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What's Inside...

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

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HIGHLIGHTS for OCTOBER 2020

HIGHLIGHTS

SUPREME COURT DECISION

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- A bare invocation of "in the interest of substantial justice" is not some magic wand that will automatically compel courts to suspend procedural rules. (***Bureau of Internal Revenue vs. Hon. Menardo I. Guevarra, CTA Case no. 10101, October 15, 2020***)
- Nothing in the law and jurisprudence would suggest that the arraignment of a corporation is a condition sine qua non for the Court to acquire jurisdiction over the accused corporation. (***Kingsam Express Incorporation and Samuel S. Santos vs. People of the Philippines, CTA EB Crim. No. 054, October 16, 2020***)
- The phrase 'you are requested to pay your aforesaid deficiency tax liabilities' does not constitute as the demand for a valid formal assessment notice. **(*Panay Electric Company, Inc. vs. CIR, CTA Case Nos. 9523, October 16, 2020*)**
- An amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration before an appeal to the CTA En Banc can be filed. (***Benedicto P. Caguimbal vs. CIR, CTA EB Crim. No. 065, October 21, 2020***)
- A party should not presume that a motion for extension would be granted, much less, that the extension that may be granted should be counted only from his receipt of the Court's Resolution. (***CIR vs. Lotte Confectionery Pilipinas Corporation, CTA EB No. 2291, October 21, 2020***)
- A letter from the CIR containing a warning that should the taxpayer fail to pay, the CIR would be constrained to resort to administrative summary remedies to enforce collection of the deficiency taxes without further notice, certainly indicates that it was the CIR's final action subject of an appeal to the CTA. (*JTKC Land, Inc. vs. CIR, CTA Case No. 9597, October 26, 2020*)

HIGHLIGHTS for OCTOBER 2020

BIR ISSUANCES

- RR No. 26-2020, October 6, 2020 – This implements Section 4 (zzz) of RA 11494 relative to donations of identified equipment for use in public schools.
- RR No. 27-2020, October 6, 2020 – This suspends the filing and 90-day processing of VAT refund claims anchored under Section 112 of the Tax Code of 1997, as amended, whose prescription fall during the effectivity of RA 11494.
- RR No. 28-2020, October 15, 2020 – This implements the tax exemption provisions under Section 4 (cc) and Section 18 of RA No. 11494 on the incentives for the manufacture or importation of certain equipment, supplies or goods.
- RR No. 29-2020, October 15, 2020 – This implements the provisions of RA 11494 relative to the tax exemption of certain income payments.
- RMO No. 39-2020, October 26, 2020 – This prescribes the policies, guidelines and procedures in the processing of applications for the VAPP pursuant to RR No. 21-2020.
- RMC No. 110-2020, October 6, 2020 – This clarifies the proper modes of service of an electronic Letter of Authority.
- RMC No. 111-2020, October 15, 2020 – This clarifies certain issues relative to the VAPP pursuant to RR No. 21-2020.

SEC ISSUANCES

- SEC Memorandum Circular No. 27 s. 2020 – This provides for the Guidelines for the Conversion of Corporations Either to One Person Corporation or to Ordinary Stock Corporation.
- SEC Memorandum Circular No. 28 s. 2020 – This provides for the Requirements for Corporations, Partnerships, Associations, and Individuals to Create and/or Designate E-mail Account Address and Cellphone Number for Transactions with the Commission.

BSP ISSUANCES

- BSP Circular Letter Nos. 2020-047, 2020-048 & 2020-049, October 21, 2020 – This provides the call for the publication/position of certain documents as of September 30, 2020.
- BSP Memorandum No. 2020-080, October 9, 2020 – This provides the guidelines on the electronic submission of monthly and semi-annual EFPS reports of all BSP-Supervised Financial Institutions with EFPS License.

HIGHLIGHTS for OCTOBER 2020

IC ISSUANCES

- IC Circular Letter CL-2020-95, October 1, 2020 – This provides the guidelines in the interpretation and application of Section 4(uu) of RA 11494, otherwise known as the "Bayanihan to Recover as One Act".
- IC Circular Letter CL-2020-96, October 6, 2020 – This provides the framework for Passenger Personal Accident Insurance (PPAI) for public utility vehicles.
- IC Circular Letter CL-2020-102, October 26, 2020 – This provides the amendment to Section 5 of Circular Letter No. 2020-69 dated 11 June 2020, Re: Validity Period of Temporary Licenses.
- IC Legal Opinion LO-2020-14, October 19, 2020 – This provides that Insurance Commission may refrain from rendering opinion on matters which will necessitate the examination or review of the acts and rulings of another government agency.

SUPREME COURT

DECISION HIGHLIGHT

The Commissioner of Internal Revenue (CIR)'s mere presentation of Registry Receipt without identifying and authenticating the signatures appearing on the registry receipts was insufficient to prove taxpayer's receipt of the PAN and the FAN

The taxpayer denied receiving the Preliminary Assessment Notice (PAN) and the Final Assessment Notice (FAN) from the CIR. The CIR contends that he had presented competent proof of actual mailing and receipt of the assessment notices.

The Supreme Court (SC) ruled that, in view of the taxpayer's categorical denial of due receipt of the PAN and the FAN, the burden was shifted to the CIR to prove that the mailed assessment notices were indeed received by respondent or by its authorized representative. The CIR's mere presentation of Registry Receipt was insufficient to prove taxpayer's receipt of the PAN and the FAN. The witnesses for the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of taxpayer's authorized representative.

The SC also affirmed the CTA en banc's ruling that the FAN and the assessment notices attached
to it are void for failure to demand payment of the taxes due within a specific period. The last paragraph of the FAN indicates that the CIR would still issue a formal letter of demand and assessment notice should respondent fail to respond to the FAN within the 15 day period given to it to present in writing its side of the case. *(CIR vs. T Shuttle Services, Inc., G.R. No. 240729, August 24, 2020)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue otherwise it becomes null and void.

Taxpayer prays before the CTA the cancellation of BIR's tax assessment due to an invalid LOA. CTA has held that to determine whether an assessment is lawful and valid, it is necessary that the LOA must not be void. Aside from the validity of the grant of authority, which is either from the Commissioner or its duly authorized representatives, one of the requirements to be valid is that the LOA must be served or presented to the taxpayer within 30 days from its date of issue otherwise it becomes null and void.

Here, the LOA was issued on May 15, 2009. The same should have been served on or before June 14, 2009 to be valid. However, records show that the LOA was served to the Taxpayer only on June 30, 2009 or 46 days after the date of its issuance. Therefore, the LOA, as well as the assessment, is null and void. *(Joselito Ranada Laraya vs. Commissioner of Internal Revenue CTA Case No. 8890 dated October 1, 2020)*

In a claim for refund of excess and unutilized input taxes proof of remittance is not a pre-requisite.

Taxpayer claimed for refund its excess and unutilized Creditable Withholding Taxes. In denying the claim, one of the arguments made by the BIR is that the Taxpayer failed to prove the actual remittance of the Creditable Withholding Taxes.

CTA has held that the proof of remittance is the responsibility of the withholding agent. It is sufficient that a taxpayer-claimant provides for BIR Form 2307 as evidence to prove that the taxes are indeed withheld.

Here, the Taxpayer presented BIR Form 2307 to substantiate its claim for refund. *(Sonoma Services, Inc. vs. Commissioner of Internal Revenue CTA Case No. 9808 dated October 1, 2020)*

The withholding agent has locus standi over a claim for refund of erroneously paid taxes.

Taxpayer erroneously withheld from payee/recipient of income payments. Subsequently, it claimed for refund from BIR the said amount withheld. In denying the refund, BIR posited that the Taxpayer is not the proper party to claim for refund.

CTA has resolved that a "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer". The terms "liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. It is very difficult indeed conceptually impossible to consider a person statutorily "liable for tax" as not "subject to tax". By any reasonable standard, such person should be regarded as a party in interest or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.

Therefore, the Taxpayer, though merely a withholding agent, has interest to bring a suit for refund of taxes erroneously paid. *(Toledo Power Company vs. Commissioner of Internal Revenue CTA Case No. 9465 dated October 2, 2020)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

Once a Compromise Agreement has been sanctioned by the Court, it is entered as a determination of a controversy and has the force and effect of a judgment.

The CTA, in resolving to approve the Judicial Compromise Agreement, ruled that a compromise agreement is a contract whereby the parties make reciprocal concessions in order to resolve their differences and, thus, avoid or put an end to a lawsuit. It must not be contrary to law, morals, good customs and public policy, and must have been freely and intelligently executed by and between the parties. Once a compromise agreement is given judicial approval, however, it becomes more than a contract binding upon the parties. Having been sanctioned by the court, it is entered as a determination of a controversy and has the force and effect of a judgment. (*Zest-O Corporation v. Commissioner of Internal Revenue, CTA Case No. 9489, October 7, 2020*)

Contractors engaged in mineral agreements with the Philippines do not enjoy exemption from excise tax, the collection thereof is merely deferred.

Taxpayer is a contractor engaged in extracting minerals in the Philippines. BIR assessed the Taxpayer due to non-payment of excise tax. Taxpayer posited that it is exempt from excise tax by virtue of RMC 17-2003. On the other hand, BIR posited that albeit the Taxpayer previously enjoyed tax-exempt status, it is nevertheless no longer exempt from excise tax since recovery period has already lapsed.

CTA has held that there is no law providing exemption to contractors having contract with the government. So much so that the RMC that both parties relied on is void. Accordingly, it is expressly stated that the contractor is liable to pay excise tax, which commences after the contractor has fully recovered its pre-operating expenses, exploration, and development expenditures, inclusive.

In this case, the contract between the Taxpayer and the Government provided a period of five years within which the pre-operating expenses and property expenses are recovered. After such period shall the Government share in the net revenues of the operation, including all taxes. Hence, the Taxpayer is not exempt from taxes to begin with. The payment thereof merely were deferred in order for it to recover its investments. *(OceanaGold (Philippines), Inc. vs. Commissioner of Internal Revenue CTA Case No. 9289 dated October 7, 2020)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

The BIR must have initially conducted a surveillance or stocktaking against the taxpayer before the issuance of a 48-Hour Notice, 5-day VAT Compliance, and Closure Order

After the LOA was issued to certain ROs, a Memorandum of Assignment was issued to another set of officers to continue the investigation without issuing another LOA. Subsequently, after the initial investigation was conducted and the assessment protested, another LOA was issued addressed to the second set of officers primarily for the purpose of reinvestigation. The taxpayer argues that it is not liable since the RO who found it liable for deficiency taxes was not authorized by an LOA, it is not liable for the deficiency tax.

The Court ruled that there must be a grant of authority before any revenue officer can conduct an examination or assessment. In the absence of such authority, the assessment or examination is a nullity. Furthermore, even if the CIR has issued a subsequent LOA, the defect, i.e., absence of authority given to the second set of officers, cannot be cured. Hence, the subject tax assessment cannot be enforced against the taxpayer. (*Bicyclepoker, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9868, October 7, 2020*)

As a rule, Supreme Court decisions forms part of the law and have retroactive effect as of the date such law was originally passed.

Taxpayer was assessed by the BIR due to non-payment of DST anent the former's advances from related parties. Taxpayer posited that it relied in a BIR issuance specifically stating that a particular taxpayer is not liable to pay DST for its advances to related parties. BIR posited, however, that the Filinvest Case clearly stated that jurisprudential interpretations form part of the law and could retroact from the effectivity date of the law itself.

CTA has held that the Filinvest Case is properly applied, and that the Supreme Court decisions, although not a law, form part of the law as of the date such law was originally passed. It means that jurisprudence may act retroactively from the time the law became effective regardless of its later promulgation. The only exception is when the taxpayer relied in good faith in a previously overturned jurisprudence. Moreover, Section 246 of the NIRC, as amended relates such exception when a general interpretative law was relied in good faith by a taxpayer. Thus, shall be protected by the same general interpretative law even if subsequently overturned.

Here, the Taxpayer cannot be exempted from payment of DST because it did not rely in a general interpretative law. It relied in a BIR Ruling where there was no indication of its name. Therefore, the general rule of the Filinvest Case where the Supreme Court decisions have retroactive effect applies in this case. *(San Miguel Paper Packaging Corporation vs. Commissioner of Internal Revenue CTA EB No. 2099 dated October 7, 2020)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

An assessment arising from an audit investigation conducted by an unauthorized RO, regardless whether a timely protest was filed, is void, inexistent, and will never attain finality.

The BIR argues that the CTA is precluded from ruling on the validity of the assessments since the taxpayer failed to file his protest to the FLD within the period provided by the 1997 NIRC, as amended, rendering the same final, executory, and demandable. The taxpayer, on the other hand, argues that the RO who conducted the audit was not authorized pursuant to a valid LOA and thus, the resulting assessment and collection efforts of the CIR were void.

The CTA ruled that an assessment arising from an audit investigation conducted by an unauthorized RO, regardless whether a timely protest was filed, is void, inexistent, and will never attain finality. Since the RO who conducted the audit of the taxpayer was not authorized through a valid LOA to do so, the assessment herein does not give rise to an enforceable tax liability. Hence, the taxpayer's failure to protest the FLD is of no moment. (*Commissioner of Internal Revenue. v. Ryan Neil Erasmo Alvez, CTA EB No. 2076, October 8, 2020*)

The BIR can only inform the taxpayer to submit additional documents, it cannot demand what type of supporting documents should be submitted.

The BIR argues that the CTA has no jurisdiction over the case because the assessment has become final, executory and unappealable due to the taxpayer's failure to submit the relevant supporting documents within sixty (days) from filing its protest. The taxpayer, on the other hand, argues that the "relevant supporting documents" that must be submitted within sixty (60) days is for the taxpayer to determine and decide on. The taxpayer explains that the BIR can only inform the taxpayer to submit additional documents, but it is without choice as to what specific document should be submitted.

The CTA quoting the Supreme Court ruled that the BIR can only inform the taxpayer to submit additional documents, it cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that the taxpayer cannot submit. Since it is the taxpayer that decides what documents it will submit to support its protest, the argument of the CIR that the assessment has attained finality must be rejected. (*Ishida Philippines Tube Co., Inc. v. Commissioner of Internal Revenue, CTA Case No. 9729, October 8, 2020*)

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

If a sale is subject to zero percent (0%) VAT, the receipts, sales invoices or commercial invoices, whether provisional or not, must have the word "zero-rated sale" written or printed prominently on its face.

The taxpayer argues that the VAT sales invoices issued in support of its zero-rated sale of mineral products should be considered to determine compliance with the invoicing and registration requirements, i.e. written or printed "zero-rated sale" and not the provisional invoices. The BIR, on the other hand, argues that bot the provisional invoice and final sales invoice must be compliant with the invoicing and registration requirements.

The Court ruled that if the sale is subject to zero percent (0%) VAT, the receipts, sales invoices or commercial invoices, whether provisional or not, must have the word "zero-rated sale" written or printed prominently on its face. Since the term "zero-rated" was not written or prominently printed on the provisional invoices, said omission is fatal to the claim for refund. (*Oceanagold (Philippines), Inc., v. Commission of Internal Revenue, CTA Case No. 9112, October 9, 2020*)

Administrative issuances, such as an RMO, have the force and effect of law, and they benefit from the same presumption of validity and constitutionality enjoyed by statues.

The taxpayer argues that the Waivers of the Defense of Prescription Under the Statue of Limitation of the National Internal Revenue Code ("waivers") executed by it are invalid as they do not contain the nature and the amount of the tax due as required under RMO No. 20-90. It asserts that faithful compliance with the requirements under the said RMO cannot be brushed aside. The CIR, on the other hand, argues that and RMO is just an internal issuance and that it cannot grant any vested right to any taxpayer over any particular work procedure, which is internal to the BIR.

The Court, in disagreeing with the BIR, ruled that the reliance on RMO No. 20-90 is not based on the notion that such BIR issuance is a source of a vested right of the taxpayer, but rather it is because the Court adheres to the principle that administrative issuances, such as the subject RMO, have the force and effect of law; and that they benefit from the same presumption of validity and constitutionality enjoyed by statues. Since the waivers did not contain the nature and the amount of the tax due as required by the RMO, said waivers did not effectively extend the prescriptive period on account of their invalidity. (*First Philippine Industrial Corporation v. Commissioner of Internal Revenue CTA Case No. 9000, October 9, 2020*)

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

The City of Manila can impose business taxes on tuition and educational fees on the basis of local government units' (LGU) power to levy taxes conferred under the 1987 Constitution

Taxpayer is a stock and proprietary educational institution as provided in its Articles of Incorporation. Thus, with regard to the tuition fees as taxpayer's source of income, the City of Manila imposed local business taxes (LBT).

The CTA ruled that, under the 1987 Constitution, proprietary educational institution, such as taxpayer, may be granted exemptions but only as may be provided by law. Thus, stock or proprietary educational institutions, like the taxpayer, may be exempt from all taxes, save for real property taxes and duties, provided there is a law granting the same. The taxpayer, however, failed to present basis of its exemption from LBT under Section 143(h) of the LGC of 1991 and Section 29 of the Manila Revenue Code. Tuition fees as taxpayer's source of income as a stock and proprietary educational institution is not included in the prohibited subjects of an LBT. Likewise, it is not included in the common limitations as provided under Section 133 of the Local Government Code (LGC). Thus, the same squarely falls under Section 143(h) of the LGC of 1991, i.e., any business which is not specifically mentioned in the enumeration shall be subject to LBT. *(Far Eastern University vs. City of Manila, CTA AC No. 223, October 14, 2020)*

When the assessment has already attained finality, the Court has no jurisdiction over the assessment, perforce, it should dismiss any appeal disputing the same

The BIR served the Formal Letter of Demand (FLD) and/or Final Assessment Notice (FAN) on the taxpayer's old address. The taxpayer failed to notify the BIR of its change of business address. The CTA, however, still assumed jurisdiction over the case and proceeded to void the assessment since there was no due date to pay the assessed amount; that is, after a cursory reading of the FLD/FAN. The BIR argues that the assessment notices that the Court relied on were photocopies and may not have reflected the true and actual content of the originally issued assessment notices.

The Court reconsidered its Decision since the FLD appears to carry a due date from which the taxpayer must pay the deficiency tax liabilities. Since the BIR's service of the FLD/FAN is binding for purposes of the period within which to reply, the taxpayer's filing of protest with request for reinvestigation over a year from its receipt of the FLD was already beyond the 30-day prescriptive period provided under Section 228 of the Tax Code of 1997. The failure to file a timely protest makes the assessment final, demandable and unappealable. Thus, the taxpayer has lost its right to contest the assessment before the Court. *(Citiaire Industrial Services Corporation vs. CIR, CTA Case No. 9713, October 14, 2020)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

A bare invocation of "in the interest of substantial justice" is not some magic wand that will automatically compel courts to suspend procedural rules.

BIR did not attach a Motion for Extension of Time to its Petition for Review with the Department of Justice (DOJ); thus, the latter denied its petition. On this basis, the BIR filed a Petition for Certiorari before the CTA which was also denied for lack of merit. The BIR claims that its alleged procedural lapses should not be allowed to overshadow the fact that the taxpayer committed grave injustice in depriving the Government of the taxes due to it. It also posits that the strict adherence to the rules on the period for filing the appeal/motion for reconsideration with the DOJ may be relaxed, to give way to substantial justice.

The CTA ruled that a bare invocation of "in the interest of substantial justice" is not some magic wand that will automatically compel courts to suspend procedural rules. The CTA reminded the BIR that its Petition for Certiorari is anchored on the purported grave abuse of discretion committed by the DOJ. Consequently, it is behooved to prove not merely reversible error but grave abuse of discretion committed by the latter, absent which the Petition for Certiorari cannot prosper. The CTA maintains its earlier finding that no grave abuse of discretion can be attributed to the Secretary of Justice in dismissing BIR's appeal as his actions are consistent with the DOJ's pertinent rules. *(Bureau of Internal Revenue vs. Hon. Menardo I. Guevarra, CTA Case no. 10101, October 15, 2020)*

The perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional

The CIR moves for reconsideration of the assailed Decision which he claims he received the on July 15, 2020. However, a perusal of the records, particularly the Notice of Decision, shows that the CIR received the assailed Decision on July 14, 2020. The CIR posted his MR only on July 30, 2020, or one (1) day late.

The CTA ruled that although appeal is an essential part of our judicial process, the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory. *(Autostrada Motore, Inc. vs. CIR, CTA Case No. 9624, October 15, 2020)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

The CTA's power of review over CIR's decisions is limited to those that have not yet become final

The taxpayer's Petition for Review was denied on the ground that the BIR's assessment against it had already lapsed into finality. The taxpayer urged the CTA to reconsider its decision on account of necessary hindrances inherent in the corporate structure such as the fact that its actions can only be exercised through its board of directors.

The CTA found the taxpayer's reason insufficient to disregard established principles on jurisdiction. Jurisdiction is provided for by law, and this Court's power of review over CIR's decisions is limited to those that have not yet become final. The fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. *(Red Fox Group, Inc. vs. CIR, CTA Case No. 9752, October 16, 2020)*

Nothing in the law and jurisprudence would suggest that the arraignment of a corporation is a condition sine qua non for the Court to acquire jurisdiction over the accused corporation.

The taxpayer contends that the Decision of the CTA in Division is null and void for failure to arraign the accused corporation. The taxpayer also alleges that there is newly discovered evidence, which shows that the BIR initially acknowledged that the sources of money for the acquisition of bus units did not come from unreported revenue.

The CTA *En Banc* ruled that the requirement that a corporation be charged and prosecuted for a crime, only means that a suit must be brought against the corporation in court, or that a criminal suit be brought against the corporation, by indictment or information. The taxpayer failed to point out any law, jurisprudence, rules, and regulations that would require the arraignment of a corporation.

The CTA also noted that the subject document constitutes "forgotten" evidence, or evidence already in existence or available before or during a trial. The presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, and only serves to delay the proceedings. *(Kingsam Express Incorporation and Samuel S. Santos vs. People of the Philippines, CTA EB Crim. No. 054, October 16, 2020)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

The phrase 'you are requested to pay your aforesaid deficiency tax liabilities' does not constitute as the demand for a valid formal assessment notice

In its MR, the taxpayer argues that the CTA erred in ruling that the assailed waivers were invalid; and that the subject assessment did not indicate a definite due tax.

The CTA reiterated that the subject waivers reveal that they do not indicate the kind and amount of the taxes to be assessed or collected. It is required inter alia that the Waiver, must indicate the nature and the amount of the tax due, to be valid, and would have the effect of extending the three-year prescriptive period to assess. These details are material as there can be no true and valid agreement between the taxpayer and respondent absent these information.

On the second ground raised by taxpayer, the CTA discussed that the amounts assessed are still indefinite, since the same are subject to further adjustment after the payment thereof. The mutability or changeableness of the amount due constitutes failure to comply with the mandatory requirement of stating a definite amount of liability and that there must be a clear demand to pay. An examination of the FLD would reveal that there is no demand or requirement for the taxpayer to pay the taxes due. The phrase 'you are requested to pay your aforesaid deficiency tax liabilities' negates the imperative nature and assertion of a legal right of an assessment. *(Panay Electric Company, Inc. vs. CIR, CTA Case Nos. 9523, October 16, 2020)*

There is nothing in the law that requires submission of the complete documents enumerated in RMO No. 53-98 and RR No. 2-26 before being entitled to a refund

The CIR claims that the taxpayer must clearly show in its tax return that the income from which the withholding tax was withheld formed part of its gross income. Thus, the CIR insists that by failing to provide supporting documents that would show the income was indeed declared in the Annual Income Tax Return (AITR), there is no direct linkage between the CWT and the income as reflected in the AITR.

The CTA ruled that that there is nothing in the law that requires submission of the complete documents enumerated in the "Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities" under RMO No. 53-98 before being entitled to a refund. There is also nothing in RR No. 2-06 that states that the mandatory attachments (i.e. Summary of Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns with claimed Tax Credits due to Creditable Tax Withheld At Source and the Monthly Alphalist of Payees (MAP) whose Income Received have been subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments) are required to be submitted in order to grant a refund or credit. *(Tullett Prebon Philippines, Inc. vs. CIR, CTA Case No. 9804, October 20, 2020)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

The doctrinal precept in the Next Mobile case finds application when factual circumstances display that the parties to the execution of the waiver are in pari delicto irrespective of the number of waiver/s accomplished or executed

At the administrative level, the taxpayer admitted that its signatory in the waiver of statute of limitation was duly authorized. On the other hand, BIR's representative, who is presumed to know that the delegation must be in writing and duly notarized, required from the taxpayer's representative such written and notarized authorization/delegation before accepting the subject Waiver. The taxpayer's authorized representative also received the Waiver without requiring that the date of acceptance be indicated therein.

The CTA *En Banc* ruled that the exception crafted by the Supreme Court in the Next Mobile case, i.e., a defectively executed waiver may result in an extension of CIR's period to assess internal revenue taxes, was not solely hinged on the execution of five (5) separate infirmed waivers which remained unrectified as petitioner suggests. Rather, the doctrinal precept finds application when factual circumstances display that the parties to the execution of the waiver are in pari delicto, or at equal fault irrespective of the number of waiver/s accomplished or executed. Thus, the CTA *En Banc* applied the Next Mobile case, although there is only one defective waiver in this case. Both parties are estopped from questioning the validity of the subject Waiver because they performed contributory acts in the invalidity thereof. *(M. Tech Products Philippines, Inc. vs. CIR, CTA EB No. 2114, October 21, 2020)*

An amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration before an appeal to the CTA En Banc can be filed

The taxpayer submits that the revisions made in the CTA Division's Amended Decision were revisions on the civil aspect of the case and not on the alleged errors set forth by the taxpayer as to his conviction as compared to the *Asiatrust case*, relied upon by the CTA *En Banc* in denying the taxpayer's Petition for Review. In the *Asiatrust case,* the assignment of errors alleged in the MR are factual matters which were taken by the court for reconsideration resulting to an amended decision. Thus, there is no need to file an MR of the CTA Division's Amended Decision.

The CTA *En Banc* ruled that an appeal to the CTA *En Banc* must be preceded by the filing of a timely motion for reconsideration or new trial with the CTA Division. An amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration. *(Benedicto P. Caguimbal vs. CIR, CTA EB Crim. No. 065, October 21, 2020)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

A party should not presume that a motion for extension would be granted, much less, that the extension that may be granted should be counted only from his receipt of the Court's Resolution

Taxpayer filed a "Motion for Extension of Time to File Petition for Review" praying that the CTA *En Banc* grant an additional period of thirty (30) days. The Court *En Banc* granted the taxpayer a final and non-extendible period of fifteen (15) days, or until August 1, 2020. The taxpayer, however, filed a "Motion to Admit Petition for Review" only on August 24, 2020 stating that the counsel for taxpayer received the Resolution of the Court en banc granting the motion of petitioner for an extension of time for fifteen (15) days only on August 18, 2020 and that the reason for the delay was beyond the control of taxpayer and his undersigned counsel.

The CTA en banc held that the taxpayer's reason for the delay in filing, i.e. because the Court *En Banc* 's Resolution granting the motion for extension was received only on August 18, 2020, is not a valid excuse to file the Petition for Review beyond the allowable period. The counsel for taxpayer should not presume that the motion for extension would be granted, much less, that the extension that may be granted should be counted only from his receipt of the Court *En Banc*'s Resolution. Although the taxpayer pleads for liberal interpretation of the rules on procedure, the same, however, should not be ignored to suit the convenience of a party. *(CIR vs. Lotte Confectionery Pilipinas Corporation, CTA EB No. 2291, October 21, 2020)*

So long as the process of distillation is employed, whether directly or indirectly, the resulting product thereon may fall within the ambit of "other similar products of distillation", subject to excise tax under Section 148(e) of the Tax Code of 1997

Taxpayer mainly argues that the products subject to excise tax under Section 148 of the Tax Code of 1997 are limited to fractions or distillation products primarily derived from distillation of crude oil; and thus, the subject alkylate which is not produced by the primary distillation of crude oil, but by the primary process of alkylation, should not be included in the category of "other similar products of distillation."

The CTA ruled that Sections 129, 131, and 148 (e) of the Tax Code of 1997 clearly state that excise tax shall attach, inter alia, to mineral oils or motor fuels like naphtha, regular gasoline and other similar products of distillation, as soon as they come into existence. A closer look at the provisions of Section 148 readily shows that the word "distillation" is only found in the phrase "other similar products of distillation". There is nothing therein that suggests that distillation should be the primary or direct process through which the product is formed in order to fall within the scope of the proviso. The absence of such qualification leads to the conclusion that so long as the process of distillation is employed, whether directly or indirectly, the resulting product thereon may fall within the ambit of "other similar products of distillation". Where the law does not distinguish, the Court should not distinguish. *(Petron Corporation vs. CIR, Commissioner of Customs and Collector of Customs, CTA Case No. 8544, October 21, 2020)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

A letter from the CIR containing a warning that should the taxpayer fail to pay, the CIR would be constrained to resort to administrative summary remedies to enforce collection of the deficiency taxes without further notice, certainly indicates that it was the CIR's final action subject of an appeal to the CTA

The taxpayer received a Preliminary Collection Letter reiterating the tax deficiency assessment and requested for the payment thereof with the warning that should the taxpayer fail to pay, the CIR would be constrained to resort to administrative summary remedies to enforce collection of the deficiency taxes without further notice.

The CTA ruled that it has no jurisdiction over the present case since the Petition for Review was filed out of time. The tenor and language of the Preliminary Collection Letter suggests a character of finality and thus, constitutes a final decision on the disputed assessment which is a proper subject of an appeal to the CTA. The said letter certainly indicates that it was the CIR's final action regarding petitioner's request for reinvestigation. As the Supreme Court had fittingly stated in one case, with similar issue, "How then could it have been made to believe that its request for reconsideration was still pending determination, despite the actual threat of seizure of its properties?" *(JTKC Land, Inc. vs. CIR, CTA Case No. 9597, October 26, 2020)*

BIR ISSUANCES

HIGHLIGHTS

RR No. 26-2020, October 6, 2020

This implements Section 4 (zzz) of RA 11494 relative to donations of identified equipment for use in public schools.

This revenue regulation covers all donations of personal computers, laptops, tablets, or similar equipment (i.e. mobile phone, printer) for use in teaching and learning in public schools starting from the effectivity of the said Act on September 15, 2020 up to December 19, 2020.

Donor/s of said equipment shall be entitled to the following tax incentives:

a. Deduction from the gross income of the amount of contribution/donation subject to limitations, conditions and rules set forth in Section 34 (H) of the Tax Code and to the following conditions:
    i. That the Deed of Donation shall indicate in detail the items donated, its quantity/number and the amount/value of the donation;
    ii. That the deduction shall be availed of in the taxable year in which the expenses have been paid or incurred;
    iii. That the taxpayer can substantiate the deduction with sufficient evidence, such as sales invoice/s, delivery receipt and other adequate records –
        - The amount of expenses being claimed as deduction;
        - Proof or acknowledgement of receipt of the contributed/donated property by the recipient public school.

b. Exemption from the payment of Donor's Tax pursuant to Sections 101 (A) (2) and (B) (2) of the Tax Code.

c. In case of foreign donation, the importation of personal computers, laptops, tablets, or similar equipment by the DEPED, CHED, or TESDA, shall be EXEMPT from VAT; provided, that if the importer/consignee is other than the abovementioned agencies, in order for the imported articles to be exempt from VAT, the importer should present a Deed of Donation duly accepted by the abovementioned agencies.

d. In the case of local donation where the personal computers, laptops, tablets, or similar equipment are originally intended for sale or for use in the course of business by the donor, the same shall not be treated as transaction deemed sale subject to VAT under Section 106 (B) (l) of the Tax Code. Furthermore, any input tax VAT attributable to the purchase of donated personal computers, laptops, tablets, or similar equipment not previously claimed as input tax shall be creditable against any output tax

BIR ISSUANCES

HIGHLIGHTS

RR No. 27-2020, October 6, 2020

This suspends the filing and 90-day processing of VAT refund claims anchored under Section 112 of the Tax Code of 1997, as amended, whose prescription fall during the effectivity of RA 11494.

To prevent the expected influx of numerous filers of VAT refund claims, the following deadlines shall be extended to the following dates:

Taxable Quarter	Deadline
Calendar quarter ending September 30, 2018	December 31, 2020
Fiscal quarter ending October 31, 2018	January 15, 2021
Fiscal quarter ending November 30, 2018	January 31, 2021
Calendar quarter ending December 31, 2018	February 15, 2021

In areas where the ECQ or MECQ is in force after the effectivity of RA No. 11494, the following shall be observed:

a. If the deadline for the filing of the VAT refund claim falls within the ECQ or MECQ period, filing of the claim shall be extended for thirty (30) days after the lifting of the ECQ or MECQ.
b. The 90-day period of processing VAT refund claims is suspended during the declaration of ECQ or MECQ in the area and shall resume thirty (30) days after the same has been lifted.
c. In cases where the processing office is required temporary closure, the 90-day processing of VAT refund claims shall be suspended until the last day of the quarantine period for the affected processing office.

RR No. 28-2020, October 15, 2020

This implements the tax exemption provisions under Section 4 (cc) and Section 18 of RA No. 11494 on the incentives for the manufacture or importation of certain equipment, supplies or goods.

The importation from June 25, 2020 to December 19, 2020 of the goods enumerated in the Regulations and identified as critical products, essential goods, equipment or supplies needed to contain and mitigate COVID-19, subject to the limitations and restrictions specified in the Regulations, shall be exempted from VAT, excise tax and other fees.

a. The taxpayer availing of the exemption must present a certification from the DTI that the equipment and supplies being imported are not locally available or of insufficient quality and preference.

b. The importation hereof shall not be subject to the issuance of ATRIG.

c. Donations of said imported articles to or for the use of the National Government or any entity created by any of its agencies which is not conducted for profit or to any political subdivision of the government are exempt from Donor's Tax and subject to the ordinary rules of deductibility under existing rules and issuances.

The grant of exemption for the importation of goods enumerated in the Regulations is deemed to be in effect beginning June 25, 2020. The VAT on all covered and qualified shipments/ importations that may have been paid from June 25, 2020 up to September 14, 2020 shall be refunded pursuant to Section 204(C) of the Tax Code, in accordance with the existing procedures for refund

BIR ISSUANCES

HIGHLIGHTS

RR No. 28-2020, October 15, 2020
This implements the tax exemption provisions under Section 4 (cc) and Section 18 of RA No. 11494 on the incentives for the manufacture or importation of certain equipment, supplies or goods.

of VAT on importation, provided that the input tax on the imported items have not been reported and claimed as input tax credit in the monthly and/or quarterly VAT returns. The same shall not be allowed as input tax credit pursuant to Section 110 of the Tax Code for purposes of computing the VAT payable of the concerned taxpayer/s for the said period.

Inputs, raw materials and equipment necessary for the manufacture of essential goods of medical grade related to containment and mitigation of COVID-19, as determined by Food and Drug Administration — Department of Health (FDA-DOH), whether locally sourced or imported by the registered manufacturer, shall be exempt from VAT.

The sale of finished goods/products, whether locally-manufactured or imported, is subject to VAT. The sale of inputs, raw materials and equipment to a non-holder of "License to Operate" issued by the FDA-DOH is likewise subject to VAT.

RR No. 29-2020, October 15, 2020
This implements the provisions of RA 11494 relative to the tax exemption of certain income payments.

The following income payments shall be excluded from gross income and shall not be subject to Income Tax:

a. Retirement benefits received by officials and employees of private firms, whether individual or corporate, from June 5, 2020 to December 31, 2020, provided that the amount received is in accordance with a retirement plan duly-registered with the BIR. Provided further, that any re-employment of such official or employee in the same firm and its related parties within the succeeding twelve (12)-month period shall be considered as proof of non-retirement.

   If the re-employment happens within calendar year 2020, the employer shall include the said retirement benefits in the gross income of the concerned official or employee for 2020. However, if the re-employment will occur in 2021 and within the twelve-month period, the concerned employee shall pay the taxes due on the retirement benefits received within thirty (30) days from date of re-employment, or on the due date for the payment of the second installment payment of 2020 Income Tax, whichever comes later, without penalties.

b. COVID-19 Special Risk Allowance given to public and private health workers.

c. Actual Hazard Duty Pay given to Human Resources for Health (“HRH”).

BIR ISSUANCES

HIGHLIGHTS

RR No. 29-2020, October 15, 2020
This implements the provisions of RA No. 11494 relative to the tax exemption of certain income payments.

d. Compensation paid to private and public health workers who have contracted COVID-19 in the line of duty or dies while fighting COVID 19, amounting to:

- ₱1,000,000.00 in case of death; or
- ₱100,000.00 in case of severe or critical sickness; or
- ₱15,000.00) in case of mild or moderate sickness.

Provided that, such amount is given or to be given from February 1, 2020 and during state of national emergency due to COVID-19 as declared by the President; Provided further, that the compensation provided herein shall be given to the beneficiaries not later than three (3) months after the date of confinement or death; Provided finally, that the required supporting documents are submitted.

For compensation in case of death, the said amount shall not also be included as part of the gross estate of the decedent subject to Estate Tax.

RR No. 30-2020, October 30, 2020
This prescribes the rules and regulations to implement Section 11(f) and (g) of RA No. 11494 on the taxes derived from gaming and non-gaming operations as other sources of funding for the subsidy, stimulus measures and other measures to address the COVID-19 pandemic.

The prescribed rules and regulations are as follows:

a. Franchise Tax at the rate of five percent (5%) imposed on the gross bets or turnovers, or the agreed pre-determined minimum monthly revenues from gaming operations, whichever is higher, earned by offshore gaming licensees, including gaming operators, gaming agent, service providers and gaming support providers.

b. Income Tax, VAT, and other applicable taxes imposed on income from non-gaming operations earned by offshore gaming licensees, including gaming operators, gaming agent, service providers and gaming support providers.

PAGCOR and/or the company chosen as its third-party intermediary/audit platform shall furnish the BIR with the following information:

a. Gross bets or turnovers earned by offshore gaming licensees, including gaming operators, gaming agent, service providers and gaming support providers;

b. Minimum Guarantee Fee or the minimum amount of regulatory fees paid by offshore gaming licensees, including gaming operators, gaming agent, service providers and gaming support providers per month; and

c. Other relevant data.

BIR ISSUANCES

HIGHLIGHTS

RR No. 30-2020, October 30, 2020

This prescribes the rules and regulations to implement Section 11(f) and (g) of RA No. 11494 on the taxes derived from gaming and non-gaming operations as other sources of funding for the subsidy, stimulus measures and other measures to address the COVID-19 pandemic.

Non-payment, underpayment and/or payment of taxes computed not in accordance with the prevailing official exchange rate at the time of payment by offshore gaming licensees, operators, agents, service providers and support providers shall be considered as fraudulent acts and subject to incremental penalties under Sections 248(B), 249(B), 253 and 255 of the NIRC of 1997, as amended.

The BIR shall implement closure orders against offshore gaming licensees or operators, gaming agents, and service or support providers that fail to pay the taxes due as enumerated under Section 3 and/or committed any of the fraudulent acts in Section 5 of the Regulations, and such erring entities shall cease to operate.

After two years or upon determination that the threat of COVID-19 has been successfully contained or abated, whichever comes first, the revenues derived from franchise taxes on gross bets or turnovers and income from non-gaming operations, shall continue to be collected and shall accrue to the General Fund of the Government.

RMO No. 36-2020, October 15, 2020

This provides guidelines and procedures in the refund of erroneously paid VAT on imported drugs prescribed for Diabetes, High Cholesterol and Hypertension, as implemented under RR No. 18-2020.

This guidelines and procedures are as follows:

- No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty under Section 204(C) of the Tax Code of 1997, as amended.
- Claims for refund of erroneously paid VAT on importation of drugs prescribed for diabetes, high cholesterol and hypertension included in the DOH-FDA approved list from January 23, 2020 up to July 9, 2020 shall be filed and processed at the respective RDOs or at the LTAD under the LTS where the taxpayer-claimant is registered.
- The ROs assigned to receive the documents pertaining to the VAT refund shall ensure that the required documents specified in the Order are complete.
- The result of the evaluation of the VAT refund/credit claim, approved or otherwise, shall be communicated in writing to the taxpayer immediately after approval of the report by the designated approving BIR Official.

BIR ISSUANCES

HIGHLIGHTS

RMO No. 39-2020, October 26, 2020

This prescribes the policies, guidelines and procedures in the processing of applications for the VAPP pursuant to RR No. 21-2020.

The prescribed guidelines and procedures are as follows:

- The LTAD, LTDs, or RDOs shall receive and process the applications of taxpayers for availment of VAPP starting from the effectivity of RR No. 21-2020.
- The TWG shall be responsible in receiving and processing the VAPP applications, including the issuance of Certificate of Availment, in case of full compliance, or Denial Letter in cases where the VAPP availment is disapproved based on the grounds provided under Sections 3, 7 and 8 of RR No. 21-2020.
- The Assistant Chief, LT Office/Assistant RDO shall review the VAPP application within five (5) working days from receipt of the docket, and recommend for its approval/disapproval by the Chief, LT Office/RDO.
- If approved, the Chief, LT Office/RDO shall issue a Certificate of Availment (CA) within three (3) working days from approval of the application.
- In case of denial of the application due to failure of the taxpayer to act on the aforesaid notification or in case of invalid availments or falsified information, the Chief, LT Office/RDO shall issue a Denial Letter within 3 working days from disapproval of the application.
- Based on the list of VAPP availments provided by the TWG, the Chief, LT Office/RDO shall suspend the conduct of the audit of taxpayer whose availment is under evaluation. The TWG shall coordinate with the Chief, Assessment Section (CAS) regarding the approved/denied availments. The audit shall resume if the availment has been found invalid.
- If the taxpayer's availment has been determined to be valid and after issuance of the CA, the CAS shall recommend to the Chief, LT Office/RDO to withdraw and cancel the issued LA, TVN, NIC, or ND for pending cases.
- The ACIR, LTS/Regional Director shall issue the ATCA for FAN covered by the approved VAPP availments with duly issued CAs within ten (10) working days from receipt of the Monthly Report on Certificates of Availment/ Denial Letters issued from the Chief, LT Office/RDO.

BIR ISSUANCES

HIGHLIGHTS

RMC No. 108-2020, October 6, 2020

This prescribes the use of BIR Form Nos. 2119 - VAPP Application Form and BIR Form No. 0622 - VAPP Payment Form pursuant to RR No. 21-2020.

This circular prescribes the use of BIR Form Nos. 2119 - VAPP Application Form and BIR Form No. 0622 - VAPP Payment Form.

Payment of the tax due thereon shall be made through any BIR Authorized Agent Bank or Collection Officer where the taxpayer is registered or having jurisdiction over the transaction, as the case may be. Payment through BIR electronic payment channels (e.g., G-Cash and PayMaya) is not allowed.

RMC No. 110-2020, October 6, 2020

This clarifies the proper modes of service of an electronic Letter of Authority ("eLA").

This circular provides the proper modes of service of an eLA.

The eLA shall be served to the taxpayer through personal service by delivering personally a copy of the eLA at his registered or known address or wherever he may be found. Personal or substituted service of the eLA shall be effected by the RO assigned to the case. However, such service may also be made by any BIR employee duly authorized for the purpose.

In case personal service is not possible, the eLA shall be served either by substituted service or by mail. However, substituted service can only be resorted to when the party is not present at the registered or known address.

Personal service is complete upon actual delivery of the eLA to the taxpayer or his representative. Service by registered mail is complete upon actual receipt by the taxpayer or after five (5) days from the date of receipt of the first notice of the postmaster, whichever date is earlier. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing.

Service to the tax agent/practitioner, who is appointed or authorized by the taxpayer in accordance with existing revenue issuances, shall be deemed service to the taxpayer.

BIR ISSUANCES

HIGHLIGHTS

RMC No. 111-2020, October 15, 2020

This clarifies certain issues relative to the VAPP pursuant to RR No. 21-2020.

This circular provides clarification on certain issues relative to the VAPP as follows:

- All persons, natural and juridical, including estates and trusts, are qualified to avail of the VAPP. The Program covers calendar year 2018 and fiscal year 2018 ending in July, August, September, October and November 2018, as well as those ending in January, February, March, April, May and June 2019.

- For ONETT of individuals and taxpayers on a calendar year basis, the VAPP covers all transactions from January to December 2018. For taxpayers on a fiscal year basis, the covered ONETT are those within their fiscal year 2018.

- Availment of the VAPP should cover all the tax types to which the taxpayer is registered, including Withholding Taxes, except when the taxpayer is pursuing a claim for tax credit/refund, in which case, he can leave out the tax type for such claim.

- Taxpayers shall use BIR Form No. 2119 for the application and BIR Form No. 0622 for the payment of the corresponding voluntary tax.

- If a business taxpayer wants to avail of the benefit of VAPP, his availment should cover both Sections 9.a. and 9.b. If availment will also cover Section 9.c, a separate application and payment form should be prepared.

- For availment under Section 9.a for Income Tax, VAT, Percentage Tax, Excise Tax and DST other than for ONETT, the ATC is MC341. For availment under Section 9.b for Final and Creditable Withholding Taxes, the ATC is MC342 and for availment for taxes on ONETT, the ATC is MC343.

- Payment by check is acceptable, provided that check payments conform to the payment requirements of the BIR. Payment through Tax Remittance Advice (TRA) is not acceptable.

- If there is no increase or decrease in the total taxes due for all tax types in 2018 compared to all taxes due in 2017, as in the case of enterprises enjoying tax exemptions and incentives, the voluntary tax payment shall be computed based on the "net increase of not more than 10%".

BIR ISSUANCES

HIGHLIGHTS

RMC No. 111-2020, October 15, 2020

This clarifies certain issues relative to the VAPP pursuant to RR No. 21-2020.

- If the taxpayer is only in its first year of operation for 2018 and there are taxes due for the year per tax returns filed, the taxpayer can avail of the VAPP.
- IAET paid by a taxpayer should be included in the total taxes due for the purpose of computing the increase/decrease since it can be considered as Income Tax.
- In case the taxpayer paid MCIT in 2017 and paid the normal Income Tax in 2018, the MCIT shall be the Income Tax due for 2017 while the annual corporate Income Tax due computed under the normal Income Tax before deducting any tax credits/payments shall be considered as the Income Tax due for 2018.
- Excess tax credits from prior period/taxable year shall be considered in determining the Net VAT due. If the net VAT due is a negative amount, then the total taxes due for the year will not be reduced by the negative VAT amount.
- A taxpayer who paid Percentage Tax or availed of the eight percent (8%) Income Tax rate despite having exceeded the threshold of Three Million Pesos (₱3,000,000.00) can apply for the VAPP, provided that the VAT return will be filed and the VAT will be paid with the corresponding penalties after deducting the total Percentage Tax payments.
- The waiver of refund in Section 12 of the Regulations is applicable only to claims for refund on erroneous payment.
- If the taxpayer would like to apply for the VAPP but declines to waive his right to claim for refund, he can leave out from the availment the tax type for said refund.
- A taxpayer with a pending claim for tax credit/refund can avail of the VAPP, provided that the claim is not on erroneous payment for which the taxpayer has not waived his right to such claim.
- A taxpayer who failed to withhold and remit withheld taxes in 2018 is qualified to avail of the VAPP under the condition that the amount not withheld and not remitted has to be paid first and the same shall form part of the total taxes remitted for 2018, which shall be the taxable base in determining the five percent (5%) required amount to be paid to avail of the benefits under the VAPP.

BIR ISSUANCES

HIGHLIGHTS

RMC No. 111-2020, October 15, 2020

This clarifies certain issues relative to the VAPP pursuant to RR No. 21-2020.

- The CGT and DST shall be computed based on the highest value among the selling price, zonal value and fair market value.
- The exception in Section 3.d of the Regulations "with pending cases" does not include those who failed to comply with an issued Subpoena Duces Tecum (SDT) if no criminal case has been filed in court yet for failure to comply with the SDT.
- If a taxpayer is currently under audit/investigation for 2018 and he/she availed of the VAPP, the conduct of audit shall be suspended while the availment of the VAPP is under evaluation. Upon issuance of a Certificate of Availment, the electronic LA and other related notices shall be withdrawn and cancelled.
- A taxpayer with an on-going investigation or a duly issued but protested FAN for 2017 and/or 2018 can avail of the VAPP, but the availment will not cover taxable year 2017. The amount on the FAN for the 2018 audit case will, in no way, affect the computation of the voluntary payment for VAPP.
- Taxpayers with duly issued but protested FANs can avail of the VAPP provided the FANs are for taxable year 2018, are still under protest on or before the effectivity of the Regulations and all tax types of the taxpayer are covered in the availment.
- If the taxpayer with FAN has a duly issued CA after availing of the VAPP, the assessment shall be cancelled through issuance of an ATCA by the authorized RO.
- A taxpayer who was notified to rectify the deficiencies in the VAPP availment or to pay the additional voluntary tax but fails to do so within ten (10) days from receipt of the notification can no longer qualify for the benefit of the VAPP.
- In case the taxpayer's availment was denied and rendered invalid and the taxpayer was subjected to audit/investigation, upon authorization and approval of the CIR, any voluntary tax paid by the taxpayer per BIR Form No. 0622 shall constitute as payment of the deficiency tax assessments for taxable year 2018, provided, that such payment includes the specific tax types and taxable period covered by the assessment notice.
- If the taxpayer paid the tax for the VAPP on or before December 31, 2020 but submits his/her/its application after the deadline, this can be considered as availment within the deadline.

BIR ISSUANCES

HIGHLIGHTS

RMC No. 113-2020, October 20, 2020

This publishes the full text of the letter from the Department of Finance ("DOF") to amend the effectivity date of RA No. 11467, as circularized under Revenue Memorandum Circular ("RMC") No. 65-2020.

Per RMC No. 65-2020, the effectivity of RA No. 11467 is January 27, 2020.

It was clarified that that the said Act was made effective upon its complete publication in the website of the Official Gazette. Thus, RA No. 11467 became effective beginning January 23, 2020.

RMC No. 112-2020, October 6, 2020

This clarifies the suspension of enlisting/delisting of Large Taxpayers to January 1, 2021.

This circular provides the following clarification, to wit:

a. All transactions of affected taxpayers, both Head Office/s and all branches, shall be handled by the RDOs or concerned offices at the LTS where they are registered prior to July 1, 2020;

b. All Certificates of Registration issued by the concerned offices at the LTS/RDOs on or after July 1, 2020 to the affected LT shall be valid and may be posted at the principal place of business; and

c. Principal and supplementary receipts/invoices based on duly approved ATP issued on or after July 1, 2020 shall remain valid.

SEC ISSUANCES

HIGHLIGHTS

SEC Memorandum Circular No. 27 s. 2020

This provides for the Guidelines for the Conversion of Corporations Either to One Person Corporation or to Ordinary Stock Corporation

Ordinary Stock Corporation (OSC) to One Person Corporation (OPC)

A natural person of legal age, a trust, or an estate who acquired all of the outstanding capital stocks of an OSC, may apply for its conversion into an OPC upon submission of the following documentary requirements, which shall be processed as an Amendment of the Articles of Incorporation:

1. Cover sheet;
2. Signed Application for Conversion by the single stockholder and countersigned by the corporate secretary;
3. Original or CTC of the document/s effecting the transfer/s of full title/ownership of shares;
4. Certificate Authorizing Registration or tax clearance from the BIR;
5. Notarized Secretary's Certificate of No Intra-corporate Dispute;
6. Articles of Incorporation of an OPC
7. Letter of acceptance of appointment by Nominee and Alternate Nominee;
8. Self-appointed Treasurer's Bond, if applicable;
9. Name reservation;
10. Monitoring clearance from Compliance Monitoring Division (CMD) of the Company Registration and Monitoring Department (CRMD), whichever is applicable;
11. Endorsement clearance from appropriate government agencies, if applicable;
12. Undertaking to Change Corporate Name, if not yet included in the Articles of Incorporation; and
13. Undertaking to Assume All Liabilities of the OCS, if noy yet included in the Articles of Incorporation.

The date of the issuance of the Certificate of Filing Amended Articles of Incorporation shall be deemed as the date of approval of the conversion, and shall bear and retain the corporation's original SEC Registration Number. The name of the corporation shall include an "OPC" suffix in order to reflect its nature.

The OPC converted from OCS shall succeed the latter and be legally responsible for all the latter's outstanding liabilities as of date of approval of the conversion.

SEC ISSUANCES
HIGHLIGHTS

SEC Memorandum Circular No. 27 s. 2020

This provides for the Guidelines for the Conversion of Corporations Either to One Person Corporation or to Ordinary Stock Corporation

One Person Corporation (OPC) to Ordinary Stock Corporation (OSC)

When the shares in an OPC ceases to be held solely by a single stockholder, the OPC may be converted into an OSC after due notice to the Commission, and after compliance with all the requirements for a stock corporation, after evaluation of the following documentary requirements:

1. Cover sheet;
2. Signed Notice of Conversion of an OPC into OSC, by all holders of shares of the outstanding capital stock, countersigned by the corporate secretary;
3. Original or CTC of the document/s effecting the transfer of full title/ownership of shares;
4. Certificate Authorizing Registration or tax clearance from the BIR;
5. Articles of incorporation and By-laws of an OSC filed in accordance with the requirements provided under Section 14 of the RCC;
6. Name reservation;
7. Monitoring clearance from other relevant department of the SEC or from the CMD of CRMD, whichever is applicable;
8. Endorsement clearance from appropriate government agencies, if applicable;
9. Undertaking to Change Corporate Name, if not yet included in the Articles of Incorporation; and
10. Undertaking to Assume All Liabilities of the OPC, if not yet included in the Articles of Incorporation.

The Notice of Conversion of OPC to OSC shall be filed with the Commission within sixty (60) days from such transfer/s of shares. The date of transfer of shares shall be deemed to be the date that the corresponding Certificate Authorizing Registration or tax clearance issued by the BIR.

Notice of Conversion filed beyond the 60 days from the transfer of shares may still be approved for conversion but subject to prior payment of penalty if found liable for violation of Section 132, in relation to Section 158 of the RCC.

The AOI of the OPC shall be deemed superseded upon issuance of the SEC of the Certificate of Filing of Amended AOI and By-laws. The date of the issuance of the Certificate of Filing Amended AOI and By-laws shall be deemed as the date of approval of the conversion. It shall retain the corporation's original SEC Registration Number, and the suffix "OPC" shall be removed from its corporate name.

SEC ISSUANCES

HIGHLIGHTS

SEC Memorandum Circular No. 27 s. 2020

This provides for the Guidelines for the Conversion of Corporations Either to One Person Corporation or to Ordinary Stock Corporation

Common Provisions to Both Kinds of Conversion

In the AOI of the converted corporation, the signatory/ies thereto must clearly state that they voluntarily agreed to the conversion.

By reason of the nature of these corporations, the conversion from an OSC to OPC is optional, while the conversion from OPC to OSC is mandatory, unless when winding-up and dissolution is appropriate.

Processing of applications for conversion, and opposition or dispute arising from the conversion on the ground of fraud in procurement thereof, shall be commenced before the CMRD.

SEC Memorandum Circular No. 28 s. 2020

This provides for the Requirements for Corporations, Partnerships, Associations, and Individuals to Create and/or Designate E-mail Account Address and Cellphone Number for Transactions with the Commission

The SEC requires that every corporation, association, partnership, and person under its jurisdiction and supervision shall submit a valid official electronic mail ("e-mail") address and a valid official cellular phone within sixty (60) days from the effectivity of these rules.

In addition to the valid official e-mail address and official cellular phone number, it is also required to submit a valid alternate e-mail address and valid alternate cellular phone number.

A valid official or alternate e-mail address pertains to an existing e-mail address which identifies an e-mail box, with at least One (1) gigabyte of unused memory space at any given time, to which the SEC may deliver e-mail messages through the internet, and from which the SEC may receive e-mail messages through the internet.

A valid official or alternate cellular phone number shall pertain to an existing mobile phone number from any telecommunications company legally operating in the Philippines to which the SEC may call or deliver SMS, and from which the SEC may receive SMS or calls. They shall be under the control of the corporate secretary, the person in charged with the administration and management of the corporation sole, the resident agent of the foreign corporation, the managing partner, the individual, or the duly authorized representative.

SEC ISSUANCES

HIGHLIGHTS

SEC Memorandum Circular No. 28 s. 2020

This provides for the Requirements for Corporations, Partnerships, Associations, and Individuals to Create and/or Designate E-mail Account Address and Cellphone Number for Transactions with the Commission

Beginning February 23, 2021 onwards, the e-mail addresses and cellphone numbers shall be included in the General Information Sheet (GIS) or Notification Update Form (NUF) regularly filed with the SEC. Failure to include such shall mean that the GIS or NUF incomplete.

Both the official and alternate e-mail addresses shall be where transactions, applications, letters, requests, papers and pleadings under the jurisdiction of, for consideration by, the SEC may be processed, submitted and/or filed online. The official cellphone number to be provided by all entities registered with the SEC is an additional security measure to ensure that the person accessing the e-mails sent by the Commission is the authorized person of the corporation or partnership to receive and retrieve the same. Multi-Factor Authentication (MFA) utilizing mechanisms such as One-Time Personal Identification Number (OTP) scheme or Two-Step Verification by a Software-Based Authenticator will be performed by the SEC to said cellphone number which the authorized person will have to input before the e-mail message can be retrieved.

If there is no internet access available in the location to create an e-mail account, only the official and alternate cellphone numbers shall be required to be submitted to the SEC.

Notice of Change of official e-mail address, alternate e-mail address, official cellphone number, and/or alternate cellphone number, shall be filed within five (5) days from the date of the decision to change the e-mail address and/or cellphone number.

In case of double filing of e-mail addresses and cellphone numbers, the SEC may summon the parties involved to determine the cause, and to determine whether an intra-corporate dispute exists. If such dispute exists and there is double filing, the Commission shall mark the submission of e-mail addresses and cellphone numbers as “DISPUTED”, and can only be unmarked by an order from the appropriate Court.

All corporation, partnership, association, or person who fails to submit the e-mail addresses and cellphone numbers beginning February 23, 2021 shall be administratively penalized in the amount of Ten Thousand Pesos (P10,000.00)

BSP ISSUANCES

HIGHLIGHTS

BSP Circular No. 1099, October 6, 2020

This provides the Cash Service Alliance (CSA) general guidelines

This Circular amends the Manual of Regulations for Banks for the adoption of the CSA general guidelines. The CSA General Guidelines is issued to formalize the direct exchange of fit currency among banks, and to serve as a general reference guide that participating banks shall adopt in drafting their bilateral agreements.

Banks with intention to deposit fit currency or withdraw from the Bangko Sentral CD shall utilize the CSA System to provide information on their available fit currency or to place fit currency orders. The CSA transaction will take precedence over direct deposit to or withdrawn from the Bangko Sentral CD.

BSP Circular No. 1100, October 6, 2020

This provides the amendments to the Alternative Compliance with Reserve Requirements of Banks and Non-Bank Financial Institutions with Quasi-Banking Functions (NBQBs).

This Circular amends Section 252/212-Q of the MORB/MORNBFI to read as follows:

"252/212-Q COMPOSITION OF RESERVES
xxx
Allowable modes of alternative compliance. The following alternative modes of compliance with the required reserves against deposit and deposit substitutes liabilities shall be allowed:

a. Peso-denominated loans that are granted to micro-, small-, and medium- enterprises (MSMEs), as defined under Sec. 332 (Definition of Terms), excluding banks and NBQBs that meet the definition of a small- and medium-enterprise, subject to the conditions provided.

b. Peso-denominated loans that are granted to large enterprises, excluding banks and NBQBs that meet the definition of a large enterprise, subject to the conditions provided."

BSP ISSUANCES

HIGHLIGHTS

BSP Circular Letter Nos. 2020-047, 2020-048 & 2020-049
October 21, 2020
This provides the call for the publication/position of certain documents as of September 30, 2020

This provides the call for the publication/position of Balance sheet, as of 30 September 2020:

BSP Issuance	Document to be published	Entity
BSP Circular Letter Nos. 2020-047	Balance sheet	All trust corporations
BSP Circular Letter Nos. 2020-048	Balance sheet	All banks
BSP Circular Letter Nos. 2020-049	Statement of Condition side-by-side with its Consolidated Statement of Condition, if applicable	All Non-Bank Financial Institutions with Quasi-Banking Functions and/or trust authority.

BSP Circular Letter Nos. 2020-051
October 27, 2020
This provides the operational relief measures covering fees under the Manual of Regulations on Foreign Exchange Transactions (FX Manual), as amended.

Applicable fees to be paid by importers for Documents Against Acceptance (D/A) or Open Account (O/A) importations reported beyond the prescribed period under item 2.b of Appendix 6 of the FX Manual shall be waived during the period covered by Circular No. 1080 and up to one (1) month thereafter.

BSP ISSUANCES

HIGHLIGHTS

BSP Memorandum No. 2020-080
October 9, 2020
This provides the guidelines on the electronic submission of monthly and semi-annual EFPS reports of all BSP-Supervised Financial Institutions with EFPS License.

The submission procedures are as follows:

1. All BSFIs with EPFS license shall use the prescribed EPFS Data Entry Template (DET) and the corresponding Control Prooflist (CP) which can be downloaded from http://www.bsp.gov.ph/SES/reporting_templates.

2. The corresponding DET for the EPFS monthly and semi-annual reports together with the scanned CP in PDF duly signed by the authorized official of the BSFI shall be electronically transmitted within fifteen (15) banking days after the end of each reference period beginning 31 January 2021 for monthly report and 31 December 2020 for semi-annual report, to the prescribed e-mail addresses provided in the memorandum.

3. Only electronic submissions originating from officially registered email address/es of the BSFIs shall be recognized and accepted by the DSA.

4. Covered BSFIs that are unable to transmit via email may submit the DET and its accompanying scanned CP using any portable storage device through messengerial or postal services within the prescribed deadline to the addressed provided in the memorandum.

BSP Memorandum No. 2020-081
October 22, 2020
This Memorandum provides the conduct of Off-site credit verification as an alternative to On-site credit verification relative to availments in the Bangko sentral ng Pilipinas' (BSP) Rediscount Facility.

Under this alternative, On-site Credit Verification activities will be conducted remotely by requiring banks to submit scanned copies of collateral documents through electronic mail (email) or present them on BSP-organized virtual meetings via Microsoft Office (MS)Teams or other similar platform accessible to the bank. The guidelines on the documentary requirements and procedures relative to the implementation of the Off-site Credit Verification are also provided in the memorandum.

IC ISSUANCES

HIGHLIGHTS

IC Circular Letter CL-2020-95, October 1, 2020
This provides the guidelines in the interpretation and application of Section 4(uu) of RA 11494, otherwise known as the "Bayanihan to Recover as One Act"

The following information are clarified under the said circular:

1. Insurance companies, mutual benefit associations, and pre-need companies shall implement a one-time sixty (60)-day grace period for each payment of premiums and installments falling due from the effectivity of RA 11494 until 31 December 2020.

2. Automatic debit/charge arrangements shall continue provided that an "Opt-Out Offer" shall be communicated to life insurance policyholders and pre-need planholders.

3. Non-application of interests on interests, penalties, fees, or other charges during the one-time sixty (60)-day period.

4. Non-waiver of provisions of RA No. 11494 for premiums and/or installments falling due from the effectivity of RA 11494 until 31 December 2020.

5. A longer grace period may be agreed upon but it must be in writing.

6. Policy loans are excluded from the purview of Section 4(uu) of RA 11494.

IC Circular Letter CL-2020-96, October 6, 2020
This provides the framework for Passenger Personal Accident Insurance (PPAI) for public utility vehicles.

The insurance coverage required by the program shall be subject to the following conditions:

1. Participation through insurance pools consisting of one (1) lead insurance company and twelve (12) member insurance companies.

2. Appointment of a duly licensed Management Company to handle the operations of the insurance pool.

3. Submission of a Tax Clearance by the Management Company and lead insurance company.

4. Submission by the Management Company and lead insurance company of an endorsement from national transport groups as primary stakeholders.

5. An "All Risk – No Fault" insurance coverage shall be provided.

6. A claims fund of not less than Fifty Million Pesos (₱50,000,000.00) shall be maintained at any given time.

IC ISSUANCES

HIGHLIGHTS

IC Circular Letter CL-2020-96, October 6, 2020
This provides the framework for Passenger Personal Accident Insurance (PPAI) for public utility vehicles.

7. Reports shall be submitted as required by the IC.
8. Payment of all claims shall be made within five (5) working days upon completion of the required documents.
9. Within thirty (30) days from recognition, the Management Company shall set-up offices located near LTFRB offices and satellite offices. A twenty four (24) hour point of contact or hotline shall also be established.
10. The IC shall cause an examination at least once a year and whenever the public interest so demands.

IC Circular Letter CL-2020-96-A, October 8, 2020
This provides the amended framework for Passenger Personal Accident Insurance (PPAI) for public utility vehicles.

The amendment clarified that insurance pool should have ***at least*** twelve (12) member insurance companies, to wit:

> "1. Recognition of Pool/s. - Insurance companies shall participate in the program through an insurance pool with a mandatory requirement of one (1) lead insurance company and ***at least*** twelve (12) member insurance companies. Each pool shall have a duly appointed Management Company duly licensed as a General Agent by this Commission that shall handle the day to day operations of the pool in order to ensure the fiscal stability and viability of the program and particularly, to be able to respond to claims quickly and effectively."

IC Circular Letter CL-2020-99, October 12, 2020
This provides the adoption of the Insurance Commission Financial Crisis Management and Resolution (FCMR) Handbook.

The FCMR Handbook sets forth the policy responses that the members of the Financial Stability Coordination Council intend to pursue not only in crisis scenarios but also during normal times as part of its preparatory and preventive measures to avert and manage scenarios. The handbook covers the following:

1. Key Persons Responsible for Crisis Management
2. Preventive and Preparatory Measures
3. Resolution Powers and Tools
4. Recovery and Resolution Plans
5. Coordination with Other Regulators and Information Sharing Arrangements
6. Crisis Communication Policies
7. Post Crisis Evaluation

IC ISSUANCES

HIGHLIGHTS

IC Circular Letter CL-2020-101, October 16, 2020
This provides the Guidelines on the Use of Videoconferencing for the Conduct of Mediation/Conciliation Conferences and Other ADR Proceedings Before the PAMD.

The PAMD is hereby authorized to conduct mediation/conciliation conferences and other ADR proceedings through the use of videoconferencing during this period of public health emergency. PAMD is hereby provided with software licenses for CISCO WEBEX MEETINGS to host the videoconference proceedings. No other platforms or software shall be used for the videoconference proceedings

IC Circular Letter CL-2020-102, October 26, 2020
This provides the amendment to Section 5 of Circular Letter No. 2020-69 dated 11 June 2020, Re: Validity Period of Temporary Licenses.

The amendment extended the validity of temporary licenses, to wit:

> "Section 5. Validity. All temporary licenses issued pursuant to this Circular Letter will be valid until **15 November 2020**."

IC ISSUANCES

HIGHLIGHTS

IC Circular Letter CL-2020-103, October 30, 2020

This provides the amendment to Section 1 of Circular Letter No. 2020-60 dated 15 May 2020 on "Regulatory Relief on Net Worth Requirements and Guidelines on the Implementation of Amended Risk-Based Capital (RBC2) Framework for Calendar Year 2020".

The amendment removed the relief from the quarterly compliance of the networth requirements of ₱900,000, to wit:

> "1. All insurance companies already compliant with the net worth requirements as of 31 December 2019 under Section 194 of the Insurance Code of the Philippines, as amended by Republic Act No. 10607, that are adversely affected by the crisis are required to comply with CL No. 2016-68 (Amended Risk-Based Capital Framework) and Revised Regulatory Intervention (RBC ratio)"

IC Legal Opinion LO-2020-13, October 1, 2020

This provides that government mandated mass repatriation is not covered in AFP Gen's Compulsory Insurance Coverage for Agency-Hired Migrant Workers.

This Opinion provides that government mandated mass repatriation is not covered in AFP Gen's Compulsory Insurance Coverage for Agency-Hired Migrant Workers.

The Insurance Commission opined that the Policy is clear that it cover repatriation cost only in three instances: (a) in case of death, (b) in case of termination of employment, and (c) in case of medical repatriation. Hence, repatriation costs not arising from the abovementioned instances is, therefore, not covered notwithstanding the government mandated mass repatriation.

IC ISSUANCES

HIGHLIGHTS

IC Legal Opinion LO-2020-14, October 19, 2020

This provides that Insurance Commission may refrain from rendering opinion on matters which will necessitate the examination or review of the acts and rulings of another government agency

The Insurance Commission opined that it must be emphasized that while the GSIS is in the business of insurance, it is not regulated by the Insurance Commission and it does not operate by virtue of Section 193 of Republic Act No. 10607 or the Amended Insurance Code. Instead, the GSIS has its own charter and its governing law is Republic Act No. 829'1 or the Revised Government Service Insurance Act of 1997. As such, the relevant laws, rules, and regulations governing the policies issued by insurance companies do not apply to those issued by the GSIS.

RETIREMENT BENEFITS: TAX EXEMPTION UNDER THE BAYANIHAN TO RECOVER AS ONE ACT

By

Fulvio D. Dawilan

Two weeks ago, my colleague, Rodel Unciano, wrote in this column about the features of the exemption from tax of retirement benefits as provided under Republic Act No. 11494 ("Bayanihan II") and as implemented by Revenue Regulations No. 29-2020 ("RR 29-20". Let me further elaborate on this, especially in relation to the conditions or limitations imposed for the entitlement to the tax exemption.

Recall that in the said law, retirement benefits received by officials and employees of private firms, whether individual or corporate, from June 5, 2020 until December 31, 2020 shall be excluded from gross income and shall be exempt from taxation. The law, however, includes a proviso to the effect that any re-employment of the retired employee in the same firm, within the succeeding twelve month period shall be considered as proof of non-retirement, and shall subject the benefits received to appropriate taxes. In essence, if an employee is re-hired by the same employer within the next twelve months, he will not be considered retired and the supposed retirement benefits will be subjected to tax. This is the only limitation or condition on the exemption from tax of the said retirement benefits.

The Courts had consistently upheld the principle to the effect that in the implementation of laws and in the crafting of regulations by administrative bodies and implementing agencies, the implementation is necessarily limited to what is provided for in the legislative enactment. It cannot be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute.

With this in mind, allow me to state that the exemption described in Bayanihan II does not make any reference, either by exclusion or inclusion, to those retirement benefits and their exemption as specified in the Tax Code. The only reference to the Tax Code is with respect to the penalty to be imposed on a person who willfully evades or defeats the payment of taxes through the said exemption. Apparently, the only condition or limitation for the availment of exemption is that the retiring employee should not be rehired within the next twelve months after retirement and that the exemption should not be used as a scheme to evade or prevent the payment of taxes.

On this note, the law should not be expounded to include or exclude those not specified in the law. Neither should additional conditions be provided that would limit the coverage of retirement benefits entitled to the exemption. Relative to this, the provision on tax exemption of retirement benefits under the Bayanihan II does not limit, expressly or impliedly, its coverage to the retirement benefits received in accordance with retirement plans duly-registered with the BIR.

In fact, the exemption of retirement benefits under Bayanihan II does not exclude the retirement benefits already exempted based on the existing laws. Based on the rules provided in the Tax Code, retirement benefits may be received either under Republic Act No. 7641 or in accordance with a reasonable private benefit plan maintained by the employer. If the conditions under RA 7641 or under the private benefit plan are met, the retirement benefits shall be exempt from tax. But that does not imply that since the benefits are exempt under RA 7641 or under the reasonable private benefit plan, the retiring employee or employer may not resort to availing the exemption under Bayanihan II. It may sound absurd to refer to other basis for exemption when the benefit is already exempted from tax following the existing rules. But that's a choice to be made by the employee or his employer. The point is – the exemption from tax under Bayanihan II is not limited to those received under reasonable private benefit plan, to the exclusion of retirement benefits received from the employer or from non-BIR qualified plan. To do so would be limiting the exemption to a few retirement scenarios.

As presently crafted, the regulations would effectively exclude a number of benefits that the law attempts to exempt. Again, as the law did not qualify, all retirement benefits received within the specified period should be exempted. Apparently, to anchor such limitation on the basis that employees could be separated on some other basis, such as redundancy or other causes beyond the control of the employee, and still enjoy exemption from taxes, has no basis. The reasons for retirement (even early retirement) are not necessarily the same as the reasons for separation due to causes beyond the control of the employee. Also, there are a number of conditions and compliance for the exemption of separation benefits that are not required for retirement benefits. It may not therefore be appropriate to exclude retirement benefits from exemption on the premise that the benefits could be exempted as separation benefits.

In so far as exception to the exemption due to re-employment is concerned, the law refers to the re-hiring with the same firm. However, RR 29-20 extended the same to re-employment with the employer's related parties. This means that should the employee be rehired by an employer that is related to the former employer, the tax corresponding to the retirement benefits should be paid. If that is the intent, the law would have clearly indicated that. That is NOT the case though.

The Bayanihan II relaxed the conditions on tax exemption for retirement benefits, but for a limited period, from June 5, 2020 to December 31, 2020. Apparently, because of the situation faced by businesses caused by the COVID 19 pandemic, employers are forced to retire employees ahead of their scheduled retirement. Any retirement benefits received during the period covered should therefore exempted from tax, without conditions other than that provided by the legislators.

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