TAX Insights

BDB Law
DU-BALADAD AND ASSOCIATES

Insights

JULY ● VOL. 07 ● SERIES OF 2021

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 JULY 2021

HIGHLIGHTS

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- **The CTA has jurisdiction over a petition for certiorari to determine whether there is a grave abuse of discretion committed by the BIR.** *(Golden Donuts, Inc. vs. Commissioner of Internal Revenue, G.R. No. 252816, February 3, 2021)*

- **Belated transmittal of BIR records, heavy workload and difficulty in coordinating with Revenue Officer are not considered as excusable negligence to lift an order of default against the BIR.** *(Commissioner of Internal Revenue vs. The Third Division of the Court of Tax Appeals and AZ Contracting System Service, Inc., G.R. No. 238093, January 26, 2021)*

- **Section 229 of the Tax Code is inapplicable to claims for recovery of unutilized Input VAT.** *(Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 221694, January 19, 2021)*

- **The failure to revalidate the LOA after 120 days merely renders the same unenforceable.** *(AFP General Insurance Corporation vs. Commissioner of Internal Revenue, G.R. No.222133, November 4, 2020)*

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- **The CIR, or his duly authorized representative, is duty bound to wait for the expiration of the fifteen (15) day period, reckoned from the date of receipt of the PAN, before it can issue the FLD and assessment notice.** *(Commissioner of Internal Revenue vs. Lanao Del Norte Electric Cooperative (LANECO), CTA EB No. 2236, June 9, 2021)*

- **An input tax need not be directly and entirely attributable to the zero-rated sales to be refundable or creditable.** *(Commissioner of Internal Revenue vs. Lepanto Consolidated Mining Company, CTA EB No. 2230, June 14, 2021)*

- **In the case of non-filing of an ITR, being a statutory offense or malum prohibitum, lack of intent to commit the crime is unavailing as a defense.** *(People of the Philippines vs. De Guzman, CTA Crim Case No. O-690, June 9, 2021)*

- **Once an assessment is made or issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund at any time within the full period of two (2) years from the date of payment.** *(Makati City, et. al. vs. Metro Pacific Tollways Corporation, CTA EB No. 2217, June 14, 2021)*

- **While PCL does not contain that words "final decision", the tenor is unmistakeably one that warned the taxpayer to settle or pay his tax liabilities tantamount to a denial of taxpayer's request for reconsideration.** *(Yap vs. Bureau of Internal Revenue, CTA EB No. 2272, June 15, 2021)*

- **A taxpayer who pays or advances a legally and lawfully due and payable tax to the government is not entitled to recover such tax because the same is neither erroneously nor illegally collect.** *(British American Tobacco (Philippines), Limited vs. Commissioner of Internal Revenue, CTA Case No. 9998, June 28, 2021)*

BIR RULINGS

- **ITAD BIR Ruling No. 026-21, June 8, 2021** – Under the Philippine-Malaysia tax treaty, professional fees and director's fees derived by Malaysian resident in the Philippines may be taxed in the Philippines.

- **ITAD BIR Ruling No. 028-21, June 8, 2021** – For VAT purposes, in case of NRFCs, it is sufficient that the services are rendered in the Philippines, regardless of regularity.

- **ITAD BIR Ruling No. 029-21, June 8, 2021** – If the country of residence of the NRFC did not impose tax on dividends it received from the Philippines, the tax sparing credit condition is satisfied.

- **ITAD BIR Ruling No. 030-21, June 8,** 2021 – Diplomatic mission and their diplomatic agents are subject to indirect taxes, such as VAT, but may be exempt on the basis of reciprocity.

BIR ISSUANCES

- **RR No. 8-2021, June 11, 2021** – This amends certain provisions of RR No. 4-2021, which implemented the VAT and Percentage Tax provisions under RA No. 11534 (CREATE Act)

- **RR No. 9-2021, June 11, 2021** – This amends certain provisions of RR No. 16-2005, as amended by RR No. 13-2018 and as further amended by RR No. 26-2018, to implement the imposition of 12% VAT on transactions covered under Section 106 (A)(2)(a) subparagraphs (3), (4), and (5), and Section 108(B) subparagraphs (1) and (5) of the NIRC of 1997, as amended by RA No. 10963 (TRAIN Law)

- **RMC No. 75-2021, June 7, 2021 –** This prescribes the standard policy and guidelines on the use of BIR Form No. 0605 for Excise Tax purposes

- **RMC No. 76-2021, June 15, 2021 –** This clarifies the illustrative examples in the computation of Corporate Income Tax under Section 3(B) and 3(D) of Revenue Regulations No. 5-2021.

- **RMC No. 80-2021, June 29, 2021–** This clarifies the suspension of the statute of limitations on assessment and collection of taxes due to the declaration of quarantine in various areas in the country

SEC ISSUANCES

- **Securities Laws are by nature special laws, and acts or omissions that violate their provisions are considered mala prohibita which is a punishable offense.** *(Ventures Securities, Inc. vs. Capital Markets Integrity Corporation, SEC En Banc Case No. 01-21-481, Series of 2021, June 15, 2021)*

- **Section 51 defines a controlling person as "every person who, by or through stock ownership, agency or otherwise, or in connection with an agreement or understanding with one or more other persons controls any person liable under this Code or the rules or regulations of the Commission thereunder**. *(In the matter of: R&L Investments, Inc. vs. Venture Securities, Inc., Wilfred Racadio (President), Adora Aguilar (Associated Person), Loreto Balabis (Salesman) and Teresita Mosenabre (Settlement Head), SEC MSRD Case No. MSRD-MID-2020-2, June 11, 2021)*

- **A person who renders services for hire or pay, or who leases services, is not engaged in the retail business because he does not sell goods to the general public.** *- SEC-OGC Opinion No. 21-06 – Re: Retail Trade Law; Water Filtration Services, May 10, 2021*

- **Foreigners can be elected as directors in proportion to their allowable participation or share in the capital of corporations engaged in activities that are reserved to Filipinos** *- SEC-OGC Opinion No. 21-08 – Re: Appointment of a Foreign Director in a Corporation Engaged in a Party Nationalized Activity, May 17, 2021*

HIGHLIGHTS for JULY 2021

BSP ISSUANCE

- ***BSP Memorandum No. M-2021-034, June 4, 2021.*** - This provides the Guidelines for Obtaining a Certificate of Eligibility (COE) under Republic Act (RA) No. 11523.

- ***BSP Memorandum No. M-2021-037, June 28, 2021 –*** Circularizes the Regulatory Relief Through Extension of Deadline to Pay the 2021 Annual Supervision/Service Fee.

IC ISSUANCE

- ***A car owner who has already a comprehensive Insurance Policy that covers Voluntary Third-Party Liability (VTPL) for property damage and VTPL for personal injury for P500,000.00 each may no longer need have a secure a Compulsory Third-Party Liability (CTPL) -*** *Legal Opinion LO no. 2021-10 dated June 23, 2021.*

- ***IC Circular Letter CL-2021-40 dated June 9, 2021.*** - This provides for the increased capacity of the Online Agent's Computerized Examinations (Online ACE)

SUPREME COURT

DECISION HIGHLIGHTS

Goodwill is essentially characterized as an intangible asset derived from the conduct of business and cannot therefore be allocated and transferred separately and independently from the business as a whole.

The Supreme Court upheld the decision of the CTA *En Banc* in cancelling the deficiency income tax assessment against taxpayer, HSBC on the alleged sale of "goodwill" of its Merchant Acquiring Business (MAB). It ruled that goodwill is essentially characterized as an intangible asset derived from the conduct of business and cannot therefore be allocated and transferred separately and independently from the business as a whole.

Here, when HSBC transferred its MAB in the Philippines, inclusive of POS terminals, other information technology assets and merchant agreements, to GPAP-Phils. Inc. in exchange for shares, the goodwill of the business was also transferred to GPAP-Phils. Inc., being the new owner of the MAB and its assets. When HSBC subsequently assigned its GPAP-Phils inc. shares to GPAP-Singapore, the goodwill of MAB remains with GPAP-Phils. Inc. GPAP-Singapore merely steps into the shoes of HSBC as the majority stockholder of GPAP-Phils. Consequently, the subsequent sale of shares acquired by HSBC through a tax-fee exchange shall be subject to capital gains tax pursuant to Section 7(D)(2) of the 1997 NIRC, and not regular corporate income tax. *(Commissioner of Internal Revenue vs. The Hongkong Shanghai Banking Corporation Limited – Philippine Branch, G.R. No. 227121, December 9, 2020)*

The CTA has jurisdiction over a petition for certiorari to determine whether there is a grave abuse of discretion committed by the BIR.

The Court ruled that the CTA may take cognizance of a petition for *certiorari* to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction committed by the BIR in issuing the another 2007 (2nd LOA) LOA against the taxpayer as well as the subpoena *duces tecum* considering that a previous investigation of the same taxable year 2007 was already conducted pursuant to the 2007 LOA (1st LOA), and the taxpayer already settled its tax liabilities arising out of said investigation.

However, in the instant case, instead of filing a petition for *certiorari* under Rule 65 before the CTA to question the interlocutory orders of the BIR, it filed a petition for review, which is obviously a wrong remedy. Nevertheless, in accordance with the liberal spirit pervading the Rules of Court, the Court relaxed the rules and treated the petition for review as petition for *certiorari. (Golden Donuts, Inc. vs. Commissioner of Internal Revenue, G.R. No. 252816, February 3, 2021)*

SUPREME COURT
DECISION HIGHLIGHTS

Belated transmittal of BIR records, heavy workload and difficulty in coordinating with Revenue Officer are not considered as excusable negligence to lift an order of default against the BIR.

The CIR failed to file his Answer to the taxpayer's petition for review before the CTA. Upon the taxpayer's Motion, the Court granted and declared CIR in default. The CIR filed a Motion to Lift Order of Default and Admit Attached Answer. The CTA denied the said motion.

In upholding the CTA's denial of the CIR's motion to lift order of default, the Court explained that a motion seeking to overturn an order of default for failure to answer must meet three requisites, namely:

(1) It must be made by motion under oath by one that has knowledge of the facts;
(2) It must be shown that the failure to file answer was due to fraud, accident, mistake or excusable negligence; and
(3) There must be a proper showing of the existence of a meritorious defense.

In this case, the CIR argued that its failure to answer within the period granted was due to the belated transmittal of the BIR records, heavy workload, and difficulty in coordinating with the Revenue Officer, which the Court found to be not excusable to merit the lifting of an order of default. Excusable negligence is one in which ordinary diligence and prudence could have not guarded against, and these circumstances should be properly alleged and proved. The Court further emphasized that it is within the CTA's discretion to deny the motion to lift an order of default. *(Commissioner of Internal Revenue vs. The Third Division of the Court of Tax Appeals and AZ Contracting System Service, Inc., G.R. No. 238093, January 26, 2021)*

Section 229 of the Tax Code is inapplicable to claims for recovery of unutilized Input VAT.

The taxpayer inadvertently not transferred several of its purchases of services on its Input Tax Services account on its Quarterly VAT returns. Thus, the same were not charged to the output tax payable for the quarter. This resulted in the alleged over/erroneously paid output tax for the same quarters. Hence, the taxpayer resorted to filing claims for refund.

In denying the taxpayer's petition, the Supreme Court ruled that Section 229 of the Tax Code is inapplicable to claims for recovery of unutilized input VAT. Input VAT is not "excessively" collected as contemplated in Section 229 because at the time the input VAT was collected, the amount paid is correct and proper.

Erroneous or wrongful payment includes excessive payment because they all refer to payment of taxes not legally due. However, what the taxpayer claims to be "excess" input VAT in this case does not in fact fall under the category of "erroneous or wrongful payment." Thus, it is clear, that neither law nor jurisprudence authorized the taxpayer's claim for refund or issuance of tax credit. *(Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 221694, January 19, 2021)*

SUPREME COURT

DECISION HIGHLIGHTS

The failure to revalidate the LOA after 120 days merely renders the same unenforceable.

Taxpayer argues that the LOA issued by the BIR is invalid for failure of the concerned revenue officer to have the same revalidated after 120 days, pursuant to RMO No. 28-88, as reiterated by RMC No. 40-2006.

In ruling against the taxpayer, the Court held that failure to revalidate the LOA after 120 days does not void the LOA *ab initio.* The expiration of the 120-day period merely renders an LOA unenforceable, inasmuch as the revenue officer must seek ratification of his expired authority to audit to be able to validly continue investigation beyond the first 120 days.

In this case, the taxpayer did not contest the LOA upon receipt when they could have refused service of the LOA it believed was defective due to lack of revalidation. Its failure to exercise its right to refuse the service of an allegedly defective LOA shows that they had acquiesced to the tax authorities' investigation. *(AFP General Insurance Corporation vs. Commissioner of Internal Revenue, G.R. No.222133, November 4, 2020)*

BCDA is a government instrumentality and therefore exempt from payment of docket fees.

BCDA filed via registered mail a Petition for Review with Request for Exemption from Payment of Filing Fees with the CTA involving its claim for refund against the CIR. However, in a letter from the CTA's Executive Clerk of Court, it informed the BCDA that she was returning the said Petition for Review as it was not deemed filed without the payment of correct legal fees.

The Court ruled the BCDA is a government instrumentality and therefore exempt from payment of docket fees required under Section 21, Rule 141 of the Rules of Court. Thus, it was erroneous for the CTA En Banc to affirm the CTA Second Division's dismissal of the BCDA's Petition for Review. That the BCDA belatedly filed the docket fees did not strip the CTA Second Division of jurisdiction as it was exempt from payment in the first place. *(Bases Conversion and Development Authority vs. Commissioner of Internal Revenue, G.R. No. 205466, January 11, 2021)*

SUPREME COURT

DECISION HIGHLIGHTS

A valid LOA shall be signed by the CIR or his duly authorized representative.

The Court upheld the CTA *En Banc*'s ruling that the deficiency tax assessment against taxpayer was invalid due to the revenue officers' lack of authority to continue audit against taxpayer.

It is settled that unless authorized by the CIR himself or by his duly authorized representative, through LOA, an examination of the taxpayer cannot ordinarily be undertaken.

Here, the alleged LOA re-assigning the audit to another revenue office and group supervisor was not signed by the CIR or its duly authorized representatives as identified in the Tax Code and in prevailing BIR regulations. Consequently, these officers did not have the authority to examine taxpayer's books of accounts and tax records, which makes the resulting assessment void.

Even assuming that the LOA was valid, taxpayer's gaming revenues as a PAGCOR licensee was exempt from regular corporate income tax after payment of the 5% franchise tax. *(Commissioner of Internal Revenue vs. Travellers International Hotel Group, Inc., G.R. No. 255487, May 3, 2021)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

A Letter Notice (LN) is different from a LOA and the issuance of the former does not equate to the issuance of the latter to validate an otherwise void assessment.

The taxpayer assailed the validity of the assessment for want of proof that the CIR or his duly authorized representatives issued a Letter of Authority (LOA) authorizing the revenue officers (ROs) to examine taxpayer's books for 2010.

In ruling for the taxpayer, the Court held that the absence of a LOA is a violation of the taxpayer's right to due process which renders the assessment null and void. Moreover, an LN is different from a LOA and the issuance of the former does not equate to the issuance of the latter to validate an otherwise void assessment. *(Yan An Cargo Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9865, June 1, 2021)*

The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege and may be exercised only in the manner and in accordance with the provisions of law.

This is a Petition for Review filed by the CIR against the taxpayer before the Court *En Banc* assailing the Decision of the Court's Special Second Division which cancelled the assessments issued against the taxpayer.

In dismissing the Petition, the Court held that the relief prayed for by the CIR is totally irrelevant to the subject of its appeal. Moreover, the particular assessment referred to in the Prayer is different from the subject assessment in this case as well.

It is well-settled that the right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. An appealing party must strictly comply with the requisites laid down in the Rules of Court. Deviations from the Rules cannot be tolerated. *(Commissioner of Internal Revenue vs. Subic Water & Sewerage Co., Inc., CTA EB No. 2185, June 1, 2021)*

Note: The mandatory nature of the requirement to serve copy of the Petition to Court in Division is apparent under Rule 43 of the Rules of Court and warns that failure to comply with the "proof of service of the petition" is sufficient ground for the dismissal thereof.

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

Mere intent to import rice, per se, is not a taxable transaction that is subject to tax and customs laws.

Petitioner argued that the taxpayer intended to unload its goods in Philippine customs territory and thus, it intended an importation. For failure of the taxpayer to pay the appropriate customs and duties for said importation, the goods were validly seized and forfeited in favor of the government.

The Court stressed that Freeport Zones such as Subic Special Economic Zone and Subic Bay Freeport Zone are excluded from the Philippine Customs Territory. Thus, mere intent to import rice, per se, is not a taxable transaction that is subject to tax and customs laws. The Court came to the conclusions that the law mandated management and operation of Ecozones as a separate customs territory, separate and distinct from the customs territory, and Customs Territory is comprised of the national territory of the Philippines outside of the proclaimed borders of the Ecozone. *(Republic of the Philippines vs. Amira C Foods International DMCC, CTA EB No. 2210, June 3, 2021)*

Although the document may not be entitled "Letter of Authority" but otherwise, if it contains all the elements necessary to establish a contract of agency between the CIR and the new RO, the said document may be equivalent to a LOA.

The CIR argued that the ROs have authority to conduct the audit examination of the taxpayer's accounts. As alleged, the Memorandum of Agreement (MOA) subsequently issued derived its authority from the original LOA initially issued and the source of the RO's authority to investigate is not the MOA or any other document, but the validly issued LOA. Thus, the MOA directing ROs to conduct the audit examination of the taxpayer is proper.

The Court held that while the CIR is correct in his theory that the ROs have authority to conduct the audit based on the MOA, it disagreed as regards the averments that the MOA issued in this case is a valid source of authority of ROs since the same was only signed by the Revenue District Officer (RDO) who has no power to authorize the examination of taxpayer's accounts.

Although the document may not be entitled "Letter of Authority" but otherwise, if it contains all the elements necessary to establish a contract of agency between the CIR and the new RO, the said document where such authority is transferred may be equivalent to a LOA.

Thus, the ROs who conducted the examination may be deemed authorized to do so without need for a new LOA, if the MOA was signed by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service. (*Commissioner of Internal Revenue vs. Kokoloko Network Corporation, CTA EB No. 2197, June 3, 2021*)

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

In refund claims, after the claimant has successfully established a prima facie right to the refund by complying with the requirements laid by law, burden is shifted to the opposing party, the BIR, to disprove such claim.

The taxpayer argued that both administrative and judicial claims were timely filed, thus the Court has jurisdiction over the instant Petition. Conversely, the CIR counter-argued that the Court has no jurisdiction over the instant Petition.

In ruling against the CIR, the Court ruled that in refund claims on erroneously paid taxes, both administrative and judicial claims must be filed within the two (2)-year reglementary period. Here, records show that the alleged erroneous multiple payments or remittance by the taxpayer transpired on October 17, 2017. Thus, counting two (2) years from October 17, 2017, the taxpayer had until October 17, 2019, within which to file both its administrative and judicial claims for refund.

Moreover, CIR's contention that the documents presented by taxpayer do not necessarily prove its claim, as these are susceptible to different interpretations other than a case of multiple payment or multiple remittance and it could be that the second and third payment were for different transaction. Nevertheless, the Court ruled that after the claimant has successfully established a prima facie right to the refund by complying with the requirements laid by law, burden is shifted to the opposing party, the BIR, to disprove such claim. To rule otherwise would be unduly burden the claimant with additional requirements which has no statutory nor jurisprudential basis. *(Empress Dental Laboratories, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 10186, June 7, 2021*)

If a taxpayer files a petition for review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties.

Petitioner essentially argues that the assessment for estate tax liability against the estate of his father is erroneous for including a property not belonging to it. Meanwhile, the CIR claimed that the taxpayer could no longer question the assessment against his father's estate as the same had already attained finality for failure to timely file a protest thereto.

The Court ruled that as a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Here, the estate of the taxpayer's father was amiss in disputing the assessment and discharging the burden of overcoming the presumption. Thus, the taxpayer cannot belatedly attack what has already become final for being erroneous.

Moreover, Petitioner is not a real party in interest with respect to the estate tax assessment against estate. In tax assessments, it is the taxpayer who disputes the same. Here, Petitioner is neither the taxpayer nor acting for and in behalf of the estate. *(Tamparong, Jr. vs. Commissioner of Internal Revenue, et. al., CTA Case No. 9520, June 8, 2021)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

In case the taxpayer denies receipt of the assessment notices from the BIR, the latter has the burden to prove by competent evidence that the required notices were actually received by the taxpayer.

The Court *En Banc* denied the Petition filed by Petitioner for lack of compelling reason to disturb the findings of the Court in Division in the Assailed Decision and Resolution for failure of the Petitioner to prove the actual receipt of the assessment notices by the Respondents.

The Court cited the Supreme Court case of *Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of internal Revenue*, where it held that it is a requirement of due process that the taxpayer must actually receive the assessment. Accordingly, the rule is that in case the taxpayer denies receipt of the assessment notices from the BIR, the latter has the burden to prove by competent evidence that the required notices were actually received by the taxpayer. It is also clear that to prove the fact of mailing, it is essential for the petitioner to present the registry receipt issued by the Bureau of Posts or the Registry return card signed by the taxpayer or its authorized representative or at least a certification issued by the Bureau of Posts attesting to the same fact.

Here, Petitioner's evidence miserably failed to satisfactorily prove that respondents actually received the PAN, FLD and Assessment Notices. Hence, the failure of petitioner to prove actual receipt of the assessment notices by respondents leads to the conclusion that no assessment was validly issued. *(People of the Philippines vs. Delgado and Delbros, Inc., CTA EB Crim No. 077, June 9, 2021)*

Note: *(Concurring & Dissenting Opinion by Bacorro-Villena, J.)* Concurred with the ponencia denying the Petition for Review but take exception from the ratio relied upon in the ponencia. The ponencia goes further to conclude that, "no assessment was validly issued". To my mind, such a declaration touching upon the assessment's validity is improper in criminal cases for tax evasion. Criminal cases for tax evasion must be distinguished from petitions for review of disputed assessments, and it must be clarified that the civil liability deemed instituted with the criminal action is only the civil liability ex delito, and should not be confused with the civil liability arising out of tax assessments.

The CIR, or his duly authorized representative, is duty bound to wait for the expiration of the fifteen (15) day period, reckoned from the date of

The taxpayer alleged that it violated its right to due process when the CIR prematurely issued its FLD. On the other hand, the CIR posited that it observed both procedural and substantive due process in issuing the subject assessment of this case.

In ruling for the taxpayer, the cited Court Section 228 of the NIRC of 1997, as amended, and Section 3.1.2 of Revenue Regulations (RR) No. 12-99, providing that a taxpayer is given a period of fifteen (15) days from receipt of the PAN, to file a protest with the BIR. If the taxpayer fails to respond to the PAN within the said 15-day period, the taxpayer shall be considered in default. It is only then that the CIR, or his duly authorized representative, can validly issue the FLD and assessment notice, which shall be served to the taxpayer.

COURT OF TAX APPEALS

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receipt of the PAN, before it can issue the FLD and assessment notice.

Here, the taxpayer received the PAN on February 20, 2012. Ideally, it had until March 6, 2012, within which to file its protest. On March 9, 2012, however, the taxpayer received the subject FLD dated February 29, 2012. Thus, the CIR's failure to observe the fifteen (15) day period to lapse before issuing the FLD is a clear violation of the taxpayer's right to due process. Consequently, the subject FLD and assessment notice are void, and bears no valid fruit. *(Commissioner of Internal Revenue vs. Lanao Del Norte Electric Cooperative (LANECO), CTA EB No. 2236, June 9, 2021)*

The term "purchase of domestic petroleum products for use in its domestic operations" could only refer to "goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition," and not to "things imported."

This is a Petition for Review, filed by the CIR seeking to reverse and set aside the assailed Amended Decision by the CTA Special 3rd Division.

In denying the Petition, the Court held that the taxpayer satisfied all the requisites to be entitled to its refund claim. The Court in Division ruled that the taxpayer was able to prove that its importations of Jet A-1 fuels were not locally available in reasonable quantity.

In the determination of whether there is locally available Jet A-1 fuel in reasonable quantity, quality, or price, Jet A-1 fuel which was imported cannot be possibly included in the computation. After all, if locally available Jet A-1 fuel includes both local production and imports, there will never be an instance when the Jet A-1 fuel available is insufficient to meet the demands of the domestic market. Consumers of Jet A-1 fuel will always import the same to meet their needs if no other Jet A-1 fuel is locally available in reasonable quantity, quality, or price. *(Commissioner of Internal Revenue vs. Philippine Airlines, Inc., CTA EB No. 2256, June 9, 2021)*

All BOI-registered entities, such as the taxpayer, are entitled to zero-rated VAT on their purchases from local suppliers.

The taxpayer asserted that the Court in Division erroneously excluded its input VAT arising from local purchases of goods and services from the computation of its valid input VAT relying on the doctrine laid in *Coral Bay v. CIR*.

In denying the Petition, the Court held that all BOI-registered entities, such as the taxpayer, are entitled to zero-rated VAT on their purchases from local suppliers. Accordingly, no output VAT should have been shifted to or passed-on to the taxpayer from its local suppliers. In the same vein, it is not correct for the taxpayer to recognize said erroneously passed-on VAT as input taxes.

COURT OF TAX APPEALS
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Accordingly, no output VAT should have been shifted to or passed-on to the taxpayer from its local suppliers.

There being no input VAT to be paid by BOI-registered entities, the taxpayer is precluded from claiming a refund or issuance of tax credit certificate of the input VAT erroneously passed-on to it by its local suppliers. The taxpayer could not have paid input taxes on its purchases of goods and services from VAT - registered suppliers because such purchases being zero-rated, *i.e.*, no output tax was paid by the suppliers, no input tax was shifted or passed on to the taxpayer. It must be stressed that VAT is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. *(Rio Tuba Nickel Mining Corp. vs. Commissioner of Internal Revenue, CTA EB No. 2180, June 10, 2021)*

An input tax need not be directly and entirely attributable to the zero-rated sales to be refundable or creditable.

The CIR contended that the taxpayer failed to prove that input taxes sought to be refunded are directly attributable to its alleged zero-rated sales. Consequently, this failure on the part of the taxpayer should result in the denial of its claim for input VAT refund.

In ruling against the CIR, the Court cited Section 112 of the NIRC which provides that the same does not require absolute direct attribution of the purchases (the input VAT of which is subject of a refund/TCC claim) to zero-rated sales. In fact, the said provision allows the allocation of input VAT that cannot be directly attributed to any of the taxpayer's sales (i.e., zero-rated sales, taxable sales or exempt sales).

Thus, on the strength of Section 112 of the NIRC and the previous ruling of the Court, it is not necessary for input taxes to be directly attributable to zero-rated sales so that they can be validly refunded. *(Commissioner of Internal Revenue vs. Lepanto Consolidated Mining Company, CTA EB No. 2230, June 14, 2021)*

It is not only PAGCOR that is exempt from paying income taxes, whether local or national, but also PAGCOR's licensees and franchisees such as the taxpayer.

The CIR insisted that the taxpayer is not entitled to refund because the exemption does not inure to the benefit of entities who are mere licensees of PAGCOR's franchise.

In denying the CIR's Petition, the Court cited Section 13(2) of the PAGCOR Charter which explicitly granted PAGCOR exemption from the payment of corporate income tax and other taxes, including any form of charges, fees and levies (with the exemption of 5% franchise tax on gross revenues or earnings) with respect to its income from gaming operations and such exemption inure to the benefit of and extend to other entities with whom PAGCOR operator has any contractual relationship in connection with the operations of the casinos authorized to be conducted under the former's Charter.

COURT OF TAX APPEALS

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The Court further cited the Supreme Court case of Bloomberry Resorts and Hotels, Inc. vs. BIR whereby the Supreme Court ordered the BIR to refrain from imposing corporate income tax on Bloomberry's income derived from its gaming operations. The Supreme Court held that since Bloomberry is a licensee of PAGCOR and has already paid 5% of its franchise tax on its gaming revenue, it is exempt from tax on its income generated from its gaming operations. *(Commissioner of Internal Revenue vs. Premiumleisure and Amusement, Inc. (PLAI), CTA EB No. 2226, June 14, 2021)*

Any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents: a) sales invoice; b) export declaration and bill of lading or airway bill ods; and c) bank credit advice or certificate of bank remittance.

The taxpayer argued that its claim for tax refund should be granted because all the elements necessary for the granting of the tax refund claim are present. It alleged that it has sufficiently established and proven all the requirements before a taxpayer engaged in zero-rated transactions may apply for tax refund or issuance of tax credit certificate for unutilized input VAT. On the other hand, the CIR counter-argued, among others, that the taxpayer's claim for VAT refund/tax credit has no factual and legal basis.

The Court partially granted the Petition. It held that any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: a) the sales invoice as proof of sale of goods; b) the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and c) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services. In other words, only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

In this case, some items in the refund claim should be disallowed for being not properly supported by the required documents previously mentioned. As only a portion of taxpayer's zero-rated is properly substantiated, the substantiated excess unutilized input taxes shall be multiplied to this portion to determine the refundable amount. Hence, the Petition for Review is partially granted. *(Axelum Resources Corp. vs. Commissioner of Internal Revenue, CTA. Case No. 9969, June 15,2021)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

In the case of non-filing of an ITR, being a statutory offense or malum prohibitum, lack of intent to commit the crime is unavailing as a defense.

The accused was indicted for violation of Section 254, in relation to Section 255 of the 1997 NIRC, as amended, for his wilful failure to file his ITRs for taxable years 2012 and 2013. According to him, he did not own Lucky Sea Trading and that it was another person, his employer, who was the one who caused his BIR registration as well as the business name registration in the DTI.

One of the elements of the offenses under Sec. 255 is that such failure was willful. As defined, willfulness is a state of mind that may be inferred from the circumstances of the case. Thus, proof of willfulness may be, and usually is, shown by circumstantial evidence alone. The Court held that such denial by the accused without a corroborative evidence is considered an alibi, which has long been considered weak and unreliable. It further held that the accused failed to take affirmative actions to prove his lack of prior knowledge or active participation in the said registration of his business, like proving that his signature was forged or his personal credentials were stolen.

The Court emphasized that in the case of non-filing of an ITR, being a statutory offense or malum prohibitum, lack of intent to commit the crime is unavailing as a defense. *(People of the Philippines vs. De Guzman, CTA Crim Case No. O-690, June 9, 2021)*

The term "relevant supporting documents" for purposes of Section 228 of the 1997 NIRC, as amended, refers to the documents necessary to support the legal basis in disputing a tax assessment, as determined by the concerned taxpayer and not by the BIR.

The CIR contended that the Court has no jurisdiction over the Petition for Review because the assessment notices have become final and demandable for failure of the taxpayer to submit all relevant supporting documents within sixty (60) days from filing of the protest.

In ruling against the CIR, the Court held that the term "relevant supporting documents" for purposes of the above-quoted Section 228 of the 1997 NIRC, as amended, refers to the documents necessary to support the legal basis in disputing a tax assessment, as determined by the concerned taxpayer and not by the BIR. The latter can only inform the former to submit additional documents, but the BIR cannot demand what type of supporting documents should be submitted. To rule otherwise would, in effect, place the taxpayer at the mercy of the BIR, which may require the production of documents which said taxpayer may not be able to submit.

Here, the taxpayer attached the supporting documents to its protest letter, i.e., its 1st, 2nd, and 3rd Quarterly VAT Returns and Filing References for the EWT Returns (BIR form 160 1 E), all for taxable year 2009. There is no indication, in the said protest letter, that petitioner intended to submit any other document relative thereto. Thus, the CIR's argument is bereft of merit. *(8196 Convenience Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9818, June 10, 2021)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

Once an assessment is made or issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund at any time within the full period of two (2) years from the date of payment.

The Court ruled that Section 195 of the LGC of 1991, as amended, requiring the filing of a protest would still apply even if the taxpayer opts to pay the amount assessed within the same period of 60 days and subsequently claims for refund under Section 196 of the same law.

On the contrary, Section 196 of the LGC of 1991, as amended, would apply, without requiring prior compliance with Section 195, if no notice of assessment was issued to the taxpayer.

Here, since the Billing Assessment Forms were issued to the taxpayer and they qualify as the notices of assessment contemplated by law, it could not follow Section 196 of the LGC of 1991, as amended, without complying with the requirement of filing a protest under Section 195 of the same law.

Once an assessment is made or issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund at any time within the full period of two (2) years from the date of payment as Section 196 of LGC of 1991, as amended, may suggest. The reason being that the taxpayer must administratively question the validity or correctness of the assessment within 6o days from receipt of the notice of assessment. *(Makati City, et. al. vs. Metro Pacific Tollways Corporation, CTA EB No. 2217, June 14, 2021)*

Note: *(Dissenting Opinion of Modesto-San Pedro, J.)* Billing Assessment Forms do not meet the requirements of Section 195 of the LGC. Thus, the Billing Assessment Forms do not qualify as a notice of assessment as contemplated in Section 195. Therefore, the taxpayer's assessment representing deficiency LBT has not attained finality.

While PCL does not contain that words "final decision", the tenor is unmistakeably one that warned the taxpayer to settle or pay his tax liabilities tantamount to a denial of taxpayer's request for reconsideration.

The taxpayer argued that the Preliminary Collection Letter (PCL) cannot be construed as an FDDA because it uses the word "requested" which is not similar to a demand and that the wordings of the PCL do not state in clear and unequivocal language that such is BIR's duly authorized representative's FDDA.

In ruling against the taxpayer, the Court held that while the subject PCL does not contain the words "final decision", the tenor is unmistakably one that warned the taxpayer to settle or pay his tax liabilities. The "finality" of the BIR's decision can also be inferred from the fact that the taxpayer was similarly warned that his failure to pay the same will result in the accumulation of interest and surcharges.

A final demand letter from the BIR, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration. Such letter amounts to an FDDA and is thus appealable to the Court in Division. *(Yap vs. Bureau of Internal Revenue, CTA EB No. 2272, June 15, 2021)*

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Proof of actual remittance of the taxes withheld to the BIR is not an indispensable requirement in claims for refund of excess CWTs.

The CIR contended that the proof of actual remittance of the taxes withheld to the BIR is indispensable in a claim for refund of excess CWTs.

In ruling against the CIR, the Court held that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice the taxpayer-payee who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Section 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, the taxpayer-payee has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the taxpayer-payee. *(Tullet Prebon (Philippines), Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9562, June 17, 2021)*

The document which may be accepted as evidence to prove the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment which is the basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.

This is a Petition for Review filed by the taxpayer against the CIR claiming for refund representing unutilized and excess creditable withholding taxes (CWTs) for taxable year (TY) 2015.

In a claim for refund of excess and unutilized CWTs, the fact of withholding must be established by competent evidence. As held by the Court, the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) is competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates. However, other competent proof may be appreciated to establish the fact of withholding. In another CTA decision, it was declared that in claims for excess and unutilized creditable withholding tax, the submission of BIR Forms 2307 is to prove the fact of withholding of the excess creditable withholding tax being claimed for refund, but the information contained in that BIR Form No. 2307 can also be gathered from Withholding Tax Remittance Returns (BIR Form No. 1606). In that case, refund was granted despite non-presentation of BIR Form No. 2307.

It is settled that the document which may be accepted as evidence to prove the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment which is the basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid. *(Casas+Architects, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9806, June 17, 2021)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

Revenue officers must be authorized by an LOA in order to validly examine the books of accounts and other accounting records of the taxpayer. Otherwise, the tax assessments issued by the BIR against such taxpayer shall be void.

The taxpayer pointed out that the subject assessment was conducted pursuant to a Letter Notice (LN), without the issuance of LOA, and thus such assessment should be void.

In ruling for the taxpayer, the Court ruled that it is explicit that all audit investigations must be conducted by a duly designated RO authorized to perform audit and examination of taxpayer's books and accounting records, pursuant to an LOA. In case of re-assignment or transfer of cases to another RO, it is mandatory that a new LOA shall be issued with the corresponding notation thereto. In the absence of such an authority, the assessment or examination is a nullity.

Here, the record of the case is bereft of any showing of the authority of ROs to conduct the audit investigation of the taxpayer. Accordingly, since the said ROs were not duly authorized by a new LOA, the subject tax assessments that were issued as a result of their audit investigation of the taxpayer's alleged deficiency tax liability are void. *(Commissioner of Internal Revenue vs. Standard Insurance Co., Inc., CTA EB No. 2090, June 21, 2021)*

The CIR must ensure not only the FAN's sending but also its receipt by the taxpayer.

The taxpayer alleged that the assessment against it was invalid for the CIR's failure to prove the former's receipt of the PAN and the FAN. Conversely, the CIR contended that the issuance of WDL is evidence in itself of the previous issuance of the subject notices.

In ruling against the CIR, the Court held that the CIR must ensure not only the FAN's sending but also its receipt by the taxpayer. A final assessment is a notice to the effect that the amount therein stated is due as tax and a demand for payment thereof. This demand for payment signals the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies. Thus, it must be sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period.

Here, the CIR failed to provide any scintilla of proof that the taxpayer received the subject notices. In his defense, the CIR blamed the delay on the sluggish turn-over of records within his own office. However, the efficiency of the BIR's workflow is not a valid reason for the delay nor a matter fit for the judicial discourse. *(Commissioner of Internal Revenue vs. Barrio Fiesta Manufacturing Corporation, CTA EB No. 2186, June 21, 2021)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

Claim for refund are civil in nature and as such, the taxpayer claimant, though having a heavy burden of showing entitlement, need only prove preponderance of evidence in order to recover excess credit in cold cash.

The crux of the controversy in the case at bar is the interpretation of Section 148(e) of the 1997 NIRC, as amended. Accordingly, the taxpayer presented an expert witness to determine the nature of alkylate considering that Section 148(e) of the NIRC of 1997, as amended, imposed the excise tax only and particularly to "Naphtha, regular gasoline and other similar products of distillation."

The Court held that the expert witness' opinion that "alkylate is not a product of distillation, but a product of alkylation" is acceptable. Experts' opinions are not ordinarily conclusive in the sense that they must be accepted as true. They are generally regarded only as purely advisory in character. The opinion of the expert may not be arbitrarily rejected; it is to be considered by the court in view of all the facts and circumstances in the case and when common knowledge utterly fails, the expert opinion may be given controlling effect. If both the documentary and testimonial evidence were unavailable, expert evidence could be considered. Here, the BIR did not object to the offer of testimony of the witness as expert in fuel products but made a belated objection only after the witness testified by way of his Judicial Affidavit. Thus, the Court found no reason not to give effect to the said expert opinion.

Claim for refund are civil in nature and as such, the taxpayer claimant, though having a heavy burden of showing entitlement, need only prove preponderance of evidence in order to recover excess credit in cold cash. *(Petron Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 9751, 9813 and 9848, June 21, 2021)*

The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege and may be exercised only in the manner and in accordance with the provisions of law.

This is a Petition for Review filed by the CIR against the taxpayer before the Court *En Banc* assailing the Decision of the Court's Special Second Division which cancelled the assessments issued against the taxpayer.

In dismissing the Petition, the Court held that the relief prayed for by the CIR is totally irrelevant to the subject of its appeal. Moreover, the particular assessment referred to in the Prayer is different from the subject assessment in this case as well.

It is well-settled that the right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. An appealing party must strictly comply with the requisites laid down in the Rules of Court. Deviations from the Rules cannot be tolerated. *(Commissioner of Internal Revenue vs. Avon Cosmetics, Inc., CTA EB No. 2261, June 22, 2021)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

The taxpayer argued that the assessment is void for failure of the CIR to serve a copy of the FLD and its accompanying Assessment Notices to the former. On the other hand, the CIR asserted that it observed due process in the service of the assessment notices when the PAN, FLD and Assessment Notices were served at petitioner's registered address through registered mail.

In ruling against the CIR, the Court held that if the taxpayer denies receiving an assessment from the BIR, it becomes incumbent upon the BIR to prove by competent evidence that such notice was indeed received by the addressee. It was further ruled that when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

Here, the taxpayer directly denied receipt of the assessment notices. Thus, the CIR is obliged to present evidence that the assessment notices were actually received by the taxpayer. The return cards of the notices sent to the taxpayer through registered mail could prove receipt of the notices. However, the same were not presented and offered in evidence by the CIR. *(Fabtech Kitchens Unlimited, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9589, June 23, 2021)*

A taxpayer who pays or advances a legally and lawfully due and payable tax to the government is not entitled to recover such tax because the same is neither erroneously nor illegally collect.

This is a Petition for Review filed by the taxpayer seeking a tax refund representing excise taxes prepaid by the taxpayer on internal revenue stamps requisitioned through the BIR's Internal Revenue Stamp Integrated System (IRSIS), the return of spoiled stamps and bad order consisting of short deliveries, as well as the unapplied balance of the taxpayer's advance deposit in the IRSIS.

The Court dismissed the Petition because the subject claim for refund was composed of the taxpayer's duly made advance deposits, i.e., voluntarily filed and prepaid by petitioner through eFPS using Excise Tax Return for Tobacco Products (BIR Form No. 2200-T) and the value of spoiled stamps and bad orders credited back by the BIR to petitioner's IRSIS account.

There is erroneous payment of taxes when a taxpayer pays under a mistake of fact, as for the instance in a case where he is not aware of an existing

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exemption in his favor at the time the payment was made. Alternatively, illegally assessed or collected taxes arise when payments are made under duress or the assessment thereof is rendered by a person who has no power to assess the tax. Accordingly, a taxpayer who pays or advances a legally and lawfully due and payable tax to the government is not entitled to recover such tax because the same is neither erroneously nor illegally collect. *(British American Tobacco (Philippines), Limited vs. Commissioner of Internal Revenue, CTA Case No. 9998, June 28, 2021)*

A Mission Order is necessary before the BIR can issue a 48-Hour Notice, 5-day VAT Compliance Notice, and Closure Order, to a "non-compliant taxpayer".

A surveillance by certain officers is necessary before the BIR can issue a 48-Hour Notice, 5-day VAT Compliance Notice, and Closure Order, to a "non-compliant taxpayer". The surveillance, in turn, must be covered by, or authorized through, a Mission Order duly issued under RMO No. 3-2009.

In this case, no Mission Order was shown to the taxpayer at the onset of the BIR's overt surveillance. In fact, the BIR admitted that no Mission Order was issued against the taxpayer. Further, the Court finds that the 48-Hour Notice and 5-Day Vat Compliance Notice have no factual bases. The said Notices did not state the details of the findings of the investigating officers and computation and legal bases of the alleged deficiency VAT deficiency. Notably, no Preliminary Assessment Notice and Final Assessment Notice were issued in this case. In fact, during the pendency of the instant case, the tax audit of the taxpayer pursuant to an LOA was still on-going. *(iScale Solutions, Inc. vs. Commissioner of Internal Revenue, et. al., CTA Case No. 9845, June 30, 2021)*

There is no violation of the doctrine of exhaustion of

The CIR alleged that the taxpayer failed to exhaust administrative remedies before elevating the case to the Court. Accordingly, pending closure of their investigation of the taxpayer's claim, no grant of refund may be given to the taxpayer based on the filed claim.

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administrative remedies as long as the administrative and judicial claims for refund were filed within the two-year reglementary period.

In partially granting the Petition, the Court held that as long as the administrative and judicial claims for refund were filed within the two-year reglementary period, there is no violation of the doctrine of exhaustion of administrative remedies, even if the taxpayer-claimant did not wait for the action of the CIR on its refund claim before filing its judicial claim with this Court.

Here, there is no showing that the CIR ever acted upon the taxpayer's administrative claim for refund from the time it was filed on April 26, 2017 up to the filing of its judicial claim on April 10, 2018. Considering that the two-year prescriptive period was about to end, the taxpayer properly elevated its judicial claim within the said two-year prescriptive period under Section 229 of the NIRC of 1997, as amended. *(Merck Sharp & Dohme (I.A.) LLC – Philippine Branch vs. Commissioner of Internal Revenue, CTA Case No. 9803, June 25, 2021)*

ITAD BIR RULINGS

HIGHLIGHTS

ITAD BIR Ruling No. 023-21, June 7, 2021

Under RMC 8-2017, Japanese companies may seek reimbursement from the executing government agencies of the Philippines for the 12% VAT paid in connection with the OECF-funded project.

Contrary to the provision of RMC No. 45-2015, RMC No. 8-2017 now states that the VAT-registered suppliers and subcontractors of Japanese companies involved in Japanese Overseas Economic Cooperation Fund (OECF)-funded projects shall bill and pass on the 12% VAT to these Japanese companies, which in turn, shall include in there billing and pass on the 12% VAT to the concerned executing agencies of the Republic of the Philippines, DPWH in this case.

In other words, the Japanese companies are allowed to bill, and seek reimbursement from the executing government agency for the 12% VAT paid in connection with the OECF-funded project and not only the 5% VAT.

It also bears stressing that RA No. 10963 or the TRAIN law amended Section 114(C) of the Tax Code. The national government, or any of its political subdivisions, instrumentalities, and agencies, including GOCCs shall no longer impose the 5% final withholding VAT on payments for purchase of goods and services from OECF-funded projects. But the government or its agencies shall still assume the payment of VAT shouldered or paid by the Japanese companies.

ITAD BIR Ruling No. 024-21, June 8, 2021

The condition for the imposition of the preferred dividend tax rate of 15% is fully satisfied if the country of domicile of the NRFC exempt from taxation the dividends received from the Philippines.

Section 28(B)(5)(b) of the Tax Code provides that dividend paid by a domestic corporation to a NRFC are subject to income tax of 15%, provided the country of domicile of the foreign stockholder corporation shall allow a tax credit against the tax payable to the domiciliary country by the foreign stockholder corporation “taxes deemed paid in the Philippines” equivalent to 15%.

This deemed paid tax credit represents the difference between the regulatory 30% dividend rate imposed on NRFC and the preferred 15% dividend tax rate. The Supreme Court, however ruled in a case that the condition for the imposition of the preferred dividend tax rate of 15% is fully satisfied if the country of domicile of the NRFC exempt from taxation the dividends received from the Philippines.

In this case, considering that Bermuda, the country of origin of the CEL, an NRFC does not impose income, gains or appreciations derived by CEL from sources within and outside Bermuda, the dividends it received from the domestic corporation are, therefore, subject to Philippine income tax rate of 15%.

ITAD BIR RULINGS

HIGHLIGHTS

ITAD BIR Ruling No. 025-21, June 8, 2021

Where the income earner is a resident of a country with which the Philippines has an existing and effective tax treaty, the relevant provisions of the said treaty governs the taxability of income derived by a resident of one or both of the contracting sates.

The place where the services were actually rendered, not the residence of the income recipient, determines the source of income for personal services. In a case, the Court ruled that the "source of income" relates to the property, activity or service that produced the income.

However, in cases where the income earner is a resident of a country with which the Philippines has an existing and effective tax treaty, the relevant provisions of the said treaty governs the taxability of income derived by a resident of one or both of the contracting states pursuant to the principle of *pacta sunt servanda*, which requires the parties to a treaty to keep their agreement therein in good faith.

In this case, the income recipient is a tax resident of Singapore, a country where the Philippines has an existing treaty. Under Article 14 of the Philippines-Singapore tax treaty, although services are performed in the state of source, the state of residence would still remain its taxing rights over the remuneration or income for personal services derived by its resident, provided all of the following conditions are satisfied:

(1) The recipient is present in the state of source for a period or periods not exceeding the aggregate 183 days in the calendar year concerned;
(2) The remuneration or income is paid by, or on behalf of, a person who is a resident of the first-mentioned state; and
(3) The remuneration or income is not borne directly by a permanent establishment which that person has in the state of source.

ITAD BIR Ruling No. 026-21, June 8, 2021

Under the Philippine-Malaysia tax treaty, professional fees and director's fees derived by Malaysian resident in the Philippines may be taxed in the Philippines.

Under Section 32(B)(5) of the Tax Code, income derived from sources within the Philippines is exempt to the extent required by any treaty obligation binding upon the Philippine government.

Relative thereto, Articles 14 and 15 of the Philippine-Malaysian tax treaty provide that the Philippines may tax remuneration paid in respect to professional services performed in the Philippines and director's fees derived by a Malaysian resident, paid by a Philippine-resident company.

Further, consultancy fees, profit share and director's fees derived by a Malaysian resident from the sale or performance of services in the Philippines are subject to 12% VAT under Section 108(A) of the Tax Code.

ITAD BIR RULINGS

HIGHLIGHTS

ITAD BIR Ruling No. 027-21, June 8, 2021

Under Philippine-Thailand tax treaty, the profits derived by an enterprise of Thailand in the Philippines may be taxed in the Philippines if the profits are attributable to a permanent establishment in the latter.

Under Article 7 of Philippine-Thailand tax treaty, the profits derived by an enterprise of Thailand in the Philippines may be taxed in the latter if the profits are attributable to a permanent establishment which the enterprise has in the Philippines.

Under Article 5, a permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on, and includes especially, a place of management, a branch, an office, a factory, and a workshop. In the case of furnishing of services, an enterprise is deemed to have a permanent establishment if it furnishes services in the Philippines, through employees or other personnel thereof, for a period or periods aggregating more than 183 days.

In this case, Prosoft, a resident of Thailand, is not engaged in trade or business in the Philippines and does not have a permanent establishment in the Philippines. As represented, it rendered all services online and outside the Philippines. Thus, the service fee paid by Suzuki Philippines, a domestic corporation to Prosoft, for such services shall be exempt from Philippine income tax. Moreover, the same fee is exempt from VAT following the cross-border or destination principle of the VAT system.

ITAD BIR Ruling No. 028-21, June 8, 2021

For VAT purposes, in case of NRFCs, it is sufficient that the services are rendered in the Philippines, regardless of regularity.

Under Article 7 of Philippine-UAE tax treaty, the profits of an enterprise of UAE shall be taxable only in UAE unless the enterprise carries on business in the Philippines through a permanent establishment situated therein.

Under Article 5, a permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on, and includes especially, a place of management, a branch, an office, a factory, and a workshop. It includes also the furnishing of services, by an enterprise through employees or other personnel thereof, which continues for an aggregate of more than 6 months in any taxable year.

In this case, NDT, an enterprise of UAE, is not engaged in trade or business in the Philippines. It does not have a permanent establishment in the Philippines since it does not have any fixed place of business in the country and it furnish services in the Philippines for an aggregate of 140 days only. Thus, the service fee paid by FPIC, a domestic corporation to NDT are subject to Philippine income tax.

For VAT purposes, in case of NRFCs, it is sufficient that the services are rendered in the Philippines, regardless of regularity. Considering that the in-line inspection services of NDT were rendered in the Philippines, the same shall be subject to VAT.

ITAD BIR RULINGS

HIGHLIGHTS

ITAD BIR Ruling No. 029-21, June 8, 2021

If the country of residence of the NRFC did not impose tax on dividends it received from the Philippines, the tax sparing credit condition is satisfied.

In *CIR vs. Wander case*, the Supreme Court held that if the country of residence of the NRFC did not impose tax on dividends it received from the Philippines, the tax sparing credit condition is satisfied.

Accordingly, since Target Value is an NRFC, and its country of residence, the Cayman Islands, did not impose any tax on the dividends it received from Cosco, a domestic corporation, pursuant to Section 6 of the amended Tax Concessions Law of the Cayman Islands as confirmed by the Governor in Cabinet, the subject dividends are, therefore, subject to income tax rate of 15% pursuant to Section 28(B)(5)(b) of the Tax Code.

ITAD BIR Ruling No. 030-21, June 8, 2021

Diplomatic missions and their diplomatic agents are subject to indirect taxes, such as VAT, but may be exempt on the basis of reciprocity.

While the Vienna Convention on Diplomatic Relations of 1961 exempts diplomatic missions and their diplomatic agents from all dues and taxes, personal or real, national, regional or municipal, they are, however, subject to indirect taxes of any kind which are normally incorporated in the price of goods or services, such as VAT.

Nevertheless, on the basis of reciprocity, the BIR may grant tax privileges to a foreign embassy and to its members on their local purchases of goods and services.

Here, the Embassy of the Republic of India and its qualified diplomatic personnel in the Philippines are entitled to the same VAT exemption that India grants to the Philippine Embassy and its diplomatic personnel in New Delhi, India by way of reimbursement/refund, and not through point-of-sale basis, applying the principle of reciprocity which was reiterated in RMO No. 10-2019, as amended by RMO No. 41-2020.

ITAD BIR RULINGS

HIGHLIGHTS

DA-ITAD BIR Ruling No. 012-21, June 7, 2021

Applying the principle of reciprocity, the Embassy of the USA and its personnel are exempt from VAT and ad valorem tax on their local purchase of motor vehicles.

Article 34 of the Vienna Convention on Diplomatic Relations states that the exemption privilege of an Embassy and its diplomatic agents does not include exemption from VAT and ad valorem taxes.

However, applying the principle of reciprocity, the BIR may confirm VAT and ad valorem tax exemption to the Embassy of the USA and/or its personnel on their local purchase of motor vehicles since it appears from DFA VAT matrix dated March 2, 2021 that the Government of USA allows similar exemption to the Philippine Embassy and/or its personnel.

In view thereof, the local sale of one unit of 2020 Ford Everest, for personal use of the Fleet Postal Officer of the Embassy of the USA, being an exempt entity, shall be subject to VAT at 0% rate pursuant to Section 106(A)(2)(b) of the Tax Code, as amended. And is likewise exempt from ad valorem tax pursuant to Section 9 of RR No. 25-2003.

DA-ITAD BIR Ruling No. 013-21, June 7, 2021

Applying the principle of reciprocity, the Embassy of the USA and its personnel are exempt from VAT and ad valorem tax on their local purchase of motor vehicles.

In general, purchases by the Embassy or its agents of goods and/or services shall be subject to VAT and ad valorem under Section 106 and 149 of the NIRC of 1997, as amended.

However, applying the principle of reciprocity, the BIR may confirm VAT and ad valorem tax exemption to the Embassy of the USA and/or its personnel on their local purchase of motor vehicles since it appears from DFA VAT matrix dated March 2, 2021 that the Government of USA allows similar exemption to the Philippine Embassy and/or its personnel.

In view thereof, the local sale of one unit of Kawasaki EN650D, for personal use of the Cemetery Superintendent, ABMC of the Embassy of the USA, being an exempt entity, shall be subject to VAT at 0% rate pursuant to Section 106(A)(2)(b) of the Tax Code, as amended. And is likewise exempt from ad valorem tax pursuant to Section 9 of RR No. 25-2003.

ITAD BIR RULINGS

HIGHLIGHTS

DA-ITAD BIR Ruling No. 014-21, June 7, 2021

Applying the principle of reciprocity, the Embassy of the Republic of Indonesia and its personnel are exempt from VAT and ad valorem tax on their local purchase of motor vehicles.

Article 34 of the Vienna Convention on Diplomatic Relations states that the exemption privilege of an Embassy and its diplomatic agents does not include exemption from VAT and ad valorem taxes.

However, applying the principle of reciprocity, the BIR may confirm VAT and ad valorem tax exemption to the Embassy of the Republic of Indonesia and/or its personnel on their local purchase of motor vehicles since it appears from DFA VAT matrix dated March 2, 2021 that the Government of Indonesia allows similar exemption to the Philippine Embassy and/or its personnel in Indonesia.

In view thereof, the local sale of one unit of 2020 Toyota Prado, for personal use of the Army Attaché of the Embassy of the Republic of Indonesia, being an exempt entity, shall be subject to VAT at 0% rate pursuant to Section 106(A)(2)(b) of the Tax Code, as amended. And is likewise exempt from ad valorem tax pursuant to Section 9 of RR No. 25-2003.

BIR ISSUANCES

HIGHLIGHTS

UPDATES

RR No. 8-2021, June 11, 2021

This amends certain provisions of RR No. 4-2021, which implemented the VAT and Percentage Tax provisions under RA No. 11534 (CREATE Act)

This amends certain provisions of Revenue Regulations (RR) No. 4-2021, which implemented the Value-Added Tax (VAT) and Percentage Tax provisions under Republic Act (RA) No. 11534 (Corporate Recovery and Tax Incentives for Enterprises [CREATE] Act). Section 2, sub-section 4.109-1(B)(p)(4) of RR No. 4-2021 is amended to include the adjusted amount of not more than ₱3,199,200.00 selling price for sale of house and lot, and other residential dwellings in order to qualify for VAT exemption.

The importation of Covid 19-related equipment, materials, drugs and vaccines under Section 2, sub-section 4.109-1(B)(p)(bb) of RR No. 4-2021 shall not be subject to the issuance of the Authority to Release Imported Goods (ATRIG) under Revenue Memorandum Order (RMO) No. 35-2002, as amended, and may be released by the Bureau of Customs (BOC) without the need of an ATRIG.

Excess Percentage Tax payments as a result of the decrease of tax rate from 3% to 1% starting July 1, 2020 until the effectivity of RR No. 4-2021 may be carried forward to the succeeding taxable quarters. This carry-over portion is intended for Percentage Taxpayers who are regularly filing the returns and are expected to have overpaid taxes as a result of the retroactive application of the CREATE. Tax refund, however, is still allowed in the event that the taxpayer shifted from non-VAT to VAT-registered status, or the taxpayer has opted to avail of the eight percent (8%) Income Tax rate at the beginning of TY 2021.

RR No. 9-2021, June 11, 2021

This amends certain provisions of RR No. 16-2005, as amended by RR No. 13-2018 and as further amended by RR No. 26-2018, to implement the imposition of 12% VAT on transactions covered under Section

This amends certain provisions of RR No. 16-2005, as amended by RR No. 13-2018 and as further amended by RR No. 26-2018, to implement the imposition of 12% VAT on transactions covered under Section 106 (A)(2)(a) subparagraphs (3), (4), and (5), and Section 108(B) subparagraphs (1) and (5) of the Tax Code of 1997, as amended by TRAIN Law.

The following transactions that were previously taxed at zero percent (0%) VAT shall now be subject to 12%:

a. Those transactions considered as export sale under subparagraphs (3), (4), and (5) of Section 106(A)(2) of the Tax Code of 1997, as amended, to wit:
    i. Sale of raw materials or packaging materials to a non-resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency, and accounted for in accordance with the rules and regulations of the BSP [Sec. 106(A)(2)(a)(3)];
    ii. Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed 70% of total annual production [Sec. 106(A)(2)(a)(4)]; and

106 (A)(2)(a) subparagraphs (3), (4), and (5), and Section 108(B) subparagraphs (1) and (5) of the NIRC of 1997, as amended by RA No. 10963 (TRAIN Law)

iii. Those considered export sales under Executive Order No. 226 and other special laws [Sec. 106(A)(2)(a)(5)].

b. The sale of services and use or lease of properties under subparagraphs (1) and (5) of Section 108(B) of the Tax Code of 1997, as amended:
   i. Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP [Sec. 108(B)(1)]; and
   ii. Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of the total annual production [Sec. 108(B)(5)].

RR No. 10-2021, June 17, 2021

This amends pertinent provisions of Section 10 under RR No. 20-2018 relative to the outright exemption granted to the exportation of Sweetened Beverages products

This amends pertinent provisions of Section 10 under Revenue Regulations No. 20-2018 relative to the outright exemption granted to the exportation of Sweetened Beverages products, as follows:

SECTION 10. IMPOSITION OF EXCISE TAX ON REMOVAL OF SWEETENED BEVERAGES PRODUCTS FOR EXPORT.

Removal of Sweetened Beverages products intended for export shall be subject to the payment of the Excise Tax by the manufacturer due on every removal thereof from the place of production. After payment of the tax, the manufacturers at its option may file a claim for excise tax credit/refund pursuant to Sections 204 and 229 of the NIRC; or may avail of a claim for product replenishment scheme in accordance to the prescribed provisions under Sec. 6 of Revenue Regulations No. 3-2008 dated January 22, 2008, subject to the following terms and conditions:

a. A permit shall be per shipment secured from the BIR Office where the manufacturer is registered or required to be registered as an excise taxpayer before the product is removed from the place of production;
b. The products removed from the place of production shall be directly transported, loaded aboard the international shipping vessel or carrier, and shipped directly to the foreign country of destination without returning to the Philippines;
c. Proof of exportation such as, but not limited to, the documents enumerated below, shall be submitted within thirty (30) days from the date of actual date of exportation. However, the concerned BIR Office may, upon written request by the taxpayer-exporter, grant a maximum

of 30 days, one-time extension for the submission of such documents for meritorious reasons.

i. Export Entry Declaration duly filed with the Bureau of Customs
ii. Commercial Invoice
iii. Packing list
iv. Bill of Lading
v. Cargo Manifest, if applicable
vi. Inward bank remittance in foreign currency acceptable to the BSP
vii. Any document showing proof that the products exported have actually arrived and unloaded in the foreign port of destination
viii. Other necessary documents as may be reasonably required; and

d. The prescribed phrase "EXPORTED FROM THE PHILIPPINES" is printed on each label that is attached/affixed on the primary container in a recognizable and readable manner.

Failure to submit proof of exportation within the prescribed period shall be construed as non-exportation of the particular articles; and therefore, the same shall be subjected to the corresponding applicable tax, inclusive of penalties. Relative thereto, subsequent issuance of export permits shall not be allowed unless the assessed applicable tax due on such unliquidated export, including the applicable penalties, shall have been paid. For this purpose, proof of payment of the aforesaid assessment shall accompany the subsequent application permit.

RR No. 11-2021, June 23, 2021

This implements the tax exemptions and privileges granted under RA No. 11523 (Financial Institutions Strategic Transfer [FIST] Act)

This implements the tax exemptions and privileges granted under RA No. 11523 or FIST Act.

A Financial Institutions Strategic Transfer Corporation (FISTC) established and organized pursuant to the provisions of the Act shall comply with the registration requirements as set forth in Section 236 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Further, the newly registered FISTC shall comply with the provisions of the NIRC of 1997, as amended, and other applicable tax revenue issuances, particularly on the issuances of registered Sales Invoices or Official Receipts, keeping of registered Books of Accounts and other accounting records, withholding of taxes, filing of required tax returns; and payment of correct taxes due on time.

All reference to FISTC under this Regulations shall also apply to Special Purpose Vehicle (SPV) created and organized under RA No. 9182, as amended.

Pursuant to Section 15 of Article IV of the Act, only the following transactions shall be covered by the tax exemptions as provided in paragraph (b) of the Regulations:

a. Transfer of a Non-Performing Loan (NPL) by a Financial Institution (FI) to a FISTC;
b. Transfer of a Real and Other Properties Acquired (ROPA) by an FI to a FISTC;
c. Dation in payment (dacion en pago) of an NPL by a borrower to an FI;
d. Dation in payment (dacion en pago) of an NPL by a third-party, on behalf of a borrower, to an FI;
e. Transfer of an NPL by an FI to an individual;
f. Transfer of a ROPA by an FI to an individual;
g. Transfer of an NPL by a FISTC to a third-party;
h. Transfer of a ROPA by a FISTC to a third-party;
i. Dation in payment (dacion en pago) of an NPL by a borrower to a FISTC or an individual;
j. Dation in payment (dacion en pago) of an NPL by a third-party, on behalf of a borrower, to a FISTC or an individual;
k. Transfer of an NPL by an individual to a third-party: and,
l. Transfer of a ROPA by an individual to a third-party.

The transactions enumerated in paragraph (a) of the Regulations, subject to the conditions set forth in paragraphs (c) and (d) of the Regulations, shall be exempt from the following taxes:

a. DST on any document evidencing the transfer or dation in payment;
b. Capital Gains Tax imposed on the transfer of lands and/or other assets treated as capital assets;
c. Creditable Withholding Income Taxes imposed on the transfer of land and/or buildings treated as ordinary assets, Provided, That this shall not include exemption from Income Tax under Title II of the NIRC of 1997. The transfer by an FI or by a FISTC of its NPA, which is treated as its ordinary asset, shall continue to be subject to the ordinary Corporate Income Tax or MCIT. In this manner the FI shall compute the tax gain or loss as the difference between the amount of consideration received from the FISTC and the cost basis of the related NPA, i.e., the unpaid loan amount of the borrower.
d. VAT on the transfer of NPAs or gross receipts tax: Provided, That in case of a VAT-exemption and pursuant to Section 110(A)(3) of the NIRC of 1997, the following rules shall apply:
    (i) if the property being transferred was intended for sale, for conversion into or intended to form part of a finished product for sale, for use as supplies in connection with trade or business, or as supplies in the sale of services, by a VAT-registered person, the input tax which can be directly attributed to the said property shall not be allowed as input tax to the transferor's other VATable activities;
    (ii) if the property being transferred is a capital good used in the trade or business of a VAT-registered person, the input tax on the said property

(iii) shall be allocated as follows: the depreciated book value of the property over its acquisition cost, multiplied by the input tax directly attributed to the said property shall not be allowed as input tax to the transferor's other VATable activities; and

(iv) the amount of the unallowable input taxes as determined in paragraphs (i) and above, if previously debited to "Input Taxes", shall be charged back to the property.

The tax exemptions as provided in paragraph (b) of the Regulations shall apply to the transactions listed in paragraph (a) of the same Regulations only if the NPL/ROPA has been issued with a Certificate of Eligibility (COE) by the Appropriate Regulatory Authority.

The tax exemptions as provided in paragraph (b) of the Regulations shall apply to the transactions listed in paragraph (a) of the same Regulations only if the particular requirements, where applicable, are complied with.

Pursuant to Section 16 of the Act, to encourage the infusion of capital and financial assistance by the FISTC for the purpose of rehabilitating the financial consumer's business, additional tax exemptions and privileges are provided under the Regulations.

A FISTC claiming any of the tax exemptions and privileges under the Act on other transactions shall, upon request, provide the appropriate COE to the Commissioner of the BIR or his duly authorized representative for purposes of examining any taxpayer and the assessment of the correct amount of tax. This is in addition to such other documentary requirements stated in the Regulations.

The FISTC shall also submit to the BIR as attachments to its Annual Income Tax Return the following:

a. List of taxable transactions;
b. List of tax-exempt transactions; and
c. List of partly tax-exempt and partly taxable transactions.

Penalties are also provided for any person, natural or juridical, who benefits from the tax exemptions and privileges herein granted, when such person is not entitled thereto.

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RR No. 12-2021, June 23, 2021

This prescribes the policies and guidelines on the utilization of the Tax Payment Certificate issued by the DTI-BOI evidencing the availment of the fiscal support for the eligible and registered participants of the Comprehensive Automotive Resurgence Strategy (CARS) Program under EO No. 182, Series of 2015

This prescribes the policies and guidelines on the utilization of the Tax Payment Certificate (TPC) issued by the DTI-BOI evidencing the availment of the fiscal support for the eligible and registered participants of the Comprehensive Automotive Resurgence Strategy (CARS) Program under Executive Order (EO) No. 182, Series of 2015.

The Regulations shall apply to the Participating Car Makers (PCMs) and Participating Part Makers (PPMs) registered under the CARS Program who applied and were issued TPCs by the DTI-BOI to pay exclusively the following tax obligations, excluding any type of Withholding Taxes, incurred in the course of their operations:

a. Excise Tax;
b. Income Tax; and
c. Value-Added Tax

The total fiscal support for the CARS Program shall be divided into 2 categories, namely:

a. Fixed Investment Support (FIS) – shall not exceed 40% of the total fiscal support, provided that in case of Parts and Shared Testing Facility, the FIS shall not exceed 40% of the capital expenditure for tooling and equipment to manufacture the parts, including training costs for the start-up operation for the use thereof; and
b. Production Volume Incentive (PVI) – shall not exceed 60% of the total fiscal support.

The availment of the fiscal support by the eligible and registered participants shall be evidenced by a TPC, which is non-transferrable. The BIR shall recognize and accept valid TPCs issued by the DTI-BOI as tax payment only upon verification and validation against their records, as well as online validation thru the Participating Car Maker Incentive Account (PCMIA) set up by the DTI-BOI.

The amount of the TPC shall be indicated in the tax return as deduction from the tax due. The accomplished tax return shall be filed using eFPS or eBIRForms Package, as the case may be. In case the tax due is more than the amount of the TPC, the tax still due shall be paid using the available modes of payment of the BIR. The printed hard copies of the tax returns, together with the copy/ies of the TPC and the other prescribed attachments, shall be submitted to the RDO/LTDO/LT Documents and Quality Assurance Division (LTDQAD) where the registered participants are duly registered.

In case the amount of TPC exceeds the tax due, net of the creditable taxes, the excess shall not be considered or treated as a refundable amount.

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Eligible and registered participants under the CARS Program shall not be allowed to register their activity under any other program granting incentives as a condition for TPC availment.

AFSs and ITRs shall be submitted on or before May 15 of each year or 1 month from the last day of filing of Income Tax Returns to the BIR.

RR No. 13-2021, June 23, 2021

This implements the penalty provisions under Sections 76, 77, 78, 79 and 80 of RA No. 10963 (TRAIN Law), amending Sections 254 and 264 of, and adding Sections 264-A, 264-B and 265-A to, the NIRC of 1997, as amended

This implements the penalty provisions under Sections 76, 77, 78, 79 and 80 of RA No. 10963 (TRAIN Law), amending Sections 254 and 264 of, and adding Sections 264-A, 264-B and 265-A to, the NIRC of 1997, as amended.

A fine of not less than ₱ 500,000 but not more than ₱ 10,000,000 and imprisonment of not less than 6 years but not more than 10 years shall, upon conviction thereof, be imposed on any person who willfully attempts, in any manner, to evade or defeat any tax imposed under the NIRC or the payment thereof.

The fine and penalty stated herein shall be in addition to other penalties provided for by law. The conviction or acquittal obtained for violation of Section 2 of these regulations shall not be a bar to the filing of a civil suit for the collection of taxes.

A fine of not less than ₱ 500,000 but not more than ₱ 10,000,000 and imprisonment of not less than 6 years but not more than 10 years shall be imposed on any person who commits any of the following acts:

a. Printing of receipts or sales or commercial invoices without authority from the BIR; or
b. Printing of double or multiple sets of invoices or receipts; or
c. Printing of unnumbered receipts or sales or commercial invoices, not bearing the name, business style, Taxpayer Identification Number, and business address of the person or entity; or
d. Printing of other fraudulent receipts or sales or commercial invoices.

A penalty amounting to 1/10 of 1% of the annual net income as reflected in the taxpayer's audited financial statements for the second year preceding the current taxable year, or ₱ 10,000, whichever is higher, shall be imposed, for each day of violation, on any taxpayer required but fails to transmit sales data to the Bureau's electronic sales reporting system under Section 237-A of the NIRC, as amended.

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An additional penalty of permanent closure of the taxpayer shall be imposed should the aggregate number of days of violation exceed 180 days within a taxable year. The penalty shall not apply if the failure to transmit is due to force majeure or any causes beyond the control of the taxpayer.

A fine of not less than ₱ 500,000 but not more than ₱ 10,000,000, and imprisonment of not less than 2 years but not more than 4 years shall be imposed on any person who shall purchase, use, possess, sell or offer to sell, install, transfer. update, upgrade, keep, or maintain any software or device designed for, or is capable of:

a. suppressing the creation of electronic records of sale transactions that a taxpayer is required to keep under existing tax laws and/or regulations; or
b. modifying, hiding, or deleting electronic records of sales transactions and providing a ready means of access to them.

The maximum penalty provided for in this Section shall apply in case of cumulative suppression of electronic sales record in excess of the amount of ₱ 50,000,000, which shall be considered as economic sabotage.

Penalties are also provided under the Regulation for convictions of any person who commits offense/s related to fuel marking.

The penalties stated herein for offenses related to fuel marking are in addition to the penalties imposed under Title X of the NIRC, as amended, Section 1401 of RA No. 10863, otherwise known as the "Customs Modernization and Tariff Act (CMTA)", and other relevant laws.

RMC No. 71-2021, June 1, 2021

This announces the nationwide availability of the Online Survey Form under the Client Support Service

The Online Survey Form can be accessed by taxpayers availing the BIR's frontline services through any of the following ways:

a. Answer the Online Survey Form using the designated personal computer in the eLounge area; and
b. Scan the Quick Response (QR) code available at each counter using mobile phone to answer the feedback questions.

However, the manual survey forms shall still be available in cases where taxpayers opted to use such.

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RMC No. 72-2021, June 2, 2021

This announces the availability of BIR single Hotline Number and use of Chatbot.

This announces the availability of BIR single Hotline Number (02) 8538-3200 and use of Chatbot, named REVIE, to assist taxpayers with their general inquiries on tax related matters.

REVIE is the BIR's Digital Assistant, an artificial intelligence, that can be accessed 24/7 from the home page of the BIR Website (www.bir.gov.ph). Questions about taxpayers' registration requirements (i.e. how to get a TIN, etc.), eServices, BIR Forms, zonal values, among others, including TIN Verification, can be asked from REVIE. Taxpayers using the facility will also have the option to chat with a live agent in case they need clarifications on the answers provided by REVIE. Tax inquiries may also be sent via e-mail at contact_us@bir.gov.ph.

RMC No. 73-2021, June 3, 2021

This announces the availability of the New Business Registration (NewBizReg) Portal

This announces the availability of the New Business Registration (NewBizReg) Portal.

The NewBizReg Portal is a gateway in the electronic submission of application for registration through e-mail, which is available to individual and non-individual business taxpayers (Head Office and Branches).

Taxpayers who will apply for business registration through the NewBizReg Portal must answer the "Tax Type Questionnaire" (Annex A) and submit the same as an attachment to the e-mail. The accomplished Tax Type Questionnaire will be the basis of the BIR's registration officers/frontliners in determining the tax types which the taxpayer will be liable to.

In case there will be changes or error/s on the tax type registration, the registration officer shall update the records and issue the Certificate of Registration (COR) of the concerned taxpayer.

RMC No. 74-2021, June 7, 2021

This announces the placement of Intro Page in the BIR Website

This announces the placement of Intro Page in the BIR Website starting June 8, 2021.

Users of the BIR website shall see the Intro Page (instead of the home page) when they type www.bir.gov.ph. The Intro Page contains a menu of contents frequently accessed by users, such as eServices, Tax Reminders, BIR Forms, Zonal Values, New Revenue Issuances, Registration Information, etc. The Intro Page also has direct link to the home page and "Contact Us" section of the BIR Website as well as the Bureau's social media accounts.

Through the placement of Intro Page in the BIR Website, users can directly access their desired content without having to go through the home page of the BIR Website.

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UPDATES

RMC No. 75-2021, June 7, 2021

This prescribes the standard policy and guidelines on the use of BIR Form No. 0605 for Excise Tax purposes

This prescribes the standard policy and guidelines on the use of BIR Form No. 0605 for Excise Tax purposes. All concerned are advised on the proper filling up of the said form as indicated below.

a. Excise taxpayers making advance payment for export products availing the Product Replenishment Scheme should tick the "Tax Deposit/Advance Payment" box under the Voluntary Payment of the Manner of Payment (Field No. 17) of BIR Form No. 0605.
b. Excise taxpayers under the Non-Essential Services for Cosmetic Procedures should use BIR Form 2200-C.
c. Excise taxpayers using BIR Form 0605 paying Deficiency Tax should tick the “Preliminary/Final Assessment/Deficiency Tax” box under the Per Audit/ Delinquent Account under Manner of Payment (Field No. 17) of BIR Form No. 0605.
d. Payments for Administrative Penalties must tick the "Others (Specify)" box under the Voluntary Payment of the Manner of Payment (Field No. 17) of BIR Form No 0605 and indicate in the box provided “Administrative Penalties”.

All other Excise Tax payments on domestic removals of excisable articles shall use their corresponding Excise Tax returns (BIR Form 2200 series).

RMC No. 76-2021, June 15, 2021

This clarifies the illustrative examples in the computation of Corporate Income Tax under Section 3(B) and 3(D) of Revenue Regulations No. 5-2021

This clarifies the illustrative examples in the computation of Corporate Income Tax under Section 3(B) and 3(D) of Revenue Regulations (RR) No. 5-2021.

In the illustration for proprietary educational institution and Regional Operating Headquarters (ROHQ) under the said Sections of the RR, the Income Tax due and the gross income were inadvertently written to be in the amount of P1,000,000.00 and P558,500,000.00 instead of the correct amount of P100,000.00 and P58,500,000.00, respectively, which was shown in the Circular.

The Circular also clarifies that the 1% Income Tax rate for proprietary educational institutions and the 1% Minimum Corporate Income Tax (MCIT) for ROHQ shall be imposed only for the period July 1, 2020 until June 30, 2023, and January 1, 2022 to June 30, 2023, respectively. Thus, beginning July 1, 2023, the Income Tax rate for proprietary educational institutions and the MCIT shall revert to ten percent (10%) and two percent (2%), respectively.

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RMC No. 77-2021, June 15, 2021

This clarifies certain provisions of Revenue Memorandum Order No. 14-2021

This clarifies certain provisions of Revenue Memorandum Order (RMO) No. 14-2021.

- Only persons, natural or juridical, who are residents of one or both of the Contracting States may avail of treaty benefits. To establish the fact of residency in a contracting state, the nonresident income recipient should submit a Tax Residency Certificate (TRC) duly issued by the tax authority of the country of residence. Failure to submit the same would result in the denial of the nonresident's claim.

- Pursuant to Revenue Administrative Order No. 1-2019, the International Tax Affairs Division (ITAD) of the Bureau of Internal Revenue (BIR) has the original jurisdiction over matters involving the application and interpretation of tax treaties. Therefore, rulings involving the application and interpretation of tax treaties should originate from the ITAD.

- If the nonresident submitted to the income payor a TRC and the appropriate BIR Form No. 0901 prior to the payment of income, the income payor may apply the provisions of the applicable treaty in the withholding of taxes; provided that all the conditions for the availment thereof, other than residency, have been satisfied. Otherwise, the regular rates imposed under the Tax Code should be applied.

- When an item of income was subjected to taxation in accordance with the provisions of the relevant tax treaty, the withholding agent/income payor shall file with ITAD a request for confirmation that the tax treatment of such income was proper.

- If the treaty rate was applied on the nonresident's income, the income payor (domestic or foreign), should be the one to file the request for confirmation with the ITAD. The income payor is not prevented, however, from authorizing the nonresident or any other person to file such request for and on its behalf, provided that the latter is equipped with a Special Power of Attorney (SPA).

- Depending on the type of income, the request for confirmation with complete documentary requirements shall be filed by the withholding agent, domestic or foreign, on or before the dates prescribed below:

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Type of Income	Date of Filing
Capital Gains	At any time after the transaction but shall not be later than the last day of the fourth month following the close of the taxable year when the income is paid or when the transaction is consummated.
Other types of income	At any time after the close of the taxable year but not later than the last day of the fourth month following the close of such taxable year when the income is paid or becomes payable, or when the expense/asset is accrued or recorded in the books, whichever comes first

- For long-term contracts involving the payment of interests and royalties and other types of income where the condition for entitlement to treaty benefits is not dependent on time threshold, the annual updating is not mandatory. In this case, the BIR will issue a one-time certification that is presumably valid for the whole duration of the contract so long as there is no relevant and significant change in the facts or circumstances upon which the ruling was based (e.g. change in the country of residence, the recipient of the income or the beneficial owner of the income, or the legal basis).

- On the other hand, in the case of long-term contract of services where the existence of a Permanent Establishment (PE) in the Philippines is dependent on time threshold (e.g. days of physical presence of the nonresident company's employees in the Philippines within a twelvemonth period or calendar year or taxable year), the annual updating is mandatory. For contract of services, the COE shall be limited to a particular period of engagement.

- Applications with incomplete documents will no longer be accepted, given the limited storage of ITAD. In case an application with incomplete documents was inadvertently accepted, the filer shall be duly notified of the result of evaluation and the docket shall be returned immediately to said filer.

- There will be no automatic denial for failure of the filer to file the RFC within the prescribed period. Denials will purely be based on the merits of the case, i.e., whether or not the nonresident has established and proved their entitlement to treaty benefit. However, the penalty for late filing shall be imposed (Section 13 of RMO No. 14-2021). In meritorious cases, the nonresident or withholding agent may be

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- granted an extension within which to submit the required documents but in no case shall it exceed thirty (30) days.

- All taxpayers with pending TTRAs will still receive a "Final Notice to Submit Additional Documents" despite receiving a notice prior to the effectivity of the new RMO, and will be given three (3) months from receipt thereof to submit the required documents. Those who have been notified that their applications have been archived will no longer receive a Final Notice but are obliged to submit the required documents indicated in the previous notice/s within four (4) months from the effectivity of the new RMO.

- If the RFC or TTRA is approved, the BIR will issue a COE instead of the usual BIR Ruling. For TTRAs relating to interests, dividends, and royalties, which were filed prior to the effectivity of RMO No. 8-2017, the BIR may still issue a Compliance Check Report.

If the nonresident has income payments subjected to treaty rates in 2020 and prior years but no TTRA or Certificate of Residence for Tax Treaty Relief (CORTT) Form was filed therefor, the withholding agent has until the last working day of 2021 to file an RFC with complete documentary requirements. Failure to file the same within the prescribed deadline would be subject to the provisions of Sections 250 and 255 of the Tax Code. A penalty of ₱1,000 per failure to file a CORTT Form for dividends, interests and royalties paid after the effectivity of RMO No. 8-2017 until December 31, 2020 shall, however, be imposed to be fair with the taxpayers who previously complied with the provisions of such RMO.

RMC No. 78-2021, June 17, 2021

This circularizes the Consolidated Price of Sugar at Millsite for the month of April 2021

This circularizes the Consolidated Price of Sugar at Millsite for the month of April 2021 contained in Operations Memorandum (OM) Nos. 25-2021, 26-2021, 27-2021 and 28-2021.

While the weekly Price of Sugar at Millsite issued by the Sugar Regulatory Administration reflects the comparative prices of sugar between the previous year and current year, the consolidated schedule on the said weekly OMs contains only that of the current year for purposes of imposing the one percent (1%) Expanded Withholding Tax on sugar prescribed under Revenue Regulations (RR) No. 2-98, as amended by RR No. 11-2014.

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RMC No. 79-2021, June 28, 2021

This circularizes the PSA Advisory dated May 19, 2021 with subject "Philippine Identification (PhilID) Cards as the Official Proof of Identity for Transactions with Government and Private Entities"

This circularizes the Philippine Statistics Authority (PSA) Advisory with subject "Philippine Identification (PhilID) Cards as the Official Proof of Identity for Transactions with Government and Private Entities".

Under Republic Act No. 11055 (Philippine Identification System Act), the PhilID card, issued by the PSA, shall serve as the official government-issued identification document of cardholders in dealing with all National Government Agencies (NGAs), Local Government Units (LGUs), Government-Owned or -Controlled Corporations (GOCCs), Government Financial Institutions (GFIs), State Universities and Colleges (SUCs), and all private sector entities. As such, the PhilID card shall be accepted as sufficient proof of identity, without the need to present any other identification documents.

The Act penalizes any person or entity who without just and sufficient cause refuses to accept, acknowledge and/or recognize the PhilID card as the only official identification of the holder/possessor with a fine in the amount of Five Hundred Thousand Pesos (₱500,000.00). Finally, if the violation is committed by government official or employee, the penalty shall include perpetual absolute disqualification from holding any public office or employment in the government, including any GOCCs, and their subsidiaries.

RMC No. 80-2021, June 29, 2021

This clarifies the suspension of the statute of limitations on assessment and collection of taxes due to the declaration of quarantine in various areas in the country

This clarifies the suspension of the statute of limitations on assessment and collection of taxes due to the declaration of "quarantine" in Metro Manila, Bulacan, Cavite, Laguna and Rizal (NCR Plus), and other applicable jurisdictions.

The running of the statute of limitations in assessment and collection shall be suspended in areas placed under enhanced community quarantine (ECQ), as stated in RMC No. 52-2021, as well as modified enhanced community quarantine (MECQ). With such suspension, the concerned offices of the Bureau shall be provided with additional days for them to issue the Assessment Notices, Warrants of Distraint and/or Levy, as well as Warrants of Garnishment, to enforce collection of deficiency taxes against taxpayers covered by the ECQ and MECQ declaration, which is equivalent to the number of days the particular area was placed under ECQ and MECQ, plus sixty (60) days from its lifting.

The extended due date computation for areas placed under ECQ and MECQ is as follows:

	Old Prescriptive Due Date	New Prescriptive Due Date Per RMC 136-2020	Due to declaration of ECQ and MECQ	Number of Declared ECQ and MECQ Days
Case 1	April 15, 2021	August 30, 2021	December 15, 2021	47 days + 60
Case 2	April 15, 2021	August 30, 2021	November 19, 2021	21 days + 60
Case 3	August 15, 2021	December 30, 2021	March 28, 2022	28 days + 60

BIR ISSUANCES

HIGHLIGHTS

RMO No. 18-2021
June 2, 2021
This prescribes the BIR Operational Key Performance Indicators (KPIs) for CY 2021 for the Revenue Regions (RRs), Revenue District Offices (RDOs) and Large Taxpayers Service (LTS)

The concerned Assistant Commissioners, as Measures Owners, shall monitor, review and evaluate their respective Operational KPIs against their goals/targets to assess the performance of the concerned offices. There are seventeen (17) Operational KPIs whose details are specified in Annex A of the Order.

The Operational KPIs shall be included as measures in the Office Performance Commitment and Review (OPCR) Form as well as in the Office Index of Success Indicators of the RRs, RDs, RDOs, LTs, LTNOADs, LTDs Cebu and Davao, ELTFOD, LTVATAU, LTCED, LTDPQAD, ELTRD and LTAD in relation to the Strategic Performance Management System.

The Accomplishment Report and Evaluation Report shall be prepared every 1st Semester (January to June) and annually based on the cumulative accomplishment from January to December.

RMO No. 19-2021,
June 3, 2021
This amends Annex A of RMO Nos. 31-2014 and 15-2017 by updating the list of contents/information posted in the BIR Website and Employees Portal

Heads and Assistant Heads of BIR offices identified as content owners in Annex A of the Order shall ensure the regular and timely posting of updates on their assigned/owned information/contents in the BIR Website and/or BIR Employees Portal.

The same policies, guidelines and procedures prescribed in RMO Nos. 31-2014 and 15-2017 relative to the regular updating/posting of the assigned/owned content (as specified in Annex A of the Order) shall be followed.

BIR ISSUANCES

HIGHLIGHTS

RMO No. 20-2021, June 17, 2021

This amends RMO No. 31-2020 relative to the giving of points to the Revenue District Offices (RDOs) on their conduct of tax information dissemination activities under the Taxpayer Awareness Program (TAP).

In the reporting of accomplishments on the Taxpayer Awareness Program (TAP), the giving of Points per tax information dissemination activity was amended as follows for the following activities:

- Posting of tax information materials in social media (Facebook, YouTube, etc.)
- Conduct of Tax Quiz and other special events to promote tax awareness
- Implementation of new/innovative idea on tax information dissemination/ delivery of taxpayer service

In relation to the preparation of the semestral/annual TAP Accomplishment Reports, the Client Support Section (CSS) Chiefs and Client Support Unit (CSU) Heads should pay attention to the following:

a. Presentation of Accomplishments
b. Content of the Accomplishment Report
c. Accuracy of Information Reported

The provisions reiterated in Section III of RMO No. 31-2020, with the exception of the amended portions in Section III.3 thereof (pertaining to posting of tax information materials in social media; conduct of Tax Quiz and other special events; and implementation of other new/innovative idea on tax information dissemination/delivery of taxpayer service) still remain the same and shall be strictly observed in the preparation and submission of the TAP Accomplishment Reports.

Securities Laws are by nature special laws, and acts or omissions that violate their provisions are considered mala prohibita which is a punishable offense.

Considering that Trading Participants play an essential and critical role in these markets, the Commission has established, approved and implemented rules and regulations requiring them to act in a manner that is protective of the interests of their customers, the investing public, and other market participants. These rules, along with rules promulgated by the self-regulatory organizations (SROs) which include the Appellee CMIC, seek to ensure that Trading Participants operate, inter alia, in a financially sound manner, maintain adequate custody of customer assets, and refrain from deceptive and manipulative practices.

Given this, the SEC En Banc hold that the imposition of penalty for violation of the CMIC Rules in relation to the Implementing Guidelines is warranted based on the established rule that admissions are conclusive upon the party. An act or omission that violates law, rule or regulation can never become valid even if repeatedly practiced or done over a considerable period of time. Moreover, as discussed and emphasized earlier, the Securities Laws are by nature special laws, and acts or omissions that violate their provisions are considered mala prohibita which is a punishable offense.

The Know Your Customer ("KYC") guidelines which have been incorporated and adopted in the CMIC Rules was intended to ensure that securities transactions are not used for money laundering, terrorist financing, drug trafficking, and other illegal acts. The KYC rules and guidelines are thus specifically intended (a) to deter criminals posing as legitimate customers who would use financial institutions as tools to launder proceeds from their illicit activities, (b) to unmask or reveal the illicit nature of a customer's business, and (c) to obtain and store information of a customer in a database that will indicate/show when transactions are inconsistent with customer's normal business transactions or financial capacity. From this perspective, it is clear that the responsibility of Trading Participants in relation to KYC rules and guidelines is intended to be continuing and regular to ensure that client information is updated and current. Know Your Customer is not just for the benefit of the Trading Participant. The KYC Rule is in place to prevent money laundering and other illegal acts. *(Ventures Securities, Inc. vs. Capital Markets Integrity Corporation, SEC En Banc Case No. 01-21-481, Series of 2021, June 15, 2021)*

Respondent violated Section 28 of the SRC as he has no license from the Commission authorizing him to act as salesman in securities.

Section 26 of the Securities Regulation Code makes it unlawful for any person in the offer or sale of any security "(1) to employ any device, scheme, or artifice to defraud, or (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact…, or (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any person."

Stock market transactions affect the general public and the national economy. The rise and fall of stock market indices reflect to a considerable degree the state of the economy. Trends in stock prices tend to herald changes in business conditions. Consequently, securities transactions are impressed with public interest and are thus subject to public regulation. In particular, the laws and regulations requiring payment of traded shares within specified periods are meant to protect the economy from excessive stock market speculations, and are thus mandatory. Here, the evidence presented by complainant and the statement of Respondent in his counter-affidavit are facts sufficient to support a conclusion that the Respondent violated SRC section 26 paragraphs 1 and 3 in relation to SRC Rule 26.1.

Respondent also violated Section 28 of the SRC when he admitted that he has no license from the Commission authorizing him to act as salesman in securities. Yet he executed trades at the PSE despite not having a license as a traded or salesman. He also executed numerous EQ trade transactions involving large number and amount of securities. *(In the matter of: R & L Investments, Inc., et. al., vs. Marlo N. Moron, SEC MSRD Case No. MSRD-MID-2020-4, June 11, 2021)*

Respondent violated the provisions of the SRC and 2015 SRC Rules. Respondent's acts and deeds show that he participated in the fraudulent scheme of transferring shares securities owned by other client of R&L to his account in Venture Securities.

Respondent cannot feign ignorance that he has no knowledge on the unauthorized securities transactions of his account as he himself admitted that he received commission money from the transactions. Those facts are suspicious in itself, and should have alerted him that there are irregular transactions pertaining to his account. His claim of ignorance is unnatural to be believable and contrary to human experience. In this situation, the more natural thing for him to do after knowing that he will receive checks amounting to millions of pesos is to conduct an actual inquiry and verification of the circumstances of the issuance of checks or to refuse to receive them. Instead of doing these, he even asks for a higher amount of commission.

It is clear that Respondent violated Section 26 in relation to Section 54 of the SRC and the 2015 SRC Rules. Respondent's acts and deeds show that he participated in the fraudulent scheme of transferring shares securities owned by other client of R&L to his account in Venture Securities. *(In the matter of: R&L Investments, Inc. vs. Julieto C. Sulapas, SEC MSRD Case No. MSRD-MID-2020-3, June 11, 2021)*

Section 51 defines a controlling person as "every person who, by or through stock ownership, agency or otherwise, or in connection with an agreement or understanding with one or more other persons controls any person liable under this Code or the rules or regulations of the Commission thereunder.

Section 51 describes a controlling person as "*every person who, by or through stock ownership, agency or otherwise, or in connection with an agreement or understanding* with one or more other persons controls any person liable under this Code or the rules or regulations of the Commission thereunder". From the foregoing, it appears that there is no fix and exclusive criteria in the determination of a controlling person. Control is rather and indefinable concept that has been variously defined. However, the 2015 SRC Rules defined it as "Control is the power to determine the financial and operating policies of an entity". In other words, the term "control" means the possession of the power to determine the financial and operating policies of an entity whether through the ownership of voting securities, by agency, by statute or agreement or otherwise.

As President, he is liable under the Rules as control person based on his failure to supervise Ventures' registered representatives in requiring the updating of the Sulapas account and the Respondents' duty to report the suspicious Sulapas transaction to the Anti-Money Laundering Council as required by the Rule at least beginning at the time he assumed the office as President of Ventures. Likewise, Customer Account Information Rule mandates the broker dealer to maintain information pertaining to the account after its opening like updating in every two years an keeping current all material information in the CAIF.

It is well-established that under the Suitability Rule, the broker dealers, associated persons or salesman have an obligation to recommend to their customers only the purchase of securities that are reasonable and suitable to the customer's financial situation and needs.

Accordingly, as a result of the unauthorized act of the registered persons and upon the Ventures' and Racadios's failure to act upon the cumulative red flags, the Commission found Ventures and Racadio liable under the Rule for their failure to act and by not conducting an investigation on the illegal activities and occurrences. Any activities in violation of the SRC and its IRR which were not detected and acted upon may be considered as sufficient ground for their liability. In the present case, the Commission found that the Respondents repeatedly, consciously and intentionally, for several years (2012 to 2019), failed and ignored to comply with the pertinent regulations and provisions of the SRC and its IRR. *(In the matter of: R&L Investments, Inc. vs. Venture Securities, Inc., Wilfred Racadio (President), Adora Aguilar (Associated Person), Loreto Balabis (Salesman) and Teresita Mosenabre (Settlement Head), SEC MSRD Case No. MSRD-MID-2020-2, June 11, 2021)*

As registered persons, it is the obligation of R&L, Joseph Lee, Jonathan Lee and Lucy Linda Lee to act honestly, fairly and in the best interest of their clients in conducting their business.

As registered persons, it is the obligation of R&L, Joseph Lee, Jonathan Lee and Lucy Linda Lee to act honestly, fairly and in the best interest of their clients in conducting their business. A reading of the provisions of the Information About Clients Rule would show that the same pertains to the KYC Rule. The application of the KYC Rule is a continuing requirement (1) from the time client opens an account with a broker dealer and (2) everytime the client would trade.

Under the Rule on Supervision, R&L is required to ensure that Jonathan Lee possesses sufficient training and experience in securities regulation matters and an understanding of the securities activities of the firm enabling them to effectively execute their duties. The fact that Marlo Moron can perform the above-mentioned functions only highlights Jonathan Lee's failure to supervise the activities of the Company. In view of the foregoing, the Commission find the Respondents to have violated Rule 30.2.6.1 of the 2015 SRC IRR.

The Commission cannot tolerate and ignore any act or omission on the part of those involved in the capital market which would violate the norm set by the securities law especially on the transactions and responsibilities of Broker Dealers and that would diminish or even just tend to diminish the faith of the investors on the integrity of the capital market. Likewise, the practice of installing undiscerning persons in entities involved in the capital market cannot be tolerated, let alone allowed to be perpetuate. This must be curbed by holding accountable those who consciously and willfully commit wrongful acts in the performance of their duties as officers, registered persons or employees. The Respondents must be reminded that transactions involving securities affect the general public and the national economy. *(In the matter of: R&L Investments, Inc. – R&L Investments, Inc., Joseph Lee (President), Lucy Linda Lee (Nominee and Salesman) and Jonathan Lee (Associated Person),), SEC MSRD Case No. MSRD-MID-2020-1, June 11, 2021)*

SEC ISSUANCES
HIGHLIGHTS

UPDATES

SEC-OGC Opinion No. 21-06 – Re: Retail Trade Law; Water Filtration Services, May 10, 2021

A person who renders services for hire or pay, or who leases services, is not engaged in the retail business because he does not sell goods to the general public.

This is a request for an opinion on the proposed investment in the Philippines by a foreign corporation with 100% foreign ownership which provides water filtration system services, whether the Retail Trade Liberalization Act is applicable.

A person who renders services for hire or pay, or who leases services, is not engaged in the retail business because he does not sell goods to the general public. The law covers only the sale of goods for consumption to the general public as end-user. Thus, for sale transactions to be considered as "retail", the following element must be present: (1) The seller should be habitually engaged in selling; (2) The sale must be direct to the general public; (3) The object of the sale is limited to merchandise, commodities or goods for consumption. It was opined that "a firm engaged in the business of rendering services, in some occasions, may require certain materials in order that the service may be made. It may supply these materials for the convenience of the client or when the materials required are produced exclusively by the same firm. Of course, the client has to pay for the cost of these materials separately from the cost of the service x x x. Although this is a sale, the same is incidental to the repair and is not being pursued as an independent business. Thus, the same is not considered retail trade."

SEC-OGC Opinion No. 21-07 – Re: Engaging in Mass Media and Advertising Activities thru the Offering of Space on Assets (Moving Structures), May 10, 2021

A domestic corporation wholly owned by Filipino citizens is legally allowed to engage in advertising and mass media activities.

This is a request for opinion whether Metro Promo Concepts Corporation, a corporation wholly-owned by Filipino citizens, may engaged business of providing its clients with marketing services that include advertising, promotions, and mass media. It is previously engaged in the business of sale of general merchandise, goods, wares, commodities of all kinds and description.

Considering that MPC will offer a complete package of marketing services that includes conducting market research, creating marketing plan, conceptualizing, proposing brand/campaign ambassadors, story board, installation of campaign materials, providing social media direction, offering various tools and media of dissemination and the actual execution of campaign/project, as well as offers or leases spaces in moving vehicles or assets, MPC clearly performs the functions of an advertising and mass media agency, and is therefore engaged in nationalized activities. Consequently, MPC is subject to foreign ownership restrictions on mass media and advertising entities under Items 1 and 2, respectively, of Section 11,Article XVI of the 1987 Constitution, the Foreign Investment Act and Executive Order(EO)No. 657, and other pertinent laws. Thus, since MPC is a domestic corporation wholly owned by Filipino citizens, as disclosed in the letter, then the Commission confirms the position that MPC is legally allowed to engage in advertising and mass media activities.

SEC-OGC Opinion No. 21-08 – Re: Appointment of a Foreign Director in a Corporation Engaged in a Party Nationalized Activity, May 17, 2021

Foreigners can be elected as directors in proportion to their allowable participation or share in the capital of corporations engaged in activities that are reserved to Filipinos.

This is a request for an opinion whether an American can be elected as member of the Board because of the latter's credentials and work experience.

On the qualifications of the members of the board of directors, the RCC does not mention any restriction on the nationality of the person to be elected as member of said board. It must be noted, however, that while the RCC does not impose restriction on the nationality of the members of the board of directors, the same shall be subject to he following:1) the additional qualifications of a director that a private corporation may set forth in its By-Laws as provided in Section 46 of the RCC; and 2) the requirements under the 1987 Constitution, special laws such as the Commonwealth Act No. 108 or the Anti-Dummy Law and/or special rules implemented by the regulatory authority of the industry.

In this regard, the Commission has held in previous opinions that foreigners can be elected as directors in proportion to their allowable participation or share in the capital of corporations engaged in activities that are reserved to Filipinos, but are prohibited from being elected as officers of a corporation, such as the President, Vice President, Treasurer and Secretary. Please note, however, that in determining the "representation of alien stockholders in the board of directors of corporations engaged in partially nationalized activities", the basis should be the actual share of the alien stockholders in the capital of the corporation which share, however, should not exceed the foreign equity ceiling, prescribed by law for a particular corporation or association.

Based on the foregoing, SEC confirm that Trident Water can elect Mr. Lucci as director provided that the number of foreigners in the 11-member Board of MWC does not exceed the allowable seats (40% x 11) that may be filled up by a foreigner, subject to the above discussion. Please note further that this is subject to the limitations, if any, that are provided in MWC's By-Laws and in the applicable special rules that are implemented by the regulatory authority of the water industry.

BSP ISSUANCES
HIGHLIGHTS

UPDATES

BSP Circular Letter CL-2021-044, June 1, 2021

Disseminates the AMLC's Study on the 2021 Suspicious Transaction Report (STR) Quality Review covering STRs filed by covered persons from 2017 to 2020

This disseminates the AMLC's Study on the 2021 Suspicious Transaction Report (STR) Quality Review covering STRs filed by covered persons from 2017 to 2020.

The study highlighted, among others, the following data quality and system issues:

1. Potential Over Usage of Suspicious Indicators (SI) 6 for Defensive Reporting
2. Continuous Misreporting of Fraud Schemes and Activities

In view of the foregoing, BSP-Supervised Financial Institutions (BSFIs) are reminded to further enhance their suspicious transaction reporting process and ensure proper filing of STRs using the appropriate suspicious indicator or predicate crimes, in accordance with the AMLC Registration and Reporting Guidelines (ARRG).

BSP Circular Letter No. CL-2021-048, June 17, 2021

Circularizes the Savings Consciousness Week 2021

This circularizes the Savings Consciousness Week 2021. Pursuant to Proclamation No. 380 dated May 15, 1994, designating June 30 to July 6 as Savings Consciousness Week, all banking institutions and their branches are enjoined to undertake during the period promotional and publicity-generating activities such as advertising, window and counter displays, streamers, distribution of giveaways, raffles, and similar incentives and devices consistent with existing minimum health standards and social distancing protocols.

We enjoin the banking industry to continuously encourage the public to save in banking institutions and further raise awareness on the vital role of savings in the country's economic development. Banks are requested to incorporate the theme: "Pinagpagurang pera ay ingatan, pag-iimpok sa bangko ay simulant".

BSP Memorandum No. M-2021-034, June 4, 2021

This provides the Guidelines for Obtaining a Certificate of Eligibility (COE) under Republic Act (RA) No. 11523

This provides the Guidelines for Obtaining a Certificate of Eligibility (COE) under Republic Act (RA) No. 11523, otherwise known as the Financial Institutions Strategic Transfer (FIST) Act.

The Monetary Board approved the following guidelines for BSFIs that intend to obtain COE for purpose of availing of the tax exemptions and privileges for the sale/transfer of non-performing asset/s (NPA) to a FIST corporation (FISTC) or to an individual, or for transactions involving dacion en pago by the borrower or by a third party on behalf of a borrower to a BSFI pursuant to the provisions of Section 386 of the Manual of Regulations for Banks (MORB) and Sections 363-Q/307-N of the Manual of Regulations for Non-Bank Financial Institutions, which implement the provisions of the Republic Act (R.A.) No. 11523 or the FIST Act and its Implementing Rules and Regulations (IRR).

1. The COE refers to the certificate issued by the Bangko Sentral ng Pilipinas (BSP) as to the eligibility of the NPAs [i.e., non-performing loans (NPL) and real and other properties acquired (ROPA)] of BSFIs for purposes of availing of the tax exemptions and privileges, pursuant to the provisions of the FIST Act and its IRR. As stated under Rule 25 of the IRR, only assets that have become non-performing on or before 31 December 2022 will be issued a COE.
2. The transactions, which pertain to Rule 15.1 (1) to (6) of the IRR, shall be issued a COE to be entitled to tax exemptions and fee privileges:
3. The BSP will act on applications for COE issuance that are received on or before 24 February 2023, provided that the transaction must have occurred and the Deed of Transfer/Dacion or equivalent documents have been duly executed by the parties and notarized within the two-year period from the effectivity of the FIST Act, i.e., 18 February 2021 to 18 February 2023

BSP ISSUANCES
HIGHLIGHTS

UPDATES

BSP Memorandum No. M-2021-035, June 7, 2021
Circularizes the Use of Philippine Identification System (PhilSys) ID for Customer Identifacation and Verification.

This circularizes the Use of Philippine Identification System (PhilSys) ID for Customer Identifacation and Verification.

Pursuant to Sections 904 and 921 of the Manual of Regulations for Banks (MORB) and Sections 904-Q, 921-Q, 602-S, 501-P, and 602-N of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI), the identification document issued by the Philippine Statistics Authority (PSA) under the PhilSys is considered an official document to establish and verify the identity of a customer. Consistent with PSA Advisory dated 19 May 2021 (Annex A), the PhilSys ID should be accepted as official and sufficient proof of identity without the need to present any other identification documents.

For purposes of authentication, BSFIs may conduct either online or offline authentication procedures to verify the identity of the individual against the registry information in the PhilSys or PhilID, pursuant to the relevant provisions of the Implementing Rules and Regulations of R.A. No. 11055, and subject to the rules to be issued by the PSA.

BSFIs are reminded that RA No. 11055 penalizes any person or entity who without just and sufficient cause refuses to accept, acknowledge and/or recognize the PhilID Card as the only official identification of the holder/possessor with a fine in the amount of Five Hundred Thousand Pesos (Php 500,000.00). The said penalty provision is without prejudice to the enforcement actions that BSP may impose for violations of the relevant provisions of the MORB/MORNBFI.

BSP Memorandum No. M-2021-036, June 28, 2021
provides the Guidelines on the Submission of Reports/ Documents and Communications through BSP Financial Supervision Sector (FSS) Mall-in Account

This provides the Guidelines on the Submission of Reports/ Documents and Communications through BSP Financial Supervision Sector (FSS) Mall-in Account.

Effective 05 July 2021, all reports, documents, and communications to the BSP FSS, including general correspondences and other documents shall be transmitted electronically to the email address: fssmail@bsp.gov.ph.

The BSFIs, through its Compliance Officers, are expected to ensure that the reports/correspondences to FSS are submitted to proper communication channels (i.e., specific FSS Department/Office email addresses or via the FSS mail-in account).

Failure to use the prescribed subject line format will result in the failure of delivery of the email to the intended recipient. For reports, it may be considered non-compliance with the BSP reporting standards and may be subject to applicable sanctions under existing BSP regulations.

BSP ISSUANCES
HIGHLIGHTS

UPDATES

BSP Memorandum No. M-2021-037, June 28, 2021
Circularizes the Regulatory Relief Through Extension of Deadline to Pay the 2021 Annual Supervision/Service Fee

This circularizes the Regulatory Relief Through Extension of Deadline to Pay the 2021 Annual Supervision/Service Fee.

The Monetary Board, in its Resolution No. 765 dated 17 June 2021, approved the grant of regulatory relief for Pawnshops and Money Service Businesses (MSBs) through the extension of deadline from 31 March 2021 to 31 December 2021 within which to pay the 2021 annual supervision/service fee.

The regulatory relief is expected to assist pawnshops and MSBs as they continue to deliver financial services during this extraordinary situation.

BSP Memorandum No. M-2021-038, June 30, 2021
An Advisory on the Organization Changes in the Regional Operations Sub-Sector (ROSS)

This is an Advisory on the Organization Changes in the Regional Operations Sub-Sector (ROSS).

The Monetary approved, among others, the implementation of the reorganization of the Bangko Sentral ng Pilipinas (BSP). Subsequently, BSP Implementing Order No. 35 dated June 7, 2021 provided the guidelines to operationalize the structural, non-structural and staffing changes in ROSS, which was renamed and shall be prospectively referred to as Regional Operations (RO).

Under the RO are five (5) Regional Offices and twenty (20) branches, which are strategically located throughout the Philippines. Among the five (5) Regional Offices are the BSP Greater Manila Regional Office (BSP GMRO) and the BSP South Luzon Regional Office (BSP SLRO). The BSP GMRO, previously known as Cash Department, shall service the deposit and withdrawal transactions of AABs in the Greater Manila Area and other assigned areas. On the other hand, the BSP SLRO, a newly-created Regional Office, shall provide administrative oversight to South Luzon branches, including centralization of its regional economic and financial learning functions.

IC ISSUANCES

HIGHLIGHTS

IC Circular Letter CL-2021-40 dated June 9, 2021

This provides for the increased capacity of the Online Agent's Computerized Examinations (Online ACE)

In order to accommodate more examinees in the Insurance Agent's Qualifying Examinations through the Online Agent's Computerized Examinations (Online ACE) System, Item III "Online ACE Examination Schedules" is hereby amended.

The Online ACE can accommodate 50 examinees per batch with a total of three (3) batches per day. Each batch is divided into two (2) examination rooms. namely Room A and B. Each examination room can accommodate 25 examinees. Rooms A and B will be conducted simultaneously in online examination rooms. Once the slots in a scheduled batch have already been taken. It shall no longer be available on the system.

Unless otherwise directed, availability of ACE conducted examinations shall be governed as follows:

Days	Batches	Time
Mondays through Fridays	Batch 1 (Room A and B)	9:15 am to 10:45 am
	Batch 2 (Room A and B)	12:30 pm to 2:00 pm
	Batch 3 (Room A and B)	2:15 pm to 3:45 pm

IC Circular Letter CL-2021-41 dated June 28, 2021

This disseminates IATF Resolution No. 117, Series of 2021 on Eligibility for COVID-19 Vaccination under Priority Group A4

The IATF Resolution No. 117, series of 2021 included the following to be eligible for vaccination under priority Group A4:

i. **Private sector workers required to be present at their designated workplace outside of their residences**
ii. Informal sector workers and **self-employed who may be required to work outside their residences**, and those working in private households.

All regulated entities must determine who amongst their personnel/workers and agents are included in the priority Group A4 and must submit all necessary information for scheduling and master listing to their respective local government units, subject to the Data Privacy Act of 2021.

All regulated entities must ensure that all necessary support and assistance relative to the vaccination to eligible personnel/workers and agents shall be extended, including availability of proofs of eligibility and logistics support.

All regulated entities, through their respective organizations, must submit updates on the number of registered and vaccinated eligible personnel/workers and agents under priority Group A4. The respective organizations must submit a summary of the reports from their respective members to this Commission on 31 August 2021 and whenever deemed necessary by this Commission via email at ocom@insurance.gov.ph

IC ISSUANCES

HIGHLIGHTS

IC Circular Letter CL-2021-42 dated June 29, 2021

This is a directive to take all precautionary measures against recent spate of cyberattacks

All entities under the regulatory control and supervision of this Commission are respectively hereby:

- Warned of the current alarming cyberattacks on entities engaged in financial services;
- Directed to take all precautions to mitigate the risk of such cyberattacks and related risks, which includes, but are not limited to, upgrading their cybersecurity measures and further training its information and communications technology (ICT) personnel; and
- Directed anew to promptly and strictly comply with the provisions of the Data Privacy Act of 2012, insofar as applicable, particularly as regards the following areas of compliance, viz: (1) Registration with the NPC as a PIC and/or PIP; (2) Appointment of a DPO; (3) Conduct of a Privacy Impact Assessment; (4) Creation of a Privacy Manual; (5) implementation of Privacy and Data Protection Measures; and (6) Exercise of Data Breach Reporting Procedures.

Legal Opinion LO no. 2021-10 dated June 23, 2021

A car owner who has already a comprehensive Insurance Policy that covers Voluntary Third-Party Liability (VTPL) for property damage and VTPL for personal injury for P500,000.00 each may no longer need have a secure a Compulsory Third-Party Liability (CTPL)

This legal opinion answers the issue on whether a car owner who already has a Comprehensive Insurance Policy that also covers Voluntary Third-Party Liability (VTPL) for property damage and VTPL for personal injury for P500K each still need a Compulsory Third Party Liability (CTPL).

The Commission discussed that a Comprehensive Motor Insurance Policy provides cover for:

a) liability to the public (death or injury in the maximum amount of Php100,000.00);
b) no-fault indemnity;
c) loss or damage; and
d) excess liability insurance.

The first two items are commonly known as the CTPL coverage while the last item includes: a) excess bodily injury, also known as VTPL-Bodily Injury; and b) third-party property damage or VTPL-Property Damage. The VTPL covers expenses in excess of the CTPL's coverage limit. In some instances, additional coverages for auto personal accident and acts of God are likewise included subject to payment of additional premium. Further, a stand-alone product for CTPL can also be sold separately.

If all the above benefits are already provided in the policy schedule, CTPL is already covered which would therefore no longer necessitate a separate cover for CTPL.

CREATE VAT CONFUSION

By

Irwin C. Nidea, Jr.

The implementation of Revenue Regulations 9-2021 is in suspended animation. What happens now? Some believe that everything goes back to the rules before RR 9-2021 was issued. But some are more cautious, knowing that Corporate Recovery and Tax Incentives for Enterprises Act (CREATE) has clearly laid down the limitations on what can be considered as zero-rated.

The first school of thought sees that everything goes back to what it was before, which means that the cross-border doctrine as we know it remains. An Ecozone company, although located inside Philippine territory, is considered existing in a foreign soil. Thus, sale to an Ecozone company, even without being actually exported, is considered constructively exported and is considered value-added tax zero-rated.

What is the effect of this school of thought on local suppliers of Ecozone companies? If you are a local supplier that is located outside the Philippine Economic Zone Authority, you must not pass on VAT to a PEZA-registered entity. That is the general rule. In other words, an Ecozone company should not allow its suppliers to impose VAT on it because of the cross-border doctrine. If it does, the Ecozone company cannot recover the input VAT from the government. It can, however, file a claim for refund against its supplier.

CREATE VAT CONFUSION

By

Irwin C. Nidea, Jr.

The second school of thought sees that CREATE is now the prevailing law. It explicitly states that to be considered zero-rated, purchases by an Ecozone company must be "directly and exclusively used" for its registered activity. There is now a limitation of what can be considered as VAT zero-rated. It is not a zero-sum game anymore. With CREATE, suppliers and buyers must determine if what is being bought or sold will be directly and exclusively used for the registered activity of the Ecozone company.

Did CREATE diminish the cross-border doctrine? It is important to note that the PEZA Law was not amended by CREATE. The PEZA Law and the SC cases of Seagate and Toshiba state that ALL purchases by a PEZA entity are VAT zero-rated. There is no exception. But CREATE is now limiting it to those that are directly and exclusively used by an Ecozone company for its registered activities.

The Implementing Rules of CREATE broadly defines "directly and exclusively used" in the registered project or activity as referring to raw materials, supplies, equipment, goods, services, and other expenditures necessary for the registered project or activity without which the registered project or activity cannot be carried out.

The definition as it is now, will cause lots of confusion, and tax assessments in the future. The taxpayers will now be left with the burden of proving that what was sold to Ecozone companies fall within the definition of direct and exclusive use and are consequently zero rated.

What if what is purchased is not "directly and exclusively used" for the registered activity of a PEZA company? What will happen with the VAT that is passed on to it? Can it file a claim for refund for these or it has no choice but to just consider it as part of cost? Yes, it can. But the Ecozone company must prove two points—that what was passed on to it is not directly and exclusively used for its registered activity AND that the same is attributable to its zero-rated sales. How can an input VAT that is not "directly and exclusively used" for a registered activity be considered as attributable to the same? This is a paradox that must be clarified by our legislators.

CREATE VAT CONFUSION

By
Irwin C. Nidea, Jr.

The Tax Code speaks of attribution. The Court of Tax Appeals (CTA) in the case of Toledo states that "directly" and "entirely" as stated in Section 112 of the Tax Code does not mean that only those purchases of goods that form part of the finished product of the taxpayer can be subject of an input VAT refund.

According to the CTA, it is significant to note that the Tax Code did not limit input taxes to those purchases that only form part of the finished product of the taxpayer. To the extent possible, words must be given their ordinary meaning. The word "attribute," the adjective form of which is "attributable," is defined in the dictionary as "to explain as to cause or origin." In other words, "creditable input tax due or paid attributable to such sales" simply means that the input tax is connected with the zero rated or effectively zero-rated sales.

So, the Tax Code might have a brewing conflict with CREATE. Should we abide by the definition of the CTA in Toledo that does not limit zero-rating only to those that are directly and exclusively used but considers all purchases as attributable to zero-rated sale?

In another case, however, the CTA has a different view which may be consistent with CREATE. It ruled that boarding houses that serve as housing of the PEZA company employees cannot be considered as "attributable" to the registered activity. The PEZA company is engaged purely in export sale of nickel. According to the CTA, materials used to construct the laborer's row houses, dormitories and foreman's duplex are not attributable to export sales. But a dissenting opinion said that the construction of these facilities is indispensable in the pursuit of its registered activity, moreso, as the PEZA company's plant is located in a far-flung area, where public transport is scarce.

If housing of employees is not considered as attributable to the zero-rated sale, what else cannot be considered as such, especially now under CREATE? Are the gasoline and the cars used by employees to go to the mining site pass the criteria of CREATE for zero-rating? If not, what will happen to the input VAT that will be passed on to Ecozone companies?

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The deferral of RR 9-2021 puts taxpayers in limbo. Should taxpayers still consider all sales to Ecozone entities zero-rated or should they now apply the "direct and exclusive use" rule under CREATE? Did CREATE diminish the cross-border doctrine? What is the categorical meaning of "direct and exclusive use" vis a vis the attribution rule? The government cannot afford to just throw in general definition of these terms. Vagueness will result in subjective interpretations, which will further dampen a plague-stricken economy.

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