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What's Inside…

INSIGHTS is a monthly publication of BDB LAW to inform, update and provide perspectives to our clients and readers on significant tax-related court decisions and regulatory issuances (*includes BIR, SEC, BSP and various government agencies*).

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COURT OF TAX APPEALS
DECISION HIGHLIGHTS

UPDATES

- **The presence of zero-rated or effectively zero-rated sales is very critical for VAT refund.** *(Maibarara Geothermal Inc., vs. Commissioner of Internal Revenue, CTA Case Nos. 9119, 9201, 9254 and 933, March 4, 2019)*

- **Direct denial of receipt of PAN shifts the burden to the party favored by the presumption to establish that the subject mailed letter was actually received by the taxpayer.** *(Far East Seafood, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8909, March 4, 2019)*

- **A request for reconsideration is not the same as a request for reinvestigation which suspends the running of the statute of limitations. (***WPP Marketing Communications Inc. (formerly known as J. Walter Thompson Company (Philippines) Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 9778, March 5, 2019)*

- **The BIR must present evidence to justify the application of the ten-year prescriptive period.** *(Commissioner of Internal Revenue vs. Parity Packaging Corporation, CTA EB No. 1783 (CTA Case No. 8825), March 5, 2019)*

- **The taxpayer must receive the PAN, and the FAN to comply with the due process requirement.** *(Bostik Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9019, March 05, 2019)*

- **The absence of a valid LOA originating from the CIR or the Revenue Regional Director renders the assessment void.** *(Central Luzon Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8952, March 6, 2019)*

- **In case the basic tax exceeds P1,000,000.00 or where the settlement offered is less than the said prescribed minimum rates, the compromise must be approved by the Evaluation Board.** *(C.F. Sharp Crew Management Inc., vs. Commissioner of Internal Revenue, CT A Case No. 9707, March 6, 2019)*

- **Under the VAT System, compliance with the 120+30 day is mandatory and jurisdictional.** *(Northwind Power Development Corporation vs. Commissioner Internal Revenue, CTA CASE NO. 9152, March 6, 2019)*

- **A BOI-registered entity with 100% exports is not entitled to refund of input VAT. Otherwise, the taxpayer would unjustly be enriched at the expense of the government.** *(Hinatuan Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9287, March 6, 2019)*

- **The presentation of the registry return receipt with an unauthenticated signature is not equivalent to proof of actual receipt of notices by Taxpayer.** *(People of the Philippines vs. Engr. Reynaldo A. Matanguihan, CTA Crim. No. A-5 (Criminal Case No. 01-194392), March 7, 2019)*

- **It is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the current taxable year.** *(Maxima Machineries Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9358, March 11, 2019)*

- **In determining the BIR's right to collect, the validity or invalidity of an assessment, in relation to the due process requirements; or prescription of the right to assess; or the fact of payment of said assessment; may also be reviewed by the Court and are properly included as "other matters".** *(Grand Plaza Hotel Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8892, March 11, 2019)*

- **The *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.** *(Northern Mindanao Sales Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8959, March 11, 2019)*

- **The DST is actually an excise tax, because it is imposed on the transaction rather than on the document.** *(Liberty Telecoms Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9311, March 11, 2019)*

- **It can be inferred from RMC No. 61-05 and Section 4.108-3 (f) of RR No. 16-05 that generation and transmission charges, including the VAT thereon, although billed to the end-user by the distribution companies and electric cooperatives, are not part of their gross receipts; neither can they claim an input tax on such charges.** *(Toledo Power Company vs. Commissioner of Internal Revenue, CTA Case Nos. 8450, 8512, 8547 & 8596, March 15, 2019)*

- **Repeated acts of paying the principal deficiency taxes by installment and repeated requests for reduction, waiver and abatement of the interest and increments does not justify the suspension of the prescriptive period for collection.** *(Commissioner of Internal Revenue vs. Asia United Insurance, Inc., CTA EB NO 1725(CTA Case No. 8916), March 17, 2019)*

- **Unsupported under-declaration of expenses does not automatically result in recognition of income.** *(Lancaster Colors International, Inc. vs. Commission of Internal Revenue CTA Case No. 8933 dated March 28, 2019)*

The presence of zero-rated or effectively zero-rated sales is very critical for VAT refund.

The taxpayer filed a VAT refund for the alleged unutilized input VAT for the taxable year 2013. BIR counter-argues that the taxpayer is not entitled for refund considering that petitioner is not yet selling its geothermal energy power.

The CTA ruled that, the presence of zero-rated or effectively zero-rated sales is very critical. This is so because the said fourth, eighth, and ninth requisites are entirely dependent on the said presence of such zero-rated or effectively zero-rated sales. The fourth requisite, it is explicit that taxpayer must be engaged in zero-rated or effectively zero-rated sales. As regards the eighth requisite, the presence of zero-rated or effectively sales are indispensable because the input VAT being refunded must be attributable thereto. In the same vein, the ninth requisite entails the existence of zero-rated or effectively zero-rated sales despite that there are also taxable or exempt sales, because the proportionate allocation on the basis of sales volume cannot be had in the absence the said zero-rated or effectively zero-rated sales.

In the instant case, there are no zero-rated sales yet unto which the subject input VAT can be attributed for the year 2013. Correspondingly, the taxpayer failed to comply with the eighth and fourth requisite. ***(Maibarara Geothermal Inc., vs. Commissioner of Internal Revenue, CTA Case Nos. 9119, 9201, 9254 and 933, March 4, 2019)***

Direct denial of receipt of PAN shifts the burden to the party favored by the presumption to establish that the subject mailed letter was actually received by the taxpayer.

The Commissioner of Internal Revenue (CIR) filed a Motion for Reconsideration assailing the CTA's Decision, that the assessments are void for the alleged failure on the part of CIR to prove service of the Preliminary Assessment Notice (PAN) to the taxpayer. Likewise, the CIR assailed that he is entitled to the benefit of the presumption that the PAN was received in the ordinary course of mail.

The CTA ruled that the presumption that the notice was received in the regular course of mail is disputable subject to controversion and direct denial thereof shifts the burden to the party favored by the presumption to establish that the subject mailed letter was actually received by the taxpayer. Furthermore, Registry Return Receipts must be authenticated to serve as proof of receipt of letters sent through registered mail. Receipts for registered letters and return receipts do not prove themselves; they must be properly authenticated in order to serve as proof of receipt of the letters.

In this case, the subject mail matter of Registry Return Receipt is insufficient to prove that CIR was able to strictly comply with the requirements set forth under the law. The revenue officer presented had no personal knowledge on whether the subject mail matter Registry Return Receipt is indeed the PAN or said PAN was mailed or actually delivered to the addressee or the latter's duly authorized representative since she merely sends said PAN to the

Administrative Office. ***(Far East Seafood, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8909, March 4, 2019)***

A request for reconsideration is not the same as a request for reinvestigation which suspends the running of the statute of limitations.

The BIR issued an assessment notice against the taxpayer on January 15, 1996. On February 6, 1996, the taxpayer filed its protest. Although there was no allegation of a Final Decision on Disputed Assessment, the taxpayer, on August 4, 1998, filed a supplemental protest. On February 1, 2018, petitioner received a letter dated November 6, 2017 from the BIR as the latter's final action to the taxpayer's assessment.

When the assessment was elevated to the CTA, the BIR argued that its right to collect the deficiency taxes has not yet prescribed since the request for reinvestigation filed by the taxpayer effectively suspended the running of the prescriptive period to collect.

The CTA ruled that, the law is categorical that the suspension of the statute of limitations shall only take effect when a taxpayer files a protest letter with a request for reinvestigation and the respondent granted the request for reinvestigation made by a taxpayer.

In the instant case, petitioner's supplemental protest letter dated August 4, 1998 did not request for reinvestigation. Rather, it is asking the concerned BIR Revenue District Officer that the "examiner's findings be properly reconsidered." Thus, it is a request for reconsideration which was not among the circumstances in the above-mentioned provision that will suspend the running of the statute of limitations. Further, the waiver of the taxpayer of the defense of prescription shall only be effective when there is a written agreement between both the taxpayer and the respondent. However, the facts and circumstances in the records of this case had no written agreement for such waiver of the defense of prescription. The running of the statute of limitations has not been effectively suspended. ***(WPP Marketing Communications Inc. (formerly known as J. Walter Thompson Company (Philippines) Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 9778, March 5, 2019)***

The BIR must present evidence to justify the application of the ten-year prescriptive period.

The BIR filed a petition for review with the CTA *En Banc* on the decision of the CTA's First Division dated January 22, 2018. The BIR contends that it's right to assess respondent deficiency taxes has not yet prescribed. It argued that there was falsity in the cost of goods sold declared per the taxpayer's tax returns justifying the application of the ten-year prescriptive period.

The CTA noted that the present Petition for Review is nearly a word-for-word rehash of the CIR's Motion for Reconsideration submitted before the Court in Division. The CTA thus ruled that the BIR did not present any evidence to prove

the falsity of taxpayer's tax returns in order to justify the application of the ten-year prescriptive period. ***(Commissioner of Internal Revenue vs. Parity Packaging Corporation, CTA EB No. 1783 (CTA Case No. 8825), March 5, 2019)***

The taxpayer must receive the PAN, and the FAN to comply with the due process requirement.

The taxpayer is being assessed for deficiency income tax and VAT for taxable year 2005. During the course of its assessment, the BIR issued a PAN, and a FAN. However, the PAN, and the FAN bore different addresses. Further, the said addresses are not the registered address of the taxpayer.

The CTA ruled that, in compliance with the requirements of due process, not only must formal assessment notices be issued and received by the taxpayer, but such taxpayer must also receive a preliminary assessment notice or PAN. Also, denial by the taxpayer of receipt of any of these notices shifts the burden of proving receipt of said notices on respondent.

In the instant case, taxpayer consistently denied receipt of the PAN, FAN, and FLD because they were sent to the wrong address. Thus, it was incumbent upon the BIR to prove, not only that the PAN, and the FAN were validly issued and mailed, but that they were duly received by the taxpayer. As the PAN, and the PAN were never received by taxpayer, there was no valid service of said notices depriving taxpayer of the facts and the law upon which the assessment issued against it was based in violation of its right to due process. ***(Bostik Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9019, March 05, 2019)***

The absence of a valid LOA originating from the CIR or the Revenue Regional Director renders the assessment void.

The Commissioner of Internal Revenue (CIR) asserts that RMO Nos. 8-2006 and 62-2010 allowed the head of investigating office to issue a Memorandum of Assignment (MOA) in cases of reassignment/retirement or resignation of the previously assigned Revenue Officer (RO) named in the LOA. Since the ROs named under the LOA were transferred/reassigned, the Chief of LT- Regular Audit Division I had the authority to issue a MOA authorizing a new RO to continue the audit/examination of taxpayer's books of account or accounting records for TY 2009.

The CTA ruled that, Sections 6(A) and 13 of the NIRC, as amended, mandates that a valid LOA originating from the CIR or the Revenue Regional Director is a condition sine qua non for a RO to legally conduct a verification/audit of a taxpayer for potential deficiency taxes. Conversely, the absence of such authority renders the assessment void.

In the case at hand, the record is bereft of any showing that a valid LOA was issued by the CIR or the concerned Revenue Regional Director in favor of the new RO for the latter to continue the examination of petitioner's books of account or accounting records for potential tax liabilities for the relevant period. Being a product of an unauthorized tax audit/examination, the subject

assessment predicated upon the findings of the new RO should be deemed a complete nullity and without any legal consequence, thereby warranting its cancellation and withdrawal. ***(Central Luzon Drug Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8952, March 6, 2019)***

In case the basic tax exceeds P1,000,000.00 or where the settlement offered is less than the said prescribed minimum rates, the compromise must be approved by the Evaluation Board.

The taxpayer filed a motion to withdraw petition for review because an application for compromise settlement of the deficiency income tax and documentary stamp tax for taxable year 2013 to the BIR, which the latter accepted.

The CTA noted that, the Commissioner of Internal Revenue (CIR) is empowered to compromise the payment of internal revenue taxes, under certain conditions. The payment of any internal revenue tax may be compromised by respondent on either of the two (2) instances, namely: (1) a reasonable doubt as to the validity of the claim against the taxpayer exists; or (2) the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax. In case the basic tax exceeds P1,000,000.00 or where the settlement offered is less than the said prescribed minimum rates, the compromise must be approved by the National Evaluation Board (NEB).

While the CIR's power to compromise is sanctioned under the NIRC of 1997, the exercise thereof is subject to the determination of the CTA, whether the same is "within the parameters of law." In this case, it was not shown that there is full compliance with the requirements set forth by law. Specifically, there is no showing that the compromise settlement has been duly approved by a majority of all the members of the NEB, considering that the basic assessed taxes in the instant case are more than P1,000,000.00. ***(C.F. Sharp Crew Management Inc., vs. Commissioner of Internal Revenue, CT A Case No. 9707, March 6, 2019)***

Our Take

Note: Although the taxpayer failed to show its full compliance with the legal parameters for the grant of a compromise settlement, the CTA nonetheless granted the motion to withdraw. The CTA said that considering that the taxpayer is no longer interested in pursuing the petition, the motion to withdraw must be granted.

Under the VAT System, compliance with the 120+30 day is mandatory and jurisdictional periods.

Taxpayer filed its administrative claim for refund of unutilized input VAT which was subsequently denied by the BIR. Taxpayer filed its corresponding appeal with the CTA but it was contested by the BIR on the ground that the petition was filed out of time.

The CTA ruled that one of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper.

The 120-30 day periods are no longer applicable. The TRAIN law has amended the period for the CIR to decide VAT refund claim to 90 days. It is not clear however, if a taxpayer can elevate a claim for refund to the CTA if the CIR fails to decide within the said 90 day period.

In the instant case, the taxpayer filed its administrative claim for refund or issuance of TCC on November 27, 2013. It had 30 days therefrom, or until December 27, 2013, within which to submit all pertinent supporting documents. The 120-day period shall be reckoned from November 27, 2013 and shall run until March 27, 2014. Considering that BIR failed to act on the subject claim within March 27, 2014, the taxpayer had thirty (30) days from March 27, 2014, or until April 28, 2014, within which to file a judicial appeal before the CTA. However, the present Petition for Review was filed only on September 28, 2015. Clearly, Taxpayer's judicial claim was belatedly filed. ***(Northwind Power Development Corporation vs. Commissioner Internal Revenue, CTA CASE NO. 9152, March 6, 2019)***

A BOI-registered entity with 100% exports is not entitled to refund of input VAT. Otherwise, the taxpayer would unjustly be enriched at the expense of the government.

Taxpayer seeks the refund or issuance of a tax credit certificate representing unutilized input value-added tax (VAT) on its domestic purchases of goods and services and importation of goods. BIR denied the claim due to the alleged failure of Taxpayer to show substantial proof of the factual and legal bases of its claim for refund and that the Taxpayer is not the proper party who can claim the Refund.

The CTA ruled that the taxpayer was issued a Certification by the BOI attesting to the fact that it is a BOI-registered entity with 100% exports. Under Section 3.4 of RMO No. 9-00, said Certification shall serve as authority for the local suppliers of taxpayer to avail of the benefits of zero-rating on their sales to taxpayer. On the basis of said Certification, no output tax should be shifted by the local suppliers to latter. Thus, it follows that taxpayer is not entitled to a refund of input VAT from the said domestic purchases. Otherwise, to allow taxpayer a refund or issuance of tax credit certificate of input VAT on its domestic purchases of goods and services, where there is no right to demand it against the government, since its purchases are zero-rated, would unduly enrich taxpayer at the expense of the government. In instances when taxpayer paid input VAT, notwithstanding that under the law it is subject to VAT at zero percent rate, the taxpayer's recourse is not against the government, but against the seller. Thus, taxpayer is not entitled to the refund. ***(Hinatuan Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9287, March 6, 2019)***

The presentation of the registry return receipt with an unauthenticated signature is not equivalent to proof of actual receipt of notices by Taxpayer.

Accused, as the Corporate Officer of Almarey Construction Co., Inc., was prosecuted for violation of Section 254 in relation to Sections 252(d) and 255 of the NIRC of 1986, as amended. He claimed that his right to due process was violated since he did not receive any FAN for the alleged deficiency taxes of the company, hence, he was not notified of the alleged tax deficiency. BIR on the hand presented a Registry Return Receipt allegedly signed by the taxpayer, acknowledging the receipt of the Notices.

The CTA ruled that to sustain a conviction for willful failure to pay a tax under the law, the person must first be required to pay the tax under the NIRC or its rules and regulations. Hence, prior receipt of the notices is required. Here, the Registry Return Receipt bears an unidentified and unauthenticated signature of the supposed addressee. Since the identity and authority of the person whose signature appears on the Registry Return Receipt was not established, it may not reasonably be said that accused indeed received the Assessment Notices. The presentation of the registry return receipt with an unauthenticated signature is not equivalent to proof that a letter sent through registered mail was actually received by the addressee. Hence, the accused is not guilty beyond reasonable doubt. ***(People of the Philippines vs. Engr. Reynaldo A. Matanguihan, CTA Crim. No. A-5 (Criminal Case No. 01-194392), March 7, 2019)***

It is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the current taxable year.

The taxpayer filed a claim for refund of unutilized creditable input tax attributable to its zero-rated sales. The said zero-rated transactions allegedly originated from its sale of goods and services to export-oriented entities registered with the PEZA, such as the SBMA, the CDA the CEZA, and the BOI.

The CTA Special Third Division ruled that applying the laws, regulations and Cross-border doctrine, it is clear that taxpayer's sales of goods and services to its customers, which are entities located inside the Ecozones and/or BOI-registered, whose products are 100°/o exported, are considered "export sales" and therefore, subject to 0°/o VAT rate. Note that in claiming excess or unutilized input VAT from zero-rated transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the current taxable year. Consequently, there being no excess input VAT which may be the subject of a claim for refund or issuance of tax credit certificate, the instant claim must be denied. ***(Maxima Machineries Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9358, March 11, 2019)***

In determining the BIR's right to collect, the validity or invalidity of an assessment, in relation to the due process requirements; or prescription of the right to assess; or the fact of payment of said assessment; may also be reviewed by the Court and are properly included as "other matters".

BIR seeks reconsideration of the Court's Amended Decision (assailed Amended Decision) promulgated on October 29, 2018 which the Court granted the Petition for Review filed by the taxpayer and cancelled and set aside the BIR's assessment. In the Amended decision, the Court found the subject Formal Letter of Demand and Assessment Notices invalid for failure to indicate a definite due date for payment by the taxpayer, which negates respondent's demand for payment.

BIR contends that a challenge to the collection procedure under "other matters" cannot reach back and examine an undisputed assessment as the taxpayer questions the legality of respondent's collection and argues that the assessments upon which the collection proceedings are based on are void.

The Court ruled that can take jurisdiction over the present petition even if there was no disputed assessment. Section 7(a)(1) of RA No. 1125, as amended, confers upon the CTA the jurisdiction to decide not only cases pertaining to disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the NIRC of 1997, as amended. It must be emphasized that in determining the BIR's right to collect, the validity or invalidity of an assessment, in relation to the due process requirements; or prescription of the right to assess; or the fact of payment of said assessment; may also be reviewed by the Court and are properly included as "other matters". The failure to protest, or to raise said issues in a protest, should not result to a waiver of said defenses, for the reason that "a void assessment bears no valid fruit."***(Grand Plaza Hotel Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8892, March 11, 2019)***

The prima facie correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. In order to stand the test of judicial scrutiny, the

BIR issued a FAN against the taxpayer assessing for its deficiency value-added tax (VAT). Based on the Details of Discrepancies, BIR explains that since there is no means by which the correctness and accuracy of the taxpayer's receipts can be ascertained, assessment based on estimate was used pursuant to Section 2.4(a) of RMC No. 23-2000. BIR's comparison of petitioner's gross sales based on industry benchmark rate, pursuant to RMO No. 05-2012, against the gross sales reported per VAT Returns disclosed that petitioner failed to pay the corresponding VAT on the portion of its gross receipts.

The Court, in cancelling the VAT deficiency on undeclared sales, ruled that the BIR made no determination of the actual VATable sales of petitioner since the benchmark rate used by respondent pertains to the sales of other wholesaling companies as reflected in the computation. There was also no indication as to how the benchmark rate was derived by respondent or that it can at least be used to approximate the actual VATable sales of petitioner. BIR merely assumed that the amount of VATable sales of other wholesaling companies is the same with the VATable sales of the taxpayer.

assessment must be based on actual facts.

The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption. Hence, assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. Consequently, while there is a presumption of correctness of assessment issued by respondent, being a mere presumption, the same cannot be made to rest on another presumption, which is respondent's presumption that the amount of VATable sales of other wholesaling companies is the same with the VATable sales of petitioner. ***(Northern Mindanao Sales Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8959, March 11, 2019)***

DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. The DST is actually an excise tax, because it is imposed on the transaction rather than on the document.

This is a Resolution on the Motion for Reconsideration filed by the taxpayer assailing the Decision of the Court promulgated on October 18, 2019. Taxpayer contends that the cash advances involved in this case, should not be subjected to DST as the BIR merely relied its findings on the Notes to Financial Statements of the taxpayer.

The Court ruled that even while the document evidencing the transaction is not shown, or no debt instrument was identified by the BIR, DST may still be imposed. A DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. The DST is actually an excise tax, because it is imposed on the transaction rather than on the document. As a corollary, there is no basis in the assertion that a DST is literally a tax on document. Thus, even while the subject document was not shown or no debt instrument was identified by the BIR, DST may still be imposed, so long as the transactions are clearly established. ***(Liberty Telecoms Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 931 1, March 11, 2019)***

It can be inferred from RMC No. 61-05 and Section 4.108-3 (f) of RR No. 16-05 that generation and transmission charges, including the VAT thereon, although billed to the end-user

This is a Resolution on the Motion for Reconsideration filed by the taxpayer assailing the Decision of the Court promulgated on June 9, 2017. The taxpayer contends that its sale of power to CEBECO III, which was eventually distributed to a PEZA- registered entity and a BOI-registered 100% export entity are subject to VAT zero-rating. BIR claims that CEBECO III is a non-PEZA registered or BOI - registered entity. Thus, taxpayer's sales to the said entity should not be subject to zero-rating.

The Court ruled that considering that sales of services by a VAT-registered taxpayer to entities located in ecozones and to BOI-registered manufacturers/producers whose products are 100% exported are considered

by the distribution companies and electric cooperatives, are not part of their gross receipts; neither can they claim an input tax on such charges

"export sales" subject to zero percent (0%) VAT rate pursuant to Section 108 (B) (3) of the NIRC of 1997, as amended, then, if the end-user who pays for the sale of electricity and related ancillary services through an electric cooperative for remittance to the generation company is a PEZA-registered entity or a BOI-registered 100% exporter, then the transaction should qualify for VAT zero-rating. ***(Toledo Power Company vs. Commissioner of Internal Revenue, CTA Case Nos. 8450, 8512, 8547 & 8596, March 15, 2019)***

Repeated acts of paying the principal deficiency taxes by installment and repeated requests for reduction, waiver and abatement of the interest and increments does not justify the suspension of the prescriptive period for collection

The BIR assessed the taxpayer for deficiency DST for the taxable year 2003. The taxpayer requested that the assessed amount be paid in installment and made several installment payments. The request was denied by the BIR and a FAN was issued on January 31, 2006. The taxpayer then made repeated requests for the reduction, waiver, and abatement of interest and increments. On February 28, 2014, the taxpayer questioned the BIR's right to initiate collection proceedings since its right to collect has already prescribed.

CIR argues that the words "reinvestigation" or "reconsideration" are not indispensable in order to suspend the running of the prescriptive period to collect and that the repeated acts of paying principal deficiency DST liability by installment sans interest, and requests for reduction, waiver and abatement of the interest and increments, clearly demonstrate positive acts which justify the suspension of the prescriptive period for collection

The Court ruled that the taxpayer's repeated acts in paying its principal deficiency DST liability by installment sans the interest and repeated requests for the reduction, waiver, and abatement of interest and increments would not justify the suspension of the prescriptive period for collection. Thus, since the taxpayer did not request for reinvestigation, the prescriptive period for collection was not suspended**.** ***(Commissioner of Internal Revenue vs. Asia United Insurance, Inc., CTA EB NO 1725(CTA Case No. 8916), March 17, 2019)***

Unsupported under-declaration of expenses does not automatically result in recognition of income.

The BIR assessed the taxpayer for income tax based on the latter's discrepancies between its declared expanded withholding taxes and the expenses reported in its audited financial statements (AFS). BIR alleged that the undeclared expenses which cannot be explained by the taxpayer through supporting documents constitute undeclared revenue that must be assessed since expenses lower the tax base in computing income tax.

In this Resolution, the CTA has reiterated in its decision the three elements in the imposition of income are the following: (1) there must be gain or profit; (2) that the gain or profit is realized or received, actually or constructively; and (3) it is not exempt by law or treaty from income tax. In the imposition of the

assessed income tax, it must be clear that there was an income, and such income was received by the taxpayer, and not when there is an undeclared purchase or expense. ***(Lancaster Colors International, Inc. v Commission of Internal Revenue CTA Case No. 8933 dated March 28, 2019)***

BIR ISSUANCES

- **RR No. 2-2019, March 19, 2019 -** This revenue regulation prescribes the rules in implementing the imposition of excise tax on non-essential services introduced by TRAIN Law.

- **RMC 31-2019, March 7, 2019 -** This revenue memorandum circular reiterates the tax compliance requirements of candidates, political parties/party list groups and campaign contributors on their registration, update and other tax compliance requirements following RMC No. 38-2018.

- **RMC 34-2019, March 4, 2019 -** This revenue memorandum circular clarifies the treatment and reporting requirements on input tax of drugs and medicines exempt from VAT as of December 31, 2018.

- **RMC 37-2019, March 18, 2019 -** This Circular prescribes the newly revised BIR Form No. 1701 [Annual Income Tax Return for Individuals (including mixed income earner), Estates and Trusts] January 2018 ENCS, which was revised due to the implementation of the TRAIN Law.

- **RMC 38-2019, March 25, 2019 -** This revenue memorandum circular amends RMC No. 102-2018 as regards the deadline for the processing of pending VAT Refund/Credit claims filed prior to the effectivity of RMC No. 54-2014.

BIR ISSUANCES

RR No. 2-2019, March 19, 2019 - This revenue regulation prescribes the rules in implementing the imposition of excise tax on non-essential services introduced by TRAIN Law.

The regulation imposes an excise tax equivalent to five percent (5%) based on gross receipts derived from the performance of services, net of excise tax and value-added tax on invasive cosmetic procedures, surgeries and body enhancements directed solely towards improving, altering, or enhancing the patient's appearance and other surgeries that do not meaningfully promote the proper functions of the body or prevent or treat illness or disease.

RMC 31-2019, March 7, 2019 - This revenue memorandum circular reiterates the tax compliance requirements of candidates, political parties/ party list groups and campaign contributors on their registration, update and other tax compliance requirements following RMC No. 38-2018.

The revenue memorandum circular mandates the registration (as taxpayers) of individual candidates, political parties/party list groups, and campaign contributors. Further, the regulation requires the withholding of five percent (5%) creditable withholding tax on income payments made by candidates and political parties/party list groups.

It also exempts from Donor's Tax donations/contributions that have been utilized/spent during the campaign period. Lastly, income tax exemption is granted for campaign contributions utilized to cover a candidate's expenditures for his/her electoral campaign. On the other hand, unutilized/excess campaign funds are subject to income tax.

BIR ISSUANCES

RMC 34-2019, March 4, 2019 - This revenue memorandum circular clarifies the treatment and reporting requirements of input tax on drugs and medicines exempt from VAT as of December 31, 2018.	Pursuant to Section 34 of TRAIN Law, the sale of drugs and medicines prescribed for diabetes, high-cholesterol and hypertension shall be exempt from VAT beginning January 1, 2019.
RMC 37-2019, March 18, 2019 - This Circular prescribes the newly revised BIR Form No. 1701 [Annual Income Tax Return for Individuals (including mixed income earner), Estates and Trusts] January 2018 ENCS, which was revised due to the implementation of the TRAIN Law.	It should be noted that the newly revised return shall be used by the individuals (including those with mixed income), estates and trusts in filing the annual income tax return and paying the income tax due starting the year 2018 that is due on or before April 15, 2019.

BIR ISSUANCES

RMC 38-2019, March 25, 2019 - This revenue memorandum circular amends RMC No. 102-2018 as regards the deadline for the processing of pending VAT Refund/Credit claims filed prior to the effectivity of RMC No. 54-2014.

This revenue memorandum circular further amends the deadline prescribed in RMC No. 102-2018 from March 29, 2019 to July 31, 2019.

SEC ISSUANCES

- **SEC Memorandum Circular No. 5 series of 2019, March 14, 2019 -** This memorandum circular provides the guidelines on the implementation of ASEAN Capital Market Forum (ACMF) Pass under the ASEAN Capital Market Professional Mobility Framework.

- **SEC Notice, March 15, 2019 -** This notice requests for comments, not later than 29 March 2019, on the proposed amendments to the guidelines and procedures on the use of corporate and partnership names.

- **SEC Notice, March 15, 2019 -** This notice requests for comments, not later than 29 March 2019, on the proposed guidelines on the conversion of an ordinary stock corporation into One Person Corporation (OPC).

- **SEC Notice, March 15, 2019 -** This notice requests for comments, not later than 29 March 2019, on the proposed guidelines on the establishment of a One Person Corporation (OPC).

- **SEC Notice, March 15, 2019 -** This notice clarifies rules for the filing of Audited Financial Statements (AFS) pursuant to the Revised Corporation Code of the Philippines.

- **SEC Notice, March 22, 2019 -** This notice requests for comments, not later than 5 April 2019, on the proposed guidelines on corporate term.

- **SEC Notice, March 26, 2019 -** This notice requests for comments, not later than 10 April 2019, on the draft Rules on Material Related Party Transactions for Publicly-Listed Companies.

- **SEC Notice, March 28, 2019 -** This notice requests for comments, not later than 15 April 2019, on the draft Updated Anti-Money Laundering (AML) Module for the SEC Certification Examination.

SEC ISSUANCES

SEC Memorandum Circular No. 5 series of 2019, March 14, 2019 - This memorandum circular provides the guidelines on the implementation of ASEAN Capital Market Forum (ACMF) Pass under the ASEAN Capital Market Professional Mobility Framework.

The guidelines provide for the scope of activities and the prohibited activities in the host jurisdiction, mode of performance of service, conditions for servicing retail and non-retail investors, and the application requirements, validity, renewal, termination, and revocation of the ACMF Pass. The role of the attached licensed firm of the host jurisdiction was also laid down, namely, to conduct the proper due diligence and record maintenance. Finally, the attached licensed firm in the host jurisdiction is required to notify the host regulator and the licensed firm in the home jurisdiction of any changes which may have an impact on the status of licensing, registration, approval, or authorization of the recognized representative. Upon receipt thereof, the licensed firm in the home jurisdiction shall notify the home regulator. The host regulator may take regulatory actions against the recognized representative if the latter contravenes the host jurisdiction's laws and regulations.

These guidelines apply to professionals in the Philippines who intend to obtain an ACMF Pass in another country which is a signatory to the MOU, professionals in other signatory countries who intend to obtain an ACMF Pass in the Philippines, and attached license firms. Professionals from other signatory countries who are interested to obtain the ACMF Pass must be a licensed, registered, approved, or authorized by the Home Regulator, has no pending disciplinary action, and has not been convicted of an offense involving moral turpitude, fraud, embezzlement, counterfeiting, theft, misappropriation, forgery, bribery, false oath, perjury, or of a violation of securities, commodities, banking, real estate, or insurance laws.

SEC Notice, March 15, 2019 - This notice requests for comments, not later than 29 March 2019, on the proposed amendments to the guidelines and procedures on the use of corporate and partnership names.

The draft included salient amendments which include a provision that a One Person Corporation shall indicate the letters "OPC" either below or at the end of its corporate name; and The OPC bearing the name of the single incorporator/director shall be allowed provided the name contains descriptive word indicating the nature of business. The draft also provided that the names of other extra territorial bodies and organizations or international governmental organization, may not be used as part of a corporate or partnership name unless when duly authorized or allowed by the governing body.

A list of persons shall give consent to the use of name of a corporation or partnership whose registration had been dissolved or revoked, or a former corporate name which was the subject of amendment. Otherwise, the corporate name shall not be used for 3 years from the date of issuance of certificate of dissolution or from the date of finality of the revocation order, or 5 years from the approval of amendment. The name of the absorbed corporation may not be used unless the consent of the surviving constituent corporation is obtained in the form of Directors Certificate or Secretary Certificate. Finally, no application for re-registration of the dissolved or

	revoked corporation shall be processed by the Commission unless the application is accompanied by the required documents. Upon approval, the certificate of registration shall indicate its new SEC registration number and pre-generated Tax Identification Number (TIN) as confirmation that the same is a separate and distinct entity from the dissolved/revoked corporation.
SEC Notice, March 15, 2019 - This notice requests for comments, not later than 29 March 2019, on the proposed guidelines on the conversion of an ordinary stock corporation into One Person Corporation (OPC).	The draft included salient provisions, one of which states that only a domestic corporation organized as a stock corporation (Ordinary Stock Corporation) may be converted into a One Person Corporation (OPC). An Ordinary Stock Corporation (OSC) may apply for its conversion into an OPC. Also, applications for conversion from OSC into an OPC will be processed as an amendment of an Articles of Incorporation/By-laws. Furthermore, the conversion of an OSC into an OPC shall take effect upon approval of the Amended Articles of Incorporation. The OPC will retain its SEC Company Registration Number with the addition of "-OPC" at the end thereof, once the conversion is approved and the Certificate of Filing of Amended Articles of Incorporation is issued. Finally, the OPC converted from an OSC shall succeed and be legally responsible for all the latter's outstanding liabilities and obligations as of the date of approval of the conversion.
SEC Notice, March 15, 2019 - This notice requests for comments, not later than 29 March 2019, on the proposed guidelines on the establishment of a One Person Corporation (OPC).	The guidelines include salient provisions, one of which state that a One Person Corporation (OPC) can only be a natural person of legal age, trust or estate. A foreign natural person may incorporate an OPC, subject to the applicable constitutional and statutory restrictions on foreign participation in certain investment areas or activities. Banks, non-bank financial institutions, quasi-banks, pre-need, trust, insurance, public and publicly listed companies, non-chartered government-owned-and controlled corporations (GOCCs) cannot incorporate as OPC. A natural person who is licensed to exercise a profession may not organize as an OPC for the purpose of exercising such profession except as otherwise provided. The single stockholder is required to designate a nominee and an alternate nominee named in the Articles of Incorporation in the event of death and incapacity. The written consent of both the nominee and alternate nominee shall be attached to the application for incorporation. Its nominee and alternate nominee may be changed at any time by submitting to the Commission the names of the new nominees and their corresponding written consent. The Articles of Incorporation need not be amended to effect the change in the nominees.

SEC ISSUANCES

	In case the single stockholder becomes incapacitated, the nominee can take over the management of the OPC as director and president. At the end of the incapacity, the single stockholder can resume the management of the OPC. In case of death or permanent incapacity of the single stockholder, the nominee will take over the management of the OPC until the legal heirs of the single stockholder have been lawfully determined and the heirs have agreed among themselves who will take the place of the deceased.
SEC Notice, March 15, 2019 - This notice clarifies rules for the filing of Audited Financial Statements (AFS) pursuant to the Revised Corporation Code of the Philippines.	The notice states that the Old Corporation Code shall apply to all financial statements covering the periods on or before February 22, 2019. The Revised Corporation Code (RCC) shall be applied prospectively. All companies required to file AFS under the RCC should comply with the required comparative presentation as provided under SRC Rule 68. If the financial statements of the prior year were not audited, it shall be marked prominently as "UNAUDITED" and the auditor shall disclose this in an "other matter" paragraph under the auditor's report. A discussion of the impact of the RCC relative to the preparation and submission of financial statements shall be included in the Notes to FS.
SEC Notice, March 22, 2019 - This notice requests for comments, not later than 5 April 2019, on the proposed guidelines on corporate term.	The draft states that the decision to retain the specific corporate term as specified in the Articles of Incorporation must be approved during the annual or special meeting duly held for the purpose at the principal office of the corporation by the vote of the stockholders representing a majority of the outstanding capital stock or a majority of the members, in 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. It must be submitted to the Commission within a period of two years from February 23, 2019. Corporations that intend to enjoy perpetual term of existence need not send a Notice to the Commission.
SEC Notice, March 26, 2019 - This notice requests for comments, not later than 10 April 2019, on the draft Rules on Material Related Party Transactions for Publicly-Listed Companies.	The draft states that the board of directors shall have the overall responsibility in ensuring that transactions with related parties are handled in a sound and prudent manner, with integrity, and in compliance with applicable laws and regulations to protect the interest of the company's shareholders and other stakeholders. The board shall adopt a group-wide material Related Party Transaction (RPT) policy encompassing all entities within the conglomerate, taking into account its size, structure, risk profile and complexity of operations. Furthermore, companies shall adequately disclose in their websites its material RPT policy and shall comply with reportorial requirements. Penalties may be imposed upon non/late filing of advisement report and incomplete advisement report or abusive material related party transactions.

SEC ISSUANCES

SEC Notice, March 28, 2019 - This notice requests for comments, not later than 15 April 2019, on the draft Updated Anti-Money Laundering (AML) Module for the SEC Certification Examination.	The draft contains a discussion on the nature of money laundering, the laws and programs which seek to prevent and monitor money laundering, and the duties of covered persons or institutions. Also included in the draft are the predicate crimes or unlawful activities in relation to money laundering and topics on terrorist financing. Finally, the draft laid down the duties and responsibilities of the compliance officer and matters on internal control and internal audit.

SEC

OPINIONS & DECISIONS

- **A company's corporate purpose may not be expanded by the mere adding of activities.** *(SEC-OGC Opinion No. 19-04, March 4, 2019, Re: General Financing Activities)*

- **Under the SEC guidelines, a certificate of approval of increase of authorized capital stock may be revoked if there is (1) a failure to submit the proof of transfer of ownership within 90 days, and (2) an opportunity to be heard**. *(Pacific Star Properties, Inc. vs. Company Registration and Monitoring Department, SEC En Banc Case No. 10-10-216, March 7, 2019)*

- **Proper service of papers shall be done by tendering a copy of the same to an exclusive list of persons, an incorporator included, by leaving a copy at his dwelling house or residence with some person of suitable age and discretion residing therein; service to the last known or registered address with the Commission of the person being served shall suffice.** *(Kapa-Community Ministry International, Inc. vs. Enforcement and Investor Protection Department, SEC Admin. Case No. 02-19-181, March 14, 2019)*

SEC
OPINIONS & DECISIONS

A company's corporate purpose may not be expanded by the mere adding of activities.

This opinion tackles general financing activities.

A holding company requested for an opinion on whether it may expand its corporate purpose by simply adding "financial activities" to its primary purpose in its Articles of Incorporation (AOI) and whether it may be allowed to retain its corporate name while being engaged in financial activities.

The Commission, citing the Financing Company Act of 1998 and its IRR, and the Corporation Code, held that the company's corporate purpose may not be expanded by the mere adding of activities since a financing company must be primarily organized for the purpose of extending credit facilities. The mere adding of activities would effectively make such as secondary purposes only. It has also held that the company may not retain its corporate name, assuming that it would engage primarily in financing activities since Sec. 2(c) of the IRR provides that the corporate name of financing companies shall contain words which are descriptive of its operations and activities as a financing company. ***(SEC-OGC Opinion No. 19-04, March 4, 2019, Re: General Financing Activities)***

Under the SEC guidelines, a certificate of approval of increase of authorized capital stock may be revoked if there is (1) a failure to submit the proof of transfer of ownership within 90 days, and (2) an opportunity to be heard

The Company Registration and Monitoring Department (CRMD) approved the company's application to increase its authorized capital stock wherein the increased shares would be transferred to a subscriber in consideration of several parcels of land. However, the company failed to transfer the said parcel of lots to its name within the 90-day period as required in the SEC guidelines. The company appeared before the CRMD and explained that its failure was caused by having paid the property taxes at the wrong BIR venue. The CRMD directed the company to submit a report on the reason for the delay but the latter failed to do so. Hence, CRMD revoked the company's Certificate of Approval of Increase of Authorized Capital Stock.

This case discussed the issue on whether the CRMD erred in revoking the Certificate of Approval when the company failed to transfer 18 parcels of land to its name in consideration for subscription of its shares, within the 90-day period to do so as provided by SEC Guidelines.

Under the Guidelines, there must be a failure to submit the proof of transfer of ownership within 90 days, and an opportunity to be heard, before the SEC may revoke the approved increase of authorized capital stock. The Commission has upheld the revocation since both requisites were present in the case. However, it was held that SEC Memorandum Circular No. 14, Series of 2013 states that the company is not precluded from filing for substitution of payment since its inability to comply with the 1st requisite was due to a meritorious reason, namely its difficulty to secure a BIR Tax Clearance for the transaction since it paid property taxes at the wrong BIR venue. The case was

SEC
OPINIONS & DECISIONS

remanded to the CMRD for further proceedings. ***(Pacific Star Properties, Inc. vs. Company Registration and Monitoring Department, SEC En Banc Case No. 10-10-216, March 7, 2019)***

Proper service of papers shall be done by tendering a copy of the same to an exclusive list of persons, an incorporator included, by leaving a copy at his dwelling house or residence with some person of suitable age and discretion residing therein; service to the last known or registered address with the Commission of the person being served shall suffice.

The sheriff, armed with a Cease and Desist Order (CDO), went to the address indicated in the corporation's Articles of Incorporation to serve and post said CDO. However, upon arrival therein, the area was occupied by another entity. Nonetheless, the CDO was posted therein. Thereafter, the sheriff went to the address of two incorporators and left a copy of the CDO in their residences. The corporation claimed that it did not receive an official copy of the CDO.

The Commission held that the corporation was properly served with the CDO. Citing the SEC Rules of Procedure, the Commission explained that service of papers shall be done by tendering a copy of the same to an exclusive list of persons, an incorporator included, by leaving a copy at his dwelling house or residence with some person of suitable age and discretion residing therein; service to the last known or registered address with the Commission of the person being served shall suffice. The CDO was properly served in this case as it was served at the residence of two incorporators to residents of suitable age and discretion. The Rules also provide that service to the last known or registered address with the Commission of the person being served is already sufficient. The corporation failed to update its address with the Commission, thus the sheriff's act of posting the CDO on the address indicated in the corporation's AOI is also considered as valid service. Since the corporation failed to file a pleading or motion to lift the CDO within 5 days from its receipt, the Commission deemed the CDO to be permanent. ***(Kapa-Community Ministry International, Inc. vs. Enforcement and Investor Protection Department, SEC Admin. Case No. 02-19-181, March 14, 2019)***

IC ISSUANCES

- **Insurance Commission (IC) Circular Letter (CL) No. 2019-06, March 15, 2019 –** This letter directs all pre-need companies authorized to transact business in the Philippines on the Submission of Quantitative Impact Assessment Report relative to the Regulatory Relief provided to the Pre-Need Industry.

- **IC CL No. 2019-07, March 18, 2019 –** This letter provides for guidelines and grounds for reduction of penalties due to delays in the submission of reportorial requirements.

IC ISSUANCES

Insurance Commission (IC) Circular Letter (CL) No. 2019-06, March 15, 2019 – This letter directs all pre-need companies authorized to transact business in the Philippines on the Submission of Quantitative Impact Assessment Report relative to the Regulatory Relief provided to the Pre-Need Industry.

Pursuant to CL No. 2018-58, the Commission aims to monitor and assess the overall impact of the regulatory relief to pre-need companies for the year 2018 and to further improve the regulations for pre-need companies by requiring all pre-need companies authorized to transact business in the Philippines to submit Quantitative Impact Assessment Reports, as follows:

a. With and without regulatory relief comparative balance sheet (statement of financial position) as of December 31, 2018 of the pre-need company following the format prescribed in Annex A;
b. With and without regulatory relief comparative balance sheet (statement of financial position) as of December 31, 2018 of trust fund account(s) following the format prescribed in Annex B;
c. With and without regulatory relief comparative reserve valuation report as of December 31, 2018 following the format prescribed in Annex C.

All reports shall be duly certified and signed by the accountant and IC-accredited Actuary together with the Chief Financial Officer (CFO) or its equivalent; it must form an integral part of the Annual Statement; and must be submitted on or before May 31, 2019. Late submission shall be subject to penalty of P5,000.00 for each day of delay; and P500.00 for every wrong data entry of material information.

IC CL No. 2019-07, March 18, 2019 – This letter provides for guidelines and grounds for reduction of penalties due to delays in the submission of reportorial requirements.

Pursuant to the Circular on Fees and Charges and several circular letters subsequently issued by the Commission which required the submission of reportorial requirements by regulated entities and imposed any penalty for any delay thereof, the Commission rationalizes the imposition of penalties by providing guidelines and grounds for the reduction of penalties due to delays in the submission of said reportorial requirements.

The grounds for reduction of penalties (not exceeding 30% of the total sun of penalties) are the following:

a. If the non-compliance or delay was shown to be beyond the control of the entity involved, as determined by the Commission;
b. Such penalty would be too burdensome and would greatly disrupt or affect the business operations, as determined by the Commission;
c. If the non-compliance or delay was due to inadvertent mistake or accident;
d. If the non-compliance or delay was due to excusable negligence; and
e. Other causes analogous to the foregoing, as determined by the Commission.

IC OPINIONS

- **IC Legal Opinion (LO) No. 2019-03, March 14, 2019 –** This opinion deals with clarifications on certain issues regarding the Compulsory OFW Insurance

- **IC LO No. 2019-04, March 19, 2019 –** This opinion deals with whether or not Starr International Insurance Philippines Branch (SIIP) is subject to strict compliance of the Circular Letter by the Insurance Commission which pertains to rules on number of seats, qualifications and term limits of independent director.

- **IC LO No. 2019-05, March 25, 2019 –** This is an opinion in relation to the application/enrollment form of microinsurance.

IC OPINIONS

IC Legal Opinion (LO) No. 2019-03, March 14, 2019 – This opinion deals with clarifications on certain issues regarding the Compulsory OFW Insurance

The insurer is seeking the IC's interpretation and opinion on the following items:

1. Period of effectivity of the Compulsory OFW Insurance relative to Accidental Death/Natural Death Claims;
2. Filing of a claim for Permanent Total Disablement;
3. Circumstances when Repatriation Claims may be granted; and
4. Filing and Coverage of Money Claims.

For the first item, the Commissioner opined that an insurance policy remains valid only for the duration of the employment contract of an OFW as long as this stipulation is clearly stated in the insurance policy. Notably, if there are controversies on the terms and conditions of a policy issued in favor of an OFW, the same should be resolved in favor of the OFW and all ambiguities in an insurance contract are construed against the insurer and are resolved in favor of coverage.

For the second item, based on Section 1, Guideline VII on Minimum Benefits, the Commissioner opined that the OFW may validly claim for personal total disablement if such disability is due to any accident, sickness or ailment suffered during the duration of his/her employment, irrespective of whether the same is work-related and irrespective whether such condition appeared only when such OFW is already in the Philippines.

For the third item, the insurer inquired on what is included in the term "just cause" for the purpose of determining payment of repatriation cost. Based on Section 23 of RA 10022 and Section 1 of Guidelines VII of the Insurance Guidelines, the Commissioner is of the opinion that, in order to determine whether or not the termination of employment is for "just cause" for purposes of determining payment of repatriation cost, reference should be made to the employment contract between the OFW and his/her employer. However, if an employment contract fails to define the just cause for the termination of the same, the term "just cause" as defined under Article 282 of the Labor Code of Philippines should be used.

Finally, the insurer is of the position that the payment of money claims shall be limited only to those awarded and/or settled before the NLRC, to the exclusion of POEA, OWWA and DOLE. Based on Section 7 and 23 of RA 10022, the Commissioner opined that NLRC has the exclusive and original jurisdiction to hear and decide money claims, whether by judgment award or settlement. Thus, only the amount awarded by NLRC upon judgment and the amount of settlement based on employer's liability properly detailed in the same are subject of insurance coverage.

IC OPINIONS

IC LO No. 2019-04, March 19, 2019 – This opinion deals with whether or not Starr International Insurance Philippines Branch (SIIP) is subject to strict compliance of the Circular Letter by the Insurance Commission which pertains to rules on number of seats, qualifications and term limits of independent director.

SIIP is of the position that it is not covered by the rules on number of seats, qualifications and term limits of independent directors because it is merely a branch of Starr International Insurance (Asia) Ltd., (a foreign entity that is licensed to establish its branch in the Philippines) and does not have a separate legal entity. It does not even have its own Board of Directors.

Based on Section 192 of the Insurance Code and Section 125 of the Corporation Code of the Philippines, the Commissioner opined that entities receiving certificate of authority from the commission shall be subject to the insurance and other applicable laws of the Philippines. Thus, SIIP is not covered by the Circular Letter because it is not an entity with a separate juridical personality. However, Starr International Insurance (Asia) Ltd., shall be covered by the same Circular Letter because it is an entity that is licensed to establish its branch office in the Philippines under the name SIIP. As such, Starr International Insurance (Asia) Ltd. shall comply with the relevant laws, regulations and circular letters of this Commission being the entity that is licensed to establish its branch office in the Philippines under the name SIIP.

IC LO No. 2019-05, March 25, 2019 – This is an opinion in relation to the application/enrollment form of microinsurance.

The insurer raised the following inquiries:

1. Whether or not it is allowable for an applicant, instead of signing the approved application form by this Commission, to simply attach or bundle a photocopy of his/her valid proof of identification/ID to the Microinsurance form as sign of proof of insurability; and
2. Whether or not the Microinsurance purchasers can be considered as an "open" group, particularly, if there is no employer-employee relationship between the purchasers.

For the first query, the Commissioner is of the opinion that the signature of the applicant to the form is an indispensable requirement that cannot be disregarded nor substituted by submitting a photocopy of a valid identification/ID. This is because the application form itself indicates that it is a document which requires that an applicant sign to affirm and give his/her consent.

Finally, the Commissioner is of the opinion that microinsurance purchasers may be considered as an “open” group outside of the employee group and can be insured under a group policy, provided that the following matters are complied with:

1. Such group, other than the employee group, has a commonality of purpose, interest or circumstances or engaging in a common economic and/or social activity;
2. The insured members are not its employees;

3. Such group was formed not for the main purpose of availing insurance; and
4. Such group policy should not be issued to an insurance agent or broker as a policyholder, except if the covered members are its employees.

BSP ISSUANCES

- **Bangko Sentral ng Pilipinas (BSP) Circular Letter (CL) No. 2019-019, March 4, 2019 –** This letter provides for an advisory for all BSP-Supervised Financial Institutions (BSFIs) to comply with the amendments to the foreign exchange transactions under Circular No. 1030.

- **BSP Memorandum No. 2019-006, March 14, 2019 –** This memorandum provides for the registration of operators of Automated Teller Machines (ATMs) that allow the purchase or exchange of Virtual Currencies (for example, Bitcoin) or other devices with similar functions and capabilities.

- **BSP Circular No. 1034, March 15, 2019 –** This circular approves the amended subsections X176.5/4176Q.5 of the Manual of Regulations for Banks (MORB)/Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) pertaining to the extension of observation period for the Basel III Framework on Liquidity Standards – Net Stable Funding Ratio (NSFR) for subsidiary banks/quasi-banks (QBs) of universal and commercial banks.

- **BSP Circular No. 1035, March 15, 2019 –** This circular approves the amended subsections X176.1/4176Q.1 of the Manual of Regulations for Banks (MORB)/Manual of Regulations for Non-Bank Financial Institutions (MORNBFI)

BSP ISSUANCES

Bangko Sentral ng Pilipinas (BSP) Circular Letter (CL) No. 2019-019, March 4, 2019 – This letter provides for an advisory for all BSP-Supervised Financial Institutions (BSFIs) to comply with the amendments to the foreign exchange transactions under Circular No. 1030.

Pursuant to the amendments made on foreign exchange transactions by BSP Circular No. 1030 dated February 5, 2019, BSP enjoins all BSFIs to familiarize themselves and strictly comply with the revised rules and regulations governing foreign exchange transactions. BSFIs are given a transitory period of six (6) months from the from the effectivity of the said issuance to facilitate the adoption of the new and revised reports that are based on International Monetary Fund Balance of Payments and International Investments Position Manual Standards.

BSP Memorandum No. 2019-006, March 14, 2019 – This memorandum provides for the registration of operators of Automated Teller Machines (ATMs) that allow the purchase or exchange of Virtual Currencies (for example, Bitcoin) or other devices with similar functions and capabilities.

Pursuant to BSP Circular No. 944 dated February 6, 2017, the circular which defined Virtual Currency Exchange (VCE) and provided for the rules and regulations of the same, BSP requires operators of ATMs that allow purchase or exchange of VCs or other devices with similar functions and capabilities to register with the BSP.

Also, as registered VCEs, they should comply with anti-money laundering/terrorist financing laws and regulations, ensure sufficient and appropriate controls and governance framework are adopted to manage the associated technology and other operational risks, and put in place adequate consumer protection and customer support, among others.

BSP Circular No. 1034, March 15, 2019 – This circular approves the amended subsections X176.5/4176Q.5 of the Manual of Regulations for Banks (MORB)/Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) pertaining to

The Monetary Board (MB), in its Resolution No. 300 dated 21 February 2019, amended subsections X176.5/4176Q.5 of the MORB and MORNBFI which approved the extension of the observation period for the Basel III Framework on Liquidity Standards - Net Stable Funding Ratio (NSFR) for subsidiary banks/quasi-banks (QBs) of universal and commercial banks (UBs/KBs), and adoption of a seventy percent (70%) NSFR floor for subsidiary banks/QBs during the observation period.

As to its reporting and monitoring requirements, the requirement for the submission of the NSRF reports shall be accompanied by a certification under oath to the effect that a covered bank/QB has fully complied with the NSFR requirement on all calendar days of the reference period; and shall take effect

the extension of observation period for the Basel III Framework on Liquidity Standards – Net Stable Funding Ratio (NSFR) for subsidiary banks/quasi-banks (QBs) of universal and commercial banks.	on January 1, 2019 for UBs/KBs and on January 1, 2020 for subsidiary banks/QBs. As to implementation, the minimum NSFR shall be phased in to help ensure that the covered banks/QBs can meet the standard through reasonable measures without disrupting credit extension and financial market activities. In order to facilitate compliance, covered banks/QBs shall undergo an observation period before the NSFR becomes a minimum requirement. Subsidiary banks/QBs of UBs/KBs shall be subject to an NSFR floor of seventy percent (70%) during the observation period. The observation period for UBs/KBs, as well as their subsidiary banks/QBs are from July 1, 2018 up to December 31, 2018 and July 1, 2018 up to December 31, 2019, respectively.
BSP Circular No. 1035, March 15, 2019 – This circular approves the amended subsections X176.1/4176Q.1 of the Manual of Regulations for Banks (MORB)/Manual of Regulations for Non-Bank Financial Institutions (MORNBFI)	The Monetary Board (MB), in its Resolution No. 301 dated 21 February 2019, amended subsections X176.1/4176Q.1 of the MORB and MORNBFI which approved the: 1. extension of observation period of the minimum Basel III Liquidity Coverage Ratio (LCR) requirement to December 31, 2019 for subsidiary banks/quasi-banks (QBs) subsidiary banks/quasi-banks (QBs) of universal and commercial banks; 2. adoption of a seventy percent (70%) LCR floor for subsidiary banks and QBs during the observation period; 3. amendments to the LCR framework under Subsections X176.1/4176Q.1 to X176.2/4176Q.2 and Appendix 74a/Q-44b of the MORB/MORNBFI; and 4. amendments in the formula of the Minimum Liquidity Ratio (MLR) under Subsection X176.3/4176Q.3 of the MORB/MORNBFI.

Published Articles

Business Mirror

Tax Law for Business

EASE IN PAYING TAXES

By

Benedicta *"Dick"* Du-Baladad

With the onset of the tax-filing season, and in relation to the Ease of Doing Business (EODB) law mandating the efficient delivery of government services, let me stir this talk again about ease in paying taxes.

As early as last month, the BIR launched the tax-filing season with an earnest appeal for taxpayers to file and pay their taxes early and correctly. In response, taxpayers made a counter-appeal for the government to please do something to make payment of taxes less costly, easy and a pleasant experience they would look forward doing again.

For years, April 15 has been a hurdle, ending one's day with a sigh of "YES, I survived." This, notwithstanding the availability of an electronic payment and filing system. Happy for those who can hire professional help, they are blessed, but sadly, not many can afford one.

And I blame this on the tax structure that we have—a complicated tax system that is complicated further by complicated implementing rules, guidelines and procedures. The result is a complex web of inefficiencies, making the life of a taxpayer difficult.

This year could be different, especially for individuals engaged in business and with income of P3 million and below (the micro, small and medium enterprises). Taxpayers in this category are given the option of paying a single flat rate of 8 percent of gross sales or receipts in lieu of paying the

regular multi-rated income tax and the 12-percent value-added tax. We call this a presumptive income tax.

Thanks to Tax Reform for Acceleration and Inclusion (TRAIN) 1, which introduced this simplified taxation precisely to encourage the MSMEs to surface, join the tax net, pay their taxes regularly and timely and without fear of being penalized.

With this simplification, the BIR is expected to simplify implementation, as well, to ensure achieving the intent and purpose of TRAIN 1. But, I would say, it is not just about simplification in the payment of taxes that this sector needs. It is a lot more than that.

What MSMEs need is a wholistic management approach where policies are specifically designed for them—a separate taxpayer segment with special needs, having its own peculiarities and behavior. A wholistic approach that runs the whole gamut of tax compliance—from registration, bookkeeping, invoicing, tax filing and payment, tax audit, collection procedures, up to closure of the business—is what this sector needs.

The MSMEs need assistance more than anyone else. Thus, policies should be directed more on tax assistance such as tax education, information, campaign to register and the like. Not strict tax enforcement, or they will hide more.

For example, assistance desks dedicated solely to MSMEs should be set up in all Bureau of Internal Revenue (BIR) payment centers and frontline offices ready to assist in registration, printing of invoices, filling up tax returns, payment of taxes, etc. Basic training on proper bookkeeping is also important. Simplifying tax forms is a must. TRAIN 1 mandates that tax returns should not exceed four pages. For MSMEs, perhaps a one-page simplified tax return can be done. For a long time, this sector has not been paid much attention to by the BIR, perhaps because it is more costly to run after them compared to the revenue potential to be generated. Instead, the BIR concentrated on large taxpayers already in the net, auditing them yearly, squeezing them for more payments and monitoring them regularly.

MSMEs comprise 99.56 percent of all businesses in the country, according to the 2017 data of the Philippine Statistics Authority (PSA). Compared to only more than 4,000 large businesses, their number runs close to a million, dominating the wholesale and retail trade sector (e.g., the *sari-sari* stores, parlor shops, tricycle repair, canteens and the like) and concentrated in the

National Capital Region, Central Luzon, Calabarzon and Central Visayas. Of this number, 89 percent are micro enterprises.

Is there really no revenue prospect from MSMEs? There is, and its not peanuts. My sense is, the almost a million figure from the PSA pertains only to those registered. The *sari-sari* stores alone are already more than a million, I heard. In which case, we are talking here of a lot bigger number of MSMEs.

The PSA report says that in terms of value added, the MSME sector contributes 35.7 percent of the total value added generated in the country. They account for 25 percent of the country's total exports revenue, normally through subcontracting arrangement with large firms, or as suppliers to exporting companies. This means that this taxpayer segment should be contributing at least 35 percent of the total revenue collection. A P1,000 monthly payment from each, for example, easily translates to P12-billion revenue collection.

The MSMEs have been crying for help, wanting to contribute their share. And so, we did our share.

Our firm, Du-Baladad and Associates, recently released a 10-pager handy pamphlet on "A Quick and Easy Tax Guide for MSMEs."

This was translated in Tagalog by the Women Business Council of the Philippines (Womenbiz) to cater to those who may find difficulty in English: "Isang Madali at Mabilis na Gabay sa Pagbabayad ng Buwis para sa MSMEs."

This booklet is given for free to MSMEs who may need a copy. It is our contribution to the tax education and assistance of MSMEs, a part of our firm's corporate social responsibility, which we have seriously taken upon ourselves to champion.

Any organization or association assisting or dealing with MSMEs may e-mail us for free copies. You can also download this from our web site at *www. bdblaw.com.ph.*

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Ceremonial Turnover at Fundado Elementary School

The students and teachers of Fundado Elementary School in Libmanan, Camarines Sur can now dream bigger and look forward to a bright new environment more conducive for learning with the turnover of a new classroom building and the newly renovated comfort rooms donated by BDB Law Foundation Inc. The classroom building is fully-equipped with armchairs, teachers' desks, blackboards, wall fans and toilets. This is the 6th classroom building built in partnership with Children's Hour Foundation.

The ceremonial turnover was graced by BDB Law Foundation's Chairman Atty. Benedicta Du-Baladad and Director Atty. Irwin C. Nidea, Jr., Fundado Elementary School teaching staff headed by their School Principal, and from Children's Hour, Ms. Ovy Jimenez and Mr. Eric Name. ***(March 22, 2019, Fundado Elementary School, Libmanan, Camarines Sur)***

THE BDB TEAM

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