TAX Insights

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What's Inside...

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

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HIGHLIGHTS for FEBRUARY 2023

HIGHLIGHTS

SUPREME COURT DECISION

- Section 254 of the Tax Code provides that the conviction or acquittal obtained under the same section shall not be a bar to the filing of a civil suit for the collection of taxes. ***(People of the Philippines vs. Court of Tax Appeals-Third Division et. al., G.R. Nos. 251270 and 251291-301, September 5, 2022, Date Uploaded: February 1, 2023)***
- Satellite services provided by a non-resident foreign corporation to a local operator of telecommunication gateways are taxable in the Philippine. ***(Aces Philippines Cellular Satellite Corporation Vs. The Commissioner of Internal Revenue, G.R. No. 226680. August 30, 2022, Date Uploaded: February 1,2023).***

COURT OF TAX APPEALS DECISIONS

- In case of a transfer of RDO, an administrative claim for refund must be filed before the new RDO, provided that the new RDO has informed and/or notified the taxpayer that the transfer of its registration has already been completed. ***(Vestas Services Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2459, February 7, 2023)***
- A new or separate LOA is not necessary to authorize other revenue officers to conduct reinvestigation and recommend the issuance of an FDDA. ***(Commissioner of Internal Revenue v. Titanium Corporation, CTA EB No. 2502, February 13, 2023)***
- The CIR, DCIR-OG, ACIR, Regional Director, as the case may be, possesses the authority to deny administrative claims for input VAT refund. ***(Nippon Philippines Corporation v. Commissioner of Internal Revenue, CTA EB No. 2506, February 15, 2023)***
- Sales made by a supplier in the Customs Territory to a purchaser in the Ecozone shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the Ecozone to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory. ***(Commissioner of Internal Revenue v. Clark Water Corporation, CTA EB No. 2379, February 17, 2023)***
- Electric Cooperatives, both non-stock, non-profit cooperatives and stock cooperatives registered with the Cooperative Development Authority are permanently exempt from payment of income taxes. ***(Misamis Oriental II Rural Electric Service Cooperative Inc. (MORESCO-II) v. Commissioner of Internal Revenue, CTA Case No. 10145, February 28, 2023)***

BIR ISSUANCES

- **BIR RMC No. 24-2023 -** This provides for further classification on the Qualification of Ecozones Logistics Services Enterprise (ELSE) to the Incentives of VAT-Zero Rate on Local Purchases of Goods and Services Exclusively and Directly Used in the Registered Project or Activity.

HIGHLIGHTS for FEBRUARY 2023

SEC ISSUANCES

- Upon the approval of the SEC and effectivity of the merger, all the assets of the constituent corporation are automatically transferred by operation of law to the surviving corporation. The cessation of the separate existence of the constituent corporations rendered it legally impossible for them to file an Amended Plan of Merger. ***(A Brown Energy Resources and Development, Inc. and Nakeen Corp. v. Company Registration and Monitoring Department, SEC En Banc Case No. 04-15-370, August 2, 2022)***
- Allegations of intra-corporate dispute in the Petition does not deprive the SEC of jurisdiction to take cognizance of a case and pass upon an issue that solely relates to the interpretation and implementation of the Corporation Code and other laws implemented by it. ***(Jesus M. Melegrito v. GA Tower 1 Condominium Corporation, SEC En Banc Case No. 06-21-484, February 8, 2022)***
- An intra-corporate dispute is no longer within the jurisdiction of the SEC. ***(Alliance Select Foods International, Inc. v. Enforcement and Investor Protection Department (EIPD), SEC En Banc Case No. 11-14-350, September 29, 2022)***

BSP ISSUANCES

- ***Circular Letter No. CL-2023-009*** – This pertains to the Anti-Money Laundering Council (AMLC) Resolution Nos. TF-63 and TF-64, Series of 2023.
- ***Memorandum No. M-2023-003*** – This provides guidelines on the Submission of Monthly Report on the Sale/Transfer and Investment Transactions of BSFIs under Republic Act No. 11523 otherwise known as the "Financial Institutions Strategic Transfer (FIST) Act".
- ***Memorandum No. M-2023-004*** – This pertains to the submission of Prudential Reports Using Extensible Mark-up Language (XML) format through Application Programming Interface (API).
- ***Memorandum No. M-2023-005*** – This is the implementation of BSP Circular No. 1055 on the Adoption of a National Quick Response (QR) Code Standard.
- ***Circular No. 1168, Series of 2023*** – Amendments to the Regulations on Personal Equity and Retirement Account (PERA).

BOC ISSUANCES

- **AOCG Memo No. 98-2023 dated February 14, 2023** - This provides for the payment of Ad Valorem Tax in the ATRIG of all importation of automobile.
- **AOCG Memo No. 99-2023 dated February 15, 2023** -This is a reiteration on the Proper Use of e-VRIS.
- **CAO No. 01-23 dated February 6, 2023** -This provides for the amendments of the provisions on the rules and regulations in the implementation of the ATA System in the Philippines.

FIRB ISSUANCE

- **Advisory 004-2023 dated February 15, 2023** - This provides answers to FAQs on the Supplemental Guidelines on the Registration of RBEs in the IT-BPM Sector with the BOI.

SUPREME COURT
DECISION HIGHLIGHTS

UPDATES

Section 254 of the Tax Code provides that the conviction or acquittal obtained under the same section shall not be a bar to the filing of a civil suit for the collection of taxes.

The taxpayers were charged with several violations of Sections 254 and 255 of the National Internal Revenue Code ("Tax Code") with respect to deficiency income tax and value-added tax (VAT).

The taxpayers were acquitted of said violations. The Court, however, ruled that the acquittal of the crimes charged in this case would not result in the extinguishment of the taxpayer's civil liability. **The civil aspect of the criminal case can survive an acquittal when it is based on reasonable doubt, as in this case**. This is also the express directive of Section 254 of the Tax Code, which provides that the conviction or acquittal obtained under this section shall not be a bar to the filing of a civil suit for the collection of taxes. *(People of the Philippines v. Court of Tax Appeals-Third Division et. al., G.R. Nos. 251270 and 251291-301, September 5, 2022, Date Uploaded: February 1, 2023)*

Satellite services provided by a non-resident foreign corporation to a local operator of telecommunication gateways are taxable in the Philippines.

The BIR assessed the taxpayer – an operator of telecommunication gateways and equipment – and found that it paid satellite air time fees to a non-resident foreign corporation ("NRFC") for the satellite services that the latter provides, but did not withhold the proper amount of tax. According to the BIR, these satellite airtime fees are income payments to an NRFC that are subject to a 35% final withholding tax ("FWT"). On the other hand, the taxpayer argued that the satellite air time fees are income sourced outside of the Philippines and thus, not taxable – first, the NRFC performed the service completely outside the Philippines, the act of transmission, which takes place in outer space, is the activity that produces the income; and second, the NRFC does not own equipment in the Philippines.

The Supreme Court ruled that the satellite airtime fee paid by the taxpayer to the NRFC is subject to FWT. In determining whether the satellite air time fee payments are subject to FWT, the Court applied a two-tiered approach: (1) identifying the source of income, and (2) identifying the situs of that source. As to the source of income, it was determined that the gateways' receipt of the call as routed by the satellite is the income source.

The income-generating activity was the entire process which is directly associated/interdependent on the facilities located within the Philippines. Thus, the satellite air time fees accrue only when the satellite air time is delivered to the taxpayer and is utilized by the Philippine subscriber for a voice or data call. The accrual of fees payable to the NRFC signifies the inflow of economic benefits. As to the situs of income, the Philippine situs of the NRFC's income from satellite air time fee payments was established as follows: (1) the income-generating activity is directly associated with the gateways located within the Philippine territory; and (2) engaging in the business satellite communication services in the Philippines is a government-regulated industry. *(Aces Philippines Cellular Satellite Corporation V. The Commissioner of Internal Revenue, G.R. No. 226680. August 30, 2022, Date Uploaded: February 1, 2023)*.

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

RMO No. 19-2007 which mandates that all amounts of compromise penalties incident to violations must be itemized in a separate assessment notice/ demand letter should be strictly observed.

The BIR issued BIR Form No. 0605, directing the taxpayer to pay penalties for the following alleged violations: a. no books of account; b. no official receipts; c. no back-end sales report; and d. unaccounted POS.

The taxpayer contends that BIR failed to observe the requirements under RMO No. 19-2007 with regard to the imposition of compromise penalties upon the taxpayer.

The Court ruled that RMO No. 19-2007 could not be any clearer in mandating that all amounts of compromise penalties incident to violations must be itemized in a separate assessment notice/ demand letter. In the present case, careful scrutiny of the records shows that the BIR did not issue any separate assessment notice/ demand letter after his investigation of the taxpayer's alleged violations. Instead, the BIR immediately proceeded to issue BIR Form No. 0605 (Payment form) with no itemized amounts of compromise penalties relative to its violations.

Considering that the pertinent provisions of RMO No. 19-2007 were not strictly observed by BIR in assessing the taxpayer for the compromise penalties, the compromise penalties were illegally collected and the taxpayer's payment thereof was erroneous. *(Commissioner of Internal Revenue v. Henryville, Inc., CTA EB No. 2531, February 1, 2023)*

Payment of local business tax under protest is not necessary for the taxpayer to file a valid protest as provided under Section 195 of the LGC.

The sole issue to be resolved is whether Section 7B.14 (c) of the Revised Makati Revenue Code (RMRC), which provides that protests must come with a valid payment of the assessed taxes under protest, applies to this case.

No. The Court ruled that Section 7B.14 (C) of the RMRC is inconsistent with Section 195 of the Local Government Code (LGC). Payment under protest is not necessary for taxpayers to file a valid protest as provided under Section 195 of the LGC. The Court maintained that the taxpayer is not liable to pay the local business tax (LBT) imposed under Section 3A.02(g) of the RMRC. *(Nelia A. Barlis v. GF & Partners, Architects, Co., CTA AC No. 247, February 2, 2023)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

UPDATES

A Motion for Reconsideration is not an available remedy in seizure proceedings involving a violation of the TCCP.

A warrant of seizure and detention was issued against the shipment of the taxpayer for violation of EO No. 156 in relation to Section 105 (No Dollar Importation of Personally Used Vehicle) of the Tariffs and Customs Code of the Philippines (TCCP). The taxpayer's settlement was initially accepted by the Acting District Collector – POD. However, the same was reversed by the District Collector. Thus, the taxpayer filed a Motion for Reconsideration with the Commissioner of the Bureau of Customs (BOC) which was subsequently denied by the latter.

In resolving the case against the taxpayer, the Court notes that the filing of a motion for reconsideration is not an available remedy in seizure proceedings. In case of seizure proceedings, the only remedies provided by the TCCP and the Customs Modernization and Tariff Act (CMTA) are "Settlement of Case by Payment of Fine or Redemption of Forfeited Property", "Review by Commissioner", "Settlement of Pending Seizure Case by Payment of Fine or Redemption of Forfeited Goods" and "Automatic Review in Forfeiture cases pursuant to Section 2307 of the TCCP, Section 2313 of the TCCP, Section 1124 of the CMTA and Section 1127 of the CMTA, respectively. As such, the Petition for Review is denied for lack of merit. *(ADELC Trading / Ryan Dominique L. Tanjutco v. Hon. Rey Leonardo B. Guerrero, in his capacity as Commissioner of the Bureau of Customs, CTA EB No. 2469. February 2, 2023)*

The judicial claim for refund must be filed within 30 days from receipt of the CIR's decision or after the expiration of the 90-day period under Section 112 (C) of the Tax Code, as amended.

The taxpayer filed its Application for Tax Credits/Refund on March 28, 2019. On July 2, 2019, the taxpayer received the Denial Letter dated June 66, 2019. The present Petition of Review was posted on August 1, 2019, counting from the date of receipt of the Denial Letter.

The court ruled that the judicial claim must have been filed within 30 days from receipt of BIR's decision or after the expiration of the 90-day period under Section 112 (C) of the Tax Code, as amended.

In the present case, the BIR issued the letter denying the taxpayer's entire claim for refund on June 6, 2019, which, while dated within the 90-day period, was received by the taxpayer only on July 2, 2019, beyond the 90-day period. As such, the instant Petition for Review, posted only on August 1, 2019, was filed out of time. Thus, the Court has no jurisdiction. *(*Ceamsa*, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10148. February 3, 2023)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

UPDATES

An assessment cannot be made to rest on mere presumptions no matter how reasonable or logical said presumptions may be – third-party information should be verified.

The taxpayer received a Letter Notice (LN) from the BIR, stating that it has purported undeclared sales for CY 2010. The said amount was the resulting discrepancy between the sales per its tax returns and the purchases of a certain company from the taxpayer. The taxpayer contended that the BIR must obtain sworn statements from third-party information (TPI) sources, attesting to the veracity of such TPI, lest the TPI may not be considered for assessment purposes.

The Court, in granting the case, found that the assessments against the taxpayer were void because the assessments lack factual and legal basis. Item IV(E)(3)(B.3) of RMO No. 30-2003 states that if the taxpayer is refuting the data appearing in the LN, there must be a confirmation request(CR) on the TPI source. In turn, the TPI source should confirm the data through a confirmation certificate. Simply put, the BIR must send a CR of said TPI to the alleged customer who, in turn, must validate said TPI. Such requirement was not met. The Court also reminded the BIR that an assessment cannot be made to rest on mere presumptions no matter how reasonable or logical said presumptions may be. *(Grand Geo Spheres Construction Corp v. Commissioner of Internal Revenue, CTA Case No. 10207, February 6, 2023)*

An LOA must be served or presented to the taxpayer within 30 days from the date of issuance; otherwise, it becomes null and void, unless revalidated.

The issue on the validity of the assessment in this case stems from the BIR's issuance of second LOA to the taxpayer. The taxpayer received its first LOA on October 6, 2016 and received the first PAN on September 27, 2018. After filing its reply, the taxpayer was allegedly informed that the tax audit investigation was transferred to a new set of revenue officers. Allegedly, the taxpayer received a second LOA on June 18, 2018, which was served through registered mail. It was certified that the Second LOA was received by a certain individual who was neither an employee nor an authorized representative of the taxpayer.

The Court, in deciding in favor of the taxpayer, cited RAMO No. 1-2000 which requires that an LOA must be served or presented to the taxpayer within 30 days from the date of issuance; otherwise, it becomes null and void, unless revalidated. The 30-day period to serve the LOA is mandatory. Here, the second LOA was not properly served by the BIR to the taxpayer. The taxpayer was informed and provided with a copy of the second LOA only when it filed its Reply to PAN on October 26, 2018, or 69 days after its issuance. The service of the LOA to the taxpayer beyond 30 days from its issuance, coupled with its improper service, renders the subject LOA and the resulting assessments void. *(Goldxtreme Trading Co. v. Commissioner of Internal Revenue, CTA Case No. 10129, February 7, 2023)*

The certificate of creditable tax withheld at source is sufficient to prove that taxes were indeed withheld.

On April 6, 2018, the taxpayer filed with the BIR an administrative claim for refund or issuance of a tax credit certificate (TCC) for the excess and unutilized creditable withholding taxes (CWTs). The BIR argued that the taxpayer is not entitled to a refund because the presentation of certificates of creditable tax withheld at source (CWT certificates) solely do not constitute conclusive evidence of payment and remittance to the BIR and that the testimonies of the various payors and withholding agents are required to prove remittance of the taxes withheld.

The Court ruled that the taxpayer does not have to prove actual remittance of the taxes to the BIR. Sections 2.58 and 2.58.3 of Revenue Regulations No. 2-98 show that the taxpayer does not need to prove actual remittance of the taxes to the BIR. It is sufficient that the CWT certificate is presented in evidence to prove that taxes were indeed withheld. Here, it is not necessary for the person who executed and prepared the CWT certificate to be presented and to testify personally to prove the authenticity of the certificates. The CWT certificate is the competent proof to establish that taxes are withheld. *(Commissioner of Internal Revenue v. Mckinsey & Co. (Phils), CTA EB No. 2540, February 7, 2023)*

In case of a transfer of RDO, an administrative claim for refund must be filed before the new RDO, provided that the new RDO has informed and/or notified the taxpayer that the transfer of its registration has already been completed.

The taxpayer argues that it filed its administrative claim for refund within the two (2) year prescriptive period after the close of the taxable quarter when the sales were made. Taxpayer argues that although RDO NO. 51 received its application for VAT credit/refund after the lapse of the 2-year period, it initially filed the said application before RDO No. 50 within the 2-year period.

The Court denied the taxpayer's claim. RR No. 05-2010, as amended, provides that the new RDO shall inform and/or notify the taxpayer that the transfer of its registration has already been completed. Here, the taxpayer admitted that despite earlier knowledge of the completion of the transfer of its registration to RDO No. 51, it still filed its application for VAT credit/refund with RDO 50. The taxpayer should have filed its administrative claim before RDO No. 51 on or before December 31, 2016. Despite such fact, the taxpayer filed its application for VAT credit/refund before RDO No. 50 on December 29, 2016, and filed the same application before RDO No. 51 only on January 9, 2017. Certainly, the taxpayer filed its administrative claim beyond the 2-year prescriptive period. Thus, the BIR is correct in denying the taxpayer's application for VAT credit/refund for having been filed out of time. *(Vestas Services Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2459, February 7, 2023)*

The CIR, DCIR-OG, ACIR, Regional Director, as the case may be, possesses the authority to deny administrative claims for input VAT refund.

On June 11, 2019, the taxpayer received a Letter dated May 30, 2019, issued by the OIC – Assistant Commissioner Large Taxpayers Service (OIC ACIR), denying its refund claim. In a resolution dated January 13, 2021, the Court upheld the decision of the BIR dismissing the judicial claim for refund filed by the taxpayer on January 10, 2020 for being filed out of time.

The taxpayer argues that Letter-Denial of the OIC-ACIR LTS is not appealable to the Court. Rather, it is the CIR's adverse decision it received on December 11, 2019, which was appealable to the Court. The Court finds this contention unmeritorious.

The Court *En Banc* emphasized that Section 7 of the Tax Code, as amended, declares that the CIR may delegate to subordinate officials with the rank of division chief or higher the power to deny administrative claims for input VAT refund – CIR, DCIR-OG, ACIR, Regional Director, as the case may be. Indeed, the ACIR, like the OIC ACIR, possesses the authority to deny administrative claims for input VAT refund. *(Nippon Philippines Corporation v. Commissioner of Internal Revenue, CTA EB No. 2506, February 15, 2023)*

Proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant – it is not required in a claim for refund of excess creditable withholding taxes.

The taxpayer filed with the BIR an administrative claim for refund and application for tax credits/refunds, requesting for the issuance of a tax credit certificate in the amount of its excess CWTs for CY ended December 31, 2014.

The CIR contends that proof of actual remittance is a condition precedent before a claim for refund of excess CWTs may prosper. However, the same has no basis in law and jurisprudence. Proof of actual remittance by the taxpayer is not needed in order to prove withholding and remittance of taxes to the CIR. Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. The CWT certificate issued by the withholding agents of the government are *prima facie* proof of actual payment by the claimant to the government itself through said agents. *(Commissioner of Internal Revenue v. Tullet Prebon (Philippines), Inc., CTA EB No. 2576, February 16, 2023)*

Sales made by a supplier in the Customs Territory to a purchaser in the Ecozone shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the Ecozone to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.

The CIR argues that the sales of services rendered by the taxpayer outside the Ecozone are technically considered importations by the buyers from the Customs Territory and are subject to VAT under the Tax Code, as amended. On the other hand, the taxpayer counter-argues that the principle of technical importation does not apply to the taxpayer's sales of services within the Customs Territory. The principle of technical importation applies only to the sale of goods and properties by the Freeport Zone-registered enterprise to a buyer from the Customs Territory.

The Court ruled in favor of the CIR. The Philippine VAT System adheres to the Destination Principle. In connection therewith, it is well-settled that export processing zones are to be managed as a separate Customs Territory from the rest of the Philippines, and thus, for tax purposes, are effectively considered as foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the Ecozone shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the Ecozone to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory. The taxpayer's sales of services to buyers within the Customs Territory or outside the Clark Freeport Zone or CFZ, even if less than or equal to 30% of its total income from all sources, are not included in the computation of the special 5% tax on GIE. Simply put, the said sales should be considered as importations by the buyer and exportation on the part of the taxpayer, which are subject to the 12% VAT under the Tax Code, as amended. *(Commissioner of Internal Revenue v. Clark Water Corporation, CTA EB No. 2379, February 17, 2023)*

In unlawful importation, goods and articles of commerce are brought into the country without the required documents, or are disposed of in the local market without having been cleared by the BOC or other authorized government agencies, to evade the payment of correct taxes, duties, or other charges.

The taxpayer was granted a Certificate of Eligibility (COE) to import 9,250 MT of Thai White Rice. Pursuant to the COE, it pad in advance all duties in the amount of P64,452,699. On December 15, 2016, the shipment of white rice arrived at Poro Point, La Union. However, prior to its exit from the customs territory, Port Operations of the Port of San Fernando, La Union issued a Memorandum stopping the release of the rice upon discovery of an excess of 603.15 MT for being not covered by an Import Permit (IP). As a result, a Warrant of Seizure and Detention (WSD) was issued and the excess rice was therefore forfeited

The Commissioner of Customs argues that the rice shipment found in excess of the quantity allowed under the taxpayer's IP is considered a prohibited importation pursuant to Sections 118 and 1113 of the CMTA, hence, subject to forfeiture. However, even though the seizure of the excess 603.15 MT of white rice was proper in the absence of IP covering it, the subject white rice are not prohibited importations subject to forfeiture.

The CTA *En Banc* ruled in favor of the taxpayer. Citing the Supreme Court's ruling, the CTA *En Banc* explained that in unlawful importation, goods and articles of commerce are brought into the country without the required importation documents, or are disposed of in the local market without having been cleared by the BOC or other authorized government agencies, to evade

payment of correct taxes, duties or other charges. Here, nothing in the records points to such collusion or fraud that would make the subject importations unlawful. In the instant case, the taxpayer alleged that it was not aware of the excess and that it has already paid in advance all taxes and duties and took immediate action to secure the required IP for the excess shipments. *(Commissioner of Customs v. Progressive Grains Milling Corp., CTA EB No. 2493, February 20, 2023)*

The power of the CTA to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the BIR.

The CIR states that since an FDDA was issued, the jurisdiction of the CTA shifts from a trial court to a court exercising judicial review, becoming strictly appellate in nature. Thus, it was erroneous for the CTA to rule on matters that were never substantiated at the administrative level. The CIR further claims that documents presented only at the judicial level should not be given any probative value by the CTA.

The Court ruled that the power of the CTA to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the BIR. As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted in the BIR unless it is formally offered in the CTA. Thus, the review of the CTA is not limited to whether or not the CIR committed a gross abuse of discretion, fraud, or error of law, as contended by the CIR. As evidence is considered and evaluated again, the scope of the CTA's review covers factual findings. *(Commissioner of Internal Revenue v.Western Mindanao Power Corporation, CTA EB No. 2449, February 20, 2023)*

The Data and Assessment Form is not tantamount to the Notice of Assessment as mandated under Sec. 195 of the LGC.

A complaint was filed by the taxpayer claiming a refund for overpaid Local Business Tax (LBT). The City Treasurer filed a counterclaim tax payment of the alleged deficiency LBT for taxable years 2014, 2017, and 2018 in the total amount of P2,863,039.93.

The Court ruled that the City Treasurer's collection of the taxpayer's alleged deficiency LBTs for taxable years 2014, 2017, and 2018 by way of counterclaim is not allowed as it is contrary to the provisions of Section 195 of the LGC. Based on the aforementioned law, whenever the local treasurer or his duly authorized representative finds the correct taxes, fees or charges have not been paid, the local treasurer is mandated to issue a Notice of Assessment stating the nature of the tax, fee, or charge, the amount of deficiency, surcharges, interest, and penalties. A perusal of the records discloses that no Notice of Assessment was issued against the taxpayer. The Court finds that the data and Assessment Form is not tantamount to the Notice of Assessment as mandated under Sec. 195 of LGC. *(City of Manila, as represented by its City Mayor, "Honorable Francisco "Isko Moreno" Domagoso and OIC-City Treasurer v. Marina Square Properties, CTA AC No. 252, February 20, 2023)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

For zero-rated sales, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt, including provisional invoices/commercial invoices/supplementary invoices.

The taxpayer filed its claim for refund of its alleged unutilized input VAT arising from the importation of goods, other than capital goods, and purchases of capital goods attributable to its zero-rated sales.

The Court denied the taxpayer's claim and ruled that a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: (1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

In relation to the second requisite requiring the VAT-registered persons engaged in sales that are zero-rated or effectively zero-rated, a VAT invoice for every sale, barter, or exchange of goods or properties shall be issued. Hence, if the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt. The Court noted that the relevant provisional invoices do not have the word "zero-rated" prominently written or printed on them, in clear violation of the invoicing requirements set forth in the Tax Code, as amended, and RR No. 16-2005. Furthermore, nowhere in RR No. 18-2012, which provides the regulations for processing the ATP of official receipts, sales invoices, and other commercial invoices, was it stated that provisional invoices/commercial invoices/supplementary invoices need not contain the required information in a VAT invoice. *(Oceangold (Philippines), Inc. v. Commissioner of Internal Revenue, CTA Case No. 10382, February 20, 2023)*

The delinquency interest may not be properly computed if a due date does not appear in the FAN/FLD, rendering the said FAN/FLD void.

The CIR assailed that the CTA in Division erred in ruling that the assessments are void due to the alleged absence of a definite tax liability and due date in the FAN/FLD. According to the CIR, what is essential is that the taxpayer was informed in writing of the the BIR's findings and stated the facts and laws on which the assessment is based.

The Court *En Banc*, however, is not impressed with the contention of the CIR. In numerous cases decided by the Supreme Court, it consistently held that indicating the due date in an assessment is directly related to the requirement of indicating the definite amount that is assessed. The delinquency interest may not be properly computed if a due date does not appear in the FAN/FLD as in this case. It bears stressing that an assessment, in the context of NIRC, is a "written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed." Although the disputed notice provides for the computations of the taxpayer's tax liability, the amount remains indefinite. It only provides that the tax is due and is still subject to modification, depending on the date of payment. As such, for failure to indicate the due date, it negates the CIR's demand for payment. *(Commissioner of Internal Revenue v. Medical Center Trading Corporation, CTA EB No. 2473, February 22, 2023)*

Under the RP-US Tax Treaty, the capital gains from the sale of shares of stock may be exempt from Philippine tax if the interest being disposed of is in a corporation whose assets do not consist principally of a real property interest located in the Philippines.

This is a Petition for Review filed by the taxpayer wherein it seeks the refund of the allegedly erroneously paid capital gain tax (CGT) arising from the sale of its shares of stock. Taxpayer claims that it is entitled to refund or issuance of a TCC arising from its sale of Aclara PH share to Aclara US that is allegedly exempt from capital gains tax pursuant to Article 14 of RP-US Treaty in relation to Article 1 of its Reservation Clause. The BIR, on the other hand, claims that the taxpayer utterly failed to establish that it is entitled to a tax refund because the taxpayer did not submit the Audited Financial Statements of Aclara PH to comply with one of the requisites of GCT exemption (i.e. that it does not consist principally of real property interests located in the Philippines).

Under the RP-US Tax Treaty, the capital gains from the sale of shares of stock may be exempt from Philippine tax if the interest being disposed of is in a corporation whose assets do not consist principally of a real property interest located in the Philippines. In addition, Section z(A) and (b) and Section 4 of Revenue Regulations (RR) No. 4-8679 define the terms as generally used in tax treaties as the ratio of such immovable property over the total assets of the domestic corporation in terms of value is more than fifty percent (50%). Here, it has been established that the taxpayer is a non-resident foreign corporation and the shares transferred are of Aclara PH, a domestic corporation.

Aclara PH's real property interest (at the time of sale) did not exceed 50%; hence, it could not be deemed to have possessed assets consisting principally of a real property interest in the Philippines. As a result, the taxpayer's capital gains derived from the sale of its shares of stock in Aclara PH should be exempt from CGT in the Philippines pursuant to the RP-US Tax Treaty. *(Grid Solutions (U.S.) LLC., v. The Commissioner of Internal Revenue, CTA Case No. 10146, February 28, 2023)*

Electric Cooperatives, both non-stock, non-profit cooperatives, and stock cooperatives registered with the Cooperative Development Authority are permanently exempt from payment of income taxes.

The taxpayer contends that as an Electric Cooperative (EC), it is exempted from the payment of income tax by virtue of Section 39 of PD 269 despite its non-registration with the CDA. It further argues that the BIR's claim that its exemption had already expired is erroneous since its IT exemption is permanent in character. BIR, on the other hand, argues that the taxpayer's IT exemption is dependent on its successful registration with the Cooperative Development Authority (CDA). Even assuming the hat taxpayer's exemption was restored, it is already subject to IT after the 30th year of its registration pursuant to Section 39 of PD 269.

The CTA, in granting the taxpayer's petition, ruled that there are three options provided by the law to an EC with regard to registration. First, it may choose to remain as a non-stock, non-profit cooperative. Second, it may convert itself into a stock cooperative and register under the CDA. Third, it may convert itself into a stock corporation registered under the Securities and Exchange Commission (SEC). Each choice shall equally carry with it certain consequences. If an EC elects the first option, it may remain a non-stock, non-profit entity governed by the provisions of PD 269. If the EC chooses the second option,
it shall be required to convert into a stock corporation but still enjoys the provision of PD 269. Regardless of the CDA registration, such EC shall continue to enjoy the benefits of PD 269. If the EC opts for the third option, it shall be treated as a regular domestic stock corporation upon its registration with the SEC. It shall then be entitled to all the rights and powers of any stock corporation but no longer enjoy the incentives provided by PD 269.

As shown clearly in the records, the taxpayer has opted for the first option. Furthermore, Revenue Memorandum Circular (RMC) No. 72-2003, the BIR itself affirmed the unqualified income tax exemption of ECs. NEA Legal Advisory No. 18 also affirmed ECs permanent exemption from payment of income taxes, maintaining the effectivity of Section 39m of PD 269. (Misamis Oriental II Rural Electric Service Cooperative Inc. *(MORESCO-II) v. Commissioner of Internal Revenue, CTA Case No. 10145, February 28, 2023)*

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RMC No. 21-2023, February 16, 2023 – *This clarifies Section 5 of RR No. 18-2021 on the posting of export bond prior to the removal of tobacco products, heated tobacco products, and vapor products for export from place of manufacture.*

This clarifies Section 5 of RR No. 18-2021 on the posting of export bond prior to the removal of tobacco products, heated tobacco products, and vapor products for the export from place of manufacture.

The option of posting for an export bond may be availed of by the manufacturers/exporters of tobacco products, heated tobacco products, or vapor products, subject to the following conditions:

a. The two (2) options (product replenishment and export bond) cannot be availed of at the same time to cover the Excise Tax due for the shipment;
b. The export bond amount must be at least equal to the applicable Excise Taxes due on the two (2) immediately preceding shipments;
c. The concerned manufacturers/exporters shall file and submit the export bond to the Excise Large Taxpayers Regulatory Division of the BIR and copy-furnish the Chief, Excise Large Taxpayers Field Operations Division.

RMC No. 25-2023, February 20, 2023 – *This circularizes Republic Act No. 11314, titled "An Act Institutionalizing the Grant of Student Fare Discount Privileges on Public Transportation and for Other Purposes".*

This circularizes Republic Act No. 11314, titled "An Act Institutionalizing the Grant of Student Fare Discount Privileges on Public Transportation and for Other Purposes".

Coverage - all public transportation utilities such as, but not limited to, Public Utility Buses (PUBs), Public Utility Jeepneys (PUJs), taxis, and other similar vehicles-for-hire, tricycles, passenger trains, aircrafts, and marine vessels.

Not Covered - school service, shuttle service, tourist service, and any similar service covered by contract or charter agreement and with a valid franchise or permit from the Land Transportation Franchising and Regulatory Board (LTFRB).

The Fare Discount - available during the entire period while the student is enrolled, **including weekends and holidays**. In case there is a promotional fare, the student shall have the option to choose between the **promotional fare** and the **regular fare less the discount** as provided under this Act.

Student Fare Discount Privilege - a student shall be entitled to a grant of twenty percent (20%) discount on domestic regular fares, upon personal presentation of their duly issued school identification cards (IDs) or current validated enrollment form. In the case of air public transportation utilities, the discount shall only apply to the base fare or the price of the ticket before taxes and costs for ancillary services.

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Prohibition on Availment of Double Discounts - the privileges shall not be claimed if the student claims a higher discount as may be granted by the public transportation utility, or under other existing laws, or in combination with other discount programs or incentives.

Tax Deduction - the public transportation utility operator may claim as a tax deduction the student fare discount: Provided, that the cost of the discount shall be **allowed as deduction** from gross income for the **same taxable year** that the discount is granted: Provided, further, that the **total amount of the tax deduction** net of Value-Added Tax **shall be included in their gross sales receipts** for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended.

Use of Falsified Identification Documents and Misrepresentation – any person who avails or attempts to avail of the privileges under this Act through the use of falsified identification documents, fraud, or any form of misrepresentation shall be denied said privileges and may be subject to civil and penal liabilities.

RMO No. 7. 2023, February 23, 2023 – *This prescribes the policies and guidelines in the processing and monitoring of One-Time Transactions (ONETT) and issuance of Electronic Certificate Authorizing Registration thru the eONETT System.*

This prescribes the policies, guidelines, and procedures in the processing and monitoring of One-Time Transactions (ONETT) and issuance of Electronic Certificate Authorizing Registration thru the eONETT System.

I. Policies and Guidelines

1. The facilities of the eONETT System shall be used in the processing, review, and approval of online applications, as well as the generation and printing/ issuance of eCAR.
2. The existing procedures and guidelines in requesting for systems access shall be followed by the users in acquiring access to the eONETT System.
3. All concerned Revenue District Offices shall identify users and prepare requests for access to the eONETT System through the Revenue Data Center (RDC).
4. All issues encountered in using the eONETT System shall be immediately logged to the BIR Service Desk:

Issue/Concern From	Problem Resolution Group
Taxpayer/s	Customer Assistance Division (CAD)
Revenue District Officer/s:	
- For technical-related issues	Concerned RDC/ Taxpayer Service System Division (TSSD)
- For policy/business-related issues	Assessment Performance Monitoring Division (APMD)

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5. Only those applications with complete documentary requirements shall be processed by the Revenue Officer (RO)/Group Supervisor (GS).

6. In the absence of the RO/GS who processed and submitted an application for approval, another RO/GS may print and release the eCAR to the taxpayer, provided that the physical copies of original documents presented by the taxpayer have been validated against the uploaded attachments in the system.

7. For transactions involving multiple properties (multiple TCT/OCT/CCT, or improvements) the following shall be considered:
   - **a.** If Single Selling Price – Ensure that the "Multiple Selling Price" is unchecked/ unmarked, then encode the amount in the Total Selling Price field.
   - **b.** If Multiple Selling Price – Tick/mark the checkbox in the Multiple Selling Price field then encode the amount of selling price of each property/improvement, whichever is applicable.

8. In case of a lost eCAR issued thru the eONETT System within the validity period, the concerned RDO shall reprint and issue the same to the requesting taxpayer.

BIR RMC No. 20-2023

This Circular clarifies the provision of Section 5 of RMC No. 063-22 pertaining to the Application of the Three (3) Primary Taxable Bases in applying the excise tax rates for Automobiles.

This Circular is issued to address the issues and concerns pertaining to the correct tax base in computing the excise tax on the importation of automobiles for resale pursuant to Section 149 of the NIRC of 1997, as amended.

Based on Section 5 of RMC No. 063-22, there are three (3) primary taxable bases on which excise tax rates shall be applied, as follows:

"Based on the above provisions, there are three (3) primary taxable bases in applying the excise tax rates for automobiles, namely:

1. Declared manufacturer's or importer's selling price, net of excise and value-added taxes;
2. Based on the 80% actual dealer's price, net of excise and value-added taxes; and
3. Based on the total cost of importation and expenses divided by 90%."

The application of the 3rd taxable base provided above, which is "the total cost of importation and expenses divided by 90%" is clarified to mean that the 3rd taxable base provided in number 3 of Section 5 of RMC No. 63-22 shall only apply in cases where the Net Importer's selling price is lower than the cost of importation and expenses as defined in said RMC.

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BIR RMC No. 21-2023

This amends RMC No. 48-2018 on the Classification and Processing time of One-Time Transactions (ONETT).

The processing time for the issuance of ONETT Computations Sheet (OCS) and Electronic Certificate of Authorizing Registration (eCAR) is amended as follows:

ONETT Transactions	Classification	Total Processing Time
Sale of Real Property/ Shares of Stocks Processing and Issuance		
a.) OCS	Complex	7 working days
b.) eCAR	Complex	7 working days
Donation of Properties Processing and Issuance		
a.) OCS	Complex	7 working days
b.) eCAR	Complex	7 working days
Estate of the Decedent Processing and Issuance		
a.) OCS	Highly Technical	20 working days
b.) eCAR	Complex	7 working days

The total processing time specified above is computed on a per application basis.

BIR RMC No. 24-2023

This provides for further classification on the Qualification of Ecozones Logistics Services Enterprise (ELSE) to the Incentives of VAT-Zero Rate on Local Purchases of Goods and Services Exclusively and Directly Used in the Registered Project or Activity.

This provides for further classification on the Qualification of Ecozones Logistics Services Enterprise (ELSE) to the Incentives of VAT-Zero Rate on Local Purchases of Goods and Services Exclusively and Directly Used in the Registered Project or Activity, as follows:

1. ELSE is formerly named as "Ecozone Facilities Enterprise Engaging in Warehouse Operations" under Philippine Economic Zone Authority (PEZA) Board Resolution (BR) No. 97-366, as amended by PEZA BR No. 10-506, and is now referred to as Ecozone Logistics Service Enterprises. ELSE is a registered business enterprise (RBE) supplying production-related raw materials and equipment that caters exclusively to the requirements of export manufacturing enterprises that are registered with the Philippine Economic Zone Authority (PEZA) Clark Development Corporation (CDC), Subic Bay Metropolitan Authority (SBMA), Authority of the Freeport Area of Bataan (AFAB) or other special economic zones/freeports outside the administration of PEZA. It provides critical support, particularly to export manufacturing companies with their requirements for logistics support to facilitate their import and export shipments, sourcing of raw materials, inventory management, just-in-time deliveries, localization, and process customization.

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2. ELSEs that render at least 70% of their output/services to another registered export enterprise are covered by the definition of "export enterprise" under section 293(E) of the Tax Code, as amended by the CREATE Act and as clarified in BOI MC No. 2023-001.

3. The definition of an RBE under Section 293(M) of the Tax Code, as amended, excludes certain service enterprises, such as those engaged in trucking or forwarding services. Moreover, BOI MC No. 2023-001 provided the only type of logistic service that will qualify to be registered as ELSE are those undertaking BOTH of the following:

   a. Establishment of a warehouse storage facility; and
   b. Importation or procurement from local sources and/or from other registered enterprises of goods for resale, or for packing/covering (including marking, labeling), cutting or altering to customers' specification, mounting and/or packaging into kits or marketable lots thereof for subsequent sale, transfer or disposition for export.

4. Purchases of registered ELSEs from VAT-registered suppliers are subject to VAT at zero-rate but shall only apply to goods and/or services directly and exclusively used in the registered project or activity of the ELSE. Details on the availment of VAT zero-rate incentives on local purchases under the CREATE Act are provided in RMC No. 24-2022 and its subsequent amendments.

5. The processing of applications for VAT zero-rating shall be governed by Revenue Memorandum Order (RMO) No. 7-2006 and its subsequent amendments, if any. However, provisions of Sections 294(E) and 295(D), Title XIII of the NIRC of 1997, as amended by the CREATE Act, and Rule 2, Section 5 and Rule 18, Section 5 of the CREATE Act IRR, as amended, shall be strictly complied with. Relative hereto, the following must be included in the attachments to the application for VAT zero-rating:

   a. Certificate of Registration and VAT Certification issued by the concerned IPA as submitted to it by its registered export enterprise buyers;
   b. A sworn affidavit executed by the registered export enterprise-buyer stating that the goods and/or services bought are directly and exclusively used for the production of goods and/or completion of services to be exported or for utilities and other similar costs, the percentage of allocation to directly and exclusively used for the production of goods and/or completion of services to be exported; and

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	Other documents to corroborate entitlement to VAT zero-rating, such as but not limited to duly certified copies of the valid purchase order, job order or service agreement, sales invoices and/or official receipts, delivery receipts, or similar documents to prove the existence and legitimacy of the transaction.
BIR RMO No. 6-2023 *This prescribes the updated and consolidated policies, guidelines, and procedures for BIR Audit Program.*	In general, all taxpayers are considered as possible candidates for audit. To cover such audit/investigation, electronic Letters of Authority (eLAs) or Tax Verification Notice (TVN), as applicable shall be issued. Mandatory Cases are transactions to which an audit is required as a condition precedent for the issuance of Tax Clearance, processing of claims for tax credit/refund, and other cases as may be identified by the Commissioner of Internal Revenue (CIR) as a priority target for audit/investigation. The following shall be covered by this type of audit: A. To be covered by eLAs: **a.** Claims for tax credit/refund of the following tax types: **i.** Excise Tax; or **ii.** Income Tax (except Income Tax claims of Job Order personnel), including Final and Creditable Income Tax Withheld **b.** Request for Tax Clearance of taxpayers whose gross sales/receipts for the immediately preceding year exceeds ₱3,000,000.00 or whose gross assets upon retirement exceeds ₱8,000,000.00 **i.** Due to death of taxpayer; or **ii.** Taxpayers retiring from business; or **iii.** Taxpayers undergoing merger/consolidation/split-up/spin-off and other types of corporate reorganizations **c.** Cases returned to the Investigating Offices (IO) where the original Group Supervisor (GS)/ Revenue Officer (RO) who conducted the audit are no longer available due to transfer of work assignment or separation from service (e.g., retirement, resignation, AWOL, etc.) **i.** For reinvestigation; or **ii.** For compliance with review findings that resulted to deficiency tax or additional deficiency tax **d.** Cases referred by other IO due to taxpayer's transfer of business registration, where taxpayer agreed to have the audit continued by the new IO, provided the covered period is not yet prescribed. **e.** One-Time Transactions (ONETT) i. Cases which review findings resulted in a deficiency tax; or ii. Real property transactions with findings in the Electronic Certificate Authorizing Registration (eCAR) System

B. To be covered by TVNs:

a. Persons requesting for Tax Clearance whose gross sales for the immediately preceding year is ₱1,000,000.00 but not exceeding ₱3,000,000.00 or whose total assets upon retirement is ₱3,000,000.00 but not exceeding ₱8,000,000.00.
   i. Due to the death of the taxpayer; or
   ii. Taxpayers retiring from business; or
   iii. Taxpayers undergoing merger/consolidation/split-up/spin-off and other types of corporate re-organization.

b. Claims for Value Added Tax (VAT) Refund;

c. Income Tax Refund of Job-Order personnel; and d. Claims for refund/tax credit arising from erroneous payment of taxes, including double payment of taxes due to system error/glitch.

SEC ISSUANCES

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Upon the approval of the SEC and effectivity of the merger, all the assets of the constituent corporation are automatically transferred by operation of law to the surviving corporation. The cessation of the separate existence of the constituent corporations rendered it legally impossible for them to file an Amended Plan of Merger.

The Surviving Corporation and the Constituent Corporation submitted for approval of the SEC the Plan of Merger, whereby the net assets of the Constituent Corporation will be transferred to the Surviving Corporation and treated as additional paid-in capital. During this time, the BIR then issued a ruling whereby upstream mergers between a parent company **and its subsidiary where no shares will be issued are considered not tax free** but rather as a donation. Afterwards, the SEC approved the Plan of Merger. In order to effect a tax-free merger, the two corporations filed an application with the SEC for the approval of an amended Plan of Merger, which the SEC denied.

In denying the appeal of the two corporations, the SEC ruled that upon the approval and effectivity of the original merger, all the assets of the Constituent Corporation were automatically transferred by operation of law to the Surviving Corporation. Thus, the issuance by the Surviving Corporation of shares to itself is no longer necessary. The SEC was effectively prevented from acting on the amended merger on the ground that with the approval of the original merger, only the Surviving Corporation is legally existing, being the surviving corporation. Consequently, the cessation of the separate existence of the constituent corporations rendered it legally impossible for them to file the amended merger. *(A Brown Energy Resources and Development, Inc. and Nakeen Corp. v. Company Registration and Monitoring Department, SEC En Banc Case No. 04-15-370, August 2, 2022)*

SEC ISSUANCES

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Allegations of intra-corporate dispute in the Petition does not deprive the SEC of jurisdiction to take cognizance of a case and pass upon an issue that solely relates to the interpretation and implementation of the Corporation Code and other laws implemented by it.

The members of the Corporation filed a Petition for Calling of Meeting of Election of Officers with the SEC, alleging that the Corporation has not conducted a meeting and election since 2006. The SEC granted the Petition, directing the Corporation to conduct an annual member's meeting. The Corporation argues that the SEC has no jurisdiction over the case as it is intra-corporate in nature, alleging that the issues in the Petition relate to the validity of the election of the board of trustees.

In denying the appeal of the Corporation, the SEC ruled that the Corporation's non-compliance with the mandatory provisions of Section 50 of the Corporation Code is within the exclusive and primary jurisdiction of the SEC. The SEC ruled that the main issue is not an election contest, but whether the Corporation has failed to comply with the Corporation Code mandating the conduct of the annual regular meetings. Allegations of intra-corporate dispute in the Petition do not deprive the SEC of jurisdiction to take cognizance of a case and pass upon an issue that solely relates to the interpretation and implementation of the Corporation Code and other laws implemented by it. *(Jesus M. Melegrito v. GA Tower 1 Condominium Corporation, SEC En Banc Case No. 06-21-484, February 8, 2022)*

An intra-corporate dispute is no longer within the jurisdiction of the SEC.

The stockholder filed a complaint with the SEC, alleging that his rights as a stockholder were violated when he was prevented from attending the annual stockholders' meeting. The Enforcement and Investor Protection Department (EIPD) of the SEC ruled in favor of the stockholder and directed the corporation to pay the monetary penalty.

The SEC *En Banc* ruled that the SEC had no jurisdiction over the case as it is an intra-corporate dispute. The stockholder was asserting and seeking to enforce his right to participate in the annual stockholder's meeting of the corporation. Hence, the controversy involves the enforcement of the rights of the stockholder and the corporation. An intra-corporate dispute is no longer within the jurisdiction of the SEC. *(Alliance Select Foods International, Inc. v. Enforcement and Investor Protection Department (EIPD), SEC En Banc Case No. 11-14-350, September 29, 2022)*

BSP ISSUANCES
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Circular Letter No. CL-2023-009
Anti-Money Laundering Council (AMLC) Resolution Nos. TF-63 and TF-64, Series of 2023.

This is to disseminate the AMLC Resolution Nos. TF-631 and TF-642, both dated 25 January 2023, directing the issuance of Sanctions Freeze Order (SFO) to take effect immediately against certain designated individuals and organizations, pursuant to their designation as terrorists under the Anti-Terrorism Council (ATC) Resolution Nos. 35 and 36, and the freezing without delay of the following property or funds, including related accounts: (a) property or funds that are owned or controlled by the subject of designation, and are not limited to those that are directly related or can be tied to a particular terrorist act, plot, or threat; (b) property or funds that are wholly or jointly owned or controlled, directly or indirectly, by the subject of designation; (c) property or funds derived or generated from funds or other assets owned or controlled, directly or indirectly, by the subject of designation; and (d) property or funds of persons and entities acting on behalf or at the direction of the subject of designation.

BSFIs are reminded to submit to the AMLC: (a) a written return, pursuant to, and containing the details required under, Rule 16.c of the Implementing Rules and Regulations of Republic Act (R.A.) No. 10168, otherwise known as the Terrorism Financing Prevention and Suppression Act of 2012 (TFPSA); and (b) Suspicious Transaction Report on all previous transactions of the subject of designations within five (5) days from the effectivity of the SFO.

Any person, whether natural or juridical, including covered persons, among others, who (a) deals directly or indirectly, in any way and by any means, with any property or fund that he knows or has reasonable ground to believe is owned or controlled by the designated individuals or organization, including funds derived or generated from property or funds owned or controlled, directly or indirectly, by such designated individuals or organization; or (b) makes available any property or funds, or financial services or other related services to the said designated individuals or organization, shall be prosecuted to the fullest extent of the law pursuant to the TFPSA.

Memorandum No. M-2023-003
This provides guidelines on the Submission of Monthly Report on the Sale/Transfer and Investment Transactions of BSFIs under the Republic Act

Submission Guidelines:

1. All BSFIs that availed of the tax exemptions and incentives/privileges under the FIST Act shall use the FIST Monthly Data Entry Template (DET) and its corresponding Control Prooflist (CP) which can be downloaded from www.bsp.gov.ph/ses/reporting_templates or directly requested from BSP-Department of Supervisory Analytics (DSA) through DSAReports@bsp.gov.ph. In requesting the said files, covered BSFIs shall follow the prescribed format as the subject, [REQUEST] FIST Monthly Template.

No. 11523 otherwise known as the "Financial Institutions Strategic Transfer (FIST) Act"

2. All covered BSFIs shall submit the Monthly Report DET and CP on the Sale/ Transfer and Investment Transactions of BSFIs under the FIST Act through the FIST@bsp.gov.ph, copy furnished the appropriate supervising department of the BSP, using the prescribed format for the subject.

3. The report shall be considered a Category B report and shall be submitted within twenty (20) business days after the end of the reference month.

4. BSFIs that availed of the tax exemptions and incentives/privileges under the FIST Act shall submit the required prudential report within the prescribed timeline following the reference month of the transaction.

5. BSFIs shall submit the prudential report as long as the BSFIs have an outstanding balance related to the FIST transaction (i.e., Deferred Charges) or there are new sale/transfer transactions under the FIST for the reporting month.

6. All covered BSFIs shall only use e-mail addresses officially registered with the DSA in electronically submitting reports in accordance with BSP Memoranda Nos. M-2017-028 dated 11 September 2017, M-2017-014 and 2017-015 both dated 31 March 2017 and M-2017-006 and M-2017-007 both dated 22 February 2017. The same registered e-mail address/es shall be used by the DSA in acknowledging the submitted reports.

Memorandum No. M-2023-004
Submission of Prudential Reports Using Extensible Mark-up Language (XML) format through Application Programming Interface (API)

Banks are enjoined to complete the foregoing requirements in preparation for the live implementation of the API-based submission of prudential reports following the schedule below:

1. Parallel run of the new FRPv15, which shall be used for the API-based submission shall cover the March 2023 quarter-end reports and the April and May 2023 month-end reports. The FRPv15 shall be submitted within 20 (for solo basis) and 35 (for consolidated basis) banking days from the end of the reference period, as applicable.

2. The existing FRPv14.5 and covered FRP-related reports (Annex B) being submitted through the Financial Institutions Portal (FI Portal)/Email submission pursuant to existing submission guidelines shall continue to be considered as the official submission of banks for the March 2023 quarter-end and the April and May 2023 month-end reports.

3. The Live submission1 of the FRPv15 shall start with the June 2023 quarter-end and July 2023 month-end reports. The FRPv14.5 and covered FRP-related reports shall no longer be submitted beginning the said periods.

4. Banks may use the XML Converter Facility of the BSP under the BSP Relationship Management System – Integral Financial Supervision System (BRMS-IFSS) web portal for the submission of the FRPv15 subject to the following conditions:

    a. Universal/Commercial banks (UKBs) and Digital Banks (DBs) and their subsidiary thrift and rural/cooperative banks may use the converter facility during the parallel run of the FRPv15. Beginning with the live implementation of the FRPv15 reports for the reporting period ending 30 June 2023, the BSP XML Converter Facility will no longer be available to U/KBs and DBs and their subsidiary thrift and rural/cooperative banks and, as such, they shall use their own XML facility and shall submit the same via the API facility.

    b. The submission of the generated XML report using machine-to-machine modality by UKBs, DBs, and their subsidiary banks for both the parallel run and live implementation shall be done using the bank's own process as coordinated with the BSP or via the approach introduced by the BSP using Postman protocol.

5. Other thrift/rural/cooperative banks may use the BSP XML Converter and submit their XML reports via the Web Auxiliary facility (BSP Relationship Management System or BRMS) provided by the BSP during the parallel run and live implementation until further notice.

6. Any changes to the abovementioned schedule or other related matters shall be communicated accordingly.

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Memorandum No. M-2023-005

Implementation of BSP Circular No. 1055 on the Adoption of a National Quick Response (QR) Code Standard

1. In line with the thrust of the BSP to ensure the safe, efficient, and reliable operations of payment systems in the country as provided in Republic Act No. 11127 or the National Payment Systems Act, all payment service providers (PSPs) shall adopt the National QR Code Standard, which is also referred to as "QR Ph" in QR-enabled payment services offered to end users.

2. All PSPs deploying QR Ph-enabled payment services to merchants/businesses shall require such merchants/businesses to display and utilize the QR Ph codes in their payment acceptance. Said PSPs shall provide appropriate product training on QR Ph to their client-merchants. including their store cashiers and managers. specifically on the features and benefits of QR Ph P2M so that they are able to provide appropriate guidance to customers on the use of QR Ph and enable customers to maximize the benefits of this interoperable National QR Code Standard.

3. All PSPs participating in the InstaPay automated clearing house (ACH) and offering QR-enabled payment services are required to submit a notarized certification of deployment of QR-enabled payment services compliant or non-compliant to the QR Ph standard including the information on the payment service use-cases that the non-QR Ph codes are being utilized. The certification shall be submitted to the appropriate oversight department of the BSP not later than thirty (30) calendar days from the date of this Memorandum.

4. All PSPs deploying non-QR Ph codes, which are also referred to as proprietary QR codes, for payment services shall be allowed to transition to the QR Ph until 30 June 2023.

5. Beginning 01 July 2023, all proprietary QR codes for payments services shall be disabled and shall no longer be available to the public:

    a. Receiving PSPs - PSPs offering QR-enabled payment services to their client-merchants I businesses shall disable acceptance of payments via non-QR Ph codes or proprietary QR codes. An appropriate notification shall prompt and inform the payor of the cause of an unsuccessful payment transaction caused by the use of a non-QR Ph code.

    b. Sending PSPs - The internet platforms and mobile applications of PSPs shall no longer support the scanning of non-QR Ph codes or proprietary QR codes.

6. Pending the full compliance by a PSP of the requirements under this Memorandum by 13 July 2023, no new electronic fund transfer service of such PSP shall be approved until proof of compliance with this Memorandum have been satisfactorily demonstrated by such PSP.

7. PSPs are reminded of Section I of BSP Circular No. 1055 on supervisory enforcement actions that the BSP may deploy to ensure compliance with the provisions of this Memorandum and bring about timely corrective actions.

   Likewise. PSPs are reminded of the applicable sanctions to erring PSPs as provided In Section 19 of R. A. No. 11127 and Section 37 of R. A. No. 7653, as amended. (The New Central Bank Act, as amended). Thus, in the event that any of the submitted certificate/s of compliance is/are found to be erroneous and/or untrue, the concerned PSP may be meted the appropriate sanction under Section 37 of R.A. No. 7653, as amended, for the willful making of a false or misleading statement.

8. The Philippine Payments Management Inc. (PPMI), as the accredited Payment System Management Body (IPSMB) pursuant to R. A. No. 11127, shall monitor and lead its members towards full adoption of the National QR Code Standard. The BSP shall work with the PPMI on the appropriate implementation of this Memorandum.

Circular No. 1168, Series of 2023
Amendments to the Regulations on Personal Equity and Retirement Account (PERA)

Section 1. Section 1121/1121-Q of the MORB/MORNBFI is hereby amended to read, as follows:

1121/1121-Q PERSONAL EQUITY AND RETIREMENT ACCOUNT (PERA) MARKET PARTICIPANTS AND PERA INVESTMENT PRODUCTS

XXX

Security for the faithful performance of administrators' duties. As security for the faithful performance of its duties under the PERA Act, an Administrator shall hold eligible government securities, equivalent to at least zero percent (0.0%) of the book value of the total volume of PERA assets administered, earmarked in favor of the Bangko Sentral starting 1 January 2023:xxx

For this purpose, eligible government securities shall consist of evidence of indebtedness of the Republic of the Philippines or of the Bangko Sentral or any other evidence of indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines or such other kinds of securities which may be declared eligible by the Monetary Board: Provided, That, such securities shall be free, unencumbered, and not utilized for any other purpose.

a. Valuation of securities and basis of computation of the basic security deposit requirement.

(1) Government securities deposited with the Bangko Sentral shall be measured at fair value xxx

Section 2. Appendix 114/Q-69 of the MORB/MORNBFI is hereby amended to read, as follows:

OPERATIONAL GUIDELINES ON THE ADMINISTRATION OF THE PERSONAL EQUITY AND RETIREMENT ACCOUNT (PERA)
(Appendix to Sec. 1121/1121-Q)

Pursuant to R.A. No. 9505 also known as the Personal Equity and Retirement Account (PERA) Act of 2008 (PERA Act) and its Revised lmplementing Rules and Regulations (Revised PERA Rules), the following operational guidelines on the administration of PERA are hereby issued. Certain capitalized terms herein used shall have the definitions ascribed to them in the Revised PERA Rules unless the context otherwise requires.

xxx

II. ACCOUNT ADMINISTRATION

A. Contributions

1. The administrator shall -
   (a) Secure proof of income when a contribution is made and ensure that the maximum allowable aggregate contribution per calendar year as prescribed under the Revised PERA Rules has not been exceeded. lf in case proof of income is already obtained for a contribution made during the calendar year, the same shall no longer be required for subsequent contributions made during the year.

For this purpose, prior to contribution, the status of an overseas Filipino (OF) shall be validated by securing from the OF a sworn certification on his continuing status as an OF for the calendar year;

xxx

Section 3. The submission of the Quarterly Report on Compliance with the Basic Security Deposit Requirement under Section 1121/1121-Q and Appendix 7/Q-3 of the MORB/MORNBFI shall no longer be required starting with the reference period of 31 March 2023. In this regard, the following provision shall be incorporated as a footnote to Section 1121/1121-Q (under item b.(2)(a) of the Security for the faithful performance of administrators' duties and Appendix 7/Q-3 of the MORB/MORNBFI on the references to the Quarterly Report on Compliance with the Basic Security Deposit Requirement that are required from PERA Administrators, as follows:
Starting with the reference period of 31 March 2023, this report shall no longer be submitted to the Bangko Sentral in view of the zero rates for the security for the faithful performance of PERA Administrators' duties.

BOC ISSUANCES

HIGHLIGHTS

AOCG Memo No. 98-2023 dated February 14, 2023 *This provides for the payment of Ad Valorem Tax in the ATRIG of all importation of automobile*	This orders collection districts to ensure the payment of Ad Valorem Tax/Excise Tax as reflected in the BIR-ATRIG before the release of automobiles in customs custody in order to protect the collection of rightful duties and taxes for the government.
AOCG Memo No. 99—2023 dated February 15, 2023 *This is a reiteration on the Proper Use of e-VRIS*	This reiterates that Enhance Value Reference Information System (e-VRIS) is only a risk management tool designed to determine if the declared value represents the transaction value. Hence, any value hit by the e-VRIS is not automatically rejected as the transaction value of the shipment. The assessment personnel are duty-bound to scrutinize the documents and request additional documents to justify the declared value. If the documents submitted substantiate that the declared value is the price actually paid or payable for the item, then the transaction value under Method 1 will be accepted. However, if the documents fail to satisfy the requirements under Method 1 of the CMTA, then the examiner will not proceed with the use of sequential methods of valuation.
CAO No. 01-23 dated February 6, 2023 *This provides for the amendments of the provisions on the rules and regulations in the implementation of the ATA System in the Philippines*	This amends provisions of CAO 02-22 on the rules and regulations in the implementation of the ATA System *Section 4.11 of CAO No. 2-22 is hereby amended to read as follows:* 4.11 Regularization Fee shall be imposed if evidence of re-exportation is not provided by the re-exportation counterfoil duly completed, signed, stamped, and dated by the Bureau under the following schedule: 4.11.1 First Offense – Philippine Peso amount equivalent to 25 US Dollars; and 4.11.2. Second or Subsequent Offenses-Philippine Peso amount equivalent to 50 dollars

FIRB ISSUANCE HIGHLIGHTS

UPDATES

FIRB Advisory 004-2023 dated February 15, 2023

This provides answers to FAQs on the Supplemental Guidelines on the Registration of RBEs in the IT-BPM Sector with the BOI

Clarifications to FAQs on the Supplemental Guidelines on the Registration of RBEs in the IT-BPM Sector with the BOI:

Coverage of FIRB Resolutions Nos. 26-2022 and 33-2022

1. ***Can IT-BPM projects registered with other IPAs and located in economic or freeport zones, from 15 September 2022 onwards, register with BOI under FIRB Resolution Nos. 26-2022 and 33-2022?***

No. All registration of new or expansion projects from September 15, 2022, onwards shall be with BOI if the enterprises wish to avail of the 100% work-from-home (WFH) arrangements. Prior to this period, IT-BPM projects may register with the BOI based on FIRB Resolution Nos. 26-2022 and 33-2022.

2. ***What is the penalty if an IT-BPM project implements WFH arrangements in 2023, but fails to register with the BOI by 31 January 2023?***

IT-BPM RBEs that implemented WFH arrangements in 2023 but failed to register with the BOI by 31 January 2023 shall be subject to a penalty on the regular corporate income tax (RCIT) as specified in FIRB Advisory No. 003- 2023, and Bureau of Internal Revenue (BIR) Revenue Memorandum Circular Nos. 23-2022, 39-2022, and 120-2022. This, however, is without prejudice to the suspension or withdrawal of tax incentives or cancellation of the corresponding Certificate of Registration, upon further assessment by the concerned IPAs or the FIRB.

3. ***How is the penalty on RCIT, in case of non-compliance with Section 309 of the tax code, as amended, computed?***

Per FIRB Advisory No. 003-2023, any penalty shall be based on 100% or the entirety of the RCIT for the month/s of non-compliance and not merely on the percentage of non-compliance.

4. ***Can the BOI Certificate of Registration (BOI-COR) be amended after 31 January 2023 in order to include additional projects?***

No, the BOI-COR cannot be amended after 31 January 2023 to include expansions or new projects in order to allow these new projects or expansions to implement WFH arrangements.

New or expansion projects or activities of IT-BPM RBEs should be separately registered with the BOI in order to avail of WFH arrangements.

Availment of Incentives/Registration with BOI

1. ***How can we avail of the fiscal incentives if BOI has not yet issued the BOI-COR?***

The BIR and Bureau of Customs (BOC) shall accept the official receipt as proof that the BOI-COR will be secured by the company. Generally, in lieu of the BOI-COR, the BOI-issued official receipt shall be accepted as an alternative.

2. ***If the official receipt evidencing BOI registration is secured on 1 December2022, can we implement 100% WFH arrangements starting 1 December 2022?***

Yes, the date indicated in the official receipt shall be the effective date of registration with the BOI. The effective date of BOI registration marks the beginning of the IT-BPM RBE's eligibility to implement 100% WFH arrangements.

3. ***When filing tax returns with the BIR, what will be the IPA name that will be indicated?***

In order to easily tag and isolate those under dual registration with the BOIand the concerned IPA, please use the syntax below:

"Concerned IPA-BOI"

To illustrate, if the concerned or original IPA is PEZA, the IPA field in the taxreturn will be filled out as "PEZA-BOI".

Allocation of the five percent (5%) tax on gross income earned (GIE)

1. ***If the IT-BPM RBE allows permanent WFH for employees, which registered site should these employees be reported under, for the purpose of determining the rightful local government unit (LGU) where the corresponding LGU's (e.g., 2% for PEZA) share shall be remitted?***

There is no change in the corresponding share of the existing recipient-LGU, provided that the IT-BPM RBE does not change its registered address or registered location. Further, as provided under Department of Finance Local Finance Circular No. 001-2022, the employees under a WFH arrangement shall not be assessed by the LGU.

Movement of capital equipment and other assets within and outside the economic zones and/or freeport zones

1. ***If an IT-BPM RBE has multiple projects, will a blanket TEI be required to besecured for each project?***

Since the blanket TEI shall be secured on a per-project basis, it follows that each project must secure a blanket TEI.

The term "project" means those supported by a separate COR or Supplemental Agreement (SA), as applicable.

2. ***Is a TEI also required for local purchases? What is the document to supportthe VAT zero-rating of these local purchases?***

No, the TEI does not cover locally purchased goods. The TEI is designed to serve as proof of VAT and/or duty exemption of importations.

Locally purchased goods enjoying VAT zero-rating are supported by the VAT zero-rating certificate issued by the IPAs. In this regard, locally purchased goods can be freely moved in/out of the economic zone or freeport as long as the related supporting documentary requirements can be presented.

3. ***What will be the implication if some of the assets will not be covered by the TEI?***

Imported assets that will not be supported by a TEI will be subject to the corresponding duties and taxes, as determined by the BOC.

4. ***If the count of laptops and/or other IT equipment exceeds the count of employees availing WFH arrangements, will the laptops and/or other IT equipment be subject to taxes?***

As business models are constantly changing, the related laptops and other IT peripherals that operationalize the adjustments may also vary. In this regard, a justification must be provided for the change in the equipment-to-employee ratio. Such equipment, if imported and availed of import VAT and/or customs duty exemption, shall be covered by the TEI.

The justification shall be submitted to the concerned IPA. As existing internal control procedures are maintained, we suggest that the justification be included in the IPAs' forms.

Transitory period for the movement of capital equipment and other assets within and outside the economic zones and/or freeport zones

1. ***Is the IT-BPM RBE still required to secure a surety bond on importations ifthe assets are already covered by a TEI?***

Once the TEI has been secured for existing equipment and other assets, no bond requirement, in whatever form, shall be imposed upon the movement of assets outside the zone.

Allowable ratio of WFH arrangements for covered RBEs

1. ***Is there a limitation as to the period of enjoyment of WFH arrangement once an IT-BPM project is registered with the BOI?***

There is no limit as to the period of enjoyment of the WFH arrangement once a project is registered with the BOI. Registration with the BOI under FIRB Resolution Nos. 26-2022 and 33-2022 is a permanent solution that enables RBEs located in economic zones or freeport zones to conduct 100% WFH arrangements indefinitely.

Processing of TEI for New Goods

1. ***If the TEI is not secured for assets expected to be imported starting February 2023 onwards, is there an alternative for the goods to be released at the port of entry?***

The TEI is required to be secured for assets imported as of 1 February 2023. We recommend that IT-BPM RBEs review their importation timelines to ensure that TEI processing is duly considered in their plans and that adjustments in import lead times are made, as necessary.

2. ***When should RBEs secure the TEI? Prior to the arrival of goods in the Philippines or earlier?***

We recommend the filing of the TEI at least ten (10) days before the arrival of the goods, to ensure the smooth processing and release of the imported goods. For new importations, kindly note that the DOF-RO shall only accept applications filed within one (1) year from the date of importation, based on the date indicated per airway bill or the bill of lading, as applicable.

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Published Articles

Business Mirror

Tax Law for Business

Ready. Set. INVEST!

By

Jomel N. Manaig

The colors red, yellow, and green are universal in each and every race. Red means danger or stop. Yellow means caution and yield. Green simply means go!

The same can be said for the Philippine efforts to liberalize the economy. For the proponents of the amendments to our investment laws, foreign investors see red when investing in the Philippines due to the supposed restrictions. In recent years, significant headways were achieved when the economic liberalization laws were passed. This seemingly signals a yellow light for foreign investors.

Among the laws passed were the amendments to the more than 80 year old Public Service Act (PSA). And now, a year from the passing of the law, the implementing rules and regulations (IRR) were issued. Let's take a better look at some of the provisions of the IRR shall we?

One of the highlights of the amendments to the PSA was the determination of the six specific sectors considered as public utility. In effect, the 40% foreign ownership restriction is now limited only to those classified as public utilities. Public services that are not considered as public utilities are not covered by the foreign ownership restriction.

Though the six public utilities were expressly mentioned, the law did not close the door to adding more to it in the future. The IRR gave life to this by laying down the mechanism to review and reclassify public services into public utilities. Based on the IRR, the review may either be initiated by the relevant Administrative Agency or by the National Economic and Development Authority (NEDA) itself. Fortunately, the rules provide that a consultation is part of the procedure so the relevant stakeholders would be able to voice their support or opposition.

The IRR likewise shed some more light on the term "natural monopoly" which is one of the factors in reclassifying public services into public utilities. Under the IRR, there is natural monopoly when, among others: (i) the economies of scale is characterized by declining average cost relative to output; (ii) high fixed cost; (iii) demand is insufficient to support two or more firms; and (iv) monopoly power is not due solely to regulatory or legal restrictions.

In addition to public utilities, a public service engaged in the provision of telecommunications services is considered as a "critical infrastructure" which renders it subject to foreign ownership restrictions. However, unlike the 40% foreign ownership restriction for public utilities, the restriction for critical infrastructure is the total ban on investments by foreign state-owned enterprises and the requirement of reciprocity.

Though similar to public utilities, critical infrastructure is not limited to telecommunications. The IRR provided for the mechanism to allow the President to declare a public service as critical infrastructure. It would once again be initiated by the relevant Administrative Agency or by NEDA itself.

The IRR also provides for the mechanism for the conduct of a national security review for certain mergers and acquisitions either in the initiative of the relevant government department/Administrative Agency or by voluntary declaration.

Ready. Set. INVEST!

By

Jomel N. Manaig

With the IRR of the PSA in place, is the Philippines now a more attractive place to invest for foreigners? Are the red and yellow lights now over and we are now forging ahead with a green light over the horizon?

Hopefully, we are. We all want to see the Philippines finish the investment race in first place. Nothing is more satisfying than seeing the checkered flag of success being waved.

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For inquiries on the article, you may call or email

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