TAX Insights

BDB Law
DU-BALADAD AND ASSOCIATES

OCTOBER ● VOL. 10 ● SERIES OF 2019

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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- **If both parties in a case are in pari delicto or in equal fault, the Taxpayer is estopped from raising any objection against the validity of the waivers it previously executed.** *(First Philippine Power Systems Inc., vs. Commissioner of Internal Revenue, CTA Case No. 9067 September 9, 2019)*

- **When the Taxpayer denied the receipt of PAN and FAN, the BIR has the burden to prove otherwise.** *(Indra Verhomal Menghrajani, Represented By Daughter Savitri V. Menghrajani, vs. Hon. Kim Jacinto-Henares in her Capacity as Commissioner as Internal Revenue, CTA Case No. 9269, September 24, 2019)*

- **A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." It is a demand for payment signals the time "when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies."' Thus, it must be sent to and received by the taxpayer and must demand payment of taxes described therein within a specific period.** *(Benchmark Marketing Corp. vs. Commissioner of Internal Revenue, CTA Case No. 9296, September 04, 2019)*

- **The Supreme Court ruled that it is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a "non-resident foreign corporation." Hence, 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 SEC certificate of non-registration of corporation/partnership and proof of incorporation, association or registration in a foreign country.** *(BW Shipping Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9448, September 23, 2019)*

- **Hearsay evidence is defined as 'evidence not of what the witness knows himself but of what he has heard from others.' The hearsay rule bars the testimony of a witness who merely recites what someone else has told him, whether orally or in writing.** *(Bangko Sentral ng Pilipinas vs Commissioner of Internal Revenue, CTA Case No. 9478, September 26, 2019)*

- **This Court has consistently held that in order to be considered a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC certificate of non-registration of corporation/partnership and proof of foreign incorporation/association/business registration** *(Vestas Services Philippines, Inc. vs Commissioner of Internal Revenue, CTA Case No. 9480, September 20, 2019)*

- **The final withholding VAT for payments to nonresidents for use of their property rights or for services rendered in the Philippines shall be withheld at the time of payment, and the remittance of which shall be ten (10) days following the month the withholding was made.** *(Jobstreet.Com Philippines, Inc. vs Commissioner of Internal Revenue CTA Case No. 9483, September 2, 2019)*

- **The fact that the Taxpayer was able to protest the FAN is of no moment as the same does not cure respondent's violation of Taxpayer's right to due process. Thus, the Taxpayer's filing of a protest to the PAN and FAN "does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued."** *(Fort 1 Global City Center, Inc. Vs Hon. Caesar R. Dulay, In His Capacity as Commissioner of the Bureau of Internal Revenue, CTA Case No. 9490 and 9503, September 24, 2019)*

- **A Letter Notice is not equivalent to a Letter of Authority. In the absence of an LOA, the assessment is a nullity. An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives.** *(Compania De Garay, Inc vs Commissioner of Internal Revenue, CTA Case No. 9549, September 24, 2019)*

- **A Letter of Authority is invalid for having been served beyond thirty (30) days from date of its issuance.** *(Kokoloko Network Corporation v. Commissioner of Internal Revenue, CTA Case No. 9574, September 24, 2019)*

- **A taxpayer may claim exemption from estate tax of its foreign currency deposit as long as the deposit is eligible or allowed under R.A. No. 6426, as amended.** *(Estate of Mr. Charles Marvin Romig Represented by its Sole Heir, Mrs. Maricel Narciso Romig v. Commissioner of Internal Revenue, CTA Case No. 9626, September 2, 2019)*

- **The judicial interpretations of a statute constitute a part of the law as of the date it was originally passed. Thus, the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997, as amended), in the Filinvest case was deemed as part of the NIRC as of December 23, 1994 up to the present.** *(Eagle II Holdco, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9637, September 10, 2019)*

- **Without a valid LOA from the BIR, the assessment on the taxpayer will be deemed void and shall produce no legal effect.** *(Chem Insurance Brokers & Services Corporation v. Commissioner of Internal Revenue, CTA Case No. 9656, September 9, 2019)*

- **An assessment arrived at resulting from the mere computation of deficiency taxes is not the decision appealable to the CTA for there is no disputed assessment yet.** *(Axeia Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 9816, September 16, 2019)*

- **Failure to prove that a PAN and FAN were actually issued and sent to the taxpayer, and that the same were actually received by him, there is no valid assessment which could be a valid subject of collection under a warrant of distraint and levy.** *(Barrio Fiesta Manufacturing Corporation v. Commissioner of Internal Revenue, CTA Case No. 9880, September 18, 2019)*

- **An assessment is not necessary prior to the filing of a criminal complaint**. *(People of the Philippines vs Enviroaire, Inc., represented by Tyrone N. Ong & Arlene Chua, CTA Crim. Case No O-408, September 4, 2019)*

- **The acquittal of a taxpayer in the criminal case cannot operate to discharge him or her from the duty to pay tax**. *(People of the Philippines vs. Rashdi Camlian Sakaluran, CTA Crim. Case No O-411, O-412, O-413, and O-414, September 4, 2019)*

- **Only offshore income and gross onshore interest income of an FGU are exempt from taxes.** *(United Coconut Planters Bank vs. Commissioner of Internal Revenue, CTA EB No 1790 and 1792 (CTA Case No. 8963), September 3, 2019)*

- **Ratification retroacts to the date of the subject of the action.** *(Commissioner of Internal Revenue vs. Sartorious Aketiengesellschaft, CTA EB No 1858 (CTA Case No. 8951), September 16, 2019)*

- **The determination of the type of documents needed to support the protest rests solely on the taxpayer.** *(Commissioner of Internal Revenue vs. Bisazza Philippines, Inc., CTA EB No 1870 (CTA Case No. 9372), September 02, 2019)*

- **The withholding agent only needs to prove the fact of withholding and not the actual remittance to the BIR of the taxes withheld.** *(Commissioner of Internal Revenue vs. Nes Global Talent Limited, CTA EB No 1903 (CTA Case No. 9065), September 13, 2019)*

- **Service by the BIR of assessment notices to a taxpayer's old address despite having earlier knowledge about its new address is not a valid notice for purposes of tax assessment.** *(Commissioner of Internal Revenue vs Daewoo Engineering & Construction Company Limited, CTA EB NO. 1799 (CTA Case No. 8829), August 29, 2019)*

- **The sale of services made by a VAT-registered enterprise from the customs territory to a PEZA-registered enterprise operating within the ECOZONE is still subject to VAT at zero percent (0%) rate, despite the consumption being outside the ECOZONE.** *(Coral Bay Nickel Corporation v. Commissioner of Internal Revenue, CTA EB No. 1909 and 1910 (CTA Case No. 8804) September 5, 2019)*
    - *DISSENTING OPINION of Justice Ringpis-Liban:* Applying the cross-border doctrine and the destination principle for VAT, the sale of goods and services made by a VAT-registered enterprise from the customs territory to a PEZA-registered enterprise, which are consumed, used or rendered outside the ecozone is subject to twelve percent (12%) VAT.

- **A prior application for tax treaty relief is not required before a taxpayer can avail of the preferential tax treatment under the various Philippine tax treaties.** *(Commissioner of Internal Revenue v. DGA Ilijan B.V., CTA EB No. 2008, CTA Case No. 8911, September 2, 2019)*

Receipt of notices by unauthorized person cannot be deemed as receipt by the Taxpayer.

Taxpayer IBM Plaza Condominium Association alleged that the issuance of the Warrant of Distraint and/or Levy (WDL) violates its right to due process since the LOA, the PAN and FAN were received by unauthorized persons on behalf of IBM. Also, the FAN was allegedly issued before the expiration of the fifteen (15)-day period allowed to reply to the PAN and no FDDA was issued by the BIR. BIR alleged that the LOA, the PAN and the FAN were personally served to the Taxpayer and a certain Ms. Janice Melendrez received the same.

The CTA ruled that the issuance of the WDL violated the Taxpayer's right to due process since the person who received the LOA and other Notices from the BIR was not authorized by IBM Plaza to receive the same. Ms. Janice Melendrez was an administrative assistant of IBM Plaza. BIR failed to present any evidence to show that they served the notices to any duly authorized representatives. It is incumbent upon the BIR to show that the notices were received by the taxpayer or the taxpayer's authorized representative. The fact that the taxpayer was able to protest the FAN does not cure the BIR's violation of petitioner's right to due process.Thus the receipt of the notice cannot be deemed as receipt by the Taxpayer. Hence, the assessment is void. ***(IBM Plaza Condominium Association, Inc., vs Commissioner of Internal Revenue, CTA Case No. 8740, September 2, 2019)***

Our Take

Note: In this case, while the Court ruled that the BIR must be able to prove that the notices were duly served to the taxpayer or to authorized representative, the Court did not however rule who are considered authorized representative of the taxpayer.

Presentation of proof of actual receipt of the assessment by the taxpayer is required in order to establish that the right of the taxpayer to be informed of the assessment has not been violated.

Jopauen Realty alleged that assessment is void for the failure of the BIR to issue a PAN and FAN and that the Taxpayer allegedly did not receive the same. BIR denies such allegations and countered that Taxpayer even actively participated in the Informal Conference. Hence, the issue in this case is whether the assessment is void for failure to issue a PAN and FAN.

The CTA held that the presentation of proof of actual receipt of the assessment by the taxpayer is required in order to establish that the right of the taxpayer to be informed of the assessment has not been violated. Here, the registry return receipt card for the PAN would show that the portion where signature of the person who received the notice is blank. Hence, BIR failed to prove that the PAN was received by Taxpayer. Thus, the assessment is void. ***(Jopauen Realty Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8943, September 13, 2019)***

A waiver executed after the lapse of the prescribed period for the BIR to assess is an invalid waiver.

Taxpayer challenged the VAT deficiency assessment of the BIR alleging the latter's right to assess has prescribed. The BIR argued to the contrary and showed that the Taxpayer executed a Waiver extending the period within which the assessment may be made.

The CTA held that the right of the BIR to assess the Taxpayer has prescribed. The Waiver executed is invalid for the same was executed after the 3-year period to assess has lapsed. The alleged deficiency arose from a sale transaction in the year 2007. However, the Waiver was executed in the year 2011 which is beyond the prescribed period. Thus, the BIR's right to assess has already prescribed. ***(Philippine Communications Satellite Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9219, September 11, 2019)***

In proving that the imported aviation fuel was, indeed, used in Taxpayer's transport and non-transport operations and other activities incidental thereto, the ATRIG is sufficient so long as it is corroborated by other documentary and testimonial evidence.

PAL paid under protest certain amounts allegedly representing specific taxes paid on its importation of Jet A-1 fuel for domestic operations. The CTAt originally ruled that the Authority to Release Imported Goods (ATRIGs) presented by the Taxpayer is insufficient to prove that the imported Jet A-1 fuel was used for its transport and non-transport operations. The Taxpayer alleged otherwise.

The CTA ruled that as long as the ATRIG is corroborated by other documentary and testimonial evidence, then they may be considered as proof that the imported aviation fuel was, indeed, used in Taxpayer's transport and non-transport operations and other activities incidental thereto. Here, the additional evidence presented by PAL, both testimonial and documentary, sufficiently established that the importation of subject aviation fuel was for its transport operations and other activities incidental thereto. Hence, it satisfies the second condition for its entitlement for the refund. ***(Philippine Airlines, Inc., vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 8220, September 26, 2019)***

If both parties in a case are in pari delicto or in equal fault, the Taxpayer is estopped from raising any objection against the validity of the waivers it previously executed.

In this case, the Taxpayer raised the defense that BIR's right to assess has prescribed. The BIR countered that the Taxpayer executed valid Waivers extending the prescriptive period for the BIR to assess the latter and the same was signed by its Corporate President. The Taxpayer challenged the validity of the Waivers alleging that its Corporate President was not authorized to execute and sign the waivers on behalf of Taxpayer.

The CTA ruled that since the subject waivers were executed prior to the issuance of RMO No. 14-16, the governing BIR Issuances in force at that time shall be observed which is RMO No. 20-90 and RDAO No. 05-01. The said RMO and RDAO requires the presentation of a written and notarized authority to the

BIR. Here, there was no Board Resolution authorizing its President to sign the waivers on its behalf. However, the Court took note that the Taxpayer only raised the issue on the validity of the waiver on appeal. Thus, the Court finds Taxpayer in bad faith when it impugns the authority of its own signatory after it has benefited from the extended period of assessments. Even though the parties were both aware of the infirmities of the subject waivers, they still continued their dealings with each other on the strength of these waivers. Thus, since both parties in this case are in pari delicto or in equal fault, the Taxpayer is estopped from raising any objection against the validity of the said waivers. ***(First Philippine Power Systems Inc., vs. Commissioner of Internal Revenue, CTA Case No. 9067 September 9, 2019)***

When the Taxpayer denied the receipt of PAN and FAN, the BIR has the burden to prove otherwise.

The Taxpayer in this case disputes the assessments issued by the BIR alleging that she never received any PAN and FAN since the same were sent to her old address. The BIR countered that the PAN and FAN were mailed to the address indicated in their system and offered the transmittal as proof of mailing of the subject notices.

The CTA ruled that when the Taxpayer denied the receipt of PAN and FAN, the BIR has the burden to prove otherwise. Here, the BIR witness admitted that it never received the registry return card from the Taxpayer. The presentation of the transmittal letter and registry receipts merely shows that the PAN and FAN were mailed by BIR. However, with regard to their receipt thereof, BIR failed to show that the registry return card was signed by Taxpayer or her authorized representative. Thus, the assessments are void. ***(Indra Verhomal Menghrajani, Represented By Daughter Savitri V. Menghrajani, vs. Hon. Kim Jacinto-Henares in her Capacity as Commissioner as Internal Revenue, CTA Case No. 9269, September 24, 2019)***

A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." this demand for payment signals the time "when penalties and interests begin to accrue against

Taxpayer is seeking to reverse and set aside the Final Assessment Notice (FAN) dated July 22, 2015, in the aggregate amount of Php127,130,709.77, representing alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT). Petitioner contends that the final assessments for VAT and EWT are fatally infirm for failure to indicate the due date for payment thereof.

The CTA ruled that a perusal of the Audit Result/ Assessment Notices for VAT and EWT, reveals that there are two dates appearing in the "DUE DATE" portion thereof. On the upper portion, the due date indicated is April 30, 2015, while the lower portion indicates July 31, 2015. The two different due dates indicated in the VAT and EWT assessment notices leaves the taxpayer in a quandary as to when payment should be made. Thus, similar to when no due date is

the taxpayer and enabling the latter to determine his remedies." Thus, it must be "sent to and received by the taxpayer and must demand payment of taxes described therein within a specific period.

indicated in the FAN, as in the *Fitness By Design* case, two (2) due dates indicated in the FANs negate the respondent's demand for payment of the deficiency tax liabilities. **(*Benchmark Marketing Corp. vs. Commissioner of Internal Revenue, CTA Case No. 9296, September 04, 2019*)**

The Supreme Court ruled that it is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a "non-resident foreign corporation." Hence, 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 SEC certificate of non-registration of corporation/partnership and proof of incorporation, association or registration in a foreign country.

Taxpayer filed its administrative claim for refund or issuance of TCC for its alleged unutilized/unclaimed excess input taxes attributable to petitioner's zero-rated sales/receipts for the TY 2014.

To prove that the Recipients of its services are doing business outside the Philippines, taxpayer presented the Certificates of Non-Registration of Company issued by the SEC, Certificates of Registration/ Articles of Incorporation issued by the foreign government agencies, screenshots of foreign registration per foreign regulatory websites and Consularized Manning Agreements/Purchasing & Infrastructure Support Agreements, proving that its customers are non-resident foreign corporations doing business outside the Philippines.

The CTA partially granted the claim for refund of the taxpayer ruling that the taxpayer has sufficiently proven its entitlement to refund or issuance of a TCC in the reduced amount of Php5,503,628.95 representing its unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2014. ***(BW Shipping Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9448, September 23, 2019)***

Hearsay evidence is defined as 'evidence not of what the witness knows himself but of what he has heard from others.' The hearsay rule bars the testimony of a witness who merely recites what someone else has told him, whether orally or in writing.

BIR assessed BSP for payment of DST pursuant to foreclosure sales. BSP seeks to refund the DST, surcharge and interest it paid with the BIR. Without the decision of the BIR on its claim for refund, BSP filed a Petition for Review with the CTA. BSP asserts that it paid the subject DST and penalties, as evidenced by Credit Advices to the Bureau of Treasury.

The CTA ruled that the pieces of evidence cannot be given credence by the Court for being hearsay evidence. In the instant case, none of the persons who prepared or issued the respective Credit Advices were presented before the Court, in violation of the hearsay evidence rule. As a consequence, these pieces of evidence cannot be given probative weight. Considering that BSP failed to present proof of prior payment, the same divests the CTA of jurisdiction to determine the merits of this case. In other words, there can be no valid claim for refund or nothing could be refunded where there is no showing of prior payment. ***(Bangko Sentral ng Pilipinas vs Commissioner of Internal Revenue, CTA Case No. 9478, September 26, 2019)***

This Court has consistently held that in order to be considered a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC certificate of non-registration of corporation/partnership and proof of foreign incorporation/ Association/business Registration.

Taxpayer seeks for the refund of its excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales for the 2nd quarter of calendar year (CY) 2014.

The CTA ruled that in order to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with: 1. The taxpayer-claimant must be VAT-registered; 2. There must be zero-rated or effectively zero-rated sales; 3. That input taxes were incurred or paid; 4. That such input taxes are attributable to zero-rated or effectively zero-rated sales; 5. That the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and 6. The claim for refund was filed within the prescriptive period both in administrative and judicial levels.

Taxpayer has sufficiently proven its entitlement to a refund or issuance of TCC in the amount of P134,298,376.32 representing its unutilized excess input VAT for the second quarter of CY 2014 which is attributable to its zero-rated sales/receipts for the same period. ***(Vestas Services Philippines, Inc. vs Commissioner of Internal Revenue, CTA Case No. 9480, September 20, 2019)***

A Letter of Authority is invalid for having been served beyond thirty (30) days from date of its issuance.

The BIR assessed the taxpayer deficiency taxes, to which the latter protested against. The BIR denied the protest, prompting the taxpayer to file a case against the former before the CTA.

The CTA ruled in favor of the taxpayer. The Court reiterated that under Revenue Audit Memorandum Order (RAMO) No. 1-00, an LOA must be served or presented to the taxpayer within thirty (30) days from its date of issue; otherwise, it becomes null and void unless revalidated. In the present case, it appears that LOA No. eLA 201100068137/LOA-43B-2014-00000164 was issued on May 19, 2014 but was served to petitioner only on August 6, 2014. Based on the above rule, such LOA should have been served not later than June 18, 2014, the 30th day from date of its issuance. Even assuming that the above LOA is valid, still, the deficiency tax assessment should be deemed void because the revenue officers who actually conducted the audit examination of the taxpayer's books of accounts and other accounting records for taxable year 2012 have no authority to do so. The Revenue District Officer is bereft of any power to authorize the examination of taxpayers or to effect any modification or amendment to a previously issued LOA because only the CIR or his duly authorized representatives are granted such power. ***(Kokoloko Network Corporation v. Commissioner of Internal Revenue, CTA Case No. 9574, September 24, 2019)***

A taxpayer may claim exemption from estate tax of its foreign currency deposit as long as the deposit is eligible or allowed under R.A. No. 6426, as amended.

The taxpayer, as represented by its sole heir, filed a case against the BIR for refund of estate taxes paid. It alleged that it is entitled to the refund of the amount representing erroneously paid estate tax, interest, and penalties on the HSBC USD Savings Account. The BIR argued that a foreign currency deposit of a resident decedent is not among the allowable deductions from the value of the gross estate of the resident citizen under Section 86(A) of the NIRC of 1997.

The CTA ruled in favor of the taxpayer. It held that R.A. No. 6426 remains the governing law on the exemption from estate tax of foreign currency deposits. In this case, the taxpayer is an American citizen but a resident of the Philippines who left properties in the country, including the subject foreign currency deposit account with HSBC. Consequently, the taxpayer may now claim exemption from estate tax of its foreign currency deposit with HSBC as long as the deposit is eligible or allowed under R.A. No. 6426, as amended. Considering that HSBC was granted by the BSP with EFCDU Authority, the taxpayer's USD deposit with HSBC is eligible or allowed under R.A. No. 6426, as amended. Thus, its foreign currency deposit with HSBC is exempt from estate tax. ***(Estate of Mr. Charles Marvin Romig Represented by its Sole Heir, Mrs. Maricel Narciso Romig v. Commissioner of Internal Revenue, CTA Case No. 9626, September 2, 2019)***

The judicial interpretations of a statute constitute a part of the law as of the date it was originally passed. Thus, the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997, as amended), in the Filinvest case was deemed as part of the NIRC as of December 23, 1994 up to the present.

The BIR assessed the taxpayer deficiency DST, interest, and surcharge. While the protest was pending, the taxpayer voluntarily paid the same. It thereafter filed an administrative claim for refund. Due to the BIR's inaction, the taxpayer filed the present case before the CTA.

The CTA partly granted the taxpayer's petition. The application of the Filinvest case, which held that instructional letters, as well as the journal and cash vouchers evidencing the advances extended to affiliates qualified as loan agreements are subject to DST, to the present case will not constitute a violation of the principle of nonretroactivity of laws and rulings because the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997, as amended), in the Filinvest case was deemed constituted as part of the NIRC as of December 23, 1994 up to the present.

However, the Court stated that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest. At the time the advances were made, the taxpayer relied on prevailing court decisions to the effect that inter-company loans and advances covered by inter-office memoranda were not loan agreements subject to DST. Such reliance on the said cases justifies the non-imposition of surcharge and interest. ***(Eagle II Holdco, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9637, September 10, 2019)***

Without a valid LOA from the BIR, the assessment on the taxpayer will be deemed void and shall produce no legal effect.

The BIR Revenue District Officer issued to the taxpayer a Tax Verification Notice (TVN). The Revenue Officer was also assigned therein to verify petitioner's records covering internal revenue taxes from. Despite the alleged absence of a Letter of Authority (LOA) from the CIR for Revenue Officer to examine the taxpayer's accounting books and records, the taxpayer surrendered the relevant records and documents to her. The BIR subsequently issued a FAN/FLD to the taxpayer, to which the latter protested. The instant case was thereafter filed by the taxpayer.

The CTA found that the since there was no LOA from the BIR, the subsequent assessment on the taxpayer was void and produced no legal effect. The CTA held that it cannot also rule on the taxpayer's protests, as all assessments made by the BIR after the taxpayer disclosed its books and records to the latter are equally without effect. ***(Chem Insurance Brokers & Services Corporation v. Commissioner of Internal Revenue, CTA Case No. 9656, September 9, 2019)***

An assessment arrived at resulting from the mere computation of deficiency taxes is not the decision appealable to the CTA for there is no disputed assessment yet.

The taxpayer received an electronic mail from the Revenue Officer, wherein various payment forms containing the tax deficiency assessment for various taxes were attached therein. The taxpayer paid the same under protest, and served a protest on the assessment to the BIR. Due to the BIR's inaction, the taxpayer filed a case before the CTA.

The CTA held that a cursory reading would show that the same cannot be considered as an assessment constituting a demand for payment nor a final decision of the CIR. It is a mere computation of deficiency taxes, notifying taxpayer of the amounts stated therein. There was even neither demand for payment indicated in the tenor of the electronic mail, nor in the document attached therein. The electronic mail was sent merely to inform petitioner of its liabilities and this was considered as the BIR's Notice of Informal Conference. It does not formally inform petitioner of its tax liabilities and there is no formal demand to pay the same. Thus, in the instant case, there is no disputed assessment to speak of. The document is not the assessment contemplated under Section 228 of the NIRC of 1997, as amended, that would require a protest from petitioner.

In the instant case, records reveal that at the time of the filing of the instant Petition for Review, no final assessment notice has yet been issued by the CIR. Thus, the appeal of this case over the alleged assessment is premature. This Court reiterates that the decision contemplated in R.A. 1125 is one which constitutes a final decision or inaction from a disputed assessment of the CIR. Consequently, the so-called assessment arrived at resulting from the mere computation of deficiency taxes is not the appealable decision for there is no disputed assessment yet. The taxpayer wrongly considered that the BIR has already rendered a final decision or inaction on the matter that is appealable before the CTA. ***(Axeia Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 9816, September 16, 2019)***

Failure to prove that a PAN and FAN were actually issued and sent to the taxpayer, and that the same were actually received by him, there is no valid assessment which could be a valid subject of collection under a

The taxpayer filed its "Petition for Review (with Urgent Motion to Suspend the Collection of Tax)" before the CTA. The CIR failed to file his comment.

The CTA reiterated that Section 228 of the NIRC, as amended, and RR No. 12-99, as amended, particularly Section 3 thereof, prescribe the due process requirement to be observed in issuing deficiency tax assessments, such as the issuance of a Notice of Informal Conference, Preliminary Assessment Notice ("PAN"), Final Assessment Notice ("FAN") & Formal Letter of Demand ("FLD") by the BIR. Strict compliance with the due process requirement is mandatory to make the assessment valid.

In the case at bar, the taxpayer denies receipt of a PAN and FAN from the BIR and argues that such failure of to serve the PAN and FAN rendered the warrant of distraint and levy void. It is not simply a question of whether the PAN and

warrant of distraint and levy

FAN were sent to the taxpayer, but it is imperative that the taxpayer actually received said tax assessment notices. It was, however, incumbent upon the BIR to prove by preponderant evidence that the PAN and FAN were actually received by the taxpayer. Unfortunately, he failed to discharge this burden. As earlier stated, the CIR was declared in default and therefore presented no evidence to prove that a PAN and FAN were indeed sent to the taxpayer. ***(Barrio Fiesta Manufacturing Corporation v. Commissioner of Internal Revenue, CTA Case No. 9880, September 18, 2019)***

An assessment is not necessary prior to the filing of a criminal complaint.

Enviroaire, represented by its president, Tyrone Ong, and its treasurer, Arlene Chua, was charged with violation of Section 254 (attempt to evade or defeat tax) and 255 (failure to supply correct and accurate information) of the Tax Code. In its defense, Enviroaire maintained that there was no due process afforded to them as they did not receive the PAN and FAN. BIR alleged that it issued notices to the accused via registered mail, however, there was no proof that the same was received by the accused, nor the authorized representatives. Further, records show that the PAN and FLD were only issued in 2016. Therefore the accused argue that the assessment already prescribed since the Income Tax Return for 2007 was filed in 2008.

The Court ruled that an assessment is not necessary prior to the filing of a criminal complaint. To sustain conviction for an attempt to evade or defeat tax under Section 254 in relation to Sections 253(d) and 255 of the Tax Code, the following elements must be established beyond reasonable doubt: (1) There is a tax imposed on the corporation under the NIRC; (2) An attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof; (3) Such attempt to evade or defeat tax or the payment thereof is willful; and (4) In the case of corporations, the penalty shall be imposed on the president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation.

In finding that the accused are guilty of the offense charged, the Court ruled that there was undoubtedly a willful attempt to evade or defeat tax imposed, as contemplated in Section 254 in relation to Section 253 and 256 of the NIRC, as amended. This is so since taxpayer's sales amounting to over 200 million pesos, which were perfected and consummated in 2007, should have been declared in 2007. However, the sales consistently remain unreported for two consecutive taxable periods, resulting in the substantial under-declaration of more than 30% of sales or income. Further, the accused's under-declaration of the tax, as well as attempting to mislead the Court in the method of accounting used, show that there was an attempt to undeclare tax.

As such, the Court found Enviroaire guilty beyond reasonable doubt. Accused Tyrone Ong and Arlene Chua, being the president and secretary of Enviroaire, were likewise found to be criminally liable.

With regard to the civil aspect of the case, the same is deemed simultaneously instituted. However, the Court ruled that prosecution failed to present any evidence to prove that the assessment notices were duly served and received by accused Tyrone N. Ong and Arlene Chua. Accordingly, the absence of any proof by competent evidence of the receipt of the PAN and FAN/FLD by the taxpayer renders the assessments void. ***(People of the Philippines vs Enviroaire, Inc., represented by Tyrone N. Ong & Arlene Chua, CTA Crim. Case No O-408, September 4, 2019)***

For conviction of accused under Section 255 of the Tax Code, the prosecution must be able to prove beyond reasonable doubt that the act of accused was done wilfully; The acquittal of a taxpayer in the criminal case cannot operate to discharge him or her from the duty to pay tax.

The taxpayer was charged for violating Section 255 of the Tax Code, or the failure to supply correct and accurate information in his ITRs for taxable years 2006 to 2009, specifically in relation to payment of taxes for sale of gold with the Bangko Sentral ng Pilipinas (BSP).

The Court ruled that for conviction of criminal offense under Section 255 of the Tax Code, the prosecution must prove beyond reasonable doubt the existence of the following elements: (1) The accused is a person required under the NIRC or rules and regulations to supply correct and accurate information; (2) The accused failed to supply correct and accurate information at the time or times required by law or rules and regulations; and (3) Such failure to supply correct and accurate information is wilful.

In this case, the Court ruled that the third element was not conclusively proven. The Court found that failure of the accused to declare in his ITR his sales of gold to BSP were made in good faith and without malice considering that the accused merely relied on representations made by the BSP that his gold and silver sales transactions with them were tax-free. The accused was made to believe that there was no need to pay tax on his sale of gold, and that had he known otherwise, he would not have gone into gold transactions with the BSP. Accordingly, the Court ruled that the prosecution was not able to prove beyond reasonable doubt that the accused willfully failed to supply the correct and accurate information on his ITRs. Thus, accused was acquitted on the criminal charge.

The Court likewise ruled that the acquittal of a taxpayer in the criminal case cannot operate to discharge him from the duty to pay tax. The obligation to pay the tax is not a mere consequence of the felonious acts charged in the information, nor is it a mere civil liability derived from the crime that would be wiped out by the judicial declaration that the criminal acts charged did not exist. However, in this case the LOA, FLD and PAN were not proven by the prosecution to have been duly received by the accused. Thus, no civil liability

was likewise imposed. *(People of the Philippines vs. Rashdi Camlian Sakaluran, CTA Crim. Case No O-411, O-412, O-413, and O-414, September 4, 2019)*

Our Take

Note: The accused likewise raised as a defense that by virtue of RA No. 11256 dated March 29, 2019, his sale of gold to the BSP is considered an exclusion in computing gross income thereby, making it no longer subject to income tax under Section 32 of the NIRC of 1997. However, considering that the period covered in this case are taxable years 2006 to 2009, the Court ruled that RA 11256 cannot be given retroactive application. Even assuming arguendo, that RA No. 11256 be given retroactive application, the implementing rules and regulations under Section 5132 thereof, still requires the registration and accreditation of small-scale miners and traders in order to avail the tax exemption under the law.

The invalidity of the assessment negates the element that the failure to pay taxes was willful.

Here, the taxpayer was charged for violating Section 255 of the tax code or the failure to pay, withhold and/or remit to deficiency income tax, value-added tax, and expanded withholding tax, all for taxable year 2007.

The Court ruled that the prosecution must prove beyond reasonable doubt the existence of the following elements before a taxpayer can be held liable under Section 255 of the tax code: (1) The offender is required under the 1997 NIRC, as amended, or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information; (2) The offender fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; and (3) Such failure was willful. In acquitting the accused, the Court ruled that the prosecution failed to prove elements 2 and 3. Element no. 2 is undoubtedly replete with inaccuracies, devoid of empirical evidence. In the Information, it was stated that the accused is liable for the alleged deficiency VAT but the prosecution failed to present the VAT Registration of the accused. Further, the PAN, FAN, and FLD issued by the BIR to the accused assessed the latter of deficiency percentage tax instead of VAT. Also, accused was assessed for expanded withholding tax, however, the prosecution failed to adduce evidence if indeed the accused is actually the withholding agent for the alleged EWT.

As to the third element, the prosecution failed to prove the validity of the deficiency tax assessments by failing to rebut the denial of the accused that the LOA, PAN, FAN, and FLD were duly served. Thus, the invalidity of said assessments has further cast doubt to the liability of the accused for such deficiency tax assessments as charged in the Information. ***(People of the Philippines vs. Rosalinda Valisno Cando, Owner of Gasat Express Quirino Hi-***

way, Sto. Cristo, San Jose Del Monte, Bulacan, CTA Crim. Case No O-634, September 11, 2019)

Out Take

NOTE: In the Environaire case, the Court ruled that that an assessment is not necessary prior to the filing of a criminal complaint. However, the Court found that there was a willful attempt to evade or defeat tax imposed since the non-declaration of the accused on his sales resulted to the substantial under-declaration of more than 30% of sales or income. Thus, the Court found the accused guilty. In the Cando case, the Court did not find that the failure to pay tax was willful, as discussed above.

Only offshore income and gross onshore interest income of an FGU are exempt from taxes

United Coconut Planters Bank (UCPB) filed a Petition for Review assailing the decision of the Court in Division, which partially sustained the assessment for deficiency income tax and gross receipts tax on UCPB's earnings of its Foreign Currency Deposit Unit (FCDU) for the year 2006. UCPB submits that with respect to gross onshore income, other than interest income from foreign currency loan transactions of FCDUs with residents, the exemption from all taxes covers not only service fees and commissions but also any and all other charges imposed on foreign currency loan transactions of FCDUs. Thus, all of UCPB's other income as an FCDU not expressly subject to tax, are exempt from tax and from the 35% regular corporate income tax (RCIT).

The Court ruled that while the legal issue of whether Section 27 of the NIRC provides a tax exemption for income derived by a depositary bank for the specific variety of income referred to therein has been settled, it is still incumbent upon UCPB to prove that the income for which it seeks exemption falls under this category. UCPB's assertion that based on the exemption under existing law, all the income under its FCDU, without qualification, is exempt from all taxes is certainly misplaced. Only offshore income and gross onshore interest income, as well as fees, commissions and other charges integral thereto, are exempt from taxes, the rest is subject to RCIT. ***(United Coconut Planters Bank vs. Commissioner of Internal Revenue, CTA EB No 1790 and 1792 (CTA Case No. 8963), September 3, 2019)***

Ratification retroacts to the date of the subject of such act.

The CIR filed a Petition for Review on the Order of the Court in Division granting the claim for refund of taxpayer. The CIR argues that the taxpayer's Petition for Review filed on December 19, 2014 in the Court in Division lacks a proper verification and certification against forum shopping since the signatory, Atty. Editha Hechanova, was not authorized to sign the same in the SPA dated May 10, 2012 and the alleged ratification of said SPA under Certification/SPA dated February 23, 2015 does not exist as there was no authority to ratify, hence, no

valid petition was filed upon the expiration of the two-year prescription period to claim for refund.

The Court ruled that act of taxpayer's board through its Chairman issuing an SPA confirming and certifying that said law firm was appointed as its attorney-in-fact and stated categorically that Atty. Hechanova was among taxpayer's attorneys-in-fact is considered ratification. Furthermore, in Lopez Realty, Inc., et al. v. Spouses Reynaldo Tanjangco and Maria Luisa ArguellesTanjangco, the Supreme Court explains the nature of such ratification and ruled that it retroacts to the date of the subject of such act. Thus, the Court in Division did not err in allowing Atty. Hechanova as signatory in the subject verification and certification against forum shopping. ***(Commissioner of Internal Revenue vs. Sartorious Aketiengesellschaft, CTA EB No 1858 (CTA Case No. 8951), September 16, 2019)***

The determination of the type of documents needed to support the protest rests solely on the taxpayer

The CIR filed a Petition for Review on the Order of the Court in Division cancelling and withdrawing the assessment of deficiency taxes of the taxpayer. The CIR argues that the subject assessment has become final, executory and demandable for failure of the taxpayer to submit the supporting documents within the sixty-day period from the filing of its protest. Thus, the Court allegedly has no jurisdiction over the case.

The Court ruled that the determination of the type of documents needed to support the protest rests solely on the taxpayer, and the BIR cannot demand what type of supporting documents should be submitted. More importantly, the High Court recognized that "attaching" supporting documents to the protest constitutes, in effect, the "submission" of the same as of the filing of the said protest. A perusal of the Protest/Request for Reconsideration filed shows that taxpayer attached supporting documents thereto. Thus, it also cannot be said that taxpayer failed to submit relevant supporting documents that would render the subject tax assessments final. Consequently, the Court in Division had jurisdiction over the case a quo. ***(Commissioner of Internal Revenue vs. Bisazza Philippines, Inc., CTA EB No 1870 (CTA Case No. 9372), September 02, 2019)***

The withholding agent only needs to prove the fact of withholding and not the actual remittance to the BIR of the taxes withheld.

The CIR filed a Petition for Review on the Order of the Court in Division granting the claim for refund of the taxpayer. The CIR maintains that the taxpayer is not entitled to its claim for refund of alleged erroneously paid Final Withholding Taxes (FWT) for taxable years 2012 and 2013 because the taxpayer fails to prove the fact of remittance of the taxes withheld to the BIR. The BIR further argues that the testimonies of the various payors and withholding agents are required to prove remittance, which the taxpayer failed to do.

The sale of services made by a VAT-registered enterprise from the customs territory to a PEZA-registered enterprise operating within the ECOZONE is still subject to VAT at zero percent (0%) rate, despite the consumption being outside the ECOZONE.

This is a Motion for Reconsideration for a claim of refund filed by the taxpayer for unutilized input VAT attributable to zero rated sales. Taxpayer hinges its claim for refund on the fact that the sale of goods and services by a VAT-registered entity to a PEZA-registered entity which are consumed, used, or rendered within the customs territory should be subject to twelve percent (12%) VAT. However, the Court En Banc ruled that the sale of services made by a VAT-registered enterprise from the customs territory to a PEZA-registered enterprise operating within the ECOZONE is still subject to VAT at zero percent (0%) rate, despite the consumption being outside the ECOZONE.

As such, the proper party that Coral Bay should seek reimbursement is against the supplier.

DISSENTING opinion:

Justice Ringpis-Liban dissented on the wholesale denial of the claim for refund. Applying the cross-border doctrine and the destination principle for VAT, the sale of goods and services made by a VAT-registered enterprise from the customs territory to a PEZA-registered enterprise, which are consumed, used or rendered outside the ecozone (i.e., within the customs territory) is subject to twelve percent (12%) VAT. As such, the input VAT thereon is valid and a refund can be claimed. ***(Coral Bay Nickel Corporation v. Commissioner of Internal Revenue, CTA EB Case No. 1909 and 1910)***

A prior application for tax treaty relief is not required before a taxpayer can avail of the preferential tax treatment under the various Philippine tax treaties.

This was a Petition for Review filed by the Commissioner of Internal Review contesting the refund granted to the taxpayer. The BIR based its contention on the fact that the taxpayer did not comply with Revenue Memorandum Order 1-2000 and 72-2010.

The Court En Banc denied the Petition. Citing Supreme Court cases (Deutsche Bank AG Manila Branch v. CIR and CBK Power Company Limited v. CIR), the Corut held that a prior application for tax treaty relief is not required before a taxpayer can avail of the preferential tax treatment under the various Philippine tax treaties. ***(Commissioner of Internal Revenue v. DGA Ilijan B.V., CTA EB No. 2008, CTA Case No. 8911, September 2, 2019)***

BIR ISSUANCES

UPDATES

- **Revenue Memorandum Circular No. 92-2019, August 8, 2019** - This circularizes the full text of Republic Act (R.A.) No. 11346 which was approved by the President on July 25, 2019.

- **Revenue Memorandum Circular No. 93-2019, August 23, 2019** - This was issued to amend the answers to Question No. 2 of RMC No. 85-2018 relative to the issuance of Electronic Certificate Authorizing Registration (eCAR) in the transfer of real properties.

- **Joint Memorandum Circular (JMC) No. 2019-01, May 17, 2019** - This was issued to lay down the general guidelines for reviewing and adjusting the reasonable fees and charges which the LGUs are allowed to impose, pursuant to the provisions of the Local Government Code (LGC) of 1991 and the Ease of Doing Business and Efficient Government Service Delivery Act of 2018.

- **Bureau of Local Government Finance Memorandum Circular No. 020-2019** – This was issued to provide guidelines and procedures on the use of the Local Fees and Charges (LFC) Toolkit on the review, setting, and/or adoption of reasonable local fees and charges, pursuant to Joint Memorandum Circular (JMC) No. 2019-01 dated May 17, 2019.

Revenue Memorandum Circular No. 92-2019, August 8, 2019 - This circularizes the full text of Republic Act (R.A.) No. 11346 which was approved by the President on July 25, 2019.

R.A. No. 11346 increased the excise tax on tobacco products, imposed excise tax on heated tobacco and vapor products, increased the penalties for violations of provisions on articles subject to excise tax, and earmarked a portion of the total excise tax collection from sugar-sweetened beverages, alcohol, tobacco, heated tobacco and vapor products for universal healthcare.

R.A. No. 11346, among others, imposed an excise tax at a rate of 10 pesos per pack of 20 units of heated tobacco products and 10 pesos per 10ml of liquid solution or gel on vapor products, both subject to an increase of 5% per year effective January 1, 2021. As for cigars, in addition to the ad valorem tax of 20% of the net retail value per cigar, a specific tax rate of 5 pesos shall be imposed, with an increase of 5% per year effective January 1, 2024. For cigarettes, regardless if they were packed by hand or machines, they are subject to excise tax at a rate of 45 pesos starting January 1, 2020, with an increase of 5 pesos, every year untile the year 2023, as well as another 5% increase per year effective January 1, 2024.

The law also increased the penalty for various violations under the NIRC. Notably, it increased the penalty for shipment or removal of liquor or tobacco products under false name or brand or as an imitation of an existing brand being to a fine of 1,500,000 to 15,000,000 pesos and imprisonment of 6 years and 1 day to 12 years. When it comes to unlawful possession or removal of articles subject to excise tax without payment of the tax, the penalty now ranges from 100,000 pesos to an amount not less than 10 times the amount of the excise tax due but not less than 50,000,000 pesos and imprisonment ranging from 60 days to 8 years. It likewise updated the penalty for offenses relating to stamps, with the fine now ranging from 10,000 pesos to an amount of 10 times the value of the illegal stamps seized or 500,000,000, whichever is higher, and imprisonment ranging from 5 years to 15 years.

Revenue Memorandum Circular No. 93-2019, August 23, 2019 - This was issued to amend the answers to Question No. 2 of RMC No. 85-2018 relative to the issuance of Electronic Certificate Authorizing Registration (eCAR) in the transfer of real properties.

The RMO states that in case the taxpayer submitted two separate documents, such as extra-judicial settlement, two eCARs must be issued. If the subject of the sale or donation is the total area, the two eCARs must be issued simultaneously bearing the same title number: one for the settlement of estate and one for the transfer through sale or donation. Both eCARs must be presented by the taxpayer, at the same time, to the Registry of Deeds.

If the subject of the sale or donation is only a portion of the total area, two eCARs will also be issued but the second eCAR shall only be issued after the eCAR for the estate settlement has been presented by the taxpayer to the RD for the issuance of a new title. It is the new title number that will be issued after the settlement of the estate which will be the basis for the issuance of the eCAR for the second transaction, be it sale or donation. Nevertheless, the taxpayer has the option to pay the applicable taxes for both transactions at the same time.

BIR ISSUANCES

Joint Memorandum Circular (JMC) No. 2019-01, May 17, 2019 – This was issued to lay down the general guidelines for reviewing and adjusting the reasonable fees and charges which the LGUs are allowed to impose, pursuant to the provisions of the Local Government Code (LGC) of 1991 and the Ease of Doing Business and Efficient Government Service Delivery Act of 2018.

The JMC enumerated, among others, the common and allowable fees and charges that may be imposed by the various LGUs (provinces, cities, municipalities, and barangays) and the considerations to be taken into account in determining the just and proper rates of said fees and charges.

To effectively implement the JMC, the local chief executives of the LGUs was advised to issue an executive order creating an oversight committee on the revision of the fees and charges. It likewise enjoined the DOF and DILG to coordinate with each other and monitor compliance of its directives.

Bureau of Local Government Finance Memorandum Circular No. 020-2019 – This was issued to provide guidelines and procedures on the use of the Local Fees and Charges (LFC) Toolkit on the review, setting, and/or adoption of reasonable local fees and charges, pursuant to Joint Memorandum Circular (JMC) No. 2019-01 dated May 17, 2019.

The Circular provided step-by-step procedures in accomplishing the excel-based template of the LFC Toolkit. The LFC Toolkit was designed to help the LGUs to update their respective local revenue codes with technical assistance from the BLGF and ensure compliance with the principles under the LGC and JMC.

The Toolkit requires, among others that the activities be divided into routine or special, and the costs be identified as fixed or variable and distributed accordingly. Through the LFC Toolkit, an LGU can compare and analyze its current rates with the suggested rates as estimated by the Toolkit based on the inputted cost of regulation or delivering the subject service. The Circular expressly provided that the acceptable marginal difference shall not be greater than or less than 10% of the estimated actual cost of delivering the service.

- **SEC Memorandum Circular No. 19 series, September 17, 2019** – This memorandum circular provides for guidelines regarding the disclosure requirements on advertising of financing companies and lending companies and reporting of online lending platforms.

SEC Memorandum Circular No. 19 series, September 17, 2019 – This provides for guidelines regarding the disclosure requirements on advertising of financing companies and lending companies and reporting of online lending platforms.

This memorandum circular seeks regulate the advertisements conducted by online lending platforms. The required disclosures in their advertisements are as follows:

A. Corporate Name, SEC Registration Number and Certificate of Authority to Operate a Financing/Lending Company (CA) Number in a conspicuous portion of their Advertisements and Online Lending Platforms.
B. An advisor for prospective borrowers to study the terms and conditions in the disclosure statement before proceeding with the loan transaction.

Also, the circular requires the financing companies and lending companies shall register their online lending platforms as business names. Further, the companies shall submit to the SEC, an affidavit of compliance containing a report of all their existing Online Lending Platforms. It shall be submitted, within ten (10) days from the effectivity of the circular. The report shall include but not limited to the following:

1. Name of Online Lending Platform/s;
2. Proof of compliance;
3. Images of the Online Lending Platform/s as they appear to the public; and
4. Illustration of the Online Lending Platforms showing how the required Disclosure and Advisory are displayed.

1. Non-Compliance with the required disclosures:

Company	Basic Penalty	Daily Penalty
Financing Company	Php 100,000.00	Php 500.00
Lending Company	Php 50,000.00	Php 300.00

2. Non-Compliance with the registration of business name:

Company	Basic Penalty	Daily Penalty
Financing Company	Php 100,000.00	Php 500.00
Lending Company	Php 50,000.00	Php 300.00

3. Failure to report to the SEC:

Violation	Company	Basic Penalty	Daily Penalty
Failure to submit the Affidavit of Compliance containing a report of all existing Online Lending Platform	Financing Company	Php 50,000.00	Php 400.00
	Lending Company	Php 25,000.00	Php 200.00
Submission of the Affidavit of Compliance with incomplete information of all existing Online Lending Platforms	Financing Company	Php 50,000.00	Php 400.00
	Lending Company	Php 25,000.00	Php 200.00
Failure to submit the Affidavit of Compliance containing a report of all prospective Online Lending Platforms that are to be developed/ utilized	Financing Company	Php 50,000.00	Php 400.00
	Lending Company	Php 25,000.00	Php 200.00
Commencement of operations of the Online Lending Platform/s without submission of the required Affidavit of Compliance	Financing Company	Php 50,000.00	Php 400.00
	Lending Company	Php 25,000.00	Php 200.00

4. Continuous non-compliance /submission of false or fraudulent Affidavit of Compliance

Company	Penalty
Financing Company	Subject to the facts, circumstances and gravity of the offenses, the Commission, at its discretion, may impose a Fine of not less than twice the basic penalty but not more than One Million Pesos (Php 1,000,00.00); or Suspension of lending and financing activities for a period of sixty (60) days; or Revocation of Certificate of Authority to operate as a Financing or Lending Company, as appropriate for each circumstance.
Lending Company	

SEC

OPINIONS & DECISIONS

- **If the foreign corporation still exists legally in the place of incorporation, its license to do business in the Philippines remains valid.** (SEC-OGC Opinion No. 19-33, September 9, 2019, RE: Term of License to do Business of a Foreign Corporation)

- **Though the corporate existence of a corporation is terminated, it shall continue to act as a body corporate to liquidate, settle and close its affairs, dispose of and convey its property.** (SEC-OGC Opinion No. 19-34, September 9, 2019, RE: Rights of a corporation under liquidation)

- **A corporation engaged in the retail trade business does not need to amend its Articles of Incorporation to include an e-commerce business.** (SEC-OGC Opinion No. 19-35, September 9, 2019, RE: E-Commerce mode of Retail Trade)

- **When the by laws of a corporation requires that the notice of meetings shall be done personally or through delivery by mail, any other means of notice is invalid.** (SEC-OGC Opinion No. 19-36, September 13, 2019, RE: Notice and Quorum in membership meetings)

- **The Revised Corporation Code provides for three instances in which the stockholder may vote indirectly: (1) by means of written proxy; (2) by a trustee under a voting trust agreement, or (3) by executors, administrators, receivers and other legal representatives duly appointed by the court.** (SEC-OGC Opinion No. 19-37, September 13, 2019, RE: Mustering the required quorum; representation of the dormant/inactive stockholders)

- **The term of a corporation sole is perpetual.** (SEC-OGC Opinion No. 19-38, September 17, 2019, RE: Corporate Term of Corporation Sole.)

- **Online selling is allowed even if the corporation is non-stock corporation.** (SEC-OGC Opinion No. 19-39, September 18, 2019, RE: Online and Secondary Purpose.)

- **Paid-up capital refers to a portion of authorized capital stock which has been both subscribed and paid. While paid-in capital refers to the amount of outstanding capital stock and additional paid-in capital or premium over the par value of shares.** (SEC-OGC Opinion No. 19-40, September 16, 2019, RE: Paid-Up Capital; PSE Rules.)

- **The business of prosthetics constitutes a contract for a piece of work and not sale.** (SEC-OGC Opinion No. 19-41, September 19, 2019, RE: Retail Trade; Prosthetics)

- **The Control Test and the Grandfather Rules do not apply in cases where the shareholders of the corporation are all-natural persons.** (SEC-OGC Opinion No. 19-42, September 19, 2019, RE: Retail Trade: Nationality Requirement for Transport Network Company)

If the foreign corporation still exists legally in the place of incorporation, its license to do business in the Philippines remains valid.

This Opinion is issued to determine whether a foreign corporation licensed to do business in the Philippines needs to renew its SEC license on or before the expiration the issuance of the license on October 2020.
In the Revised Corporation Code, Section 143, a foreign corporation may commence to transact business in the Philippine and continue to do so for as long as it retains its authority to act as a corporation under the laws of the State of its incorporation, unless the license is revoked, suspended, revoked, surrendered, or annulled in accordance with this Code or other special laws.

The SEC ruled that since the corporation still legally exists in the place of incorporation, its licensed to business in the Philippines remains valid, unless sooner surrendered, revoked, suspended, or annulled in accordance with the Revised Corporation Code or other special laws. ***(SEC-OGC Opinion No. 19-33, September 9, 2019, RE: Term of License to do Business of a Foreign Corporation)***

Though the corporate existence of a corporation is terminated, it shall continue to act as a body corporate to liquidate, settle and close its affairs, dispose of and convey its property.

This Opinion issued due to the request that the corporation continue to liquidate its assets by selling portions of land.

The SEC ruled that under the sale and transfer of the corporation's remaining assets are in line with the purpose of liquidation. There is no time limit within the trustees must complete the liquidation. ***(SEC-OGC Opinion No. 19-34, September 9, 2019, RE: Rights of a corporation under liquidation)***

A corporation engaged in the retail trade business does not need to amend its Articles of Incorporation to include an e-commerce business.

This Opinion was issued to due to request where a corporation engaged in a brick and mortar retail trade business seeks clarification on whether it needs to amend its Articles of Incorporation to include e-commerce.

The SEC ruled that the corporation does not need to amend its Articles of Incorporation. Based on Retail Trade Liberalization Act, retail trade is "an act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption." The definition does not distinguish between retail trade carried in physical store and through online channels. ***(SEC-OGC Opinion No. 19-35, September 9, 2019, RE: E-Commerce mode of Retail Trade)***

When the by-laws of the corporation require that the notice of meetings shall be done personally or through delivery by mail any other means of notice is invalid.

This Opinion was issued to due to a request to determine whether there was a proper notice of a meeting.

The SEC ruled that there was no proper notice of a meeting. The by-laws of the corporation provide that notices of meeting shall done personally, special delivery by mail at least two weeks before the date of the meeting. Here, the notice was posted in the common areas of the project and not through personal or mailed notice. ***(SEC-OGC Opinion No. 19-36, September 13, 2019, RE: Notice and Quorum in membership meetings)***

The SEC refrained from answering the query since it will affect the substantive and contractual rights of the private parties, i.e inactive stockholders' right to vote.

Philippine Veterans Bank had a substantial number of stockholders who have not attended the annual stockholder meetings. Despite attempts at communications, the parties did not attend.

As such Philippine Veterans Bank inquired on whether its practice of representing inactive/dormant stockholders in the stockholders' meeting to muster the required quorum is acceptable.

The SEC did not answer its query definitively. It opined that the same would affect the substantive and contractual rights of the private parties, that is, the inactive stockholders' right to vote.

However, for the purposes of guidance and information, the SEC noted that the Revised Corporation Code is instructive for Philippine Veterans Bank. The Code states that a stockholder can vote indirectly through three methods:

(1) by means of written proxy; (2) by a trustee under a voting trust agreement, or (3) by executors, administrators, receivers and other legal representatives duly appointed by the court.

These instances are exclusive in nature if the instance/circumstance is not among the three specified the stockholder may not vote indirectly. It would appear, then, that if the methods of Philippine Veterans Bank do not fall in the three methods prescribed, it would not be binding. ***(SEC-OGC Opinion No. 19-37, September 13, 2019, RE: Mustering the required quorum; representation of the dormant/inactive stockholders)***

The term of a corporation sole is perpetual.

The Opinion was issued due to query by a corporation sole asking whether its corporate term is limited only to fifty years.

The SEC ruled in the negative. It stated that the term of a corporation sole is perpetual. Further, it stated that corporation sole's corporation term was never intended to limited by the fifty year period. Hence, they can exist perpetually. ***(SEC-OGC Opinion No. 19-38, September 17, 2019, RE: Corporate Term of Corporation Sole.)***

Online selling is allowed even if the corporation is non-stock corporation.

The Opinion was due to a request by non-stock corporation on whether they are permitted to sell products online.

The SEC ruled that the corporation may sell products online. According the Revised Corporation Code, a non-stock corporation may obtain any profit incidental to its operation provided that the same is not distributable as dividends. The SEC classifies the selling of products by a non-stock corporation as an incidental power of the corporation to carry out its purpose as stated in the articles of incorporation. ***(SEC-OGC Opinion No. 19-39, September 18, 2019, RE: Online and Secondary Purpose.)***

Paid-up capital refers to a portion of authorized capital stock which has been both subscribed and paid. While pai-iin capital refers to the amount of outstanding capital stock and additional paid-in capital or premium over the par value of shares.

Buskowitz Finance inquired on whether Additional Paid-In Capital (APIC) can be considered as Paid-Up Capital for the purpose of complying with the requirements of the Philippine Stock Exchange on minimum capital of corporations seeking to be listed therein.

However, in this case, the SEC did not definitely answer the query. The SEC refrained from issuing a categorical opinion since the query involved interpretation of administrative rules and issuances of other government agencies, in this situation the rules of the Philippine Stock Exchange.

However, for the purposes of providing guidance and information, the SEC stated that the Paid-up capital refers to a portion of authorized capital stock which has been both subscribed and paid. While paid in capital refers to the amount of outstanding capital stock and additional paid-in capital or premium over the par value of shares. ***(SEC-OGC Opinion No. 19-40, September 16, 2019, RE: Paid-Up Capital; PSE Rules.)***

The business of prosthetics constitutes a contract for a piece of work and not sale.

The Opinion was issued due to the request of a corporation seeking clarification as to the status of its prosthetics business.

The SEC ruled that the business of prosthetics is a contract for a piece of work. Due to the nature of business which involves the tailor fitting of artificial limbs based on the unique or customized design per the request of the customer. Since prosthetics are not readily available it is contract for a piece of work and not a sale. ***(SEC-OGC Opinion No. 19-41, September 19, 2019, RE: Retail Trade; Prosthetics)***

The Control Test and the Grandfather Rules does not apply cases where the shareholders of the corporation are all-natural persons.

The Opinion was issued due to the request of the corporation seeking to be clarified as the foreign-equity limits under the 1987 Constitution.

The SEC ruled that after the corporate restructuring of the corporation, 60% of the shares is now owned by a wholly-owned Filipino Corporation. However, applying the Control Test and the Grandfather rule would be improper since the rules only apply to corporations and not natural persons. ***(SEC-OGC Opinion No. 19-42, September 19, 2019, RE: Retail Trade: Nationality Requirement for Transport Network Company)***

IC ISSUANCES

UPDATES

- **IC Circular Letter (CL) No. 2019-44, September 2, 2019** – This revises the framework on the selection of external auditors. This letter supplements CL No. 2018-03, directs all Health Maintenance Organizations (HMOs) doing business in the Philippines to adhere to the guidelines in the conduct of examination of affairs, financial condition, and methods of doing business of HMOs.

- **IC Circular Letter (CL) No. 2019-45, September 4, 2019** – this letter, supersedes Advisory CL No. 2014-31 and CL No. 2014-31 directs all insurance and professional reinsurance companies authorized to transact business in the Philippines to adhere to the amended guidelines for Securities Borrowing and Lending (SBL) transactions.

- **Insurance Commission Circular Letter (CL) No. 2019-49 dated September 12, 2019** – this letter, which supplements CL No. 2018-72, directs all insurance/reinsurance companies doing business in the Philippines to adhere to supplemental guidelines as regards the pre-approval of outsourcing agreements/contracts and evaluation of the same during regular and special examinations conducted by the Commission.

- **Insurance Commission Circular Letter (CL) No. 2019-50 dated September 16, 2019** – this letter directs all Pre-Need Companies doing business in the Philippines to adhere to the guidelines for the determination of compliance with statutory minimum unimpaired paid-up capital requirements for pre-need companies.

Insurance Commission Circular Letter (CL) No. 2019-44 dated September 2, 2019 – this letter, which supplements CL No. 2018-03, directs all Health Maintenance Organizations (HMOs) doing business in the Philippines to adhere to the guidelines in the conduct of examination of affairs, financial condition, and methods of doing business of HMOs.

In relation to RECORD-KEEPING, every HMO is required to keep its books, records, accounts and vouchers in such manner that the Commission may readily verify its Audited Financial Statements (AFS) and/or Interim Financial Statements (IFS), ascertain HMOs' solvency, as well as their compliance with the provisions of Executive Order No. 192, Series of 2015.

In relation to the CONDUCT OF EXAMINATION, the Commission may require, when public interest so demands, to examine the records of the HMOs authorized to transact in the Philippines and any other person, firm or corporation managing the affairs and/or property of such HMO. Moreover, to conduct physical inventory of the HMO's cash and all investments to ascertain the value, existence and ownership of such assets. Refusal to do so shall suspend the authority of an HMO to conduct business in the Philippines. In addition, it will not be allowed to continue its operations until it has fully complied with the provisions herein.

In relation to the PRESERVATION OF RECORDS, all books of accounts, records, vouchers and other documents supporting an HMO's AFS shall be maintained for at least five (5) years following the date of such statements was filed with the Commission, or if the AFS has already been examined, the date of the examination of the same was closed.

Insurance Commission Circular Letter (CL) No. 2019-45 dated 4 September 2019 – this letter, which supersedes Advisory deferring CL No. 2014-31 and CL No. 2014-31 dated 8 July 2014 directs all insurance and professional reinsurance companies authorized to transact business in the Philippines to adhere to the amended guidelines for Securities Borrowing and Lending (SBL) transactions.

Coverage:

This letter provides that insurance and professional reinsurance companies may act as a lender on SBL transactions.

Mode of Conducting a SBL:

Provided that, if the parties to an SBL transaction shall comply with the required documentation, documentation, collateral management, settlement, record-keeping, reporting, accounting standard and other requirements as prescribed by the Commission, the insurance and professional reinsurance companies may conduct SBL through direct lending, lending agent, lending pool system or other schemes subject to the evaluation and approval of the Commission.

Lending or Borrowing Period:

The lending period shall in no case exceed two (2) years from the date of the execution of the Confirmation Letter Notice.

Eligible Securities.

The following are the eligible securities for SBL transactions:

- Securities listed in the exchange;
- Securities issued by the Bureau of Treasury; and
- Securities issued by the Securities and Exchange Commission.

Notably, the above securities must be free from any liens and encumbrances at the time of SBL transactions.

Eligible Collaterals.

The following are the eligible collaterals for SBL transactions:

- Cash denominated in Peso;
- Irrevocable and negotiable letters of credit issued by a commercial bank;
- Bonds or other instruments of indebtedness issued by the Government of the Philippines, which must be free from any liens and encumbrances;
- Bonds, debentures or other instruments of indebtedness issued by a solvent corporation or any institution created under Philippine laws;
- Securities listed in the Philippine Stock Exchange (PSE); and
- Any combination as above-mentioned or other forms of collateral that may be allowed by the Commission.

Investment Limitations.

For life insurance, and non-life insurance and professional reinsurance companies, the total allowed investment in the SBL transactions shall not exceed five percent (5%) and ten percent (10%) of the admitted assets or net worth as per latest AFS, respectively.

Insurance Commission Circular Letter (CL) No. 2019-49 dated 12 September 2019 – this letter, which supplements CL No. 2018-72 dated 28 December 2018, directs all insurance/reinsurance companies doing business in the Philippines to adhere to supplemental guidelines as regards the pre-approval of outsourcing agreements/contracts and evaluation of the same during regular and special examinations conducted by the Commission.

Notably, a written application for pre-approval of an outsourcing agreement/contract shall be filed with the Commission. Upon receipt thereof, the Commission's Regulation, Enforcement and Prosecution Division (REPD) shall determine whether the proposed application violates any other provision in the above-mentioned guidelines, submit its recommendation to the Commissioner – which in turn will approve or disapprove the same. Ultimately, the pre-approval of the Commission is required in order for an insurer/reinsurer to enter into an outsourcing agreement/contract with a BPO Provider.

Insurance Commission Circular Letter (CL) No. 2019-50 dated September 16, 2019 – this letter directs all Pre-Need Companies doing business in the Philippines to adhere to the guidelines for the determination of compliance with statutory minimum unimpaired paid-up capital requirements for pre-need companies.

Pursuant to this CL, the Commission clarifies the threshold minimum unimpaired paid-up capital of pre-need companies. Accordingly, the threshold depends upon the type of plans a pre-need company actually sells. For companies who sell a single type of plan, the minimum unimpaired paid-up capital should be Fifty million pesos (P50,000,000.00); for two (2) types of plans, Seventy-Five million pesos (P75,000,000.00); and for at least three (3) types of plans, One hundred million pesos (P100,000,000.00).

Consequently, pre-need companies with servicing licenses and/or those that are not offering any type of plan for sale in the market shall be required to maintain a minimum unimpaired paid-up capital of Fifty million pesos (P50,000,000.00).

BSP ISSUANCE UPDATES

- **Bangko Sentral ng Pilipinas (BSP) Circular No. 2019-1048 dated September 6, 2019** – This provides for the amendments/deletions of certain provisions in the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI).

- **Bangko Sentral ng Pilipinas (BSP) Circular No. 2019-1049 dated September 9, 2019** – This provides for rules and regulations on the Registration of Operators of Payments Systems. These rules shall form part of the newly created Manual of Regulations for Payment Systems (MORPS).

- **Bangko Sentral ng Pilipinas (BSP) Circular No. 2019-1050 dated September 18, 2019** – This provides for guidelines on voluntary surrender of a Banking License and some amendments with the MORB.

Bangko Sentral ng Pilipinas (BSP) Circular No. 2019-1048 dated September 6, 2019 – This provides for the amendments/deletions of certain provisions in the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI).

The Monetary Board (MB) approved the amendments to MORB and MORNBFI pertaining to Regulations on Financial Consumer Protection, and guidelines and procedures governing the Consumer Assistance and Management System of BSP-Supervised Financial Institution (BSFI).

Section 1 provides for the Financial Consumer Protection Framework (Framework), which establishes the guidelines and expectations from BSFIs to institutionalize consumer protection as an integral component of corporate governance and culture as well as risk management. It establishes Consumer Protection Risk Management System (CPRMS), which includes governance structure, policies, processes, measurement and control procedures to ensure that consumer protection risks are identified, measured, monitored and mitigated. It also provided for the Consumer Protection Oversight, which delineates the responsibilities of the Board of Directors and Senior Management in approving and overseeing the implementation of this Framework.

Section 2 provides for ensuring the application of Policies and Procedures, Consumer Protection Standards of Conduct, which should reflect the core principles, which BSFIs must observe at all times in their dealings with financial consumers. First, under Disclosure and Transparency, BSFIs must ensure that their consumers have a reasonable holistic understanding of the products and services, which they may be acquiring or availing. Second, under Protection of Client Information, financial consumers have the right to expect that their financial transactions, as well as relevant personal information disclosed in the course of transaction, are kept confidential and are secured. Third, under Fair Treatment, the financial consumers should be treated fairly, honestly and professionally at all stages of its relationship with the BSFI. Fourth, under Effective Recourse, financial consumers should be provided with accessible, affordable, independent, fair, accountable, timely and efficient means for resolving complaints with their financial transactions. Lastly, under Financial Education and Awareness, financial education initiatives give consumers knowledge, skills and confidence to understand and evaluate the information they receive and empower them to make informed financial decisions.

Section 3 provides that BSP may deploy enforcement actions to promote adherence to the BSP Regulations on Financial Consumer Protection.

Bangko Sentral ng Pilipinas (BSP) Circular No. 2019-1049 dated September 9, 2019 – This provides for rules and regulations on the Registration of Operators of Payments Systems. These rules shall form part of the newly created Manual of Regulations for Payment Systems (MORPS).

Section 1 provides for the Registration of Operators of Payment Systems (OPS). For OPS that have yet to commence operations, they must file an application for registration consisting of application for registration (form 1), business plan, business registration/permit and pertinent fees. On the other hand, for OPS that are currently operating, they must file the same requirements not later than three (3) months from the effectivity of this circular.

Notably, both scenario requires the OPS to give notice to the appropriate department of BSP of its commencement or change of ownership or control within five (5) business days from the date of occurrence.

As for Banks and Electronic Money Issuers (EMIs) they must register through notification of its activities as an OPS to the appropriate department of the BSP. It shall include a description of the existing business as OPS, business model and target markets. Banks and EMIs shall submit the notification with the supporting documents not later than three (3) months from effectivity of this circular or within one (1) month from the start of their operations as OPS, as appropriate.

When OPS required to be registered is found to be operating OPS without registration, MB shall issue a directive to such OPS to comply with the registration requirements. However, if such remains to be unregistered, the MB shall issue an order to such OPS to stop from operating.

Bangko Sentral ng Pilipinas (BSP) Circular No. 2019-1050 dated September 18 2019 – This provides for guidelines on voluntary surrender of a Banking License and some amendments with the MORB.

Section 1 retitles Chapter 1 of the Part One of MORB on “Liquidation and Receivership” to “Cessation of Banking Business.”

Section 2 provides for that a bank that seeks to voluntary surrender its banking license must secure prior approval from the BSP. A bank shall submit to appropriate supervising department of BSP an application letter, signed by the President or any authorized representative, for voluntary surrender of its banking license. The application letter shall indicate the reason/s, as well as other documentary requirements by the BSP.

Notably, the voluntary surrender of banking license to BSP will not exempt the bank’s directors, officers and employees from any administrative or criminal sanctions arising from a determination that a violation of banking law, rule or regulation was committed.

- **Memorandum Circular No. 2019-033, September 12, 2019** – This circular provides for guidelines regarding the inspections in the economic zones by regulatory agencies.

Memorandum Circular No. 2019-033, September 12, 2019 – This circular provides for guidelines regarding the inspections in the economic zones by regulatory agencies.	The Circular stated that government inspectors may be allowed entry into the economic zones and facilities of locator enterprises provided that the following documents are available: (1) Inspection Authority and (2) Company ID of the Inspector. The Inspection Authority may in the form a memorandum signed by the head of the regulatory agency or designated representative. A Company ID issued by the regulatory agency is considered as the proof that the inspector is a legitimate employee of the regulatory agency.

Published Articles

Business Mirror

Tax Law for Business

RECOVERY OF DENIED VAT AND CWT REFUND

By

Irwin C. Nidea, Jr.

Many taxpayers have millions of pesos that are recorded in their books as unutilized input value-added tax or excess creditable withholding tax. Unfortunately, in many instances, they become paper assets when there is no output VAT or income tax from which they can be offset. Unlike cash, these excess VAT and CWT cannot be readily used to buy supplies or pay for salaries.

When input VAT and CWT accumulate, one recourse allowed by law is a claim for refund. But, oftentimes, these claims are partially or totally denied. Taxpayers are left in quandary, not knowing what to do with these denied claims.

As far as a denied input VAT refund is concerned, the issue that taxpayers face is whether the amount denied should be treated as cost that is deductible for income tax purposes. If yes, then taxpayers can still benefit up to 30 percent of the value of the denied claim. The same issue of deductibility crops up when a claim for VAT refund is not filed within the two-year prescriptive period.

Recovery of Denied VAT and CWT Refund

By
Irwin C. Nidea, Jr.

As early as 1989, in Revenue Regulation (RR) 9-89, the BIR issued guidelines on the proper treatment of unutilized input VAT arising from zero-rated sales. The BIR said that if a taxpayer has no other sales transactions subject to VAT against which its input taxes may be used in payment, then, it follows, that it is constituted as the final person against which the costs of the tax passed on shall legally stop and rest. Hence, the said input taxes may already be legally converted as cost available as deduction for income tax purposes. (VAT Ruling 059-92)

If no application for VAT refund has been applied for by the taxpayer and the two-year period to file a claim for refund has already prescribed, it became clear in many other BIR rulings, e.g., BIR Ruling DA 636-06, BIR Ruling (DA-[VAT-02] 121-10), that the taxpayer can already deduct the input VAT as cost available as deduction for income tax purposes.

What if a claim for refund is filed and the same was denied by the BIR or by the courts, should the same rule apply?

In Revenue Memorandum Circular (RMC) 42-2003, it was ruled that input VAT claimed for refund may be charged to appropriate expense account or asset account subject to depreciation, whichever is applicable, in case the zero-rated sales fail to comply with the invoicing requirement, e.g., including the TIN of the VAT registered seller-claimant in the VAT invoice or VAT receipt it issued to its customers.

While RMC 42-2003 only allows of claims denied due to noncompliance of invoicing requirements, the privilege of claiming deduction for income tax purposes also apply to claims that are denied due to the failure of the taxpayer to show that the input taxes sought to be refunded were not carried over and applied against any output VAT in the succeeding periods. In other words, the denied claim is treated as a loss of property sustained during the taxable year, which is not compensated for by insurance or other forms of indemnity (BIR Ruling DA 591-2004).

But the latest BIR issuance on this matter is RMC 57-2013. It mandates that unutilized input VAT attributable to zero-rated sales can only be recovered through the application for refund or tax credit. The BIR ruled that there is no specific provision in the Tax Code that expressly provides for another mode of recovering unapplied input VAT, particularly the proposition that denied or prescribed input taxes may be treated outright as deductible expense for income tax purposes.

Just recently, however, the Court of Tax Appeals in the Maersk Case (CTA Case EB 1786), promulgated a decision that indirectly invalidated RMC 57-2013. Citing RR 09-89, the CTA ruled that disallowed/denied claim for input tax is recorded as purchases or cost of sales, which is classified as an expense account and a deduction from a taxpayer's sales/revenue. The taxpayer usually sustains a loss when its claim for refund was denied and the same can no longer be recovered. In this case, the CTA allowed the deduction of a denied claim for VAT refund for income tax purposes.

It must be noted that the transaction from which the decision is based in the Maersk Case happened prior to the issuance of RMC 57-2013. Thus, the CTA cannot use said transactions as basis of its decision to invalidate RMC 57-2013. It can be argued that the said RMC is still controlling and treatment of denied or prescribed claims for refund as deduction for income tax purposes is still not allowed.

While there are conflicting pronouncements that shroud the issue of whether a prescribed or a denied input VAT refund must be treated as cost that is deductible for income tax purposes, there are no discussions as regards denied CWT refund on the same issue.

But the significant advantage of a denied claim for CWT refund is that it is allowed to be carried over back to the income tax return as an excess CWT. According to the Supreme Court, when a taxpayer who opted to file a claim for CWT refund and the same is subsequently denied, he can opt to again carryover the denied claim in its entirety as creditable tax (GR 205955, March 7, 2018). The same treatment cannot be said to a denied VAT refund.

Should the BIR allow denied VAT refund to be returned in the VAT returns, in its entirety? If so, it will allow 100 percent recovery of input VAT, not in a form of refund, but as part of unutilized input VAT once again.

Hopefully, tax authorities will give proper guidance on the correct treatment of denied claims for refund. It is in the interest of the government that excess VAT and CWT are fully utilized so that they can be used to help stimulate economic growth. Steps must be taken to make sure that they do not remain paper assets. After all, excess VAT and CWT are not for the government to keep.

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For inquiries on the article, you may call or email

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BDB Law, Featured in the Philippine Star

B12 THE PHILIPPINE STAR business MONDAY | SEPTEMBER 23, 2019

(From left) Du-Baladad and Associates (BDB Law) managing partner lawyer Fulvio Dawilan, WTS Global Asia's Hideki Maedomori, WTS China's Martin Ng, WTS Singapore's Sam Sim and Eugene Lim, BDB Law founding partner, chair and CEO lawyer Benedicta Du-Baladad, WTS Global CEO Wim Wuyts, director business development Marie Christin Shenouda and head of client and brand Laura Ashton, WTS Malaysia's Thenesh Kanna, WTS Vietnam's Wolfram Gruenkorn, BDB Law senior partner lawyer Irwin Nidea Jr. and partner lawyer Rodel Unciano during the ceremonial toast at BDB Law's 10th anniversary celebration

A decade of 'total client care'

(From left) Former Finance secretaries Jose Pardo and Margarito Teves, secretary Carlos Dominguez; Philippine Chamber of Commerce and Industry chairman George Barcelon and former Finance undersecretary Romeo Bernardo

Former prime minister and RCBC Corporate vice chairman Cesar Virata

It was indeed a night of celebration as **Du-Baladad and Associates (BDB Law)** commemorated its 10th anniversary at the Makati Shangri-La, Manila. Under the leadership of BDB Law founding partner, chair and CEO lawyer **Benedicta Du-Baladad**, the firm has established a legacy of providing a "total client care" service to its valued clients and partners, most of whom are trailblazers in the business community. BDB Law, whose expertise is corporate law, has attracted tycoons and business leaders as clients. To honor its first decade with clients and friends, the firm sponsored a mid-year tax forum in the afternoon and a night of cocktails and Broadway music in the evening. It was a wonderful tribute to the success of BDB Law and its commitment to the very foundation of its practice: holistic, professional, and personal. *Congratulations to Du-Baladad and Associates for 10 years of meaningful existence!*

BUSINESS CHIC

JOHNNY LITTON

BDB Law was Featured in the Philippine Star

BDB Law was featured in this Monday's *(September 23, 2019)* issue of the Philippine Star under the Business Column. Our firm celebrated its 10th Anniversary Milestone with a mid-year tax forum in the afternoon and a night of cocktails and broadway in the evening. We thank our clients and friends for being with us in a decade of holistic, personal and professional partnership. BDB Law looks forward to a hopeful future.

You may also access the online article here: *https://www.philstar.com/business/business-as-usual/2019/09/23/1953975/decade-total-client-care*

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