TAX Insights

BDB Law
DU-BALADAD AND ASSOCIATES

Insights

DECEMBER ● VOL. 10 ● SERIES OF 2020

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 NOVEMBER 2020

HIGHLIGHTS

COURT OF TAX APPEALS DECISIONS

- **When one of the parties to the taxable transaction is exempt from the DST, the other party who is not exempt shall be the one directly liable therefor, in which case, the DST shall be paid and remitted by the said non-exempt party.** *(San Carlos Biopower, Inc. vs. Commissioner of Internal Revenue CTA Case No. 9919, November 4, 2020)*

- **The situs of taxation for franchise tax is the place where the privilege is exercised regardless of the place where the taxpayer's services or products are delivered.** *(National Transmission Commission vs. City of Digos, CTA AC No. 220, November 4, 2020)*

- **For purposes of availment of the zero percent VAT under RA 9513, the following must be secured: (1) Certificate of Registration issued by the DOE; (2) Registration with BOI; and (3) Certificate of Endorsement issued by the DOE, on a per transaction basis.** *(Vestas Services Philippines vs. Commissioner of Internal Revenue, CTA Case No. 9544, November 11, 2020).*

- **BIR's failure to give any reason for rejecting the explanations made by a taxpayer in its Reply to PAN is a clear violation of taxpayer's right to administrative due process** *(Titanium Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9644, November 11, 2020)*

- **A Revenue District Officer has no power or authority to issue an LOA, much less to effect any modification or amendment to the previously issued LOA by the Regional Director** *(Titanium Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9644, November 11, 2020)*

- **A Stock Transaction Tax is a percentage tax and not an income tax, hence, the exemption from income under Section 32(B)(7)(a) cannot be extended to it.** *(Commissioner of Internal Revenue vs. IFC Capitalization Equity Fund, LP, CTA EB No. 2083, CTA Case No. 9148, November 5, 2020)*

- **The prescriptive period to assess applies to withholding tax assessments.** *(Commissioner of Internal Revenue vs. First Philippine Electric Corporation, CTA EB No. 2091, CTA Case No. 9199, November 11, 2020)*

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HIGHLIGHTS for NOVEMBER 2020

- **The BIR's prior action granting of the refund claim is indicative of taxpayer's compliance with all the necessary documentation requirements.** *(Philippine Geothermal Production Company vs. Commissioner of Internal Revenue, CTA Case Nos. 9440, 9501, 9534 & 9588, November 18, 2020)*

- **The rule against forum shopping is not limited only to suits or actions pending in courts but applies as well to administrative proceedings.** *(Cosmos Bottling Corporation vs. Commissioner of Internal Revenue, CTA EB No. 2081 (CTA Case No. 9405), November 10,2020.)*

BIR ISSUANCES

- **RMC No. 118-2020, November 6, 2020 –** This disseminates the availability of Offline Electronic BIR Forms (eBIRForms) Package Version 7.7

- **RMC No. 120-2020, November 9, 2020 –** Clarifies the retirement benefits exempt from Income Tax pursuant to RA No. 11494 (Bayanihan to Recover as One Act) as implemented under RR No. 29-2020

- **RMC No. 121-2020, November 17, 2020 –** This announces the pilot implementation for Tax Clearance for Bidding Purposes and Tax Compliance Verification Certificate (eTCBPT/TCVC)

- **RMO No. 40-2020, November 23, 2020 –** Prescribes the revised guidelines and procedures in the processing and issuance of clearances in the National Office and Regional/District Offices.

SEC ISSUANCES

- **Corporations existing prior to, and which continues to exist after the effectivity of the RCC, are *ipso jure* granted perpetual existence without any further action on their part.** *(SEC-OGC Opinion No. 20-02, November 3, 2020)*

- **SEC Memorandum Circular No. 29, Series of 2020, October 13, 2020 –** The Commission, as approved by its *En Banc*, promulgated the 2020 Guidelines on the Submission and Monitoring of the Money Laundering and Terrorist Financing Prevention Program ("MTTP").

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HIGHLIGHTS for NOVEMBER 2020

- **SEC Memorandum Circular No. 30, Series of 2020, October 13, 2020 –** The Commission issued this Memorandum Circular on the Revision of the General Information Sheet ("GIS") of Foreign Corporations Include Beneficial Ownership Information.

- **SEC Memorandum Circular No. 31, Series of 2020, November 5, 2020 –** Non-Imposition of Fines and Other Monetary Penalties for Non-Filing, Late Filing and Failure to Comply with Compulsory Notification and Other Reportorial Requirements.

- **SEC Notice, November 4, 2020 –** Notice on Online and Manual Submission of Forms/Notices Pursuant to Memorandum Circular ("MC") No. 28, Series of 2020.

BSP ISSUANCES

- **Circular Letter No. CL-2020-055 , November 16, 2020 –** Provides for the Use of 11-digits enterprise-wide bank code as part of the number of the Bangko Sentral ng Pilipinas (BSP)-prescribed Certificate of Inward Remittance (CIR) of Foreign Exchange (FX) Form issued by Authorized Agent Banks (AABs)

- **Memorandum No. M-2020-083, November 17, 2020 –** Disseminates to all Universal and Commercial Banks and their Subsidiary Banks the transition from the London Inter-Bank Offered Rate ("LIBOR") and Reporting Requirements on LIBOR-Related Exposures

IC ISSUANCES

- **The funds for these programs were derived and allocated from a certain portion of ASA's income from its microfinance operations. In sum, these programs do not fall within the purview of a contract of insurance. Neither can this Commission consider ASA as a Health Maintenance Organization ("HIMO") nor can this Commission consider ASA's programs as Pre- Need Plans since these programs do not have any form of premium attached to it.** *(IC Legal Opinion No. 2020-15, November 16, 2020)*

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- **IC Circular Letter No. 2020-103, October 30, 2020 –** Section 1 of Circular Letter No. 2020-60 is hereby amended: 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 Circular Letter No. 2020-107, November 8, 2020 –** Section 3 of Circular Letter No. 2020-86 is hereby amended.

- **IC Circular Letter No. 2020-108, November 10, 2020 –** Circular Letter No. 2020-96, as amended by Circular Letter No. 2020-96A or the "Framework for Passenger Personal Accident Insurance for Public Utility Vehicles" is hereby further amended.

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COURT OF TAX APPEALS
DECISION HIGHLIGHTS

When one of the parties to the taxable transaction is exempt from the DST, the other party who is not exempt shall be the one directly liable therefor, in which case, the DST shall be paid and remitted by the said non-exempt party.

The International Finance Corporation (IFC) itself and its transactions authorized by the IFC Articles of Agreement, to which the Philippines is a signatory, are indeed exempt from all taxation including necessarily the exemption from the payment of DST. In this connection, the taxpayer claims that IFC's immunity from taxation extends to their Loan Agreement; thus, the taxpayer is entitled to refund the erroneously paid DST.

The Court of Tax Appeals (CTA) ruled that for the instant claim for refund to prosper, the taxpayer must also prove that the subject DST paid is an "erroneous or illegal tax". However, no exhibit or evidence has been offered by the taxpayer to prove that the subject transaction was authorized by the IFC Articles of Agreement. The parties to the Loan Agreement intended or contemplated that all taxes, which include specifically, DST or "stamp taxes" due on the transaction, must be paid by the Borrowers, which include the taxpayer. Thus, if IFC contemplated that the subject transaction fall under the category of a transaction authorized under the IFC Articles of Agreement, which is clearly immune from taxation, the Loan Agreement should not have provided for the stipulation that all taxes, including the DST, shall be payable by the taxpayer (and the other co-borrowers).

The CTA emphasized the liability for the DST rests on the parties to the taxable document. However, when one of the parties to the taxable transaction is exempt from the DST, the other party who is not exempt shall be the one directly liable therefor, in which case, the DST shall be paid and remitted by the said non-exempt party. Thus, the CTA finds that the subject DST paid by the taxpayer is not an "erroneous or illegal tax". *(San Carlos Biopower, Inc. vs. Commissioner of Internal Revenue CTA Case No. 9919, November 4, 2020)*

The situs of taxation for franchise tax is the place where the privilege is exercised regardless of the place where the taxpayer's services or products are delivered.

The City of Digos calculated the taxpayer's liabilities based on its gross receipts from an electric cooperative. The fact that taxpayer has no branch or sales outlet in respondent City is not in question since the taxpayer only supplies energy in bulk to the electric cooperative while the electric cooperative, in turn, delivers the same to its end-users. But as to whether taxpayer exercised its franchise inside respondent City when it supplied power to the electric cooperative, the RTC answered this question in the affirmative when it applied Section 150 of the Local Government Code (LGC) on the Situs of Tax. Thus, the only point of contention in this case is whether respondent City properly claimed the situs of taxation.

The CTA held that respondent City could not collect local franchise taxes from

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the taxpayer. The CTA cited the case of *Casureco III* where the City therein seeks to collect a franchise tax, which as defined, is a tax on the exercise of a *privilege*. As Section 137 of the LGC provides, franchise tax shall be based on gross receipts precisely because it is a tax on business, rather than on persons or property. Since it partakes of the nature of an excise tax, the situs of taxation is the place where the privilege is exercised which is the City where Casureco III has its principal office and from where it operates, regardless of the place where its services or products are delivered. Following this principle, the taxpayer in the case at bar cannot be held liable for local franchise taxes by respondent City even if it caters its services within the latter's territory. *(National Transmission Commission vs. City of Digos, CTA AC No. 220, November 4, 2020)*

Taxpayer must no longer wait for CIR to render a decision before filing an appeal to the CTA after the taxpayer's administrative claim for input VAT refund is deemed denied.

From the filing of taxpayer's administrative claim on April 30, 2007, the CIR had one hundred twenty (120) days, or until August 28, 2007, within which to render a decision on the said claim. There was no full or partial denial of the claim within the 120-day period but rather, the 120-day period lapsed without a decision or ruling from the CIR. Considering that the CIR did not act on taxpayer's claim on or before August 28, 2007, the taxpayer had thirty (30) days, or until September 27, 2007, within which to file its judicial claim before the CTA. The taxpayer, however, filed its judicial claim on November 9, 2015, or beyond the thirty (30) day period to appeal.

The CTA held that the taxpayer's judicial claim was filed out of time. It is clear that the 30-day period provided by law should be reckoned from the receipt of CIR's decision/ruling, or after the expiration of the 120-day period from the submission of complete documents, *whichever is sooner*. Consequently, any judicial claim filed in a period less than or beyond the said 120+30-day periods, is outside the jurisdiction of this Court. *(Luzon Hydro Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9187, November 6, 2020)*

***Note**: Under the Train Law, the Commissioner is now given 90 days to decide to deny/grant a refund and any partial or full denial of claim, the taxpayer affected may, within 30 days from the receipt of the denial, appeal the decision with the CTA. The deemed denial provision was no longer explicitly stated under the Train Law.*

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In case of discrepancy between the WTO Agreement (the basic law) and the NFA Memorandum Circular of 2013 (the rules and regulations implementing the said basic law), the former prevails.

Taxpayer argues that since the subject shipment was covered by an import permit, the excess rice shipment is not "undeclared", but merely "misdeclared" as to quantity which merits, at most, the imposition of a surcharge but not seizure. On the other hand, the Bureau of Customs (BOC) argues that since the subject containers of rice are in excess of the quantity allowed in its import permit and beyond the rice allocation authorized by the NFA, it is a prohibited importation liable for forfeiture under Section 2530(f) of the Tariff and Customs Code of the Philippines (TCCP).

The CTA ruled that the rice importations are not illegal and subject to forfeiture but merely subject to ordinary customs duties and surcharge. The WTO Agreement became part of Philippine laws through the Incorporation clause and the Treaty Clauses. As between the WTO Agreement entered into by the Philippines and became part of domestic law as early as 1994, and the NFA Memorandum Circular of 2013, there is no dispute that in case of discrepancy between the former (the basic law) and the latter (the rules and regulations implementing the said basic law), the former prevails. The Special Treatment provisions of the WTO Agreement applies during the time of taxpayer's rice importations on November 26, 2013. Thus, at the time the taxpayer imported the rice shipments, there was no need to secure an import permit from the NFA. *(Universal Pacific Food Corporation vs. Commissioner of Internal Revenue, Bureau of Customs, CTA Case No. 9151, November 11, 2020)*

Absent the Certificate of Endorsement, the Court cannot treat Petitioner's gross receipts, representing its sales to RE Developer, as subject to VAT zero-rating under the law.

According to the taxpayer, its sales to the RE developer are considered zero-rated sales pursuant to Section 15(G) of Republic Act (RA) No. 9513 the Renewable Energy Act of 2008. The taxpayer alleges that the RE developer registered with the DOE and BOI, and as such its sales thereto are considered zero-rated sales.

The Court ruled that the taxpayer failed to establish that its sales transaction with the RE developer are subject to zero-rated VAT. Based on the law, RE developers shall be entitled to zero-rated VAT on its *purchases* of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities. It is likewise provided that the services performed by subcontractors and/or contractors in the exploration and development of RE sources up to its conversion into power is subject to zero

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percent VAT. However, for purposes of availment of the zero percent VAT on these transactions, the following documents must be secured: (1) Certificate of Registration issued by the DOE; (2) Registration with BOI; and (3) Certificate of Endorsement issued by the DOE, on a per transaction basis. Here, the taxpayer failed to present the requisite Certificate of Endorsement issued to the RE developer by the DOE, on a per transaction basis. Hence, the denial of the claim for a credit/refund of input VAT. *(Vestas Services Philippines vs. Commissioner of Internal Revenue, CTA Case No. 9544, November 11, 2020).*

BIR's failure to give any reason for rejecting the explanations made by a taxpayer in its Reply to PAN is a clear violation of taxpayer's right to administrative due process.

A Preliminary Assessment Notice (PAN) was issued finding deficiency internal revenue taxes due from taxpayer. Taxpayer then filed with the BIR its Reply to the same PAN, giving explanations against the above-stated findings and offering certain documents/schedules. However, in the FAN which assessed taxpayer with deficiency internal revenue taxes, the BIR merely reiterated the same findings as stated in the said PAN, without giving any reason for rejecting the explanations made by taxpayer in its Reply.

The CTA held that the taxpayer was left unaware on how the BIR appreciated the explanations or defenses raised against the subject PAN, in clear violation of taxpayer's right to administrative due process, thereby rendering the subject tax assessments void. Under Section 228 of the NIRC of 1997, the BIR is mandated to inform taxpayers, in writing, of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. *(Titanium Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9644, November 11, 2020)*

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COURT OF TAX APPEALS
DECISION HIGHLIGHTS

UPDATES

A Revenue District Officer has no power or authority to issue an LOA, much less to effect any modification or amendment to the previously issued LOA by the Regional Director.

The authority to conduct an examination and assessment of taxpayer's books of accounts emanated from a LOA issued by the Regional Director. The said LOA authorized the first revenue officer (RO) to examine taxpayer's books of accounts and other accounting records**.** The first RO's Memorandum led to the issuance of the PAN and FAN. Taxpayer protested the FAN after which it received an undated letter from the BIR informing it that the tax audit investigation was re-assigned to the second RO through a Memorandum issued by the Revenue District Officer (RDO). The second RO proceeded with the reinvestigation of taxpayer's tax case and, thereafter, prepared a Memorandum Report which became the basis for the issuance of the FDDA.

The CTA held that the subject assessments are void for having been issued pursuant to audit examination conducted by an RO other than those specifically named under the LOA. The second RO's authority to examine or conduct a reinvestigation of taxpayer's tax liabilities was based on the Memorandum of Assignment issued by Revenue District Officer, who has no power or authority to issue an LOA, much less to effect any modification or amendment to the previously issued LOA by the Regional Director. *(Titanium Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9644, November 11, 2020)*

A Stock Transaction Tax is a percentage tax and not an income tax.

From September 20, 2013 to September 3, 2013, respondent traded its listed BDO shares in the Philippine Stock Exchange through the assistance of two trading companies, and the stockholders were instructed to remit the proceeds of the sale to respondent's custodian banks in the Philippines. The stockbrokers withheld stock transaction tax ("STT") of ½ of 1% from the proceeds of the sale of respondent's listed BDO shares. Asserting exemption from STT, respondent filed with the BIR a claim for refund of the supposed erroneously withheld STT. But since the two-year statutory period was about to lapse, respondent filed its Petition for Review.

The Court in Division granted the Petition. The *En Banc*, however, reversed the same. The CTA *En Banc* ruled that CIR did not belatedly raise the issue on the characterization of STT, since it has timely denied in his Answer the allegation of respondent that it is exempt from STT. Section 32(B)(7)(a) extends only to income taxes under Title II, and not to STT under Section 127(A) found in Title V of the NIRC of 1997, as amended. This can be gleaned from a pure reading of the provisions of law and from the deliberations of the Congress in enacting RA No. 7717. *(Commissioner of Internal Revenue vs. IFC Capitalization Equity Fund, LP, CTA EB No. 2083, CTA Case No. 9148, November 5, 2020)*

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The prescriptive period to assess under the 1997 NIRC, as amended, applies to withholding tax assessments.

Respondent received a LOA from the BIR for the examination of its books for the taxable year 2009. Three waivers were subsequently executed during the time that respondent is under audit. NIC and PAN were received and replied to by respondent. On February 21, 2014, it received a copy of FLD/FAN finding it liable for deficiency taxes, which was timely protested. The BIR issued thereafter an FDDA, finding that respondent is liable for deficiency taxes.

Respondent then filed a Petition for Review. The Court in Division partially granted the petition, finding that part of the assessment has already prescribed, specifically on the withholding tax. CIR argued in the *En Banc* that assessment for withholding taxes is imprescriptible because what is being collected from the withholding agent is not the income tax, but it is only made liable for breaching its duty to remit the tax withheld. What is being collected is the penalty for failure to perform its duty. The Court *En Banc* finds the contention of CIR to be without merit as this has already been settled by the Supreme Court that a withholding tax assessment is not merely an imposition of penalty on the withholding agent, but rather, it falls squarely within the purview of Section 203 of the 1997 NIRC, as amended.

Thus, the assessment for withholding taxes has prescribed. *(Commissioner of Internal Revenue vs. Commissioner of Internal Revenue, CTA EB No. 1700, CTA Case No. 9041, February 28, 2019)*

The Local Government Code expressly provides that the taxing power of local governments do not extend to the levy of income tax, except when levied on banks and other financial institutions.

The revenue officers of the City Treasurer's Office of Makati City audited the financial statements of respondent. As a consequence, it was assessed for deficiency local business tax (LBT) for taxable years 2009, 2010, and 2011. Respondent filed a letter protest to the assessment. In the letter denying the protest, respondent was re-classified as a "holding company" and is subject to business tax either under Section 3A.02 (p) in relation to Section 3A.02 (h) of Revised Makati Revenue Code ("RMRC"). Respondent then appealed it to the Makati RTC, which eventually dismissed it, ruling that a "holding company" need not be a contractor nor an owner or operator of banks and other financial institutions, and that "holding company" shall be taxed at the rate prescribed under either subsection (g) or (h) on its gross sales and/or receipts during the preceding year.

The CTA in Division reversed the decision of Makati RTC. The CTA *En Banc* affirmed the decision of the Court in Division, holding that respondent's gain

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on sale of investment, interest income, and dividend income are not subject to LBT. The power to tax by provinces, cities and municipalities is limited by the law that granted it. The 1991 LGC expressly provides that the taxing power of local governments do not extend to the levy of income tax, except when levied on banks and other financial institutions under Section 143(f) of the 1991 LGC. The imposition of LBT on dividend and interest income of a holding company violates the limits set by Section 133(a) of the LGC. Section 3A.02 (p) in relation to Section 3A.02(h) likewise violates Section 27(D)(4) of the 1997 NIRC, as amended, because it subjects the intercorporate dividends to tax, when it should not actually be subject to tax. *(Office of the City Treasurer and/or Makati City vs. South China Resources, Inc., CTA EB No. 2154, CTA AC No. 197, November 11, 2020)*

Evidence not previously offered, can be admitted if the following requirements are fulfilled: 1) the evidence must have been duly identified by testimony duly recorded; and 2) the evidence must have been incorporated in the records of the case.

Taxpayer is assessed by the BIR for alleged deficiency income tax and VAT for taxable year 2010. It requested for reinvestigation, but BIR issued an FLD and Assessment Notices. Taxpayer then filed its written protest to the FLD on September 2, 2014. The BIR issued on March 24, 2015 its FDDA, maintaining the assessment for taxpayer's failure to submit the relevant supporting documents, and the case will be forwarded to the Collection Division. Taxpayer then received a Preliminary Collection Letter ("PCL"), but it insisted to file its protest. On September 22, 2015, it received a letter from the BIR denying its protest and the assessment has become final.

The CTA in Division denied the Petition for Review for lack of jurisdiction, as it was filed out of time. The CTA En Banc affirmed the denial, because Taxpayer received the FDDA on April 6, 2015. It then had until May 6, 2015 within which to appeal. This can be seen from the letter protest sent by C.M. Ilagan & Associates, stating that the receipt of the FDDA by the taxpayer was on April 6, 2015.

Admittedly, the undated protest was not formally offered in evidence. While it is true that as a general rule, the Court shall not consider any evidence not formally offered, the same admits of an exception. The instant case clearly falls within the exception. Although the undated protest was not attached to the Judicial Affidavit of the Revenue Officer, the same was still presented in Court during the re-cross examination, and the RO identified the same and such testimony forms part of the records of the case. (Loadstar International Shipping, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 2011, CTA Case No. 9176, November 11, 2020)

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COURT OF TAX APPEALS
DECISION HIGHLIGHTS

UPDATES

OIC-Chief of Regular Large Taxpayers Audit Division II does not have any power to authorize audit examinations of taxpayers or to effect any modification or amendment to a previously-issued LOA.

The taxpayer is being assessed for deficiency taxes for the taxable year 2009. This is pursuant to a LOA dated May 4, 2010. Two Memorandum of Assignments were issued for the change of ROs that will conduct the audit. The taxpayer executed several waivers of the defense of prescription. It then received the PAN and FLD/FAN, which was timely protested. On June 3, 2016, the taxpayer received the FDDA finding it liable for deficiency taxes. It then filed the Petition for Review on July 1, 2016.

The CTA granted the Petition for Review, due to the invalidity of the subject deficiency assessments.

The Memorandum of Assignment issued by the OIC-Chief of RLTAD II cannot validly grant the ROs and GS the authority to conduct the audit examination pursuant to the May 4, 2010 LOA. AS OIC-Chief of RLTAD II, Mr. Guzman does not have any power to authorize audit examination of taxpayers or to effect any modification, amendment to a previously-issued LOA because, only the CIR or his duly authorized representatives are granted such power. The only BIR officials authorized to issue or sign LOAs are the Regional Directors, the Deputy Commissioners, and the Commissioner. ***(****Marketing Convergence, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9379, November 16, 2020)*

The subject tax assessment arising from the investigation, audit, and recommendation of a Revenue Officer whose authority stems only from a Memorandum of Assignment, and not Letter of Authority, is consequently void.

The taxpayer is being assessed by the BIR for alleged deficiency taxes for the taxable year 2009. It received the PAN and FLD/FAN, which it timely protested. On September 4, 2014, an FDDA was issued against the taxpayer. It then filed a request for reconsideration. On January 10, 2018, the CIR issued the assailed Final Decision, denying the request for reconsideration treating it as a pro forma appeal. On February 26, 2018, the taxpayer filed the Petition for Review praying for the cancellation of the assessment.

The CTA ruled on the basis of the issue of the authority of the revenue officers who conducted the audit even if this was not raised by both parties. It was found that the RO who continued the audit and reinvestigation of the taxpayer was not validly authorized to examine the latter's books of accounts and other tax records. ROs are required to be specifically authorized by a valid LOA. In this case, the RO was tasked to conduct the investigation pursuant to a MOA only. Considering that the RO who audited the taxpayer's case was not properly clothed with a requisite LOA, the subject assessment arising from her investigation, audit, and recommendation are consequently void.

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Further, as the amount stated in the FLD remains indefinite, the subject tax assessment is void for failing to set and fix the date due, as required by law. (Robbie Stylographic and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9774, November 17, 2020)

The BIR's prior action granting of the refund claim is indicative of taxpayer's compliance with all the necessary documentation requirements.

The taxpayer initially filed an administrative claim for refund before the BIR for its unutilized input taxes for taxable year 2014. BIR failed to act on the refund claim for the 1st quarter of 2014. For the refund claim for the 2nd quarter of 2014, the BIR partially granted it. For the refund claim for the 3rd quarter, the BIR also partially granted it. Lastly, for the 4th quarter refund claim, the BIR partially granted it. Thus, the taxpayer filed separate Petitions for Review for the inaction or partial granting only of the refund claim.

The CTA in Division partially granted the refund claim of the taxpayer. The Court held that the BIR has already granted partially petitioner's refund claims. The BIR's prior action thus is indicative of taxpayer's compliance with all the necessary documentation requirements. Therefore, there being no contest as to whether taxpayer complied with the Certificate of Endorsement requirement, its sales of energy could only be deemed to be undoubtedly subject to zero-rated VAT. In granting the refund claim, the Court deducted from the total amount awarded, the amounts approved by the BIR. *(Philippine Geothermal Production Company vs. Commissioner of Internal Revenue, CTA Case Nos. 9440, 9501, 9534 & 9588, November 18, 2020)*

The BOC can no longer require the issuance of Import Permit (IP) from the NFA for importations of white rice after the expiration of special treatment imposed by the WTO; however, this is still required for imports made before its expiration.

The Company is a domestic corporation engaged in the importation of rice. In 2016, it was granted an Import Permit (IP) by the National Food Authority covering 7,200 MT of Thai White Rice. After the shipment arrived, the Port Operations discovered that there was **an excess** 603.15 MT of white rice which is not covered by an IP. Hence, the Company was assessed customs duties with a 30% **fine equivalent** to the shipment's landed cost. Thereafter, the BOC issued a Decision dated January 29,2018 forfeiting the excess white rice in favor of the government.

The Company argues that the importation of white rice was no longer regulated when the assailed Decision was rendered by the BOC due to the expiration of the special treatment on white rice by the World Trade Organization (WTO) to the Philippines on June 30,2017. On the other hand, the BOC alleges that the taxpayer illegally imported the white rice since the IP from the NFA is necessary.

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The Court ruled that the NFA still had the authority to grant IP during the time of the importation of the excess 603.15 MT of white rice since the WTO agreement was still in effect at that time. However, the Court took note of the findings of the Collector that the Company was not aware of the excess quantity that has been shipped. Moreover, there was absence of fraud due to the fact that the taxpayer had paid all the dues covering total importation of 9,250 MT of white rice in advance. *(Progressive Grains Milling Corp. vs. Commissioner of Customs, CTA Case No. 9847, November 18, 2020)*

Issuance of an FLD 17 days after the receipt of PAN – would still fall short of the standards of due process as required by law.

The BIR assessed the Company for deficiency Income Tax and VAT for the taxable year 2009. On January 4, 2013, the BIR issued a Preliminary Assessment Notice (PAN). Thereafter, Company filed its Protest to the PAN on January 21, 2020, however, it received the Formal Letter of Demand (FLD) with Assessment Notice (AN) on the same day. Hence, the Company filed its Protest on February 20,2020 stating that the company records were available for BIR's verification. The BIR issued an FDDA dated February 13,2020 against the Company.

It is clear that the BIR did not await the expiration of the Company's period within which to file its Protest to the PAN before issuing the subject FLD and ANs. In not awaiting the 15-day period (to reply to the PAN) to fully expire, the BIR did not accord the Company due process as the FLD was issued on the very same day such Protest to the PAN was submitted to the BIR. (*Commissioner of Internal Revenue vs. Max's Sta. Mesa Inc., CTA EB No. 2036 (CTA Case No.8786), November 18,2020)* .

The Court is not bound by the findings of the independent CPA. It is free to adopt or disregard the independent CPA's findings after making its own verification and evaluation of the evidence on record.

The Company filed an administrative claim for refund or issuance of TCC for its alleged excess and unutilized CWT for 2013. During trial, the Company presented its finance manager and independent CPA in order to establish that the income from which the CWTs are subject of its refund claim were reported as part of the Company's gross income. The Company contends that the evidence it submitted, specifically Annex 3 of the Amended CPA Report, clearly shows that the income payments related to the claimed CWTs, particularly the billing invoice and official receipt numbers, were traced to Company's general ledger.

The CTA ruled that under Section 3 of Rule 13 of the RRCTA, as amended, the findings of the independent CPA is not conclusive upon the Courts. The Court is not bound by the findings of the independent CPA. The Court is free to either completely or partially adopt or disregard, the findings of the independent CPA, after making its own verification and evaluation of the evidence on record. *(Tullett Prebon (Philippines), Inc. vs. Commissioner of Internal Revenue, CTA EB No. 2143 (CTA Case No. 9320), November 18,2020)*

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COURT OF TAX APPEALS
DECISION HIGHLIGHTS

The applicability of provisions regarding exemptions should be applied prospectively.

The University is a government educational institution organized under Act No. 1870, as amended by RA No. 9500 on 2008. On 2007, a LOA was issued authorizing the examination of the University's books for the taxable year 2006. The University claims that it should be exempted under Section 25 of RA 9500.

The CTA ruled that the provision on exemption under RA 9500 is not applicable to the University's assessment covering taxable year 2006 since the said law should apply prospectively. The Court cannot apply the exemption granted under RA 9500 as the law was not yet in existence at the time. It is a basic tenet that laws are to be applied prospectively, unless retroactive application was provided for. *(University of the Philippines System Admin vs. Commissioner of Internal Revenue, CTA EB No. 1946 (CTA Case No. 8397), November 18,2020)*

An LN is entirely different and serves as different purpose than an LOA. An LN will not suffice to give a valid authority to the Revenue Officers.

The Company filed its VAT Return for taxable year 2008. Without receiving a Letter of Authority, the Company subsequently received an undated Letter Notice on 2010, in which the BIR subsequently issued a PAN, FLD with an Assessment Notice, and FDDA.

CIR argues that the authority to conduct the tax audit of the Company's deficiency taxes emanates from the power of the CIR under Sec (A) of the Tax Code, in relation to RMO 40-2003 and RMO 55-2010. Hence, the issuance of LOA is not necessary under the RELIEF system of BIR.

The CTA ruled that the revenue officers were not duly authorized to conduct the audit investigation, hence the resulting tax assessments are void. Before an examination of the taxpayer may be done, it is a legal requirement that there must first be an LOA issued to the concerned revenue examiners, unless the CIR himself or his duly authorized representative will conduct such an examination. The issuance of a Letter Notice is not sufficient since it serves a different purpose than an LOA. In this case, there is no indication that an LOA was issued by the CIR to the Company. The BIR came up with the subject tax assessments only on the basis of the Letter Notice. Thus, the subject VAT assessment is void. *(Commissioner of Internal Revenue vs. Lapanday Holdings Corporation, CTA EB No. 1888 (CTA Case No. 8932), November 18,2020)*

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In filing the subject Petition for Review while his MR is still pending with the Court in Division, Petitioner likewise violated the proscription against forum shopping.

The CIR filed its Motion for Reconsideration (MR) before the CTA division on April 8,2019. However, despite the pendency of the MR, the CIR filed a Petition for Review before the CTA en banc covering the same facts and issues of the case.

The Court ruled that the Petition for Review should be dismissed for having been prematurely filed and for violation on the rules prohibiting forum shopping. While it is true that the CIR disclosed in its Verification and Certification of Non-Forum Shopping that there was a pending resolution of the MR before the CTA division, the Court noted that compliance with the certificate of non-forum shopping is separate from and independent of the avoidance of the act of forum shopping itself. Forum shopping is a ground for summary dismissal of both initiatory pleadings without prejudice to the taking of appropriate action against the counsel or party concerned.

In this case, there was forum shopping since there is identity of the rights asserted and the reliefs prayed for. There is likewise identity of the two cases such that judgment in one, regardless of which party is successful, would amount to res judicata in the other. *(Commissioner of Internal Revenue vs. Toledo Power Company, CTA EB No. 2045 (CTA Case Nos. 8450,8512,8547& 8596), November 19, 2020)*

Mere citing of the wrong provision in the NIRC, as well as failure to specify the kind and amount of tax does not automatically make the waiver void.

The Company received a Letter of Authority regarding the examination of its books and accounts for the calendar year 2005. Meanwhile, the Company executed three (3) Waivers for the Defence of Prescription, however, it subsequently assailed its validity due to the following defects: (1) The waiver failed to specify the kind and amount of taxes covered, (2) The waiver's erroneous reference to the Tax Code provision on prescriptive period amounts to a material deviation from the prescribed form of waiver under RDAO No. 05-01, and (3) The Company was not furnished a duly notarized and accepted copy by the BIR.

The Court ruled that the issued waivers were not defective. The Court reiterated the proper procedure for the proper execution of a waiver under RMO No. 20-90 and RDAO No. 05-01, to wit: (1) The waiver must be in the proper form prescribed by RMO 20-90; (2) The waiver must be signed by the

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taxpayer himself or his duly authorized representative; (3) The waiver should be duly notarized; (4) The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver; (5) Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed; and (6) The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver.

The facts in this case show that there was proper compliance for the issuance of a valid waiver. Merely citing the wrong provision of the NIRC of 1997, as amended, and failure to specify the kind and amount of tax would not readily result in the nullification of the waivers. *(UPS-Delbros Transport, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 2026 (CTA Case No. 9063), November 19,2020)*

The issuance by a Revenue District Officer of a Memorandum of Assignment cannot be treated as a valid Letter of Authority for the purpose of conducting an examination.

A Letter of Authority (LOA) was issued authorizing RO Sandoval to conduct the examination of the books and accounting records of the taxpayer for the taxable year 2012. Thereafter, RO Sandoval was promoted as a group supervisor, hence, a Memorandum of Assignment (MOA) was issued by the Revenue District Officer in favor of RO San Juan to conduct the same.

The Court ruled that there was no valid assessment conducted by the revenue officer. The latter conducting an examination of a taxpayer to determine the correct amount of taxes due should be armed with an LOA. The use of the word "shall" in RMO 43-90 can only mean that the issuance of a new LOA in cases of transfer of audits to another set of revenue officers is mandatory.

The Court reiterated that an LOA must be issued either by the Commissioner himself or the Revenue Regional Director. RMO 43-90 expanded the list of duly authorized representatives who may issue LOAs, to wit: (1) Regional Directors; (2) Deputy Commissioners; (3) Commissioner; and (4) Other officials that may be authorized by the Commissioner for the exigencies of service. Hence, the MOA executed by the Revenue District Officer cannot be treated as a valid LOA. *(IMA Land Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9505, November 23, 2020.)*

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COURT OF TAX APPEALS
DECISION HIGHLIGHTS

UPDATES

Actions for tax refund or credit are in the nature of a claim for exemption, hence the burden is on the taxpayer to show that he has strictly complied with the conditions for the tax refund or credit.

The taxpayer is a special purpose trust with a special purpose vehicle status under RA No. 9267. The taxpayer filed a claim for tax refund of the final withholding taxes paid on the interest income from its asset-backed securities (ABS). The taxpayer claims that the interest earned by the holders of its notes, being income from low cost and socialized housing-related ABS, is exempt from income and withholding tax under Sec. 33 of RA 9267. However, the CIR claims that the taxpayer is not entitled to refund since it has no legal personality to file the same, and it failed to prove its entitlement thereto.

The Court ruled that the taxpayer, as a withholding agent, has the legal personality to file the claim for refund since he is considered a 'taxpayer' under the NIRC. He is also considered as an agent of the taxpayer whose taxes were withheld, hence, his authority to file the return also includes the authority to file a claim for refund.

As to the taxability of the income derived by the ABS, the taxpayer failed to prove its entitlement to the tax exemption. A careful examination of the taxpayer's evidence reveals that it miserably failed to prove that the subject ABS was issued pursuant to a plan of securitization as approved by the SEC. In fact, the supposed plan of securitization was never presented in court. Neither is there any indication that a securitization took place. Such being the case, this Court cannot treat the subject ABS as not falling under the term "deposit substitutes", pursuant to Section 31 of RA No. 9267. Moreover, even assuming that the said ABS should not be considered as deposit substitutes under the same provision, there is likewise no indication that the yield/s from the same ABS is/are held by tax-exempt investors. Thus, the exemption from the 20% final withholding tax cannot be applied. *(Bahay Bonds 2 Special Purpose Trust vs. Commissioner of Internal Revenue, CTA Case No. 9916, November 9,2020)*

The rule against forum shopping is not limited only to suits or actions pending in courts but applies as well to administrative proceedings.

The Company was assessed for its taxable year 2008. After Commissioner Jacinto-Henares denied the Company's appeal to the FDDA, the Company sent out letters dated July 11,2016 and July 21,2016 to the newly-appointed Commissioner Dulay, requesting him to take a second look on CIR's position on the issues involved in the FDDA. Thereafter, on July 29, 2016, the Company filed a Petitioner for Review before the CTA division asking for the nullification and cancellation of the FDDA and Final Decision of the Commissioner Jacinto-Henares. After the Company received an amended FDDA from Commissioner

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Dulay, it paid the indicated deficiency taxes and sought the withdrawal of petition before the CTA division. The CTA division granted the withdrawal, however, it ruled that the amended FDDA was illegally infirm. The Company contends that there was no forum shopping when it sent out the letters since were merely informal requests, and CIR is not a "forum" within the contemplation of the rule on forum shopping.

The Court ruled that there was forum shopping in this case. Forum shopping exists when, as a result of an adverse judgment in one forum, a party seeks another in possibly favorable judgment in another forum other than by appeal or certiorari. There is also forum shopping when a party institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other court would make a favorable disposition. *(Cosmos Bottling Corporation vs. Commissioner of Internal Revenue, CTA EB No. 2081 (CTA Case No. 9405), November 10,2020)*

Assessments must contain factual basis in order to be valid.

The Cooperative was assessed for deficiency VAT regarding the sale of its refined sugar in 2006. The BIR issued an amended FLD/FAN on December 9,2010, however, the Cooperative failed to file its protest within the required period. The Cooperative contends that it was exempt from paying internal revenue taxes since it is an agricultural cooperative entitled to VAT exemption. The Court ruled that the Cooperative is not liable for deficiency taxes. A perusal of the records show that the assessment against the Cooperative lacks factual basis. The assessment is based on alleged "BIR data" stating that the Cooperative withdrew 232,533.36 LKG of refined sugar for taxable year 2006. However, the BIR did not attach nor show any breakdown of this alleged 232,533.36 LKG of refined sugar. Neither did it explain how it computed this total amount. Absent sufficient evidence to support the assessment, the presumption of correctness of assessment no longer applies. There being no factual or supporting evidence, the assessments must be cancelled.

The Court took note of the procedural lapse of the Cooperative. Its failure to timely file its protest rendered the subject assessment final, executory and demandable. However, in the instant case, the BIR's right to collect has already prescribed. The Amended FLD/FAN having been mailed on December 22, 2010; the BIR has 3 years from such date within which to collect the said assessed deficiency VAT. The Warrant of Distraint and/or Levy, and Warrant of Garnishment in 2018 were issued beyond the period to collect, as provided by law, thus rendering the same prescribed. *(ANAPI Multi-Purpose Cooperative vs. Commissioner of Internal Revenue, CTA Case No. 9787, November 16, 2020)*

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COURT OF TAX APPEALS
DECISION HIGHLIGHTS

UPDATES

An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.

The Company filed an administrative claim for refund under Sec. 112 of the Tax Code. The Company contends that its sale of business process and contact center services to its sole client is VAT zero-rated considering that its client is a non-resident foreign corporation engaged in business conducted outside the Philippines. The CIR argued that the Company failed to establish its right to refund since in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements.

The Court ruled that the Company is not entitled to tax refund since it failed to establish that it was engaged in zero-rated sales or effectively zero-rated sales during the subject period of claim. Sec. 108 (B)(2) of the NIRC provides that the following conditions must be present in order to be subject to the VAT rate of zero percent (0%): (1) The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services are performed; (2) The services fall under any of the categories under Section 108(B)(2), or simply, the services rendered should be other than "processing, manufacturing or repacking goods"; (3) The service must be performed in the Philippines by a VAT-registered person; and (4) The payment for such services should be acceptable foreign currency accounted for in accordance with BSP rules.

In this case, the Company failed to establish the second and third requisite for failure to provide sufficient proof. Hence, it is not entitled to VAT refund. *(IBEX Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9802, November 18,2020.)*

VAT invoices and/or VAT receipts from purchase of goods, properties and services are necessary to establish the payment of VAT for purposes of tax refund.

The Corporation is a GOCC engaged in sales transactions with government entities. Claiming that it committed a mistake in utilizing the actual input VAT attributable to its sales to the government instead of applying the provision on RR 16-05, it filed an administrative claim for refund and presented its schedule of Input VAT. However, the CIR denied the Corporation's claim stating that the taxes paid are presumed to have been made in accordance with the law, and its claim for refund is not properly substantiated by proper documents, such as sales invoices, official receipts, and others, pursuant to the regulations.

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The Court ruled that the Corporation is not entitled to refund since the records of the case shows that petitioner did not adduce proof on the actual input VAT declared in its VAT Returns. The necessary documents to prove the actual Input VAT incurred by Corporation are the VAT invoices and/or VAT receipts emanating from its purchases of goods, properties and services during the taxable period. Without proof on the actual input VAT incurred by the Corporation, there is no way for the Court to determine if an actual overpayment of VAT occurred in the case at bar arising from the Corporation's failure to utilize the standard input VAT of 7% on its sales to the government. *(National Development Company vs. Commissioner of Internal Revenue, CTA Case No. 9633, November 26,2020.)*

The burden in claiming tax refund rests upon the taxpayer.

The Company received cash dividends from another corporation. When it filed its Income Tax Return (ITR), it indicated the cash dividend received as part of its "other income". The Company subsequently requested for a cash refund on the erroneous income tax paid arising from the cash dividend, contending that the same should be treated as intercorporate dividends which are not subject to tax since both corporations are domestic corporations.

The Court ruled that the Company is not entitled to its claim for refund since it failed to prove that the "other income" includes the dividends received. While the Company provided a breakdown of its "other income", the same cannot be verified by the Court. No other documents such as AFS or any other source documents were presented to validate the entries in "Other Income". Thus, the denial of the claim for refund/credit of input VAT. *(Sycamore Global Shipping Corporation vs. Commissioner of Internal Revenue, CTA Case No. 10070, November 19,2020)*

The BIR is duty bound to wait for the expiration of fifteen (15) days from the date of receipt of the PAN before issuing the FLD and FAN.

The Cooperative was assessed for deficiency taxes for its calendar year 2006. The BIR subsequently issued the PAN on April 7, 2010, and on the following day (April 8, 2010), it issued the FLD and FAN. All of these were simultaneously received by the Cooperative on April 21, 2010. Now, the Cooperative assailed the assessment, however, the BIR contends that the tax assessments already became final and executory for failure of the Cooperative to file its protest to the PAN and FLD within the period provided under Sec. 228 of the Tax Code.

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COURT OF TAX APPEALS
DECISION HIGHLIGHTS

The Court ruled that the assessment is void since the BIR failed to comply with due process requirements in its issuance. Part of the due process in the issuance of deficiency tax assessment is that the taxpayer shall have fifteen (15) days from receipt of the PAN to respond thereto, and only after it fails to do so within such period, will it be considered in default and an assessment notice will be issued. In other words, the CIR or his duly authorized representative is duty bound to wait for the expiration of fifteen (15) days from the date of receipt of the PAN before issuing the FLD and FAN. *(Digos Market Vendors Multi-Purpose Cooperative (DIMAVEMC) vs. Commissioner of Internal Revenue, CTA Case No. 9131, November 16,2020)*

The CTA may allow taxpayers to assail the authority of the Revenue Officers to issue the assessments for the first time on appeal.

The Cooperative was assessed for deficiency taxes for its calendar year 2013. However, the protest letters filed by the Cooperative did not assail the authority of the revenue officers who conducted the assessment, and such issue was first raised by the Cooperative on appeal before the CTA.

The Court established that it may, for the first time on appeal, allow Cooperative to assail the validity of the Waiver and the lack of authority of the ROs to conduct the examination of its books of accounts and other accounting records. The Court of Tax Appeals has the authority to determine issues raised by the parties even if these were not raised in the administrative level to achieve a judicious administration of justice.

The Court also stated that there was no valid assessment on the part of the ROs who conducted the examination. According to the facts of the case, the original LOA authorized RO De Torres and GS Malang to conduct the examination, however, after they were transferred, the Regional District Officer merely issued an MOA to the examiners who issued the assessment. Considering that the issued MOAs do not constitute a valid LOA, the assessments subsequently issued were void. *(Misamis Oriental Rural Cooperative Inc. (MORESCO-II) vs. Commissioner of Internal Revenue, CTA Case No. 9732, November 11,2020)*

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COURT OF TAX APPEALS
DECISION HIGHLIGHTS

PAGCOR's income from junket gaming operations is subject to corporate income tax.

The Company and PAGCOR entered into a Junket Agreement providing the company a Grant of Authority to conduct junket gaming operations at PAGCOR's casino. Thereafter, the Company filed an administrative claim for refund for the erroneously paid corporate income tax on its e-junket gaming revenues for the taxable year 2015. The Company contends that the tax exemption under Section 13 (2) of PD 1869, which exempts PAGCOR from any kind or form of tax or fees, charges or levies of whatever nature, except for a five percent (5%) franchise tax, extends to persons with whom PAGCOR has contractual relationship with gaming operations. Since the Junket Agreement with PAGCOR licensed the Company to conduct junket gaming operations in PAGCOR's casino, the said tax exemption should inure to the benefit of the Company.

The Court ruled that PAGCOR's income from junket gaming operations is subject to corporate income tax. The Court reiterated the Supreme Court's previous ruling that PAGCOR's income from gaming operations is subject only to 5% franchise tax, while its income from other related services, such as income from junket operation, is subject to corporate income tax. PAGCOR's contractees and licensees shall likewise pay corporate income tax for income derived from such "other related services", including income from junket operations. Section 14(5) of P.D. No. 1869 is clear in stating that any income that may be realized from these related services shall not be included as part of the income for the purpose of applying the franchise tax, but the same shall be considered as a separate income and shall be subject to income tax. *(Prime Investment Korea Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9814, November 19,2020.)*

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BIR ISSUANCES
HIGHLIGHTS

BIR REVENUE MEMORANDUM CIRCULAR 117–2020, November 5, 2020	Consolidates the weekly Price of Sugar at Millsite issued by the Sugar Regulatory Administration ("SRA") for the month of September pursuant to Revenue Regulations ("RR") No. 13-2015. The consolidated schedule shall be used for the purpose of imposing the one percent (1%) expanded withholding tax on sugar prescribed under RR No. 2-98, as amended by RR No. 11-2014
BIR REVENUE MEMORANDUM CIRCULAR 118–2020, November 6, 2020	Disseminates the availability of Offline eBIRForms Package Version 7.7. The eBIRForms Package Version 7.7 is downloadable from www.bir.gov.ph and www.knowyourtaxes.ph. The package now includes the January 2018 version of BIR Form Nos. 1604-C, 1604-F, and 1604-E.
BIR REVENUE MEMORANDUM CIRCULAR NO. 119-2020, November 9, 2020	This notifies the public that five sets of BIR Form No. 2524 – Revenue Official Receipt were reported lost. The lost sets bear the following Serial Numbers: 1. ROR201301569000; 2. ROR201302523147; 3. ROR201302523148; 4. ROR201302523149; and 5. ROR201302523150; All official transactions wherein the abovementioned forms are used are considered invalid.
BIR REVENUE MEMORANDUM CIRCULAR NO. 120-2020, November 9, 2020	Clarifies the exemption from income tax of retirement benefits received by employees of private firms from June 5, 2020 to December 31, 2020. The clarifications made are in the form of a Q&A and are relative to the provisions of Republic Act No. 11494, or the Bayanihan to Recover as One Act, as implemented under Revenue Regulations ("RR") No. 29-2020.

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BIR ISSUANCES
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BIR REVENUE MEMORANDUM CIRCULAR 121–2020, November 17, 2020

Announces the pilot implementation of Online Application for Tax Clearance for Bidding Purposes and Tax Compliance Verification Certificate (eTCBP/TCVC). This additional option is available to taxpayers registered with RR4-Pampanga, 7A-Quezon City, 7B-East NCR, Large Taxpayers Service (LTS) except Large Taxpayers District Office (LTDO) Cebu and Davao; and to Non-Resident Foreign Corporation and Non-Resident Alien Not Engaged in Trade or Business. The circular also provides for the policy and procedure in using said eTCBP/TCVC.

BIR REVENUE MEMORANDUM CIRCULAR 123–2020, November 23, 2020

This contains the full text of the Memorandum of Agreement ("MOA") between the Bureau of Internal Revenue ("BIR") and the Land Registration Authority ("LRA") wherein the sharing of information between the parties was agreed upon. The LRA consents to share with the BIR personal data or information of the registered property owners relevant to land titles which it registered to be utilized by the BIR for assessment, collection, and enforcement of national internal revenue taxes only. The BIR, on the other hand, consents to share with the LRA personal data of taxpayers not otherwise covered by Section 270 of the NIRC of 1997, as amended, which it collected in the performance of its duties to be utilized by the LRA for tax validation purposes only. Further information on the limitations as regards the sharing of information is also contained in the MOA.

BIR REVENUE MEMORANDUM ORDER NO. 40-2020, November 23, 2020

Provides the revised guidelines and procedures in the processing and issuance of clearances in the National Office and Regional/District Offices to more efficiently reflect the regular movement of revenue officials and employees due to promotion, reassignment, leave of absence, retirement, resignation, death or transfer/secondment to other government agencies/instrumentalities/offices within the BIR, and other modes of separation.

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SEC ISSUANCES
HIGHLIGHTS

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SEC-OGC Opinion No. 20-02, November 3, 2020

Corporations existing prior to, and which continues to exist after the effectivity of the RCC, are ipso jure granted perpetual existence without any further action on their part. Given this, the Articles of Incorporation of all corporations who satisfies the requirements under Section 11 of the RCC and MC 22 Series of 2020 are deemed amended to the effect that their corporate term is now perpetual. A positive act on the part of corporations is only required if they intend to limit their corporate term to a certain period.

SEC Memorandum Circular No. 29, Series of 2020, October 13, 2020

The Commission, as approved by its *En Banc*, promulgated the 2020 Guidelines on the Submission and Monitoring of the Money Laundering and Terrorist Financing Prevention Program ("MTTP").

All Covered Persons registered after the effectivity of the 2018 Anti-Money Laundering and Combating the Financing of Terrorism ("AML/CFT") Guidelines but before the effectivity of this Circular and who have not yet submitted their MTPPs/revised MTPPs shall do so within two (2) months from the effective date of this Circular.

The MTPP shall no longer be included among the documents required to be submitted to the Company Registration and Monitoring Department ("CRMD") by Covered Persons applying for registration and issuance of a secondary license. In lieu thereof, an applicant Covered Person shall submit, together with its application, a sworn certification signed by the Compliance Officer, Corporate Secretary or Resident Agent that the applicant's MTPP has been prepared, noted, and approved by its Board of Directors or by the country/regional/area head or its equivalent for local branches of foreign covered persons. The applicant shall furnish the Anti-Money Laundering Division of the Enforcement and Investor Protection Department ("AMLD-EIPD") a copy of said sworn certification which should be stamped received by the AMLD-EIPD before they can be accepted by the CRMD.

Financing Companies ("FCs") and Lending Companies ("LCs") whose minimum paid-up capital shall at any time reach Ten Million Pesos (Php10,000,000.00) or whose foreign equity shall reach more than forty percent (40%), must submit hard and soft copies of their MTPPs to the AMLD-EIPD within sixty (60) days from the fact that the foreign ownership threshold or the minimum paid-up capital has been reached.

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SEC ISSUANCES
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SEC Memorandum Circular No. 30, Series of 2020, October 13, 2020	The Commission issued this Memorandum Circular on the Revision of the General Information Sheet ("GIS") of Foreign Corporations Include Beneficial Ownership Information. All SEC registered foreign corporations are required to disclose their beneficial owners in the GIS. For this purpose, the GIS to be submitted by such foreign corporations is hereby revised to include information on their beneficial owners as provided for and defined in SEC Memorandum Circular No. 15, Series of 2019.
SEC Memorandum Circular No. 31, Series of 2020, November 5, 2020	Non-Imposition of Fines and Other Monetary Penalties for Non-Filing, Late Filing and Failure to Comply with Compulsory Notification and Other Reportorial Requirements The Commission hereby promulgates the following guidelines to implement the above-cited directive from the President: 1. Violations for purposes of this Circular shall refer to non-filing and late filing of General Information Sheet ("GIS") and Audited Financial Statement ("AFS") including other reportorial requirements that the Commission may require, and non-compliance with compulsory notification. 2. For violations incurred that will fall due from September 14, 2020 until December 19, 2020, there will be no imposition of fines and other monetary penalties. 3. Corporations may still apply for monitoring from September 2020 until December 2020 to secure monitoring clearance. 4. Accordingly, all other violations that are incurred outside the covered period of September 14, 2020 until December 19, 2020 will result to computation of fines and penalties. 5. This Circular shall also apply to all Foreign Corporations except on matters pertaining to Securities Deposits and Change of Resident Agent whose guidelines shall observe SEC MC No. 24, Series of 2020.

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SEC ISSUANCES
HIGHLIGHTS

SEC Memorandum Circular No. 32, Series of 2020, November 17, 2020

The Commission, in its *En Banc* meeting, in consideration of the government's initiative to provide relief to industries impacted by the COVID-19 pandemic, approved the adoption of an industry-specific framework, to be referred to as the PFRS, as modified by the application of the financial reporting reliefs issued by the BSP and approved by the SEC. Accordingly, BSFIs have the option to prepare their financial statements using said industry-specific framework or full PFRS for the duration and terms allowed by the BSP.

BSFIs, which opt to adopt the industry-specific framework, should specify in the "Basis of Preparation of the Financial Statements" section of the financial statements the reliefs availed of and indicate that the availment thereof covers only current-year transactions.

Entities have the option to take either the full retrospective or the modified retrospective approach in doing the above adjustments when it reverts to full PFRS after the period of relief.

The PFRS, as modified by the application of the financial reporting reliefs issued by the BSP and approved by the SEC, shall form part of the applicable financial

reporting framework for the purpose of preparing and filing general-purpose financial statements with the Commission pursuant to the Revised SRC Rule 68.

SEC Notice, November 4, 2020

Notice on Online and Manual Submission of Forms/Notices Pursuant to Memorandum Circular ("MC") No. 28, Series of 2020, which requires Corporations, Partnerships, Associations and Individuals to create/and or designate email account address and cell phone numbers for transactions with the Commission, shall be filed through the electronic mail:

MC28_S2020@sec.gov.ph

Hard copies of said forms/notices must be filed through the Commission's Electronic Records Management Division ("ERMD") at the SEC Main Office, Secretariat Building, PICC, Pasay City.

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SEC Notice, November 9, 2020

Notice to All Lending Companies and Financing Companies.

The Securities and Exchange Commission ("SEC") is conducting a risk assessment of the Lending Companies and Financing Companies Sector to identify, assess and understand money laundering and terrorist financing ("ML/TF") risks to which the sector is exposed and to implement the most appropriate mitigation measures.

All lending companies and financing companies are enjoined to accomplish a Survey Questionnaire to assist the SEC in the conduct of the said AML/CFT Sectoral Risk Assessment.

The Survey Questionnaire shall be accomplished and submitted online on or before 16 November 2020, 5:00PM. Said Questionnaire may be accessed through the following link:

https://forms.gle/qiwVE4RZFTZh5mYN7

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BSP ISSUANCES
HIGHLIGHTS

BSP CIRCULAR LETTER NO. CL-2020-055, November 16, 2020	Implements the use of 11-digit enterprise-wide bank code as part of the number of the Bangko Sentral ng Pilipinas (BSP)-prescribed Certificate of Inward Remittance (CIR) of Foreign Exchange (FX) Form issued by Authorized Agent Banks (AABs). The CIR number format is composed of the year of issuance, the series number and the enterprise-wide bank code (11-digits), respectively. The 11-digits enterprise wide bank code has a "2-4-2-3" composition. The first two (2) digits pertain to the bank kind, the next four (4) digits to entity, the next two (2) digits to bank type, and the last three (3) digits to the branch code of the bank.
BSP MEMORANDUM NO. M-2020-083, November 17, 2020	Disseminates the transition from the London Inter-Bank Offered Rate (LIBOR) and Reporting Requirements on LIBOR-Related Exposures.It was declared that the use of LIBOR as a benchmark rate will only be allowed until December 31, 2021. Hence, all universal and commercial banks and their subsidiary banks are required to submit quarterly reports on the extent of their remaining LIBOR-related exposures beginning with the reference date of September 30, 2020 and ending with the reference date of March 31, 2022. This is to ensure that the cessation of LIBOR does not disrupt the operations of said banks. The plan should actively reduce reliance on LIBOR in advance of its discontinuation.

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IC ISSUANCES
HIGHLIGHTS

IC Legal Opinion No. 2020-15, November 16, 2020

The funds for these programs were derived and allocated from a certain portion of ASA's income from its microfinance operations. In sum, these programs do not fall within the purview of a contract of insurance. Neither can this Commission consider ASA as a Health Maintenance Organization ("HIMO") nor can this Commission consider ASA's programs as Pre- Need Plans since these programs do not have any form of premium attached to it.

The aforementioned programs are ASA's initiatives to ease the financial difficulties of its borrower-clients in times of their pressing needs and that it is part of ASA's Corporate Social Responsibility. Both of these programs have no form of premium attached to it.

In applying the afore-cited legal provisions and jurisprudence on the matter, this Commission is of the opinion that there is no undertaking and indemnity to speak of considering that these programs are part of ASA's Client's Assistance Program, a program similar to the tenor of a Corporate Social Responsibility activities being done by various juridical entities. The purpose of the assistances is to ease the burden of borrowers and their families in difficult times. The title of these activities may vary or change time to time depending upon the context and situation of ASA. To reiterate, the funds for these programs were derived and allocated from a certain portion of ASA's income from its microfinance operations. In sum, these programs do not fall within the purview of a contract of insurance.

We also opine that it is immaterial if the various amounts being extended by ASA to its borrowers/clients and their designated nominees are fixed and categorized with different requirements. What is more controlling is that the various amounts in these programs are dependent or contingent on the financial capability of ASA to actually give the various amounts, thereby making it gratuitous and still voluntary in nature.

Neither can this Commission consider ASA as a Health Maintenance Organization ("HMO") nor can this Commission consider ASA's programs as Pre-Need Plans since these programs do not have any form of premium attached to it, as primarily required in Section 2 of Executive Order No. 192, Series of 2015 and Section (b) of Republic Act No. 9829.

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IC ISSUANCES
HIGHLIGHTS

IC Circular Letter No. 2020-103, October 30, 2020

Section 1 of Circular Letter No. 2020-60 is hereby amended: 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), as follows:

RBC Ratio (Y)	Event	Action
100% and above		No regulatory action needed.
75% ≤ Y < 100%	Trend Test	Company shall be required to submit linear extrapolation of the RBC ratio for the next period. If the RBC ration falls below 75%, move to Company Action Event.
50% ≤ Y < 75%	Company Action	Company required to submit RBC plan and financial projections and implement the plan accordingly.
25% ≤ Y < 50%	Regulatory Action	IC authorized to issue Corrective Orders
Y < 25%	Authorized and Mandatory Control	IC authorized and required to take control of the company.

IC Circular Letter No. 2020-104, November 2, 2020

Dissemination of AMLC Regulatory Issuance No. 4, Series of 2020, on Freeze Order for Potential Target Matches under the United Nations Security Council Consolidated Lists (Targeted Financial Sanctions)

Attached herewith is a copy of the Anti-Money Laundering Council ("AMLC") Regulatory Issuance ("ARI") No. 4, Series of 2020, on Freeze Order for Potential Target Matches under the United Nations Security Council Consolidated Lists (Targeted Financial Sanctions).

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IC ISSUANCES
HIGHLIGHTS

IC Circular Letter No. 2020-105, November 2, 2020

Attached herewith is a copy of the Sanctions Guidelines that was prepared by the Anti-Money Laundering Council ("AMLC") pursuant to Section 11 of the Terrorism Financing Prevention and Suppression Act of 2012 and the implementing Resolutions under AMLC Resolution No. TF-01 and TF-02 to assist Covered Persons in the implementation of the freezing mechanisms and outlines their obligations thereunder.

IC Circular Letter No. 2020-106, November 4, 2020

The following Guidelines Strengthening Typhoon "Rolly"-Related Claims Management Policies are hereby adopted and promulgated.

1. Strengthening of Typhoon "Rolly"-Related Claims Management Policies. — All insurance and reinsurance companies, MBAs, pre-need companies and HMOs are enjoined to adopt and implement claims management policies relative to the processing and/or payment of claims that are related to Super Typhoon "Rolly" with the following objectives, to wit:

    a. Relaxation and streamlining of existing company procedures and mechanisms that will facilitate immediate processing and/or payment of claims related to Super Typhoon "Rolly";
    b. Relaxation of the notice of claim period and the period for completion of claim requirements; and
    c. Enhancement of services that will improve overall customer claims experience.

IC Circular Letter No. 2020-107, November 8, 2020

Amends Section 3 of Circular Letter No. 2020-86 is hereby amended to read as follows:

"SECTION 3. NO DISCRIMINATION. — There shall be no outright declination or refusal of any application to be covered by any insurance policy solely on the ground of disability except for insurance policies approved by this Commission offered under a Simplified Underwriting Offer. For purposes of this Circular, the term "Simplified Underwriting Offer" shall mean those approved insurance products that does not allow investigations of further additional risk factors which may require extra or additional premium. For insurance products which allow for further evaluation, a PWD shall be given the opportunity to either accept or decline the adjusted premium or a new suitable insurance plan and/or rider/s that the insurer/s may offer."

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IC Circular Letter No. 2020-108, November 10, 2020	Provides the Circular Letter No. 2020-96, as amended by Circular Letter No. 2020-96A or the "Framework for Passenger Personal Accident Insurance for Public Utility Vehicles" is hereby further amended, to wit: 1. Section 1(2) of CL No. 2020-96A on the requirement regarding management companies is hereby amended to read as follows: "Management Company. - The Management Company of the insurance pool must be duly licensed by this Commission, must have a minimum track-record of five (5) years as a Management Company, must have a minimum Paid-up capitalization of Twenty Million Pesos (Php20,000,000.00), duly registered with the Securities and Exchange Commission and other qualifications as may be determined appropriate in subsequent directive/s."

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REVISITING TAXABILITY OF DONATIONS

By

Rodel C. Unciano

In n times of calamity, donations from our kind-hearted countrymen are certainly a big help not only in giving temporary aid to the victims of calamities but in giving them as well a hope to start a new life and a hope for them to see again the light of the day. This too, is a big help to the government who is primarily responsible in seeing to it that the affected citizens are afforded the full assistance they truly deserve.

Based on our Tax Code, donations made during the calendar year in excess of two hundred fifty thousand pesos (P250,000) shall be subject to six percent (6%) donor's tax, which the donor is required to pay to the Bureau of Internal Revenue (BIR) within thirty (30) days from the date of donation. Recall that under the Train Law, the uniform rate of six percent (6%) donor's tax shall now apply whether the recipient of the donations are relatives of the donor or strangers.

If the donations made during the calendar year do not exceed two hundred fifty thousand pesos (P250,000), the donations are exempt from the imposition of donor's tax. But even if the amount of donations during the year exceed two hundred fifty thousand pesos (P250,000), the donations may still be exempt from donor's tax if the same is given to qualified government institution or to qualified non-government donee institution.

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To qualify for exemption from donor's tax, the donations to the government must be made to or for the use of the National Government and qualified government institutions and any entity created by any of its agencies which is not conducted for profit, or to any political subdivision of the said Government.

The exemptions shall also apply if the donations are made in favor of an educational and/or charitable, religious, cultural or social welfare corporation, institution, accredited nongovernment organization, trust or philanthropic organization or research institution or organization, provided that not more than thirty percent (30%) of said gifts shall be used by such donee for administration purposes. Donations made to certain institutions are likewise exempt from the imposition of donor's tax by virtue of express provision provided under the charter creating such institutions such as the Philippine Red Cross, International Rice Research Institute and the People's Survival Fund, among others.

As the law provides, the exemption from donor's tax is dependent on the status of the donee or the recipient of the donation. Hence, to determine whether the donation is exempt from donor's tax or not, it is necessary to take into consideration the status of the donee. If the donee falls under any of the qualified exempt donee institutions as enumerated in the Tax Code or under special laws, then, the donation shall be exempt from donor's tax.

Thus, if the donation intended to be given, whether in the form of cash or in kind, exceeds two hundred fifty thousand pesos (P250,000), it would be best to course through said donation to a qualified donee institution in order to qualify for exemption from donor's tax. If the donations are directly given by the donor to the victims, the exemption may not apply, no matter how noble the donor's intention may be. More so, if the donations are coursed through an accredited donee institution, the donor shall likewise be entitled to the full deductibility of the donations made, subject only to certain conditions.

True, the government recognizes the liberality of donor's by way of giving tax benefits. However, certain conditions must be taken into consideration in order for the donor to avail of the full tax benefits provided under the law.

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For inquiries on the article, you may call or email

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