and (2)(c) of Revenue Regulations (RR) No. 16-05, as amended, provide that any VAT registered person claiming VAT zero-rated direct or considered export sales must present, among others, the following documents: (a) The sales invoice as proof of sale of goods; and (b) The bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.

Moreover, the sales invoices supporting the export sales must be duly registered with the BIR and contain all the required information, pursuant to Sections 237 and 238 of the Tax Code. Thus, only export sales supported by above-stated documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the Tax Code.

Facts:

Oceanagold (Philippines), Inc. ("Oceanagold") is a corporation organized and existing under the laws of the Philippines. It is engaged in large-scale exploration, development and utilization of mineral resources such as gold, silver and copper.

On three separate dates, Oceanagold filed with the Excise Large Taxpayers Audit Division 1 (ELTAD 1) of the Bureau of Internal Revenue administrative claims for refund or issuance of tax credit certificate (TCC) for its unutilized input VAT attributable to zero-rated sales for the 3rd quarter of taxable year (TY) 2013, 4th quarter of TY 2013 and the 1st quarter of TY. The input VAT covered by Oceanagold's administrative claim particularly arose from domestic purchases and importations (other than capital goods), domestic purchases of services and purchases of capital goods.

In relation to the administrative claims for refund or issuance of TCC for its unutilized input VAT attributable to its zero-rated sales for the 3rd and 4th quarter of taxable year 2013 and the 1st quarter of taxable year 2014, Oceanagold received separate letters from the BIR partially granting Oceanagold's administrative claims.

Oceanagold filed three Petitions for Review and were later on Consolidated by the Court of Tax Appeals (CTA) upon the filing of a Motion to Consolidate by Oceanagold.

Issue:

Was Oceanagold entitled to its claims for refund of its unutilized input VAT arising from domestic purchase sand importation of goods (other than capital goods), domestic purchases of services, and purchases of capital goods attributable to zero-rated sales for the 3rd and 4th quarter of TY 2013 and the 1st quarter of TY 2014?

Ruling:

Yes, but only partially.

Under Section 112 (A) of the Tax Code, the following must be complied with in a claim for refund/issuance of a TCC:

1. the refund claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made

2. in case of full or partial denial of the refund claim, the judicial claim has been filed with this Court, within 30 days from receipt of the decision

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 Section 106(A)(2)(1) and (2); 106(B); and 108(B)(l) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (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. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters

Not all of Oceanagold's reported zero-rated sales or effectively zero-rated sales during the 3rd and 4th Quarters of TY 2013 and 1st Quarter of TY 2014 qualify as such and not all of Oceanagold's input VAT being claimed for refund are due or paid.

In order for an export sale to qualify as zero-rated, the following essential elements must be present:

a. the sale was made by a VAT registered person;

b. there was sale and actual shipment of goods from the Philippines to a foreign country; and,

c. the sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

Relative to the second requirement, Sections 113(A)(1), (B)(1), (2)(c), and (3) of the Tax Code, as implemented by Sections 4.113-1(A)(1), B(1), and (2)(c) of Revenue Regulations (RR) No. 16-05, as amended, provide that any VAT registered person claiming VAT zero-rated direct or considered export sales must present, among others, the following documents:

1. The sales invoice as proof of sale of goods;

2. The bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.

Moreover, the sales invoices supporting the export sales must be duly registered with the BIR and contain all the required information, pursuant to Sections 237 and 238 of the Tax Code. Thus, only export sales supported by above-stated documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the Tax Code.

Upon scrutiny of the supporting documents together with the Independent CPA report, zero-rated sales are supported by invoices but dated not within the period of claim and Oceanagold failed to submit the corresponding sales invoice of shipment to a foreign client.

Upon further examination of the documents supporting the input VAT claim, several input VAT claims should be disallowed due to the following grounds:

1. Input VAT on purchases of goods and services supported by Invoices/Official Receipts without Authority to Print;

2. Input VAT on purchases of goods and services supported by "Certified True Copy" Invoices/Official Receipts;

3. Input VAT on purchases of goods and services supported by "Photocopy" Invoices/Official Receipts;

4. Input VAT on purchases of goods and services supported by Invoices/Official Receipts but dated outside the period of claim;

5. Input VAT on purchases of goods and services supported by Invoices/Official Receipts with alteration without counter-signature or with counter-signature but without authority;

6. Input VAT on purchases of services supported by Official Receipts without Authority to Print and the amount of VAT is not separately indicated;

7. Input VAT on domestic purchase of services without supporting Official Receipts;

8. Input VAT on purchases of services but the supporting Exhibit Nos. were denied admission by the CTA; and

9. Over-claimed input VAT (Discrepancy between the amount of claim and the input VAT reflected per Official Receipt).

Also, since there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

I-Remit Inc. vs. Commissioner of Internal Revenue
CTA Case No. 9733 promulgated 24 July 2020

In order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both a Certification of Non-Registration of Corporation/ Partnership issued by the Philippine Securities and Exchange Commission (SEC), and proof of incorporation/registration in a foreign country (e.g., Articles I Certificate of Incorporation/ Registration and/ or Tax Residence Certificate). As a corollary, there must be no other indication which would disqualify said entity from- being classified as a non-resident foreign corporation. The Philippine SEC's Certification of Non-Registration of Corporation establishes that the recipient of the service has no registered business in the Philippines, and that it is not engaged in trade or business within the Philippines; while the articles of incorporation/ association will prove that the said recipient of the service is indeed foreign.

Facts:

I-Remit Inc. (I-Remit) is a domestic remittance company.

In 2017, I-Remit filed with the Bureau of Internal Revenue (BIR) its administrative claim for refund, requesting for the refund of input VAT paid by I-Remit from 1 January to 31 December 2015 [calendar year (CY) 2015]. The said administrative claim was denied by the BIR. I-Remit filed this instant Petition for Review.

Issue:

Was I-Remit entitled to its claim for refund of its unutilized input VAT paid in CY 2015 consequential to its alleged zero-rated sales?

Ruling:

No.

Under Section 112 (A) of the Tax Code, the following must be complied with in a claim for refund/issuance of a TCC:

1. the refund claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made

2. in case of full or partial denial of the refund claim, the judicial claim has been filed with this Court, within thirty 30 days from receipt of the decision

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 Section 106(A)(2)(1) and (2); 106(B); and 108(B) (I) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (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. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters

I-Remit's administrative claim pertaining to the first and second quarters of 2015 have prescribed.

The present claim covers the four (4) quarters of taxable year 2015, which closed on: (1) 31 March 2015 for the 1st quarter thereof; (2) 30 June 2015 for the 2nd quarter; (3) 30 September 2015 for the 3rd quarter; and (4) 31 December 2015 for the 4th quarter. Counting two (2) years from the said dates, I-Remit had until 31 March 2017, 30 June 2017, 30 September 2017, and 31 December 2017, respectively, within which to file its administrative claim for refund. Considering that I-Remit's administrative claim for refund, covering the four (4) quarters of 2015, was filed with the BIR only on 18 July 2017, I-Remit's right to claim for tax refund/ credit of its alleged input VAT for the 1st and 2nd quarters of 2015 has already prescribed. As a corollary, the refund claim pertaining to the 3rd and 4th quarters of 2015 were filed within the prescriptive period.

The judicial claim filed by I-Remit on 14 December 2017 was within the period provided by the law, which was 30-days from receipt of the letter denying the claim, that is, 30 days from 16 November 2017.

I-Remit, however, failed to establish that it was engaged in zero-rated or effectively zero-rated sales during the third and fourth quarters of CY 2015.

Certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%), under Section 108(B)(2) of the Tax Code:

a. The services fall under any of the categories under Section 108(8)(2),47 or simply, the services rendered should be other than "processing, manufacturing or repacking goods";

b. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;

c. The service must be performed in the Philippines by a VAT-registered person; and

d. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.

In order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both a Certification of Non-Registration of Corporation/ Partnership issued by the Philippine Securities and Exchange Commission (SEC), and proof of incorporation/ registration in a foreign country (e.g., Articles I Certificate of Incorporation/ Registration and/ or Tax Residence Certificate). As a corollary, there must be no other indication which would disqualify said entity from- being classified as a non-resident foreign corporation. The Philippine SEC's Certification of Non-Registration of Corporation establishes that the recipient of the service has no registered business in the Philippines, and that it is not engaged in trade or business within the Philippines; while the articles of incorporation/ association will prove that the said recipient of the service is indeed foreign.

The Court noted certain discrepancies in the names of the corporations stated in the supporting documents vis-a-vis the names of the entities as identified by I-Remit's witness. Furthermore, not all corporations mentioned by petitioner's witness were duly supported with both SEC Certification of Non-Registration of Corporation/ Partnership and proof of incorporation/registration in a foreign country.

I-Remit also did not submit any proof that the services rendered to foreign clients were paid for "in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP."

Deutsche Knowledge Services, Pte. Ltd. vs. Commissioner on Internal Revenue
CTA Case No. 7921 promulgated 23 July 2020

The following requisites must be satisfied before the sale of services under the said provision may be considered as VAT zero-rated: (a) Services other than processing, manufacturing or repacking of goods rendered by VAT registered persons in the Philippines; (b) The transaction paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations; and (c) The recipient of such services must be performing business outside the Philippines.

Facts:

Deutsche Knowledge Services Pte. Ltd. is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore. It is established as a regional operating headquarters (ROHQ) specifically to engage in general administration and planning, business planning and coordination, sourcing/procuring of raw materials and components, corporate finance advisory services, marketing control and sales promotion, training and personal management, logistic services, research and development services, product development, technical and support and maintenance, and data processing and communication and business development.

In the first quarter of calendar year (CY) 2007, the ROHQ rendered services in the Philippines to persons engaged in business conducted outside the Philippines; the payments for which were made in Euro and other acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

The ROHQ then filed with the BIR an Application for Tax Credits/Refunds of its excess and unutilized input VAT for the first quarter of CY 2007.

Claiming inaction on the part of the Commissioner of Internal Revenue (CIR), the ROHQ filed this present Petition for Review before the Court of Tax Appeals (CTA) Division. The CTA denied the petition for being filed out of time.

Issue:

Was the ROHQ entitled to the claim for refund of or issuance of tax credit certificate (TCC) for excess or unutilized input value-added tax for the first quarter of CY 2007?

Ruling:

Yes. Pursuant to the Section 112 (A) and (C) of the Tax Code, and as laid down by the Supreme Court in a number of cases, a taxpayer engaged in zero-rated or effectively zero-rated sales is entitled to a claim for refund or credit of excess input taxes attributable to such sales upon compliance with the following requisites: (a) the taxpayer is VAT-registered; (b) the claim for refund was filed within the prescriptive period; (c) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (d) the input taxes were incurred or paid; (e) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; and (f) the input taxes were not applied against any output VAT liability.

Per Section n2(A) of the Tax Code, the administrative claim for the issuance of a TCC or refund of input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The ROPHQ is a VAT registered entity as shown in its BIR Certificate of Registration. There was also proof that the claims for refund were filed within the prescriptive period provided under the law.

Anent the third requisite, the following requisites must be satisfied before the sale of services under the said provision may be considered as VAT zero-rated:

a. Services other than processing, manufacturing or repacking of goods rendered by VAT registered persons in the Philippines;
b. The transaction paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations; and
c. The recipient of such services must be performing business outside the Philippines.

Records show that the SEC issued to the ROHQ a license to do business as an ROHQ in the Philippines, pursuant to the Omnibus Investments Code of 1987, as amended by RA 8756, and its implementing rules and regulations. The services clearly fall within the scope of services other than processing, manufacturing or repacking of goods as contemplated by the afore-mentioned provision.

To show compliance with the third requisite, the ROHQ presented the following documents to prove that the recipient of its sales of services are non-resident foreign corporations doing business outside the Philippines: SEC Certificate of Non-Registration of Company; Intragroup Service Agreements; Company Registration Documents (authenticated copies of Articles of Associations, Certificate of Registration of Foreign Company/ Certificate of Registration of Oversea Company/, Certificate of Incorporation on Change of Name of Company/ Certificate of Business Registrations/ and Certified Copy of All Historical Registered Matters); AMinet Company Profile Fact Sheets; and Deutsche Bank Comprehensive List of Shareholdings 2013. Only the ROHQ's sales of services to entities which are duly supported by the two required documents (EC's negative certification or the Certificate of Non-Registration and proof of incorporation or registration in a foreign country) be treated as zero-rated sale, pursuant to Section 108(8)(2) of the Tax Code.

On the other hand, the foreign currency remittances referred to under Section 108 (B)(2) of the Tax Code, must also be supported by VAT zero-rated ORs, together with the details prescribed under the relevant laws.

The ROHQ has established that it was paid in Euro, an acceptable foreign currency, for the services rendered to its affiliates which were duly accounted for in accordance with the BSP rules and regulations as evidenced by the VAT zero-rated 0Rs, Cash Ledger- Cash (Euro)and Notarized Certification of inward remittances.

Taganito Mining Corporation vs. Commissioner of Internal Revenue
CTA *En Banc* No. 2055 promulgated 23 July 2020

There is nothing in Section 112 (A) of the Tax Code, and applicable jurisprudence which require that the input taxes subject of a claim for refund be directly attributable to zero-rated sales or effectively zero-rated sales. Input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfy the requirement of the law.

Facts:

Taganito Mining Corporation (TMC) is domestic corporation registered with the Board of Investments (BOI).

On 29 December 2015, TMC filed with the Bureau of Internal Revenue (BIR) Excise Taxpayers' Assistance Division under the Large Taxpayers Division, a claim for refund of excess input taxes paid on its domestic purchases and importation of taxable goods and services and importation of goods, including capital goods, for calendar year (CY) 2014.

On 12 May 2016, TMC received an undated letter, with attached Tax Credit Certificate (TCC), partially granting its claim. Unsatisfied, TMC filed a Petition for Review with the Court of Tax Appeals (CTA).

On 7 June 2016, the Commissioner of Internal Revenue (CIR) informed the Commissioner of Customs (COC) that the he has approved in favor of TMC, VAT credit representing input tax amortized in CY 2014 on importations for the period from 1 January 2010 to 31 December 2014, attributable to zero-rated export sales of nickel ore sources.

The Bureau of Customs (BOC) certified that it has not issued any refund of VAT in favor of TMC for CYs 2009 to 2014.

The CTA Division partially granted TMC's refund claim. Both parties sought the reconsideration of the assailed Decision. The CTA Division, however, found the motions for reconsideration unmeritorious and affirmed its Decision.

Issue:

Was TMC entitled to its claim for refund?

Ruling:

No. The CTA Division did not err in holding that the dispatch income earned by TMC should disallowed and that pro-rating of the valid input tax is proper in this case. TMC was not able to prove that these qualify to VAT zero-rating. Further, the dispatch income should also be disallowed since it is not supported by official sales invoices. It is settled that invoices and official receipts are not used interchangeably for purposes of substantiating input or output VAT When a VAT-taxpayer claims to have zero-rated sales of goods, it must substantiate the same through valid VAT sales invoices, not through any other document, like an official receipt which properly pertains to a sale of services.

Considering that TMC failed to prove that all its sales are zero-rated sales, the CTA Division correctly pro-rated its valid input tax on the basis of its sales volume pursuant to Section 112 (A) of the Tax Code, , which expressly provides that "where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

The Tax Code does not require that creditable input taxes be directly attributable to zero-rated sales. There is nothing in Section 112 (A) of the Tax Code, and applicable jurisprudence which require that the input taxes subject of a claim for refund be directly attributable to zero-rated sales or effectively zero-rated sales. Input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfy the requirement of the law.

Commissioner of Internal Revenue vs. Toledo Power Company
CTA *En Banc* No. 1990 promulgated 23 July 2020

Toledo Power Company vs. Commissioner of Internal Revenue
CTA *En Banc* No. 2000 promulgated on 23 July 2020

In a claim for refund, the law merely states that the creditable input VAT should be attributable to the zero-rated or effectively zero-rated sales. The use of the phrase "directly attributable" relates to a situation where the creditable input VAT cannot be directly attributed to any transaction, but does not qualify the preceding sentences of Section 112(A) of the Tax Code, in such a way as to make the refundable input VAT only those which are directly attributable to zero-rated or effectively zero-rated sales. Input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law.

Facts:

Toledo Power Company (TPC) is a general partnership duly organized and existing under Philippine laws engaged in the business of power generation and subsequent sale of generated power to the National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO) and Visayan Electric Company Inc.

On 22 April 2005, TPC filed a Petition for Review with the Court of Tax Appeals (CTA) praying for the refund or issuance of a tax credit certificate (TCC) representing its unutilized input VAT from domestic purchase of taxable goods and services, and the importation of goods attributable to zero-rated sales for the first quarter of taxable year (TY) 2003.

Another Petition was filed by TPC before the CTA on 2 July 2005, praying for the refund or issuance of TCC of the alleged unutilized input VAT for the second quarter of TY 2003.

The cases were later on consolidated. The CTA Division partially granted the refund. On a Motion for Reconsideration, the CTA reversed its decision, denying the refund claim of TPC.

Subsequently, one Petition was dismissed by the Court and the other Petition was partially granted.

Issue:

Was TPC entitled to its claim for refund?

Ruling:

Yes, partially.

In a claim for refund, the law merely states that the creditable input VAT should be attributable to the zero-rated or effectively zero-rated sales. The use of the phrase "directly attributable" relates to a situation where the creditable input VAT cannot be directly attributed to any transaction, but does not qualify the preceding sentences of Section 112(A) of the Tax Code, in such a way as to make the refundable input VAT only those which are directly attributable to zero-rated or effectively zero-rated sales. Input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law.

In granting only the reduced amount for refund/issuance of TCC, the CTA Division made specific findings such as: (1) denial of VAT zero-rating of reported sales to CEBECO III and Visayan Electric Company for failure to present the Certificate of Compliance proving that TPC was a generation company at the time of sale;37 (2) denial of VAT zero-rating of reported sales NPC for being improperly supported; and (3) disallowance of input VAT for being improperly supported. TPC did not present any compelling argument nor address the findings of insufficiency made by the CTA Division. Thus, the CTA *En Banc* finds no reason to reverse nor modify these disallowances and the resulting amount granted for refund.

TPC also argues that it was able to offer in evidence its Certificates of Compliance (COC) marked as and the same were admitted by the Court. Despite the admission of the said COCs, TPC's sales to CEBECO III and Visayan Electric Company will still be denied VAT zero-rating under the EPIRA considering that the sales involved herein are for the 1st quarter of 2003, while the COCs presented are dated 23 June 2004 and 16 November 2009. In the instant case, the alleged zero-rated sales occurred in the 1st quarter of 2003, or prior to the issuance of TPC's COCs. These sales cannot qualify for VAT zero-rating under the EPIRA.

Commissioner of Internal Revenue vs. Stradcom Corporation
CTA *En Banc* No. 1949 promulgated 23 July 2020

With the laws and jurisprudence unequivocal in the view that an assessment without observance of the due process requirements is a patent nullity.

Facts:

On 26 March 1998, the National Government, through the Department of Transportation and Communications (DOTC), entered into a Build-Own-Operate Agreement5 (BOOA) with Stradcom Corporation (Stradcom) for the construction and operation of an Information Technology (IT) infrastructure for the Land Transportation Office-Information Technology Project (LTO-IT Project). According to BOOA, the DOTC shall pay Stradcom within 30calendar days from receipt of billing based on services actually rendered, while the DOTC shall collect all fees from end-users of the IT-based services. To facilitate payment, the DOTC and respondent executed an Escrow Agreement wherein the Landbank of the Philippines (LBP) was designated as the escrow agent.

On 8 January 2013, then Secretary of the DOT issued a Memorandum addressed to the LTO, ordering the latter to immediately pay Stradcom for payment to the BIR, payment for working capital and other trade payables and payment to bank/ creditors of Stradom for overdue accounts and interest payments.

On 19 July 2013 Stradcom received a letter from the Bureau of Internal Revenue (BIR) Assistant Commissioner of Internal Revenue (CIR) Alfredo V. Misajon (ACIR Misajon) demanding payment of income tax, inclusive of interest for alleged deficiency income taxes for taxable year (TY) 2011.

Subsequently, the CIR issued a Warrant of Distraint and/or Levy (WDL) against Stradcom and a Warrant of Garnishment (WOG) over Stradcom's LBP bank account.

Thereafter, Stradcom sent BIR a letter requesting for the cancellation of the WDL and WOG on the ground that the issuance thereof was against its right to due process; the aforesaid warrants were issued absent a Preliminary Assessment Notice (PAN) and/or a Final Assessment Notice (FAN) for the corporation's supposed tax liabilities for TY 2011.

Stradcom also sent a separate letter to the CIR proposing to settle. The CIR rejected the proposal on the ground that Stradcom's income tax liabilities were already due and demandable.

Thereafter, Stradcom paid in cash (BIR Form No. 0605) in order to lift and cancel the CIR's WDL and WOG, which consisted of the actual income tax liability and interest for TY 2011.

Stradcom, then, filed an administrative claim for refund or issuance of a Tax Credit Certificate (TCC) with the BIR's Large Taxpayer's Audit Division II (LTAD II) for alleged erroneously collected basic tax and interest which the CIR garnished.

Due to the CIR's inaction on the administrative claim for refund, Stradcom filed a Petition for Review with the Court of Tax Appeals (CTA) Division. The CTA Division ordered the CIR to refund Stradcom of erroneously collected income tax for FY 2011. The CIR elevated the case to the CTA *En Banc*.

Issue:

Was Stradcom entitled to its claim for refund?

Ruling:

Yes. The CIR denied Stradcom due process.

The Tax Code, and its implementing rules provide for certain due process requirements to be observed in order for assessments to be valid. Section 10 (c), in relation to Section 13, of the Tax Code, provide for the due process requirement. Section 228 of the Tax Code provides for general outline on the proper procedure to be followed in tax assessments.

Records show indubitably that petitioner did not issue a Letter of Authority (LOA), Notice of Informal Conference (NIC), PAN and FAN prior to the issuance of the WDL and WOG against Stradcom.

With the laws and jurisprudence unequivocal in the view that an assessment without observance of the due process requirements is a patent nullity, the cancellation of the WDL and WOG against Stradcom is proper. Resultantly, absent any valid assessment justifying the collection of the taxes deemed illegally collected, the Court is constrained to grant Stardcom's claim for refund.

Majella R. Canzon and Helen B. Cruda vs. Honorable Ceasar R. Dulay in his capacity as Commissioner of Internal Revenue
CTA *En Banc* No. 2040 promulgated 16 July 2020

The Government of the Republic of the Philippines, as signatory to the ADB Charter Agreement and the ADB Headquarters Agreement, retained its right to tax the salaries and emoluments of Filipino ADB employees.

Facts:

Majella Canzon (Canzon) and Helen Cruda (Cruda) are employee and former employee, respectively, of the Asian Development Bank (ADB).

The Commissioner of Internal Revenue (CIR) issued Revenue Memorandum Circular (RMC) No. 31-2013 which provides, among others, that only the officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.

In order to comply with the RMC No. 31-2013, Canzon and Cruda filed their income tax returns (ITRs) and paid their income taxes for taxable year (TY) 2013.

The RMC was challenged by two Filipino employees of the ADB before the Regional Trial Court (RTC) Branch 213 of Mandaluyong City for allegedly being issued without authority and due process of law. The RTC ruled in favor of the employees, prompting Canzon and Cruda to file an administrative claim for refund claiming that the income taxes they paid in 2013 were erroneously collected and paid. Due to the inaction of the CIR, Canzon and Cruda elevated the case to the Court of Tax Appeals (CTA).

Issue:

Are Canzon and Cruda, both Filipino employee and former employee, respectively, of ADB entitled to their claim for income tax refund?

Ruling:

No. Under Section 2, Article II of the 1987 Philippine Constitution, the Philippines adopts the generally accepted principles of international law as part of the laws of the land. As such, the Philippine Government, as a party to international agreements, binds itself to recognize its commitments thereunder, including tax treaties, and to fulfill its obligations under them in good faith. This is the same principle enshrined in the 1935 Constitution, as amended, which is prevailing at the time when said agreement was entered into by the Government of the Republic of the Philippines (Government) and ADB.

The grant of tax-exempt privileges as worded in the ADB Charter although explicit in nature accords respect to the municipal law of the host country by recognizing the latter's prerogative in taxing its citizens or in a more general sense, its national laws on taxation. Rightfully so because under the doctrine of incorporation, as applied in most countries, "rules of international law are given a standing equal, not superior, to national legislative enactments".

To recapitulate, the Philippines entered into and signed two international agreements relevant to the case at hand, namely: the ADB Charter Agreement and the ADB Headquarters Agreement. Both were ratified by the Government and the Senate of the Philippines with the clear and categorical reservation of its power to tax its citizens and nationals. The accession, therefore, to said international agreements which grant tax exemption to ADB personnel is conditional and not absolute.

From the effectivity dates of the twin agreements, there was no explicit and categorical ruling or issuance from the Bureau of Internal Revenue implementing the reserved taxing power of the Government on the Filipino ADB employees, except until the issuance of RMC No. 31-2013. Under RMC No. 31-2013, ADB Filipino employees are finally declared to be taxable under the Tax Code.

In the instant case, the tax payments being sought to be refunded by petitioners pertain to TY 2013 which were paid by them in the following year, 2014. As abovementioned, RMC No. 31-2013 became effective on 2 May 2013. Hence, the income earned from TY 2013 by Canzon and Cruda were already subject to income tax.

Petron Corporation vs. Commissioner of Internal Revenue
CTA *En Banc* 2072 promulgated 22 July 2020

Section 148(e) of the Tax Code does not qualify whether the items subject to excise tax is a primary or secondary product of distillation. Alkylate (a product that qualifies as one similar to naphtha) is subject to excise tax under Section 148(e) in relation to Section 129 of the Tax Code.

Facts:

On 18 July 2012, the Bureau of Customs (BOC) issued Customs Memorandum Circular (CMC) No. 164-20125 implementing the Letter from the Bureau of Internal Revenue (BIR) dated 29 June 2012, which stated that "alkylate which is a product of distillation similar to that of naphtha is subject to excise tax under Section 148(e) of the National Internal Revenue Code [NIRC] of1997, as amended.

In 2012, Petron Corporation (Petron) imported alkylate that was subjected to excise tax.

Thereafter, Petron filed two separate administrative claims for refund of excise tax with the BIR allegedly representing excise taxes erroneously, wrongfully, illegally, and excessively imposed and collected by the Commissioner of Internal Revenue (CIR), through the BOC, per CMC No. 164-2012.

Petron, then, filed two separate administrative claims for refund, which pertain to excise taxes paid on importation of alkylate.

The Commissioner of Internal Revenue (CIR) did not act on both claims for refund.

Issue:

Was Petron entitled to its claim for refund?

Ruling:

No. Section 148(e) of the Tax Code does not qualify whether the items subject to excise tax is a primary or secondary product of distillation. Alkylate (a product that qualifies as one similar to naphtha) is subject to excise tax under Section 148(e) in relation to Section 129 of the Tax Code. Petron, then, is not entitled to the refund of excise tax paid inasmuch as the same was not erroneously or illegally collected.

Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.
CTA *En Banc* No. 2082 promulgated 21 July 2020

The Tax Code does not provide that the input tax needs to be directly attributable or a factor in the chain of production to the zero-rated sale for it to be creditable or refundable.

Facts:

Deutsche Knowledge Services Pte. Ltd. is established as a regional operating headquarters (ROHQ) in the Philippines of a multinational company organized under the laws of Singapore.

In the second quarter of calendar year (CY) 2014, the ROHQ claims to have rendered services in the Philippines to persons engaged in businesses conducted outside the Philippines, the payments for which were made in Euro and other acceptable foreign currency and accounted for in accordance with the rules and regulations of Bangko Sentral ng Pilipinas (BSP).

On June 24, 2016, the ROHQ filed with the Bureau of Internal Revenue (BIR) Large Taxpayers Regular Audit Division 3 (LTRAD 3) an application for tax credit/refund of its excess and unutilized input VAT for the second quarter of CY 2014. There being no action taken by the Commissioner of Internal Revenue (CIR), the ROHQ filed a Petition for Review before the Court of Tax Appeal (CTA) on 21 November 2016.

The CTA in Division partially granted the Petition. As such, the ROHQ filed its Motion for Partial Reconsideration. The CTA in Division denied such Motion. On the other hand, the CIR filed a Petition for Review.

Issue:

Was Deutsche entitled to the VAT refund even if the subject sales were not directly and entirely attributable to the zero-rated sales?

Ruling:

Yes. The Court in Division correctly ruled that an input tax need not be directly and entirely attributable to the zero-rated sales to be refundable or creditable. Section 112(A) of the Tax Code provides for the grounds when input tax may be refunded or claimed as tax credit in cases of zero-rated sales. As such, nothing in said provision states that the input tax needs to be directly attributable or a factor in the chain of production to the zero-rated sale for it to be creditable or refundable. In fact, such provision allows as tax credit an allocable portion of a taxpayer's input tax that is not directly and entirely attributable to the zero-rated sales.

Further, Section 110(A) of the same Code, which enumerates the transactions upon which creditable input tax may be claimed, only requires that the transaction was incurred or paid in connection with the taxpayer's trade or business whether directly or indirectly and that it is evidenced by a VAT invoice or official receipt. Under this provision, the Tax Code, does not require the input tax to be directly attributable to zero-rated sales to be refundable or creditable.

Furthermore, the requirement that the input tax being claimed for tax credit or refund should be directly and entirely attributable to the zero-rated sales, has not been retained in Revenue Regulations (RR) No. 16-2005 and in its amendments, which is the applicable VAT regulation in the present case.

Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc.
CTA *En Banc* No. 2094 promulgated 21 July 2020

Section 112 of the Tax Code does not require absolute direct attribution of purchases (the input VAT of which is subject of a refund/ TCC claim) to zero-rated sales.

Facts:

CE Casecnan Water and Energy Company Inc. (Casecnan) is a domestic corporation whose primary purpose is "to design, develop, construct, erect, assemble, commission, finance, own and operate a combined irrigation and hydro-electric power project and related facilities in Central Luzon, Philippines for the conversion into electricity of water provided by and under contract with the National Irrigation Administration (NIA) and for the supply of water for agricultural purposes to the National Irrigation Administration (the "Project"); provided that, in no event shall the corporation itself engage in the general supply or distribution of electricity, in retail trade or in the business of a public utility, or furnish electricity to end-users or consumers, or provide a public service or engage in industries or activities reserved by the Constitution or by Jaw to corporations wholly or partially owned by Filipino citizens."

On 4 November 2014, Casecnan filed with the Bureau of Internal Revenue (BIR) an administrative claim for refund of its excess and unutilized input VAT for the 1st and 4th quarters of calendar year (CY) 2013. On 11 March 2015, Casecnan filed its Petition for Review before the Court of Tax Appeals (CTA) in Division.

On 8 May 2015, the Commissioner of Internal Revenue (CIR) issued the corresponding Tax Credit Certificate (TCC), partially granting its administrative claim for refund. Due to the partial grant, Casecnan filed a Supplemental Petition for Review on 16 September 2015. On 19 October 2018, the CTA in Division partially granted the Supplemental Petition.

Both Casecnan and the CIR filed their Motions for Partial Reconsideration. Consequently, the CTA in Division increased the refund or TCC. However, the CIR filed the Petition for Review before the CTA *En Banc*.

Issues:

Was Casecnan entitled to its claim for refund or issuance of a tax credit certificate (TCC)?

Ruling:

Yes.

As this Court *En Banc* ruled in Commissioner of Internal Revenue v. CE Casecnan Water and Energy Company, Inc., which involved the same parties in the present Petition, the case of Coral Bay Nickel Corporation v. Commissioner of Internal Revenue is inapplicable to respondent since the petitioner in the latter case has a principal place of business located inside a special economic zone while herein respondent's place of business is within the customs territory. Therefore, since the goods and/or services purchased by Casecnan are destined for consumption within the Philippine territory, it is legally feasible that its supplier of goods and/or services passed on VAT to respondent. Being the party which ultimately bears the burden of the VAT, Casecnan is the proper party to claim the same.

It has already been settled that Section 112 of the Tax Code does not require absolute direct attribution of purchases (the input VAT of which is subject of a refund/TCC claim) to zero-rated sales. In fact, the said provision allows the allocation of input VAT that cannot be directly attributed to any of the taxpayer's sales (i.e., zero-rated sales, taxable sales or exempt sales)

Commissioner of Internal Revenue vs. Colt Commercial, Inc.
CTA EB No. 2086 promulgated 21 July 2020

A taxpayer's failure to submit the requirements listed under RMO No. 53-98 is not fatal to its claim for tax refund/credit. RMO No. 53-98 is merely a guide to revenue officers as to what documents they may require taxpayers to present upon audit of their tax liabilities.

Facts:

Colt Commercial Inc. (CCI) is a domestic corporation engaged in the business of selling cutting tools and hardware. Majority of its clients are entities located in the PEZA zones.

On September 29, 2016, CCI filed its administrative claim for refund for excess input VAT for the 3rd and 4th quarters of taxable year (TY) 2014.

Due to inaction of the Commissioner of Internal Revenue (CIR), CCI filed the original Petition for Review on 24 February 2017.

On 14 January 2019, the Court of Tax Appeals (CTA) in Division partially granted the original Petition. Thereafter, on 30 January 2019, the CIR filed his Motion for Reconsideration (MR) which the CTA in Division denied for lack of merit.

Issue:

Was CCI entitled to its claim for refund?

Ruling:

Yes. Based on Section 113 of the Tax Code, Section 4.113-1 of the Revenue Regulations (RR) No. 16-05, and Revenue Memorandum Circular (RMC) No. 42-03, it is important for a taxpayer claiming tax refund/credit on its input taxes attributable to its zero-rated sales to prove that it had followed the invoicing requirements, specifically that it issues a duly registered VAT invoice bearing the

statement that it is a VAT-registered taxpayer; followed by his Taxpayer's Identification Number; the term zero-rated sale is printed on the sales invoices; the amount to be paid by the purchaser is indicated in the sales invoices; and the date of transaction, quantity, unit cost, and description of the goods are indicated in the said invoice. The absence of any one of these requisites will cause the denial of the taxpayer's tax refund/credit claim.

To prove its compliance with the invoicing requirements, CCI submitted its sales invoices. These sales invoices were examined by the court-commissioned Independent CPA (ICPA) and were verified by the Court in Division to be in compliance with the aforementioned provisions. Further, the CIR failed to indicate with reasonably specificity the purported flawed invoices issued by CCI. It also failed to indicate the particular invoicing requirement CCI violated.

In addition, the non-submission of the complete documents enumerated under Revenue Memorandum Order (RMO) No. 53-98 at the administrative level is not fatal to a claim for refund at the judicial level. Nowhere it is stated in RMO 53-98 that the non-submission of the documents enumerated therein would directly result to the denial of a tax refund/credit claim. Moreover, in *Pilipinas Total Gas, Inc. v. CIR, G.R. No. 207112, 8 December 2015*, the Supreme Court ruled that a taxpayer's failure to submit the requirements listed under RMO No. 53-98 is not fatal to its claim for tax refund/credit. RMO No. 53-98 is merely a guide to revenue officers as to what documents they may require taxpayers to present upon audit of their tax liabilities. The said issuance was not intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax refund/credit.

CCI was able to prove that it made VAT zero-rated sales to PEZA-registered entities through submission of the PEZA Certificates of Registration of its clients and Confirmation Letters issued by PEZA Deputy Director General for Operations which validate the issuance of VAT zero-rating certifications to these entities.

Distribution of Property Dividends

Commissioner of Internal Revenue vs. Trans-Asia Oil and Energy Development Corporation
CTA EB No. 2009 promulgated 21 July 2020

Since dividends are distributions from unrestricted earnings arising from the capital invested in the corporation, they cannot be considered donations made out of the liberality of the corporation.

Facts:

Trans-Asia and Energy Development Corporation (Trans-Asia) declared dividends composed of shares of stock in Trans-Asia Petroleum Corporation (TAPC) in 2013. Subsequently, Trans-Asia paid the corresponding final taxes. In March 2014, however, the Bureau of Internal Revenue (BIR) conducted a tax investigation on Trans-Asia's donor's tax liabilities in relation to its property dividends declaration in 2013.

Issues:

Is Trans-Asia liable for the deficiency donor's tax in relation to its property dividends?

Ruling:

No. Clearly, in property dividend distribution, the taxpayer or distributing corporation does not receive any consideration in exchange for the dividends. Property dividends are unilateral distributions taken from the company's unrestricted retained earnings. As such, Trans-Asia's declaration and distribution of property dividend consisting of TAPC shares is not contemplated by the term "other disposition of shares of stock" subject to donor's tax under Revenue Regulations (RR) No. 6-2008, as amended by RR No. 6-2013.

Moreover, the distribution of property dividends was a non-reciprocal transfer since there was no consideration exchanged for the dividends. Since, Trans-Asia did not receive any consideration from its shareholders, Section 100 of Tax Code, clearly does not apply.

The property dividend distribution is not a donation and is not made out of Trans-Asia's liberality. Dividends are returns or income from the invested capital of its stockholders. They are part of the profits of the enterprise which the corporation, by its governing agents, sets apart for ratable division among the holders of the capital stock, in accordance with their respective interests. Dividends are that "portion of profits and surplus funds of corporation which has actually been set apart by valid resolution of the board of directors, or by stockholders at corporate meeting, for distribution among stockholders according to their respective interests in such sense as to become segregated from the property of the corporation, and to become property of shareholders distributively."

Accordingly, the distribution of property dividends is a realization of income on the part of Trans-Asia's stockholders, by virtue of their capital investment in the corporation. Since dividends are distributions from unrestricted earnings arising from the capital invested in the corporation, they cannot be considered donations made out of the liberality of the corporation.

Proper Document to Prove Imposition of VAT

Commissioner of Internal Revenue vs. Process Machinery Co., Inc.
CTA *En Banc* No. 1999 promulgated 17 July 2020

The proper document to prove the imposition of VAT in every sale of goods is a VAT invoice while a VAT official receipt is the appropriate VATable document for lease of goods and sale of service. These documents may not be interchanged with one another alternatively to prove the imposition of VAT in a transaction where the other is the correct VATable document.

Facts:

Process Machinery Co. Inc. (PMCI) is a domestic corporation engaged in the distribution of crushing, screening, wear protection, conveying and minerals processing equipment, service and systems solutions.

PMCI was served with a Letter of Authority (LOA) informing the company of the examination of its books of accounts and other accounting records for VAT audit. PMCI, thereafter, was served a Preliminary Assessment Notice (PAN) to which PMCI filed its response.

Subsequently, a Notice of Assessment and Formal Assessment Notice (FAN) with Details of Discrepancies was issued against PMCI. PMCI protested against the FAN.

A Final Decision on Disputed Assessment (FDDA) was eventually issued against PMCI.

PMCI filed a Petition for Review before the Court of Tax Appeals (CTA). The CTA in Division cancelled the deficiency VAT assessment against PMCI.

The Commissioner of Internal Revenue (CIR) filed the instant Petition for Review.

Issue:

Was PMCI liable to deficiency VAT?

Held:

No. PMCI complied with the VAT invoicing requirements, as provided under Section 113 of the Tax Code and relevant issuances.

The proper document to prove the imposition of VAT in every sale of goods is a VAT invoice while a VAT official receipt is the appropriate VATable document for lease of goods and sale of service. These documents may not be interchanged with one another alternatively to prove the imposition of VAT in a transaction where the other is the correct VATable document.

There is no question that PMCI's business involves the distribution of crushing, screening, wear protection, conveying and minerals processing equipment, service and systems solutions. As such, it is engaged in the sale of goods. Consequently, VAT invoices are the proper VATable documents for PMCI's sales transactions.

As aptly found by the CTA in Division, PMCI issued both a VAT invoice and a VAT official receipt in each of its transactions. PMCI initially issues a VAT invoice upon the consummation of a sale of its goods and subsequently issues a VAT official receipt upon the payment of the amount indicated in these VAT invoices. Each of respondent's VAT official receipts refer to a VAT invoice. PMCI's sales can be traced and reconciled with its VAT invoices and VAT official receipts.

By using VAT invoices for its sales transactions, PMCI complied with the VAT-invoicing requirements. As such, the BIR should have based its VAT assessment on PMCI's VAT invoices instead of its VAT official receipts, which were merely issued to evidence payment of the amounts indicated in the VAT invoice.

Further, Section 113 (D) of the Tax Code, does not allow PMCI to impose the 12% VAT on the same transaction twice. More importantly, the said provision applies to: i) non-VAT registered persons using the word "VAT' in either its invoices or receipts; and ii) VAT-registered persons who use a VAT-invoice or receipt for a VAT-exempt transaction. PMCI does not fall under either classification as it is a VAT-registered person which issued VAT invoices and receipts for a VATable transaction.

Even assuming that PMCI issued erroneous VATable documents for its sales transactions (i.e., solely VAT official receipts for sales of goods), it cannot be penalized by imposing another 12% VAT on its sales transactions when said 12% VAT have already been paid. To sanction otherwise would lead to unjust enrichment in favor the government. Philippine laws and public policy abhor unjust enrichment.

Considering the foregoing, there is no factual and legal basis for the deficiency VAT assessment against PMCI due to alleged undeclared sales. As this Court was able to independently verify and is convinced that PMCI's alleged undeclared sales were properly substantiated with VAT invoices and were correctly reported in its VAT returns.

Local Business Tax

City of Paranaque and Dr. Anthony I. Pulmano, in his capacity as City Treasurer of Paranaque vs. Kuenhe + Nagel, Inc.
CTA *En Banc* No. 2130 promulgated on 17 July 2020

Section 133(j) of the Local Government Code (LGC) is a specific provision that explicitly withholds from any Local Government Unit (LGU) the power to tax the gross receipts of transportation contractors, persons engaged in the transportation of passengers or freight by hire, and common carriers by air, land, or water.

Facts:

Kuehne + Nagel, Inc. (KNI) is a domestic corporation engaged in the business of international freight and/or cargo consolidation and forwarding by means of air and sea transport.

KNI received a Notice of Assessment from the City of Paranaque and City Treasurer (collectively referred to as City of Paranaque) assessing the former deficiency local business tax (LBT) for taxable years (TYs) 2001 to 2005, inclusive of surcharges and interests. The deficiency LBT assessment arose from the difference between the gross receipts per audited financial statements (AFS) and gross receipts as declared by KNI.

KNI filed a protest before the City Treasurer arguing that payments made for arrastre, wharfage fees, documentation, trucking, handling charges, storage fees, duties, and taxes, among others, which were advanced on behalf of its customers should not be considered as part of the gross receipts for purposes of computing LBT, fees, and charges. KNI complied to the request of the City Treasurer to submit all relevant documents. KNI also submitted a copy of the ruling issued by the Ministry of Finance in favor of NAKUFREIGHT (Philippines), which is KNI's former name, which provided that KNI's gross receipts do not include the clients' reimbursement for advances made by respondent on their behalf. The City of Paranaque denied KNI's protest.

KNI, later on, filed a Petition for Review before the Regional Trial Court of Paranaque City. The court dismissed KNI's petition for lack of merit. KNI filed a Petition for Review with the Court of Tax Appeals (CTA). The CTA in Division granted KNI's petition. The Motion for Reconsideration filed by the City of Paranaque was denied by the CTA in Division. The City of Paranaque filed the instant petition for review.

Issue:

Was KNI liable to deficiency LBT?

Ruling:

No. KNI is freight forwarder, the gross receipts of which cannot be subjected to LBT, following the limitations provided in Section 133 of the Local Government Code (LGC).

Section 133(j) of the Local Government Code (LGC) is a specific provision that explicitly withholds from any Local Government Unit (LGU) the power to tax the gross receipts of transportation contractors, persons engaged in the transportation of passengers or freight by hire, and common carriers by air, land, or water.

Here, KNI is engaged in the business of freight forwarding. Even the City of Paranaque admitted that KNI is engaged in international freight and/or cargo consolidation and forwarding by means of air and sea transportation. Thus, there is no question that KNI is a common carrier. As such, its gross receipts are not subject to LBT.

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We welcome your comments, ideas and questions. Please contact Allenierey Allan V. Exclamador via e-mail at allenierey.v.exclamador@ph.ey.com or at telephone number (632) 8894-8398.

The deadlines and timelines mentioned in this Tax Bulletin are pursuant to our understanding of the existing administrative issuances of the BIR as of the date of writing. These may be subject to change in light of the recently passed Bayanihan 2, which also authorizes the President to move statutory deadlines and timelines for the submission and payment of taxes, fees, and other charges required by law, among others.