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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 AUGUST and SEPTEMBER 2023

HIGHLIGHTS

COURT OF TAX APPEALS DECISIONS

- **Considering that the assessment contained in the LN were not fully validated from the third party sources or from other Taxpayer's accounting records pursuant to RMO No. 46-2004, such assessments were not based on facts but merely on presumption.** *(Julio R. De Quinto vs. BIR, CTA Case No. 9623, July 4, 2023*)
- **Administrative regulations, such as RR No. 17-2012, cannot amend or revoke the law. A mere regulation that "operates to create a rule out of harmony with the statute is a mere nullity" and the law must prevail.** *(San Miguel Brewery, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 10223, July 05, 2023)*
- **Given that the respondent disclaimed receipt of the PAN, the petitioner must prove that there was actual receipt thereof, by the former or its duly authorized representative.** *(Commissioner of Internal Revenue vs. Linden Suites, Inc., CTA EB No. 2551, July 4, 2023)*
- **A FAN must not only indicate the legal and factual bases of the assessment but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period.** *(Commissioner of Internal Revenue vs. Ecotechnovations, Inc., CTA EB No. 2564, July 3, 2023)*
- **The administrative agency issuing regulations may not enlarge, alter or restrict the provisions of the law it administers, and it cannot engraft additional requirements not contemplated by the legislature.** *(Commissioner of Internal Revenue vs. Casas+Architects, Inc., CTA EB No. 2599, July 4, 2023)*
- **To avail of the tax exemption granted under Section 24 (D) (2) of the NIRC of 1997, the taxpayer must notify the CIR, within thirty (30) days from the date of sale or disposition, their intention to avail of the said tax exemption through a prescribed return.** *(Estelita R. Rodriguez v. Commissioner of Internal Revenue , C.T.A. Case No. 10151, July 20, 2023)*
- **The CTA has no jurisdiction over regulatory fees assessed.** *(Nlex Corporation v. Municipality of Guiguinto, Bulacan and Hon. Guillerma DL. Garrido, in her capacity as the OIC-Municipal Treasurer of Guiguinto, Bulacan, [C.T.A. EB No. 2514, (CTA AC No. 217), July 19, 2023]*
- **It is the decision or ruling, not the inaction of the Commissioner of Customs, that is appealable to the CTA.** (*L.T.J.S. Store, represented by its Owner/Proprietor Mr. Antonio De Jesus Silva vs. Hon. District Collector of Customs, Port of MICP, North Harbor, Port Area Manila; and Hon. Rey Leonardo Guerrero, Commissioner of Customs, South Harbor, Port Area, Manila, (CTA EB No. 2563, CTA Case No. 10557), July 27, 2023)*
- **The taxpayer's accounting clerk is authorized to receive the Notice of Designation as a Withholding Agent.** (*Donato C. Cruz Trading Corp., v. Commissioner of Internal Revenue, (CTA EB No. 2573, CTA Case No. 9721), July 25, 2023)*
- **When after an assessment for deficiency taxes has been instituted by the BIR and a final demand has been made upon the taxpayer to pay its deficiencies on a certain date, the taxpayer fails or refuses to pay regardless without perfecting an appeal. In such a case, the commission of willful failure to pay is already certain since the BIR's demand has already become final, executory, and no longer subject to judicial review.** (*People of the Philippines vs. SKI Construction Group, Inc., CTA Crim Case No. A-17, July 17, 2023)*
- **To be considered as an NRFC doing business outside the Philippines, each entity must be supported, at the very least, by both: (1) an SEC Certification of Non-Registration of Corporation /Partnership; and (2) proof of registration/incorporation in a foreign country, i.e., an Articles of Foreign Incorporation/ Association.** *(Maxima Machineries, Inc. v. SKI Commissioner of Internal Revenue, CTA EB No. 2590, July 18, 2023)*
- **The rationale for the mandatory and jurisdictional 120+ 30-day period is that inaction by the respondent within the 120-day period given him to decide a claim for input tax refund is treated as a denial by itself.** (*Advanced World System, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9983, June 11, 2023)*

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- **A careful scrutiny of the RMO does not suggest that the conduct of the audit pursuant to the previously-issued manual LOA would be invalidated in the event that a new eLOA is not issued. Neither does it provide a blanket revocation of the manual LOA if the said manual LOA is not replaced with an eLOA. As it is, a manual LOA still validly clothes an RO the authority needed to conduct an examination or assessment.** (*Commissioner of Internal Revenue vs. Robinsons Toys, Inc. CTA EB. No. 2560, July 13, 2023)*
- **The two-year period for the claim for refund is counted from the date of payment to the BIR of the VAT passed on to petitioner by its suppliers i.e., the filing of its suppliers' VAT return and payment of the VAT due thereon.** (*Melco Resorts Leisure Corporation vs. Commissioner of Internal Revenue, CTA EB 2608, July 11, 2023)*
- **While the law provides that the two {2)-year period is counted from the date of payment of the tax, jurisprudence, however, clarified that the two (2)-year prescriptive period to claim a refund actually commences to run, at the earliest, on the date of the filing of the adJusted final tax return because this is where the figures of the gross receipts and deductions have been audited and adJusted, reflective of the results of the operations of a business enterprise.** *(Commissioner of Internal Revenue vs. Casas + Architects, Inc. CTA EB No. 2601, July 7, 2023)*
- **Rule 42 of the Rules of Court cannot be used as basis for extending the mandatory 30-day period set by Section 228 of the NIRC of 1997, as amended. A mere procedural rule such as Rule 42 of the Rules of Court cannot prevail over a substantive law such as Section 228 of the NIRC of 1997, as amended.** (*Montalban Methane Power Corporation vs. Commissioner of Internal Revenue, CTA EB No. 2611, July 6, 2023)*
- **The statute of limitations applies to withholding tax assessments.** *(Zenorex Marketing Corporation vs. Commissioner of Internal Revenue, CTA Case No. 10175, July 10, 2023)*
- **The burden rests with the prosecution to prove beyond reasonable doubt that all the elements of the crime are present and that the accused were the ones who committed the crime penalized under Section 255 of the NIRC. The absence of any of these two requisites warrants the acquittal of the accused.** *(People of the Philippines vs. Great Domestic Insurance Company of the Philippines., CTA EB Crim No. 094, July 10, 2023)*

- **The taxpayer, being an electric cooperative registered with the NEA, cannot claim exemption from taxation on its income from electric service operations and other sources, pursuant to FIRB Resolution No. 24-87.** *(Zambales Electric Cooperative I, Inc. (ZAMECO I) v. BIR RR No. 4, CTA Case No. 10165, August 1, 2023)*
- **The right of the taxpayer to answer the PAN carries with it the correlative duty on the part of the CIR to consider the response thereto; and that the issuance of the FAN without even hearing the side of the taxpayer is anathema to the cardinal principles of due process.** *(Dizon Farm Produce, Inc., v. Commissioner of Internal Revenue, CTA EB No. 2516, August 1, 2023)*
- **In cases of purely legal questions, the taxpayer is not required to exhaust the administrative remedies, even assuming that such remedies exist.** *(National Food Authority v. Provincial Government of Batanes, CTA AC No. 244, August 2, 2023)*
- **CTA has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law, regulation, or administrative issuance when raised by the taxpayer as a direct challenge or as a defense in disputing or contesting an assessment or claiming a refund.** *(Commissioner of Internal Revenue vs. San Miguel Brewery, CTA EB. No. 2625, August 2, 2023)*
- **The options to file an appeal with the CTA or to file an appeal with the CIR through a request for reconsideration are available only when the decision to the protest or the FDDA is issued by the Commissioner's duly authorized representative and not by the CIR himself.** *(JG Summit Holdings vs. Commissioner of Internal Revenue, CTA EB 2608, August 4, 2023)*

HIGHLIGHTS for AUGUST and SEPTEMBER 2023

- **Inaction of the COC involving liability for customs duties, fees, or other money charges is not one of the subject matters upon which the CTA exercises jurisdiction.** *(Goldmine Rice Marketing vs. Honorable District Collector of Customs, CTA EB No. 2617, August 14, 2023)*
- **The issuance of a second LOA covering the same TY is not absolutely barred under the tax laws.** *(Golden Donuts, Inc. v. CIR, CTA Case No. 9676, August 30, 2023)*

BIR ISSUANCES

- ***RR No. 7-2023, July 7,2023*** – This prescribes additional guidelines on PERA Tax Credit Certificate (TCC).
- ***RR No. 8 – 2023, July 25,2023*** – This clarifies the information that shall appear in the official receipts/sales invoices on purchases of SCs and PWDs through online or mobile applications, in relation to RR.
- ***RMO No. 25-2023, July 4,2023*** – This prescribes the policies, guidelines and procedures on the preparation and processing of payroll.
- ***RMO No. 26-2023, July 18,2023*** – This prescribes the policies, guidelines, and procedures in the processing of request for corporate information, including beneficial ownership information, with the SEC.
- ***RMO No. 27-2023, July 27,2023*** – Amends RMO No. 15-2023, relative to the revised allocation of the CY 2023 BIR Collection Goal by implementing office.
- ***RMC No. 75-2023, July 5,2023*** – This extends the deadline for the replacement of Ask for Receipt Notice with Notice to issue Receipt/invoice under RMO No. 43-2022.
- ***RMC No. 76-2023, July 13,2023*** – This circularizes the New Daily Minimum Wage Rates in certain sectors/industries under the National Capital Region as prescribed by Wage Order No. NCR-24.
- ***RMC No. 77-2023, July 18,2023*** – This notifies the loss of one (1) set of unused/unissued BIR Form No. 0535 Taxpayer Information Sheet.
- ***RDAO No. 11-2023, July 17,2023*** – This amends Annex "A" of Revenue Delegation Authority Order No. 4-2019
- ***RDAO No. 12-2023, July 25,2023*** – This designates Assistant Commissioner of Client Support Service as Officer-in-Charge of the Operations Group and gives her the authority to sign several documents specified in the Order in view of the approved leave of absence of OIC-Deputy Commissioner of Operations Group.
- **RR No. 9-2023, August 3, 2023** – This pertains to rules and regulations governing the imposition of excise tax on perfumes and toilet waters.
- **RMC No. 83-2023, August 1, 2023** – This circularizes RA No. 11956, amending Republic Act No. 11213 otherwise known as the "Tax Amnesty Act" extending the period of availement of the estate tax amnesty until June 14, 2025.
- **RMC No. 88-2023, August 9, 2023** – This clarifies the issues relative to the implementation of RR No. 3-2023 and other related concerns on VAT Zero-rate Transactions on Local Purchases of Registered Export Enterprises.
- **RMO 28-2023, August 10, 2023** – This clarifies the existing policies in the issuance of TVNs pursuant to RMO No. 23-2023.

HIGHLIGHTS for AUGUST and SEPTEMBER 2023

BSP ISSUANCES

- **BSP Circular No. 1178, August 9, 2023** – This amends and adds to the Guidelines on the Use of Benchmarks for Unit Investment Trust Funds (UITFs).
- **BSP Memorandum No. M-2023-023, August 18, 2023** – This revises the timeline of the Implementation of the International Transaction Reporting System (ITRS).
- **BSP Memorandum No. M-2023-024, August 22, 2023** - This cancels and replaces the Bangko Sentral Registration Documents (BSRDs).

Considering that the assessment contained in the Letter Notice (LN) were not fully validated from the third-party sources or from other taxpayer's accounting records pursuant to RMO No. 46-2004, such assessments were not based on facts but merely on presumption.

The taxpayer argues that he is not liable for deficiency income tax and VAT because the assessment is considered *void ab initio*, hence, it will not attain finality. Thus, the instant petition should be granted and the writ of injunction should be issued.

The Court ruled that the taxpayer failed to prove the necessity of the issuance of the writ of injunction. Pursuant to Section 218 of the 1997 NIRC, as amended, an injunction cannot be issued by any courts to restrain the collection of national taxes except such collection may jeopardize the interest of the Government and/or the taxpayer.

Here, the taxpayer failed to prove the damage and prejudice to his business of the supposed implementation of the subject warrant of distraint/levy justifies the non-issuance of an injunction order.

Nevertheless, the assessment is null and void as it was based on presumption. The subject assessment was allegedly the result of computerized matching conducted by the Bureau of Internal Revenue (BIR) from the information/data provided by third-party sources showing that the taxpayer had income from the operation of his alleged gasoline station in the year 2006. In the course of her testimony, the revenue officer admitted that although they attempted to validate third-party information through the issuance of Confirmation Letters, there were no responses from the alleged third parties.

Considering that the assessment contained in the letter notice were not fully validated from third-party sources or from other taxpayer's accounting records pursuant to Revenue Memorandum Order (RMO) No. 46-2004, such assessments were not based on facts but merely on presumption. Thus, the assessment was null and void pursuant to Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended. *(Julio R. De Quinto vs. BIR, CTA Case No. 9623, July 4, 2023)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

Administrative regulations, such as RR No. 17-2012, cannot amend or revoke the law. A mere regulation that "operates to create a rule out of harmony with the statute is a mere nullity" and the law must prevail.

The taxpayer asserts that the pertinent provisions of Revenue Memorandum Circular (RMC) No. 90-2012 and Revenue Regulations (RR) No. 17-2012 are invalid for being contrary to Section 143 of the NIRC of 1997, as amended by Republic Act No. 10351.

The Supreme Court considered RMCs as administrative rulings issued from time to time by the BIR. Granted, the interpretation placed upon statute by executive officers, whose duty to enforce it, is entitled to great respect by the courts, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Meanwhile, administrative regulations, such as RR No. 17-2012, cannot amend or revoke the law. A mere regulation that "operates to create a rule out of harmony with the statute is a mere nullity" and the law must prevail.

Here, the excise tax on liquors is governed by Section 143 of the NIRC of 1997, as amended by Section 3 of RA No. 10351. Clearly, the excise tax shall be P15 per liter in case the net retail price per liter of volume capacity of the fermented liquor is P50.60 or less, otherwise, it should be P20 per liter. To implement the same, the BIR issued RR No. 17-2012 and RMC No. 90-2012.

Upon review, however, the Court finds that certain parts of Annex "A-1" of RMC No. 90-2012 imposed tax rates per liter either by P15.49 or P20.57 regardless of whether the net retail price per liter of volume capacity of the fermented liquor is below or more than P50.60 per liter. This is clearly contrary to provisions of Section 143 of the NIRC**.**

Considering the foregoing, the BIR has deemed erroneously, excessively and illegally collected excise tax on the Taxpayer. *(San Miguel Brewery, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 10223, July 05, 2023)*

Given that the respondent disclaimed receipt of the PAN, the petitioner must prove that there was actual receipt thereof, by the former or its duly authorized representative.

Petitioner claims that the Preliminary Assessment Notice (PAN) was served upon the respondent through: *one,* personal service, and received by the latter's alleged staff; and *two,* registered mail; precisely, due process on assessment was duly complied with. Respondent says otherwise, asserting that it never received the PAN, issued by the BIR; hence, there was a violation of its right to due process.

It is a well-settled rule that he who asserts, not he who denies, must prove, since, by the nature of things, he who denies a fact cannot produce any proof of it. Given that the respondent disclaimed receipt of the PAN, the petitioner must prove that there was actual receipt thereof, by the former or its duly authorized representative.

To prove valid personal service and actual receipt of the PAN by the respondent or his duly authorized representative, Petitioner proffered PAN received by a certain Tayag on December 4, 2015, with a receiving stamp thereon; and affidavit of service of PAN, executed by a revenue officer and group supervisor. Glaringly, the petitioner failed to present the revenue officer and group supervisor who has personal knowledge of the service. Instead, they presented a different revenue officer to identify and testify on the contents of said PAN and affidavit of service. The BIR, too, failed to validly serve the PAN through registered mail, to the respondent.

Considering that foregoing, said assessment never attained finality, because the BIR trampled respondent's right to due process. *(Commissioner of Internal Revenue vs. Linden Suites, Inc. CTA EB No. 2551, July 4, 2023)*

A FAN must not only indicate the legal and factual bases of the assessment but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period.

Respondent asserts that the FAN was void for lack of due date. A perusal of the Formal Letter of Demand and Final Assessment Notice (FLD/FAN) issued against the respondent reveals that they failed to demand payment of the taxes due within a specific period. While the BIR demanded payment for the alleged deficiency taxes in the FLD, the period upon which the respondent should pay was not indicated therein.

Interestingly, judicious scrutiny of the FAN reveals that the spaces for the due dates, which indicate when the respondent is required to pay the said deficiency taxes, were *conspicuously left blank.* Since the FAN did not properly indicate the due dates when deficiency taxes must be paid, no proper demand thereof within a specific period was made.

The Supreme Court has consistently ruled that a FAN without a definite due date for payment is not valid because it negates the demand for payment. In other words, a FAN must not only indicate the legal and factual bases of the assessment but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period.

Absent of such demand, as in this case, the FAN is fatally infirm. Being a void assessment, the FAN bears no fruit and must be slain at sight. *(Commissioner of Internal Revenue vs. Ecotechnovations, Inc., CTA EB No. 2564, July 3, 2023)*

The administrative agency issuing regulations may not enlarge, alter or restrict the provisions of the law it administers, and it cannot engraft additional requirements not contemplated by the legislature.

The petitioner asserts that the respondent's claim for refund should be denied outright, considering that it failed to present the Summary Alphalist of Withholding Tax (SAWT) and Monthly Alphalist of Payees (MAP), prescribed under RR No. 2-98, as amended by RR No. 2-2006.

Petitioner's assertion is bereft of merit. In plethora of cases, the Supreme Court declared that there are three essential conditions for the grant of a claim for refund of creditable withholding income tax, to wit: 1) The claim is filed with CIR within the two-year period from the date of payment of tax; 2) The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom; and 3) It is shown on the return of the recipient that the income payment received was declared as part of the gross income.

It is clear from the foregoing that Petitioner may not impose additional requirements such as submission of SAWTs and MAPs by respondent as a precondition for entitlement to a Creditable Withholding Tax (CWT) refund simply because it is neither required by law nor jurisprudence. The administrative agency issuing regulations may not enlarge, alter or restrict the provisions of the law it administers, and it cannot engraft additional requirements not contemplated by the legislature. To do so constitutes lawmaking, which is generally reserved to the Congress. *(Commissioner of Internal Revenue vs. Casas+Architects, Inc., CTA EB No. 2599, July 4, 2023)*

To avail of the tax exemption granted under Section 24 (D) (2) of the NIRC of 1997, the taxpayer must notify the CIR, within thirty (30) days from the date of sale or disposition, their intention to avail of the said tax exemption through a prescribed return.

The taxpayer paid capital gains tax totaling P8,835,312.00 and argued that they complied with the essential basic conditions for exemption from payment of capital gains for sale of principal residence set forth under pertinent provisions of law and existing jurisprudencial declarations; and that the capital gains paid by petitioners were erroneously collected by the BIR. However, the BIR contends that the taxpayer is not entitled to a refund and exemption.

The Court held that one of the conditions to be exempt from capital gains tax in the sale, exchange, or other disposition of real property, is that the CIR shall be duly notified by the taxpayer within thirty (30) days from the date of sale or disposition through a prescribed return of his or her intention to avail of the said tax exemption and to execute and submit the required Escrow Agreement.

Here, the present refund claim must be denied for failure of the taxpayer to notify the BIR, through Capital Gains Tax Return (BIR Form No. 1706), of their intention to avail of the capital gains tax pursuant to Section 24(D) of the NIRC of 1997, and for their failure to execute and submit the required Escrow Agreement, as required under Section 3 of RR No. 13-99, as amended by RR No. 14-2000.

There is no indication that the taxpayer fulfilled the condition for the tax exemption to be granted under Section 24 (D)(2) of the NIRC of 1997. *(Estelita R. Rodriguez v. Commissioner of Internal Revenue , C.T.A. Case No. 10151, July 20, 2023)*

The CTA has no jurisdiction over regulatory fees assessed.

The taxpayer insists that it had no branch office or a sales office in the municipality. It also argues that the CTA has jurisdiction to rule on the validity of the regulatory fees assessed by the municipality against the taxpayer.

The Court of Tax Appeals (CTA) is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction. The jurisdiction of the CTA regarding local tax and real property tax (RPT) cases is provided under Section 7(a)(3) of RA No. 1125, as amended by Republic Act (RA) Nos. 9282 and 9503. In National Power Corporation v. Municipal Government of Navotas, et al., the Supreme Court ruled that local tax cases consist of cases arising from local business tax (LBT) and RPT.

"The term 'taxes' has been defined by case law as 'the enforced proportional contributions from persons and property levied by the state for the support of government and for all public needs.' While, under the Local Government Code (LGC), a 'fee' is defined as 'any charge fixed by law or ordinance for the regulation or inspection of a business or activity.

In this case, the taxpayer admitted that the subject matter of the assessment being appealed also included regulatory fees. Hence, not being local taxes, the Court in Division correctly ruled that this Court has no jurisdiction over regulatory fees assessed. *(Nlex Corporation v. Municipality of Guiguinto, Bulacan and Hon. Guillerma DL. Garrido, in her capacity as the OIC-Municipal Treasurer of Guiguinto, Bulacan, C.T.A. EB No. 2514, CTA AC No. 217), July 19, 2023)*

It is the decision or ruling, not the inaction of the Commissioner of Customs, that is appealable to the CTA.

The taxpayer insists that the Court has jurisdiction over the instant case, that it has exclusive appellate jurisdiction to review the inaction of the COC, that respondents took no action on the disputed issues of duty and tax valuations or assessments and the demanded refund, and that the COC's inaction is already a decision by itself. As such, it filed the Petition for Duty and Tax Refund in conformity with Rule 8 of the RRCTA.

Section 1136 of Customs Modernization and Tariff Act (CMTA) is clear and categorical in stating that it is the ruling and decision of the COC which may be appealed to the Court of Tax Appeals (CTA).

Similarly, Section 3 of Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that the CTA has Exclusive original over or appellate jurisdiction to review by appeal the Decisions of the Commissioner of Customs.

The inaction referred to in Section 9 of RA No. 9282 must be taken to refer exclusively to the inaction of the Commissioner of Internal Revenue (CIR) on protest in cases of disputed assessments. No similar provision appears in the CMTA, specifically allowing appeals from any inaction of the COC. Section 1136 of CMTA is clear and categorical in stating that it is the ruling and decision of the COC which may be appealed to the CTA.

Here, the CTA may only take cognizance of cases falling within its jurisdiction as enumerated under Section 7 of R.A. 9282, and the alleged inaction of the COC is not one of them. *(L.T.J.S. Store, represented by its Owner/Proprietor Mr. Antonio De Jesus Silva vs. Hon. District Collector of Customs, Port of MICP, North Harbor, Port Area Manila; and Hon. Rey Leonardo Guerrero, Commissioner of Customs, South Harbor, Port Area, Manila, (CTA EB No. 2563, CTA Case No. 10557), July 27, 2023)*

The taxpayer's accounting clerk is authorized to receive the Notice of Designation as a Withholding Agent.

Petitioner also points out that the Notice of Designation as Withholding Agent was not validly served to the corporation. According to Petitioner, the Second Division erroneously ruled that Respondent sent the Notice of Designation as a Withholding Agent by mail, and thereafter presumed that Petitioner received the same. As proven, the said notice was personally served upon Petitioner's accounting clerk, who did not state her authority to receive the same.

Section 3.1.4 of RR No. 12-99 provides that the assessment shall be sent to the taxpayer either by personal delivery or registered mail. Additionally, if personal delivery was made, the person receiving should note his or her (a) name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, and (d) date of receipt.

The law and BIR issuances are silent on how to serve the "Notice of Designation as Withholding Agent". Simply put, there is no law or rule which unequivocally states who can receive the said notice in the case of corporate taxpayers. All the same, the Court recognizes the importance of the Notice of Designation as Withholding Agent" and as such shall apply the same rules on service of a notice of assessment under RR No. 12-99.

In this case, CIR's witness, a revenue officer, testified that she personally delivered the letter to the taxpayer. Meanwhile, on the bottom left-hand side of the Notice of Designation, as Withholding Agent dated February 17, 2004, there was a notation that the same was received by a certain taxpayer's accounting clerk, on April 22, 2004. Although there was no visible annotation of her authority to receive the said letter, the Court found the statement of her connection with the taxpayer (i.e., accounting clerk) as substantial compliance. As an accounting clerk, it is highly likely that she knows and would be able to appreciate the significance of a letter/notice from the BIR and her receipt thereof. Considering this, the Court found the requisites under Section 3.1.4 of RR No. 12-99 on personal delivery complied with. *(Donato C. Cruz Trading Corp., v. Commissioner of Internal Revenue, (CTA EB No. 2573, CTA Case No. 9721), July 25, 2023)*

When after an assessment for deficiency taxes has been instituted by the BIR and a final demand has been made upon the taxpayer to pay its deficiencies on a certain date, the taxpayer fails or refuses to pay regardless without perfecting an appeal. In such cases, the commission of willful failure to pay is already certain since the BIR's demand has already become

On 15 January 2020, the Office of the Prosecutor General filed an information before the regional trial court against the accused and its responsible officers (now accused-appellees) for a violation of Section 255, in relation to Section 253 (d) and 256 of the NIRC, as amended for the under remittance of withholding tax on compensation. On October 16, 2020, the accused-appellee filed before the RTC an Omnibus motion praying for the dismissal of the case on the ground that the action had already been prescribed.

The issue is whether the offense charged against the accused-appellees had already been prescribed.

According to plaintiff-appellant, the five (5)- year prescriptive period for the offense, i.e., violation of Section 255, in relation to Sections 253 (d) and 256 of the tax code, as amended, would only begin to run upon the filing of the criminal complaint against accused-appellees on February 15, 2018. Thus, the filing of the information herein case on January 15, 2020, was well within such period.

Accused-appellees, on the other hand, reassert that the 5-year prescription period should have been counted from the expiration of the period of payment which is on February 13, 2014.

Section 281 of the NIRC provides that prescription shall begin to run from the day of the commission for the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

final, executory, and no longer subject to judicial review.

When after an assessment for deficiency taxes has been instituted by the BIR and a final demand has been made upon the taxpayer to pay its deficiencies on a certain date, the taxpayer fails or refuses to pay regardless without perfecting an appeal. In such case, the commission of willful failure to pay is already certain since the BIR's demand has already become final, executory and no longer subject to judicial review.

In the case at bar, the FAN demanded that payment be made within 30 days from the date of the FAN or until 12 February 2014.

When the period of payment had lapsed without any payment being made, a perceived offense of tax evasion due to willful failure to pay was apparently committed by accused-appellee SKI and its responsible officers on 13 February 2014. Counting five (5) years from the date of the apparent commission of the said offense, information for the same should have been filed with the RTC by 13 February 2019. Therefore, when the Information was filed on January 15, 2020, the offense charged in the information had already been prescribed pursuant to Section 281 of the NIRC. *(People of the Philippines v. SKI Construction Group, Inc., CTA Crim Case No. A-17, July 17, 2023)*

To be considered as an NRFC doing business outside the Philippines, each entity must be supported, at the very least, by both: (1) an SEC Certification of Non-Registration of Corporation /Partnership; and (2) proof of registration/incorporation in a foreign

The taxpayer made an administrative claim on March 30, 2016, for the issuance of TCCs totaling P89,994,022.70, representing the excess input value-added taxes (VAT), which are allocable and directly attributable to its VAT zero-rated transactions, as declared in its Amended Quarterly VAT Return for the period January 1, 2014 to March 31, 2014, that is, for the 4th quarter of the fiscal year (FY) ending March 31, 2014.

The issue is whether or not the taxpayer's export sales of services to its customer failed to qualify for zero percent (0% VAT).The taxpayer claims that its customer should be considered an NRFC, and its sale of services should be allowed VAT zero-rating under Section 1 08(B)(2) of the NIRC of 1997, as amended.

Under **Section 108(B)(2)** of the NIRC of 1997, as amended, the following essential elements must be present for a sale or supply of services to be subject to the **VAT rate of zero percent (0%)**, to wit:

country, i.e., an Articles of Foreign Incorporation/ Association.

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;

2. The payment for such services was made with acceptable foreign currency accounted for in accordance with the BSP rules;

3. The services fall under any of the categories under Section 108(8)(2), or simply, the services rendered should be other than "processing, manufacturing or repacking goods"; and

4. The services must be performed in the Philippines by a VAT-registered person

To be considered as a non-resident foreign corporation (NRFC) doing business outside the Philippines, each entity must be supported, at the very least, by both: (1) an SEC Certification of Non-Registration of Corporation /Partnership; and (2) proof of registration/incorporation in a foreign country, i.e., an Articles of Foreign Incorporation/ Association. The first document proves that the entity is not doing business in the Philippines, while the latter document shows that the entity is doing business outside the Philippines. Taken together, the said documents establish that the entity is an NRFC not engaged in business in the Philippines.

In this case, records reveal that the taxpayer presented proof of registration/incorporation in a foreign country of its customer. However, it failed to present its customer's SEC Certificate of Non-Registration of Company, attesting that the SEC records do not show the registration of its customer as a corporation or a partnership. *(Maxima Machineries, Inc. v. SKI Commissioner of Internal Revenue, CTA EB No. 2590, July 18, 2023)*

The rationale for the mandatory and jurisdictional 120 + 30-day period is that inaction by the respondent within the 120-day period given him to decide a claim for input tax refund is treated as a denial by itself.

On 18 March 2013, taxpayer filed its administrative claim for refund of alleged excess and unutilized input VAT in the total amount of Four Million Five Hundred Thirty-One Thousand Nine Hundred Sixty-Four Pesos and Seventy-Five cents (Php 4,531,964. 75). On 8 November 2018, the taxpayer received a Letter, dated 17 October 2018, from BIR denying its administrative claim for VAT refund. In response, it then filed the instant Petition for Review ("Petition") on 7 December 2018, assailing said denial.

The issue is whether or not the petitioner's judicial claim was filed beyond the prescriptive period as provided in Section 112 (C) of the NIRC, thereby depriving the Court of jurisdiction over the instant case.

Based on the foregoing provisions, a taxpayer applicant must comply with two specific requisites regarding the timeliness of its claim to successfully obtain a tax refund or credit:

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;
2. the judicial claim is filed with this Court within thirty (30) days from receipt of an adverse decision (i.e., partial or full denial of the administrative claim), or upon the lapse of the period given to the CIR to act on an administrative claim (i. e., one hundred twenty (120) days from the filing of such claim) wherein the CIR failed to act on the same within such period (in which case, the claim for refund is deemed denied by the CIR), whichever comes first. This rule is known as the mandatory and jurisdictional 120+30-day period enunciated by the Supreme Court.

The rationale for the mandatory and jurisdictional 120 + 30-day period is that inaction by the respondent within the 120-day period given him to decide a claim for input tax refund is treated as a denial by itself. Hence, there is no need for a taxpayer to wait for an actual denial as its request for input VAT refund has been deemed denied, by express provision of law.

Here, the taxpayer filed its administrative claim for input VAT refund for the fiscal period starting on 1 April 2011 until 31 March 2012 on 18 March 2013. Applying the 120-day waiting period, the BIR had until 16 July 2013 within which to decide said administrative claim for input VAT refund. Considering that the BIR did not act upon said administrative claims within the said 120-day waiting period, the petitioner should have filed

its judicial claim before this Court on or before 15 August 2013, which is thirty (30) days from the lapse of the 120-day waiting period. As the petitioner filed the Petition before this Court only on 7 December 2018, the same is markedly belatedly filed for more than five (5) years. (*Advanced World System, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9983, June 11, 2023)*

COURT OF TAX APPEALS DECISION HIGHLIGHTS

A manual LOA still validly clothes an RO the authority needed to conduct an examination or assessment

The taxpayer did not receive an electronic LOA (eLOA) for the said examination. The taxpayer argues that LOAs issued from 01 March 2010 covering cases for 2009 and other TYs should have been retrieved and replaced with a new eLOA pursuant to Revenue Memorandum Order (RMO) No. 69-2010.53. It found that the BIR personnel who conducted the audit were not authorized by an eLOA; hence, the resulting assessment should be invalidated. The Third Division also ruled that the FLD contained an indefinite amount of tax liabilities since the wordings therein, *"Please note that the interest and the total amount due will have to be adjusted if paid beyond July 9, 2014" subjected the total amount of tax due to a further adjustment depending on when it will be actually paid*."

The issue is whether the court erred in ruling that the absence of an electronic letter of authority (ELOA) and lack of definite amount of tax liabilities rendered the tax assessments void.

The Court ruled that the absence of an ELOA does not automatically invalidate the assessments. In the instant case, the petitioner issued a LOA on 14 May 2010 authorizing the examination of the respondent's books of accounts for TY 2009. Indeed, RMO No. 69-2010 requires that manual LOAs be retrieved and replaced with the new eLOA. However, a careful scrutiny of the RMO does not suggest that the conduct of the audit pursuant to the previously issued manual LOA would be invalidated in the event that a new eLOA is not issued. Neither does it provide a blanket revocation of the manual LOA if the said manual LOA is not replaced with an eLOA. As it is, a manual LOA still validly clothes an RO the authority needed to conduct an examination or assessment in accordance with Sections 10 and 13 of the NIRC of 1997, amended.

However, the final letter of demand and the Assessment Notices (ANs) do not indicate a definite due date for payment. More importantly, the ANs do not indicate any due date for the payment of the alleged deficiency tax assessments hence, their (ANs) violate the requirement of

demand. As ruled in Fitness by Design, the absence of the specific period within which to pay the tax due makes the assessment invalid. *(Commissioner of Internal Revenue vs. Robinsons Toys, Inc. CTA EB. No. 2560, July 13, 2023)*

The two-year period for the claim for refund is counted from the date of payment to the BIR of the VAT passed on to the petitioner by its suppliers i.e., the filing of its suppliers' VAT return and payment of the VAT due thereon.

Petitioner is exempt from direct and indirect taxes, as it enjoys the privileges afforded by PAGCOR's franchise. To recapitulate, its sales of services are exempt under Section 109(1)(K) of the NIRC of 1997, as amended, and its purchases of goods and services are effectively zero-rated under Section 108(8)(3) of the NIRC of 1997, as amended. Simply put the petitioner's suppliers of goods and services should not have shifted VAT to it, as the sales are effectively zero-rated.

The issue is whether the petitioner was able to timely and properly file its claim for a refund or tax credit.

It is well-settled in our jurisprudence that the following requirements must be complied with to prove a claim for refund or credit of taxes erroneously paid or illegally collected under Sections 204 and 229 of the NIRC of 1997, as amended:

1. That the taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two years from the date of payment of the tax or penalty;
2. That, if denied or not acted upon within said period, the petition for refund be filed with the CTA within 30 days from receipt of the denial and within said 2-year period from the date of payment of the tax or penalty regardless of any supervening cause, otherwise, the claim for refund shall have prescribed; and,
3. The claim for refund must be a categorical demand for reimbursement.

Unfortunately for the petitioner, it cannot be determined whether it timely filed its claim for refund or tax credit.

Ordinarily, for claims under Section 229, the two-year period will be reckoned from the date of payment of taxes by the statutory taxpayer. However, considering that the petitioner is not the statutory taxpayer, i.e., the petitioner only bore the economic burden of paying taxes, the two-year period is counted from the date of payment to the BIR of the VAT passed on to the petitioner by its suppliers i.e., the filing of its

suppliers' VAT return and payment of the VAT due thereon. As the buyer, the petitioner shoulders the VAT and treats it as input VAT.

The records are miserably bereft of any proof of the date of the filing of VAT returns and payment of the VAT purportedly passed on to the petitioner by its suppliers. Hence, this Court cannot determine whether a Petition for Review praying for a refund or credit of erroneously or illegally collected taxes under Section 229 is timely and properly filed. (*Melco Resorts Leisure Corporation vs. Commissioner of Internal Revenue, CTA EB 2608, July 11, 2023)*

While the law provides that the two (2)-year period is counted from the date of payment of the tax, jurisprudence, however, clarified that the two (2) -year prescriptive period to claim a refund actually commences to run, at the earliest, on the date of the fiing of the adjusted final tax return.

On April 17, 2017, the taxpayer electronically filed its Annual Income Tax Return (ITR) for taxable year (TY) 2016 declaring a total Income Tax overpayment of P9,989,997.00. On January 11, 2019, the taxpayer filed an Application for Tax Refund (BIR Form No. 1914) with the BIR. Due to BIR's inaction on its application for refund, the taxpayer filed the present Petition for Review on April 5, 2019.

The issue is whether the Court erred in not dismissing the case for being filed out of time. BIR asserts that the administrative and judicial claims for refund shall be filed within two (2) years from the date of payment of taxes or penalties and not from the date of the filing of the annual income tax return is no longer novel.

The proper resolution of this issue has been long settled by the Supreme Court; while the law provides that the two (2)-year period is counted from the date of payment of the tax, jurisprudence, however, clarified that the two (2) -year prescriptive period to claim a refund actually commences to run, at the earliest, on the date of the filing of the adjusted final tax return because this is where the figures of the gross receipts and deductions have been audited and adjusted, reflective of the results of the operations of a business enterprise.

In this case, the taxpayer electronically filed its Annual ITR for TY 2016 on April 17, 2017. Thus, the taxpayer had until April 17, 2019 to file both its administrative and judicial claims for refund. As aforementioned, the taxpayer filed its administrative claim on January 11, 2019 evidenced by its Application for Tax Credits/Refunds. Without waiting for the decision of BIR on its application, the taxpayer filed the present Petition for Review on April 5, 2019. Clearly, both the taxpayer's administrative and judicial claims were

filed within the two (2)-year prescriptive period in accordance with Sections 204 (C) and 229 of the NIRC of 1997, as amended. *(Commissioner of Internal Revenue vs. Casas + Architects, Inc. CTA EB No. 2601, July 7, 2023)*

Sec. 148 (e) of the 1997 NIRC, as amended, imposes excise tax on naphtha, regular gasoline, and other similar products of distillation only, and not on the raw materials or ingredients used for their production.

On December 29, 2014 and April 8, 2015, the taxpayer paid the Bureau of Customs (BOC) excise taxes in the total amount of P19,997,028.00 for importing alkylate covered by IEIRD No. 00379406065. On December 15, 2016, taxpayer filed its administrative claim with the BIR for the refund or issuance of tax credit certificate (TCC), representing the erroneously paid excise taxes arising from the aforesaid importation of alkylate.

The issue is whether the Court erred in denying taxpayer's claim for a refund or issuance of a tax credit certificate representing excise taxes erroneously paid for its importation of alkylate. The taxpayer contends that its claim for a tax refund is based on the absence of a law imposing an excise tax on alkylate.

For BIR, alkylate, allegedly a product of distillation similar to naphtha, is subject to excise tax under Section 148(e) of the NIRC of 1997, as amended. As the Court in Division found in the assailed Decision of September 16, 2021, alkylate is still a distillation product. This is simply because while alkylate is not directly produced through the process of distillation but by alkylation, the raw materials, namely, olefins and isobutane, are products.

In the very recent case of *Petron Corporation v. Commissioner of Internal Revenue (Petron),* the Supreme Court categorically declared that alkylate does not fall under the category of "other similar products of distillation" and hence, is not subject to excise tax. Thus, it is incorrect to say that both raw materials utilized to produce alkylate are products of distillation, much more to declare alkylate as a product of distillation simply because its raw materials are produced through distillation.

To be sure, Sec. 148 (e) of the 1997 NIRC, as amended, imposes excise tax on naphtha, regular gasoline, and other similar products of distillation only, and not on the raw materials or ingredients used for their production. Consequently, the payment of excise taxes by taxpayers upon its importation of alkylate is deemed illegal and erroneous in the absence of a specific provision of law that distinctly and categorically imposes tax thereon. *(Petron Corporation vs. Commissioner of Internal Revenue, CTA EB No. 2615, July 7, 2023)*

Rule 42 of the Rules of Court cannot be used as basis for extending the mandatory 30-day period set by Section 228 of the NIRC of 1997, as amended. A mere procedural rule such as Rule 42 of the Rules of Court cannot prevail over a substantive law such as Section 228 of the NIRC of 1997, as amended.

On October 19, 2021, the taxpayer received a copy of BIR's Final Decision on Disputed Assessment (FDDA) dated June 30, 2021, finding the taxpayer liable for deficiency taxes (i.e. Income Tax, Value Added Tax, and Expanded Withholding Tax) in the amount of Php 11,405,147.42. On November 16, 2021, the taxpayer filed a "Motion for Additional Time to File Petition for Review and To Assign Docket Number," stating that under Section 3.1.4 of Revenue Regulation (RR) No. 12-1999, as amended by RR No. 18-2013, the taxpayer may appeal the decision of the Commissioner of Internal Revenue (CIR) to the Court of Tax Appeals within thirty (30) days from receipt of the said decision.

The issue is whether the Court erred in denying the motion for additional time to file petition for review and to assign docket number.

The Court held that the period to file the Petition for Review is not extendible because of the mandatory and jurisdictional nature of the 30-day period under Section 228 of the NIRC of 1997, as amended.

The case on hand involves an appeal from a Final Decision on a Disputed Assessment (FDDA) that has a definite and distinct prescriptive period under the law. Section 228 of the National Internal Revenue Code, as amended, provides quite clearly that an appeal to the CTA must be made within thirty (30) days from receipt of said decision, and that failure to appeal within the said period renders the assessment final, executory and demandable.

Based on the foregoing, Section 11 of RA No. 1125, as amended, must be deemed as the general law governing the time, mode, and manner of appeals before the Court of Tax Appeals (CTA). While Section 228 of the NIRC of 1997, as amended serves as a special law specifically prescribing the applicable reglementary period for filing appeals to the CTA of the CIR's adverse decisions exclusively in protests on assessments by the CIR. Hence, in so far as the period for filing appeals on protests on assessments before this Court is concerned, Section 228 of the NIRC of 1997, as amended, and not Section 11 of RA No. 1125, as amended, shall apply. Moreover, Rule 42 of the Rules of Court cannot be used as basis for extending the mandatory 30-day period set by Section 228 of the NIRC of 1997, as amended. A mere procedural rule such as Rule 42 of the Rules of Court cannot prevail over a substantive law such as Section 228 of the NIRC of 1997, as amended. (*Montalban Methane Power Corporation vs. Commissioner of Internal Revenue, CTA EB No. 2611, July 6, 2023)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

The statute of limitations applies to withholding tax assessments.

On 03 December 2010, the taxpayer received a Preliminary Assessment Notice (PAN) with Details of Discrepancies", both dated 26 November 2010, assessing the taxpayer with deficiency EWT and WTC for TY 2007 in the amount of P898,772-43 and P2,246,795.07, respectively, or for an aggregate amount of P3,145,567. On 04 January 2011, the taxpayer filed a reply to the PAN dated 29 December 2010 contesting the assessment and claiming that the right of the government to assess had already been prescribed.

The issue in this case is whether the right of the Commissioner of Internal Revenue to assess taxpayers has been prescribed. The taxpayer posits that since the FAN was issued only on 14 January 2011, the assessment periods for EWT and WTC for the months of January to November have already been prescribed. On the other hand, BIR contends that: (1) the statute of limitations under Section 203 of the NIRC, as amended, does not apply to withholding tax assessments owing to their nature as a penalty instead of being internal revenue taxes; and, (2) the instant case falls under Section 222, thus, the extraordinary prescriptive period of 10 years from the discovery of falsity, fraud or omission governs.

The Court held that it is true that withholding tax is a method of collecting tax in advance and that a withholding tax on income necessarily implies that the amount of tax withheld comes from the income earned by the taxpayer/payee. Nonetheless, the Court does not agree with the CIR that withholding tax assessments are merely an imposition of a penalty on the withholding agent, and thus, outside the coverage of Section 203 of the NIRC.

Withholding taxes do not cease to become income taxes just because it is collected and paid by the withholding agent. Thus, withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes. Thus, the statute of limitations applies to withholding tax assessments. *(Zenorex Marketing Corporation vs. Commissioner of Internal Revenue, CTA Case No. 10175, July 10, 2023)*

DECISION HIGHLIGHTS

The burden rests with the prosecution to prove beyond reasonable doubt that all the elements of the crime are present and that the accused were the ones who committed the crime penalized under Section 255 of the NIRC. The absence of any of these two requisites warrants the acquittal of the accused.

On June 19, 2019, four (4) pieces of information were filed with the court a quo where the accused corporation, Great Domestic Insurance Company of the Philippines (GDICP) and its three (3) alleged officers were charged with Violation of Section 255 in relation to Sections 253(d) and 256 of the NIRC, docketed as Criminal Case Nos. 0-741 to 0-744, for failure to pay deficiency income tax (IT), value-added tax (VAT), Expanded Withholding Tax (EWT) and Documentary Stamp Tax (DST) for the taxable year 2009.

The issue is whether the prosecution failed to prove the identity of the accused corporation.

It is worth mentioning that in every criminal conviction, the prosecution is required to prove two things beyond reasonable doubt:

• First, the fact of the commission of the crime charged, or the presence of all the elements of the offense; and
• Second, the fact that the accused was the perpetrator of the crime.

The burden rests with the prosecution to prove beyond reasonable doubt that all the elements of the crime are present and that the accused were the ones who committed the crime penalized under Section 255 of the NIRC. The absence of any of these two requisites warrants the acquittal of the accused.

(People of the Philippines vs. Great Domestic Insurance Company of the Philippines., CTA EB Crim No. 094, July 10, 2023)

It is imperative upon the taxpayer to prove, on the strength of its own evidence, that its sales are zero-rated or effectively zero-rated.

The taxpayer filed its Amended Quarterly VAT Return for the 3rd quarter of TY 2018. It reported zero-rated sales and purchases of goods and services with input VAT. It subsequently filed a claim for refund of its excess or unutilized creditable input VAT for the said 3rd quarter of TY 2018. However, the BIR denied its claim for refund for its failure to submit the complete documentary requirements to support its application for refund. Hence, it filed a Petition for Review before the Court of Tax Appeals.

The claim for refund of excess and unutilized input VAT is governed by Section 112 of the NIRC of 1997, as amended. It reiterates the requisites as follows: (1) that the claim for refund was filed within the prescriptive period; (2) that taxpayer is VAT-registered; (3) that there must be zero-rated or effectively zero-rated sales; (4) that input taxes were incurred or paid; (5) that such input taxes are attributable to zero-rated or effectively zero-rated sales; and (6) that the input taxes have been applied against the output tax. Here, the taxpayer claims that its goods and services were sold to PSC, a Philippine Economic Zone Authority (PEZA)-registered enterprise, and that its transactions with its client are zero-rated. However, it was unable to prove that its sales were zero-rated or effectively zero-rated.

Hence, the Court ruled that the taxpayer's bare assertion, without any documentary evidence, is not sufficient to prove that PSC is indeed a PEZA-registered export enterprise. (*Sankyu-ATS Consortium-B v. Commissioner of Internal Revenue, CTA Case No. 10471, August 01, 2023*)

The taxpayer, being an electric cooperative registered with the NEA, cannot claim exemption from taxation on its income from electric service operations and other sources, pursuant to FIRB Resolution No. 24-87.

The BIR Revenue Region 4 in the City of San Fernando, Pampanga, issued a Preliminary Assessment Notice (PAN) to the taxpayer which assessed the latter a total deficiency income tax for taxable year 2016. The taxpayer claims that the BIR failed to consider the provisions of Republic Act Nos. 6938 and 9520 *vis a vis* electric cooperatives.

The Court ruled that electric cooperatives have been granted income tax exemption, provided they operate in conformity with the purposes and provisions of PD No. 269. However, Congress enacted RA No. 10531, which introduced amendments to PD No. 269, as amended. There is nothing in RA No. 10531 which states that the income tax exemption of electric cooperatives under PD No. 269, as amended, has been totally reverted or restored. Thus, at present, electric cooperatives registered with the NEA are subject to income tax with respect to income derived from: (1) electric service operations; and (2) other sources such as interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements. Correspondingly, the Taxpayer, being an electric cooperative registered with the NEA, cannot claim exemption from taxation on its income from electric service operations and other sources, pursuant to FIRB Resolution No. 24-87.

The taxpayer is, in effect, saying that not all of its gross receipts for taxable year 2016 should be subjected to income tax, since part of it may not be treated as income. However, it has not shown or presented any evidence to show such fact. As such, without any clear and convincing showing that the taxpayer's determination of the amount of taxable income to which income tax was imposed was erroneous, the subject income tax assessment must perforce be sustained. Therefore, as an electric cooperative, ZAMECO is liable for income tax. *(Zambales Electric Cooperative I, Inc. (ZAMECO I) v. BIR RR No. 4, CTA Case No. 10165, August 1, 2023)*

The right of the taxpayer to answer the PAN carries with it the correlative duty on the part of the CIR to consider the response thereto; and the issuance of the FAN without even hearing the side of the taxpayer is anathema to the cardinal principles of due process.

On December 19, 2016, the taxpayer received the PAN assessing it for deficiency income tax, VAT, EWT, DST, and IAET for TY 2013. On January 3, 2017, the taxpayer filed its reply against the PAN. In its reply, the taxpayer addressed the findings of the BIR per line item as stated in the PAN, except for the assessed basic DST. On January 5, 2017, just two (2) days after the taxpayer filed its reply, the CIR issued the subject FAN and Assessment Notices which contained the very same issues and the same amount of deficiency taxes stated in the PAN, apart from the computation of interests and the addition of compromise penalty.

The Court ruled that due process requires the CIR to consider the defenses and evidence submitted by the taxpayer and to render a decision based on these submissions. Failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity. Thus, issuance of a FAN, without consideration and evaluation of the defenses contained in a taxpayer's reply to a PAN, constitutes a violation of the taxpayer's right to due process which renders the assessment void. Here, the Details of Discrepancy attached to the FAN and Assessment Notices in this case did not even comment or address the defenses and documents submitted by the taxpayer. Thus, the taxpayer was left unaware of how the CIR appreciated the explanations or defenses raised in connection with the assessments. Thus, the FAN issued against the taxpayer was declared void by the CTA. *(Dizon Farm Produce, Inc., v. Commissioner of Internal Revenue, CTA EB No. 2516, August 1, 2023)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

Mere neglect by the offender to appear or to produce the documents required by the BIR, through a duly issued subpoena is punishable under Section 266 of the NIRC, as amended.

The MeTC-Manila and RTC-Manila indicted the taxpayers for violation of Section 266, in relation to Sections 5, 14, 253(d), and 256 of the NIRC, as amended for its failure to appear and produce the required corporate taxpayer's books of accounts, records, memoranda and other papers relating to taxable year from the period of January 1, 2018, to June 30, 2018. Hence, this appeal.

Section 2 of the NIRC, as amended, confers upon the BIR, the authority to assess and collect all national internal revenue taxes, fees, and charges. To aid the BIR in the discharge of said mandate, Section 5(c) of the same Code endows upon the CIR or his duly authorized representatives, the power to command the production of books, papers, records, or other data of any person liable for tax, required to file a tax return, or in the possession of said documents. Corollary, Section 266 of the same Code, as amended, penalizes by fine and imprisonment, any person, who despite being summoned, neglects to produce books of account, records, memoranda, or other papers required therein.

Here, the CTA affirmed in toto the Decisions of MeTC-Manila and RTC-Manila, to wit: "The Court is not persuaded with the reasons set forth by the accused for not complying with the Subpoena Duces Tecum. Accused taxpayer's letter request does not operate to excuse its non-appearance and non-submission of documents. Failure to obey summons is a *mala prohibita* offense, and the same is already committed from the fact of non-appearance and non-submission on the scheduled date. A subpoenaed individual cannot exempt himself or herself from criminal liability by simply submitting a letter through a representative on the day of the hearing. To hold otherwise would render Section 266 of the NIRC feeble and nugatory. *(Jimmy A. Ang and Olivia N. Ang v. People of the Philippines, Case EB CRIM-095, August 02, 2023)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

In cases of purely legal questions, the taxpayer is not required to exhaust the administrative remedies, even assuming that such remedies exist.

The taxpayer is the owner of a number of real properties located in Kaychanarianan, Basco, Batanes. In April 2019, the taxpayer, through its Legal Affairs Department, received a Notice of Real Property Tax Delinquency B (Notice) informing it of the real property tax (RPT) deficiencies on the subject properties. In the said Notice, the taxpayer was given fifteen (15) days from receipt thereof to pay the said RPT deficiencies. On June 3, 2019, the taxpayer filed a Petition for Prohibition (with application for Temporary Restraining Order and/or Issuance of Writ of Preliminary Injunction) (Petition for Prohibition) with the RTC. In the said Petition for Prohibition, the taxpayer questioned the LGU's authority to impose and collect RPT. It argued that it is a government instrumentality, hence, exempt from the payment of RPT.

In its Order on November 18, 2019, the RTC denied due course to the taxpayer's Petition for Prohibition for being filed out of time. The RTC further found that the taxpayer failed to exhaust administrative remedies by seeking judicial relief when there were other speedy and adequate remedies still available to it.

The Court ruled, citing the Supreme Court's decision in the case of Light Rail Transit Authority v. City of Pasay (LRTA), that a petition under Rule 65 of the Rules of Court, as amended, may be availed of to challenge the jurisdiction of an LGU in levying RPT on the taxpayer's (LRTA's) properties on the ground that it is not a GOCC and such being a purely legal question, the doctrine of exhaustion of administrative remedies is unavailing. Here, the issues involved are purely legal issues. It is evident that from the outset, LRTA primarily intended to question the authority of the tax assessor to impose tax assessments on its property, and the authority of the treasurer to collect said tax, as LRTA claims to be a non-taxable entity. This can be seen when the LRTA deliberately chose to file the remedies of certiorari, prohibition, and mandamus, instead of just filing a protest to contest the amounts in the assessment. Clearly, the doctrine of the exhaustion of the administrative remedy is not applicable. *(National Food Authority v. Provincial Government of Batanes, CTA AC No. 244, August 2, 2023)*

Any reassignment/ transfer of cases to another RO(s), and revalidation of LOAs which have already expired, shall require

On March 10, 2015, the taxpayer received Letter of Authority (LOA) LOA-097-2015-00000007 authorizing a Revenue Officer and a Group Supervisor to examine the taxpayer's book of accounts for all internal revenue taxes for the period January 13 to December 31, 2013. Subsequently, the CIR, through a Revenue District Officer (RDO) issued Memorandum of Assignment (MOA) No. MOAo972015LOA7735 dated 16 November 2015, assigning an RO and GS to continue with the audit investigation.

the issuance of a new LOA, with the corresponding notation thereto, including the previous LOA number and date of issue of said LOA.

The Court ruled that an RO must be clothed with authority, through an LOA, to conduct the audit or investigation of the taxpayer. Absent such a grant of authority through an LOA, the RO cannot conduct the audit of taxpayer's books of accounts and other accounting records. In this case, as can be gleaned from the foregoing, RO authority merely sprung from an MOA issued by the RDO. The MOA and the corresponding change of RO and GS happened prior to the issuance of the PAN and FAN. In addition to the aforequoted Sections 6(A), w(c), and 13 of the NIRC of 1997, as amended, which provide that only the CIR and his duly authorized representatives (i.e., Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR) may issue the LOA, the CIR's own rules, specifically, RMO No. 43-9048 mandates the issuance of a new LOA in cases of reassignment or transfer of examination to another RO. *(Commissioner of Internal Revenue v. Misamis Oriental II Rural Electric Service Cooperative, Inc. (MORESCO-II), CTA EB No. 2519, August 2, 2023)*

CTA has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law, regulation, or administrative issuance when raised by the taxpayer as a direct challenge or as a defense in disputing or contesting an assessment or claiming a refund.

The taxpayer filed an administrative claim for refund of the alleged overpayment of excise taxes erroneously, illegally, excessively, and/or wrongfully assessed on and collected on the removals of its various products for the period from January 1, 2017 to December 31, 2017. The case was later elevated to the CTA.

The CIR submits that the Court in Division erred in assuming jurisdiction over this case. Citing Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282, and Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals (RRCTA), he insists that the Court in Division does not have jurisdiction over the nullification of the P20.57 per liter excise tax rate specified in Revenue Memorandum Circular (RMC) No. 90-201221 and the assailed provision in Revenue Regulations (RR) No. 17-2012.22. The CIR explains that RMC No. 90-2012 and RR No. 17-2012 were issued in accordance with his rule-making or quasi-legislative power to interpret tax laws under Section 4 of the National Internal Revenue Code (NIRC) of 1997, as amended. Hence, the said issuances are appealable to the Secretary of Finance (SOF).

Citing the Supreme Court's decision in *Banco De Oro et al. vs. Republic of the Philippines, et al. (Banco De Oro)*, the Court ruled that the CTA has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law, regulation, or administrative issuance when raised by the taxpayer as a direct challenge or as a defense in disputing or contesting an assessment or claiming a refund. *(Commissioner of Internal Revenue vs. San Miguel Brewery, CTA EB. No. 2625, August 2, 2023)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism.

The BIR filed a Joint Complaint-Affidavit against the taxpayer for violation of Section 266 of the 1997 NIRC, as amended, in relation to Section 5(C) of the same Code. The Investigating Prosecutor's Resolution recommended the dismissal of the complaint against the taxpayer for failure to provide evidence that the taxpayer was still required to submit additional documents or that the books presented were still insufficient and that there was no evidence that the taxpayer neglected to appear or produce books as provided for under Section 266 of the NIRC. BIR, then, filed for Motion for Reconsideration and Petition for Review before the DOJ-Manila Office of the Secretary of Justice, but was denied. Hence, the BIR filed a Petition for Certiorari before the CTA imputing grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of the Court in Division.

The CTA En banc finds that the DOJ did not act with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the subject resolution. It also subscribed to the findings and Decision of the Court in Division when it stated that the public prosecutor should be given a wide latitude of discretion in the conduct of a preliminary investigation. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism.

Here, the Court gave weight to the DOJ's findings that there is no evidence that the taxpayer was apprised and informed of whatever records and documents which are still needed to be presented and submitted by it to the BIR to comply with the subject subpoena duces tecum. *(Bureau of Internal Revenue v. Hon. Menardo I. Guevarra and Ferdinand Santos, CTA EB No. 2569, August 3, 2023)*

DST on the sale and conveyance of real property as prescribed in Section 196 of the NIRC, as amended, accrues upon the transfer of

The taxpayers entered into separate notarized Deeds of Absolute Sale involving parcels of land. In order to secure the Certificate Authorizing Registration (CAR) and the Tax Clearance Certificate (TCC) from the BIR, the taxpayers proceeded to the Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) due on the sale transactions. However, before affecting the transfer of the titles over the real properties in favor of the taxpayer, the seller and the buyer-taxpayer mutually agreed to rescind, revoke and cancel the aforesaid sale transactions, as evidenced by the two (2) "Revocation/Cancellation of Deed of Absolute Sale". With this, the buyer-taxpayer filed a Letter-Application for Refund with the BIR for the CGT and DST. However, it was denied by the BIR.

ownership over the property sold through the execution of a contract of sale or deed of absolute sale.

The CTA Second Division partially granted the application for refund of the taxpayers. As to CGT, it held that the buyer-taxpayer is entitled to the refund of erroneously paid CGT. Settled is the rule that three (3) elements must concur in order to impose a tax on income: (a) there must be gain or profit; (b) that the gain or profit is realized or received, actually or constructively; and (c)it is not exempted by law or treaty from income tax. Thus, as regards the first and second requisites, since no income was realized or received, whether actual or constructive, from the revoked sale transaction involving taxpayer's real properties, no CGT on the said mutually rescinded sale.

However, as to DST, the taxpayer was not entitled to the refund of its DST payments. Sec. 196 of the NIRC, as amended, provides that DST on the sale and conveyance of real property accrues upon the transfer of ownership in the absence of stipulation to the contrary. DST must be paid upon the issuance of the instrument evidencing the transfer or conveyance of real property, irrespective of whether the contract that gave rise to it is rescissible, void, voidable, or unenforceable. This is so precisely because DST is an excise tax imposed on the privilege to transfer or convey a real property through the execution of a Contract of Sale or a Deed of Absolute Sale and not upon the transfer or conveyance itself. Accordingly, the subsequent mutual cancellation or revocation of the instrument embodying the transaction to which the DST liability attaches does not have the effect of canceling such liability.

Therefore, the buyer-taxpayer is entitled to claim for a tax refund on its CGT but not with the DST. *(Great Landho, Inc. TT&T Development, Inc., and Tama Propertics, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10184, August 4, 2023)*

The options to file an appeal with the CTA or to file an appeal with the CIR through a request for reconsideration are available only when the decision to the protest or the FDDA is issued by the Commissioner's duly authorized

On December 5, 2014, the taxpayer received the CIR's Final Decision on Disputed Assessment (FDDA). On December 22, 2014, the taxpayer filed a request for reconsideration with the CIR. On August 20, 2015, the CIR denied the taxpayer's request through the assailed Revised FDDA, wherein the taxpayer was still held liable for deficiency taxes. However, the CIR acknowledged the taxpayer's payment in the interim of its deficiency WTC, EWT, and FWT. Aggrieved by the CIR's actions, the taxpayer appealed in its case before this Court via the present Petition for Review.

The Court ruled that the taxpayer availed of the wrong remedy when it filed an administrative appeal after receiving the FDDA denying its protest. Truly, there is nothing in the law that prohibits the taxpayer from filing a motion for reconsideration but such extended exercise of exhaustion of administrative remedies does not toll the running of the 30-day period to appeal the original FDDA with the CTA. The two options provided by the aforequoted section, i.e., to file an appeal with the CTA or to file an appeal with the CIR through a request

representative and not by the CIR himself.	for reconsideration are available only when the decision to the protest or the FDDA is issued by the Commissioner's duly authorized representative and not by the CIR himself. In the latter situation, the only option available to the taxpayer is to file an appeal with the CTA within thirty (30) days from receipt of the CIR's decision. *(JG Summit Holdings vs. Commissioner of Internal Revenue, CTA EB 2608, August 4, 2023)*
The collection of Government share in financial or technical assistance agreement shall commence after the financial or technical assistance agreement contractor has fully recovered its pre-operating expenses, exploration, and development expenditures, inclusive as provided under Section 81 of RA No. 7942, otherwise known as the "Philippine Mining Act of 1995".	The taxpayer received BIR's Final Decision on Disputed Assessment (FDDA) assessing it for deficiency taxes, surcharge, and interest. BIR assessed the taxpayer for Excise Tax (ET) covering TY 2013 because of its sale of dire gold and metal concentrates are subject to 2% ET, pursuant to Section 151(A)(2) of the 1997 NIRC, as amended, and RMC No. 17-2013. It paid the foregoing deficiency tax assessments, save for the Excise Tax assessment. It argued that it is exempt from excise tax from the date of approval of its Mining Project Feasibility Study up to the end of the recovery period pursuant to the Financial or Technical Assistance Agreement (FTAA), Section 81 of RA 7982, otherwise known as the "Philippine Mining Act of 1995," and Section 236 of DENR Administrative Order No. 95-23. It adds that BIR Ruling No. 10-2007 confirmed its excise tax exemption during the recovery period. The Court held that Section 84 of the NIRC provides those mineral products of a concerned contractor, under an FTAA with the government, is subject to ET under Section 151 of the NIRC, as amended. By way of exception, Section 81 of RA No. 7942 provides that the government's share, including said ET, may not be collected by the latter from an FTAA contractor, if it has not fully recovered its pre-operating expenses, exploration, and development expenditures. Section 7 of DAO No. 12-2007, provides that the recovery period, or the period within which the government may not collect its share, including the ET, is a maximum period of five (5) years, counted from the date of commencement of commercial production, or the date when the aggregate of the Net Cash Flows from the Mining Operations is equal to the aggregate of its Pre-Operating Expenses, whichever comes first. Since the date of commencement of commercial operation started on October 11, 2005, or the date of MGB approved taxpayer's partial feasibility study, counting five (5) years therefrom, then the recovery period ended on October 11, 2010. Considering that there is no legal impediment for the BIR to assess taxpayer ET covering TY 2013, taxpayer is liable to pay Excise Tax covering TY 2013. *(Oceanagold, Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9736, August 10, 2023)*
The FLD and FANs that failed to indicate a definite due date for payment are void.	The CIR filed a Petition for Review before the CTA En Banc after the CTA Division canceled and set aside the assessments issued by it against the taxpayer for the fiscal year ending September 30, 2009. It argued that the Formal Letter of Demand (FLD) and assessment notices also comply with the requisites provided in Section 228 of the NIRC of 1997, as they state the facts, the law, the rules and regulations, or the jurisprudence on which it was based.

The CTA En Banc agrees with the Court in Division that the assessment for deficiency taxes for the period ended September 30, 2009, is void due to failure to state a period for payment. The Court finds bases on the Supreme Court Decisions, *CIR v. Pascor Realty and Development Corporation, et. al, (1999)* and *CIR v. Fitness by Design, Inc. (2016)*, that the disputed FAN was not a valid assessment because it did not set a specific due date, negating the demand for payment. Here, the Audit Results/Assessment Notices (FANs) attached to the FLD and the FDDA contain the phrase "DUE DATE" but fail to indicate a specific date in the space provided after the word, negating the taxpayer's compliance with the requisite demand for payment within the prescribed period.

CIR's failure to indicate the due date negates its demand for payment. Due process is the very essence of justice itself. While taxes are the lifeblood of the government, the power to tax has its limits in spite of all its plenitude. Hence, the Court ruled against the CIR on the grounds of invalidity of the assessment for failure to indicate a due date. *(Commissioner of Internal Revenue v. Altus Angeles, Inc., CTA EB No. 2524, August 14, 2023)*

The inaction of the COC involving liability for customs duties, fees, or other money charges is not one of the subject matters upon which the CTA exercises jurisdiction.

On June 25, 2021, the taxpayer filed a Petition for Duty and Tax Refund with the Court in Division. It alleged in the said petition that it had filed a protest which was received by the Bureau of Customs (BOC) on March 4, 2021. However, the Honorable District Collector of Customs (COC) has not acted on such protest. Thus, the filing of the Petition for Duty and Tax Refund.

The CTA ruled that it has no jurisdiction over the taxpayer's Petition. Under Section 9 of Republic Act (RA) No. 9282, the CTA in Division shall exercise exclusive original jurisdiction to review by appeal decisions of the COC in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the BOC. In the present case, however, an examination of the allegations in the Petition shows that the COC has yet to render a decision on the taxpayer's Protest and Appeal for Duty and Tax Refund filed on March 26, 2021. The filing of the Petition is premised on the alleged inaction of the COC involving liability for customs duties, fees or other money charges is not one of the subject matters upon which the CTA exercises jurisdiction. Thus, the Court lacks jurisdiction over the subject matter of the Petition. *(Goldmine Rice Marketing vs. Honorable District Collector of Customs, CTA EB No. 2617, August 14, 2023)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

It is a legal truism that, as a rule, assessments are prima facie presumed correct and made in good faith; that the taxpayer has the duty of proving otherwise; and, in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. However, the prima facie correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious.

CIR filed a Petition for Review before the CTA En Banc assailing the Decision of the CTA in Division granting, albeit partially, granting Taxpayer's Petition for Review which sought the cancellation of the assessment issued against it for deficiency value-added tax (VAT) and withholding tax on compensation (WTC) covering the taxable year 2011. In partly granting the taxpayer's Petition, the Court in Division was convinced that, based on the evidence presented, the decrease in the balance of the taxpayer's accounts receivable is due to legitimate writing off of uncollectible accounts. As such the reduction of accounts receivables should not be classified as under-declared receipts and should not lead to a VAT deficiency assessment. However, the CIR argued that the taxpayer failed to establish its compliance with the mandatory requirements set forth under Revenue Regulations (RR) No. 05-99, as amended by RR No. 25-02 for bad debts to be allowed as a deduction from gross income.

The Court held that it is undisputed that the CIR treated the "decrease" in the balance of the taxpayer's accounts receivable as "collections" subject to VAT. However, the record shows that the decrease in accounts receivable was attributable to the write-off of long overdue and uncollectible accounts. The record further reveals that the said write-off was authorized by the partners in a meeting with a corresponding journal entry on an even date to reduce the balance of Accounts Receivable and the Partner's Contribution. As correctly observed by the Court in Division, the taxpayer failed to present proof of actual sales and relies on the presumption that the decrease in accounts receivable is attributable to receipts subject to VAT. Moreso, when the taxpayer can explain the nature of the reduction in the account and provide the necessary supporting documents. Thus, finding that the decrease in the balance of the taxpayer's Accounts Receivable was due to the write-off of uncollectible accounts and not due to collection, the imposition of VAT on the said decrease in accounts receivable would be arbitrary and capricious. *(Commissioner of Internal Revenue v. Casas + Architects, Inc. CTA EB No. 2602, August 15, 2023)*

The issuance of a second LOA covering the same TY is not absolutely barred under the tax laws.

The taxpayer argued that the BIR gravely abused its exercise of discretion since under Section 235 of the NIRC of 1997, as amended, an inspection of the books of accounts and other related accounting records of a taxpayer shall be made only once in a taxable year. However, in its case, both the LOA 20008 and the Run After Tax Evader or RATE LOA pertain to the same TY 2007. Hence, the subsequent RATE LOA has already been issued in violation of Section 235. It also averred that BIR's right to assess its books of accounts for TY 2007 has already been prescribed pursuant to Section 203 of the same law.

	The Court held that there was no grave abuse of discretion on the part of the BIR. It bears noting that our tax laws do not absolutely bar the issuance of a second LOA covering the same TY as can be gleaned from Section 235 of the NIRC of 1997, as amended, RMO No. 27-2010, and in the case of CIR v. Hon. Raul M. Gonzales, et.al. (2010), to wit: "xxx that for income tax purposes, such examination and inspection shall be made only once in a taxable year, except in the following cases: (a) fraud, irregularity or mistakes, as determined by the Commissioner.xxx" As such, based on the records of the case, the BIR anchored the issuance of the RATE LOA for the TY 2007 on the finding of prima facie evidence of fraud as evinced by the Memorandum recommended by the chief of BIR's NID to CIR, which is one of the exceptions under Section 235 of the NIRC of 1997, as amended. This alone is sufficient reason for the Court to deny the taxpayer's claim that BIR committed grave abuse of discretion in issuing another LOA for the same TY. *(Golden Donuts, Inc. v. CIR, CTA Case No. 9676, August 30, 2023)*

RR No. 7-2023
July 7, 2023

This prescribes additional guidelines on PERA Tax Credit Certificate (TCC).

This Revenue Regulation (RR) amends RR No. 17-2011 to prescribe additional guidelines on PERA Tax Credit Certificate (TCC).

Qualified PERA Contributions shall refer to the contributions of the Contributor to his PERA, which shall not exceed 200,000.00 per calendar year (if the Contributor is a non-Overseas Filipino), or 400,000.00 per calendar year (if the Contributor is an Overseas Filipino or in representation of an Overseas Filipino), and in accordance with the provisions of Section 6 of these Regulations, subject to the adjustments authorized by the Secretary of Finance, taking into consideration the present value fiscal position of the Government and other pertinent factors.

The aggregate maximum Qualified PERA Contributions in one calendar year for purposes of illustration shall be as follows:

Contributor	Maximum Qualified PERA Contribution in Peso
Unmarried Filipino Citizen	200,000.00
Married Filipino Citizen and both spouses qualify as a Contributor	200000.00 for each qualified contributor
Married Filipino Citizen and only one spouse qualifies as a Contributor	200,000.00
Unmarried Overseas Filipino	400,000.00
Married Overseas Filipino whose legitimate spouse is neither and Overseas Filipino nor a qualified contributor	400,000.00
Married Overseas Filipino whose legitimate spouse and children (not otherwise disqualified as contributors) of an Overseas Filipino who did not directly open any PERA	400000 cumulative for the spouse and children in representation of the Overseas Filipino

Contributor (cont.)	Maximum Qualified PERA Contribution in Peso (cont.)
Married Overseas Filipino whose legitimate spouse is also an Overseas Filipino	400,000.00 for each qualified contributor
Married Overseas Filipino whose legitimate children are not Overseas Filipinos and are not qualified Contributors	400,000.00

Section 4 of RR No. 2-2022 is hereby amended to read as follows:

Expiration of PERA TCC. – A tax credit certificate issued in accordance with the pertinent provisions of this Regulations, that remains unutilized after five (5) years from the date of issuance, shall be considered invalid and shall not be allowed as payment for internal revenue tax liabilities of the PERA contributor. The amount covered by the certificate issued shall be automatically canceled by the PERA System.

In case of a damaged or lost certificate, reissuance of certificate will not be available after five (5) years from the date of issuance of the original certificate.

RR No. 8-2023
July 25,2023

This clarifies the information that shall appear in the official receipts/sales invoices on purchases of SCs and PWDs through online or mobile applications, in relation to RR.

The signature of the Senior Citizens (SCs)/ Persons With Disabilities (PWDs) shall not be required for qualified purchases made by SCs/PWDs online or through mobile applications. Nonetheless, the SC/PWD Identification Card number should still be provided by the SC/PWD when purchasing through online or mobile platforms, and the rules on entitlement to the benefits of the SC/PWD and to the tax deduction, pursuant to RR No. 7-2010, as amended; RR No. 5-2017, as amended; JMC No. 01 s2022; and to future issuances pertaining to SC/PWD purchases through online or mobile applications, shall be strictly followed.

RMO No. 25-2023
July 4, 2023

This prescribes the policies, guidelines and procedures on the preparation and processing of payroll.

The objectives of this order are as follows:

1. Prescribe policies and guidelines in the efficient processing of payroll in the National Office and Regional Offices using the new NBPS.
2. Define roles and responsibilities of concerned employees/offices.
3. Provide documentary requirements necessary for the processing of payroll as well as adjustments of payroll.
4. Provide Job Aid (Annex A) for the payroll processing as guidance to payroll processors.

RMO No. 26-2023
July 18, 2023

This prescribes the policies, guidelines, and procedures in the processing of requests for corporate information, including beneficial ownership information, with the SEC.

The BIR and SEC entered into a Data Sharing Agreement (DSA) pursuant to Republic Act (RA) No. 10173 or the Data Privacy Act of 2012, as implemented by NPC Circular 16-02- dated October 10, 2016. The DSA enhances and streamlines the access of the BIR to corporate information, including beneficial ownership information, by allowing on-site and online access, as well as off-site access, to relevant reportorial documents submitted by all corporations to the SEC.

A beneficial owner of a corporation is the natural person who ultimately owns or controls the corporation or exercises ultimate effective control over the corporation. Disclosing beneficial ownership information is required to prevent the use of corporations for money laundering, terrorist financing, tax evasion, and other illicit activities, among other purposes. Tax evasion and money laundering commonly create secrecy by layering of ownership through opaque legal structures or other legal vehicles to conceal the true ownership of activities and assets.

The purpose of having access to beneficial ownership, the BIR will be able to know the true ownership of activities and assets and, thus, allow fair taxation and just enforcement of tax laws. The availability of beneficial ownership for tax purposes also complies with the international tax transparency standards set by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes or the Global Forum where the Philippines is a member.

BIR ISSUANCES

HIGHLIGHTS

UPDATES

RMO No. 27-2023
July 27, 2023

Amends RMO No. 15-2023, relative to the revised allocation of the CY 2023 BIR Collection Goal by implementing office.

This has reference to the revised BIR collection target for CY 2023 which was approved by the Development Budget Coordination Committee (DBCC) last June 9, 2023. The Bureau's CY 2023 Revised Revenue Target was increased to Php 2,639,174 Million and is higher by Php 40,047 Million or 1.54 from the previous goal of Php 2,599,127 Million and Php 303,500 Million or 12.99% from CY 2022 collection of Php 2,335,674 Million. The revised breakdown by tax type was based on the Medium-Term Revenue Program (MTRP) received on June 19, 20233.

RMC No. 75-2023
July 5, 2023

This extends the deadline for the replacement of the 'Ask for Receipt Notice' with Notice to Issue Receipt/invoice under RMO No. 43-2022.

In relation to Revenue Regulations (RR) No. 10-2019 and Revenue Memorandum Order (RMO) No. 43-2022, all business taxpayers were mandated to exhibit at their place of business the new BIR Notice to the Public or **Notice to issue Receipt/Invoice (NIRI).** The Bureau informed the taxpayers to replace their old "Ask for Receipt" Notice with the new NIRI until June 30, 2023. While the deadline was already set, several inquiries are being received from business taxpayers asking if there is an extension on the replacement of Ask for Receipt Notice (ARN) with Notice to Issue Receipts / Invoice (NIRI).

In this regard, this Circular is issued to extend the deadline for securing the new NIRI on or before September 30, 2023. To secure the NIRI, the taxpayer shall fill out S1905-Registration Update Sheet to indicate/update the designated official email address which will be used by the Bureau as an additional manner in serving BIR orders, notices, letters, communications, and other processes to the taxpayers.

Business taxpayers who failed to renew on or before September 30, 2023, shall be imposed a penalty of a fine of not more than Php 1,000 pursuant to Section 275 of the Tax Code, as amended. Taxpaying public may report business establishments that do not have the NIRI posted thru eComplaint OTHERS or Chatbot "Revie" at www.bir.gov.ph.

BIR ISSUANCES

HIGHLIGHTS

RMC No. 76-2023
July 13, 2023

This circularizes the New Daily Minimum Wage Rates in certain sectors/industries under the National Capital Region as prescribed by Wage Order No. NCR-24

This Circularizes the New Daily Minimum Wage Rates in Certain Sectors/Industries under the National Capital Region as Prescribed by Wage Order No. NCR-24 approved on June 26, 2023 and published at The Philippine Star on June 30, 2023.

The new daily minimum wage rates in NCR shall be as follows:

Sectors/Industry	Current Minimum Wage Rates	New Wage Increase	New Minimum Wage Rates
Non-agriculture	PHP570	PHP40	PHP610
Agriculture (Plantation and Non-plantation) Service/Retail establishments employing 15 workers or less Manufacturing establishments regularly employing less than 10 workers	PHP533	PHP40	PHP573

BIR ISSUANCES

HIGHLIGHTS

RMC No. 77-2023 ***July 18, 2023***	This notice is hereby given of the loss of one (1) set of unused/unissued BIR Form No. 0535-Taxpayer Information Sheet, with serial number **TIS202000129735.**
This notifies the loss of one (1) set of unused/unissued BIR Form No. 0535 Taxpayer Information Sheet	The abovementioned form was reported as lost by a Revenue Officer II, Revenue District Office No. 3, Revenue Region No. 1, Calasiao, Pangasinan, and has consequently been canceled. All official transactions involving the use of said form is therefore considered INVALID. Internal Revenue officials, employees, and others concerned are requested to promptly notify this Office in the event that the aforesaid form is found and to take the necessary measures to prevent the improper or fraudulent disposition or use of the same.
RDAO No. 11-2023 ***July 17, 2023***	In the exigency of revenue service, Annex "A" of Revenue Delegation Authority Order No. 4-2019 dated July 31, 2019 is hereby amended, to effect changes to the signatories of documents stated therein.
This amends Annex "A" of Revenue Delegation Authority Order No. 4-2019	All issuances or portions thereof not consistent with this Order are hereby repealed or amended accordingly. This Order shall take effect immediately.

BIR ISSUANCES

HIGHLIGHTS

RDAO NO. 12-2023
July 25,2023

This designates Assistant Commissioner of Client Support Service as Officer-In-Charge of the Operations Group and gives her the authority to sign several documents specified in the Order in view of the approved leave of absence of OIC-Deputy Commissioner of Operations Group

In view of the approved leave of absence of the OIC Deputy Commissioner -Operations Group from July 21,24 and 25, 2023, and in order not to disrupt the operations of her Office, as the exigencies of the service so requiring, Assistant Commissioner of Client Support Service is hereby designated as Officer-in-Charge of the Operations Group, giving her the authority to sign the following documents:

1. Tax Debit Memorandum (TDM) as utilization of Tax Credit Certificate (TCCs)
2. Approval/Denial of Revalidation of TCCs
3. Approval/Denial of Cash Conversion of TCCs
4. Approval/Denial of VAT Refunds within the jurisdiction of ODCIR Operations Group
5. Endorsement to the Bureau of Customer (BOC) of VAT TCCs/Refund claims from Importation
6. Issuance/Lifting of Closure Orders
7. Approval/Denial for Issuance of Mission Order pursuant to RMO No. 40-2022
8. Other documents being issued and signed by the Deputy Commissioner for Operations Group in the ordinary course of operation.

This Order shall take effect on July 21, 2023 and shall be automatically revoked upon the return of the OIC Deputy Commissioner for official duty.

RR No. 9-2023, August 3, 2023

This pertains to rules and regulations governing the imposition of excise tax on perfumes and toilet waters.

This provides that there shall be levied, assessed and collected excise tax on the following:

	RATE AND TAX BASE	WHO SHALL PAY/ TIME OF PAYMENT
Locally manufactured perfumes and toilet waters	20% on the wholesale price, net of excise and VAT.	Shall be paid by the **manufacturer or producer before removal from the place of manufacturer/production and warehouse**. In the event that the brand new owner(s) uses or engages in **a toll manufacturing or subcontracting service or agreement,** to facilitate the production of the excisable products, payment of excise tax shall be paid by the **brand owner** itself who owns the product or formulation **before removals from their toll manufacturer's.**
Imported perfumes and toilet waters	**20%** on the value of importation used by the BOC in determining tariff and customs duties, net of excise tax and VAT.	Shall be paid by the **importer** to the BOC or its duly authorized representative **prior to the release of such goods from customs duty.**

BIR ISSUANCES

HIGHLIGHTS

UPDATES

RMC No. 83-2023, August 1, 2023

This circularizes RA No. 11956, amending Republic Act No. 11213 otherwise known as the "Tax Amnesty Act" extending the period of availment of the estate tax amnesty until June 14, 2025

As provided in Section 8 of RA 11213, as amended by RA No. 11569, estates covered by the Estate Tax Amnesty, including the payment of the estate amnesty tax shall be immune from the payment of all estate taxes, as well as any increments and additions thereto, arising from the failure to pay any and all estate taxes for the period ending May 31, 2022 and prior years, and from all appurtenant civil, criminal, and administrative cases and penalties under the Tax Code.

Moreover, payment by installment shall be allowed within two (2) years from the statutory date for its payment without civil penalties and interests.

RMC No. 88-2023, August 9, 2023

This clarifies the issues relative to the implementation of RR No. 3-2023 and other related concerns on VAT Zero-rate Transactions on Local Purchases of Registered Export Enterprises

The BIR reiterates the clarification made in RMC No. 137-2022 that the VAT zero-rating shall not extend to HMO plans procured for employees' dependents, as well as HMO plans for employees not directly involved in the operations of the registered projects or activities of the REEs.

Accordingly, only those HMO plans acquired for employees directly involved in the operation of REE's registered project or activities and forming part of their compensation package shall be accorded with VAT zero-rating.

Hence, for audit investigation/verification purposes, the supplier of HMO plans must still require the REE-buyer to provide detailed information on the acquired HMO plans as prescribed in Annex "A" of RMC No. 137-2022 and maintain a database of the same, for the ease of reference.

RMO 28-2023, August 10, 2023

This clarifies the existing policies in the issuance of TVNs pursuant to RMO No. 23-2023

Tax Verification Notice (TVN) shall be issued by the herein indicated Revenue Officials to authorize the verification of VAT credit/refund claims filed under Sections 112, 204 (C), and 229 of the Tax Code, as amended.

Processing Office	Revenue Official
Revenue District Office (RDO)	Revenue District Officer
VAT Audit Section (VATAS)	Assistant Regional Director
VAT Credit Audit Division (VCAD)	Division Chief
Large Taxpayer VAT Unit (LTVATAU)	Assistant Commissioner, LTS

BSP ISSUANCES

HIGHLIGHTS

BSP Circular No. 1178, August 9, 2023

This amends and adds to the Guidelines on the Use of Benchmarks for Unit Investment Trust Funds (UITFs).

Section 414/414-Q of the MORB/MORNBFI as amended by Circular No. 1152 dated 5 September 2022, is further amended, as follows:

Guidelines on the Selection of Benchmarks for UITFs. Benchmarks allow UITF participants to fairly assess whether a fund is overperforming or underperforming vis-a-vis a relevant market index or a portfolio with a comparable return-risk profile. As such, the trustee's presentation of fund performance shall be based on the principles of fair representation and full disclosure.

A valid benchmark for a UITF has the following characteristics:

a. Has a clearly defined objective;
b. Appropriately reflects the market or sector it aims to represent;
c. Is comprised of sufficiently diversified financial instruments that are liquid;
d. Is objectively and consistently calculated;
e. Is a total return benchmark; and
f. Reflects returns that are net of taxes.

In cases when the appropriate benchmark for a UITF does not satisfy item(s) "e" and/or "f", the trustee shall disclose the same in the Key Information and Investment Disclosure Statement (KIIDS).

Appendix 56/Q-33 of the MORB/MORNBFI is amended, as follows:

Guide in preparing the KIIDS for UITF.

1. The KIIDS provides UITF participants with key information and disclosures to facilitate better understanding and comparison of UITFs offered by trust entities (TEs). As such, the required information under the Minimum Disclosure Requirements and the Guidelines on the Selection of Benchmarks for UITFs in Sec. 414/414-Q and this Appendix shall be clearly stipulated in the KIIDS and not relegated to linked sources;
2. The KIIDS shall be concise and provide accurate information. The text shall be written in Arial style with font size 10 or its equivalent while the disclosures enumerated below shall be in capital letter and in bold font;
6. Xxx. The KIIDS shall give a fair and balanced view of the investments and the UITF's returns. The trustee shall ensure that no material. information is omitted.

7. The trustee shall include a link to a website or document(s) from which participants can obtain additional information on the benchmark (e.g., a description of the composition of securities and calculation methodology) and the benchmark administrator, as applicable.
8. The trustee shall likewise provide a link to additional explanatory materials on the features of the fund, if deemed appropriate.

A footnote shall be added to Section 414/414-Q of the MORB/MORNBFI.

Trust entities shall be given one (1) year from the effectivity of this Circular to conduct a review of the benchmarks of all existing funds to determine their propriety and validity in accordance with these guidelines; and to make appropriate changes to their policies, processes, procedures and Key Information and Investment Disclosure Statements to comply with these Guidelines.

BSP Memorandum No. M-2023-023, August 18, 2023

This revises the timeline of the Implementation of the International Transaction Reporting System (ITRS).

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Schedule	Activity
On or before October 2, 2023	BSP to provide the Extensible Markup Language (XML) schema and other documentation to the banks
October 2023	BSP to conduct technical briefings for the banks
November – December 2023	Banks to conduct pilot testing
January 2024	ITRS soft launch
April 2024	ITRS full implementation

The ITRS reports shall be submitted using the Application Programming Interface (API) in XML format.

This memorandum supersedes prior communications to banks on the schedule of the ITRS implementation.

BSP ISSUANCES

HIGHLIGHTS

UPDATES

BSP Memorandum No. M-2023-024, August 22, 2023

This cancels and replaces the Bangko Sentral Registration Documents (BSRDs).

This cancels and replaces the Bangko Sentral Registration Documents (BSRDs).

The BSRDs issued from April 2020 to December 2022 due to changes/transfers have been canceled/replaced and should not be honored if presented for purchase of foreign exchange for capital repatriation or remittance of earnings, pursuant to Section 38 of the Manual of Regulations on Foreign Exchange Transactions.

ABSENCE OF EMPLOYMENT ARRANGEMENT: TAX EFFECT

By

Fulvio D. Dawilan

The Philippines has carved itself as a favourite outsourcing jurisdiction for foreign businesses for a number of reasons. The traditional scheme is through the establishment of subsidiaries or branches in the country, and services are rendered to both foreign and local clients through these entities. With these being taxable entities, it is less likely that another taxable entity is deemed created.

But aside from these traditional structures, and perhaps because of our experience during the pandemic, new models are emerging and even other schemes that were not traditionally used are now becoming popular. Foreign businesses do in fact provide services outside of the usual subsidiaries or branches. In most cases, this necessitates the hiring of third parties, including Filipino and foreign individuals, who render services directly to clients and customers.

Depending on the arrangements between these foreign businesses and the individuals, the legal relationships could also be varied. It may lead to the creation of an employer-employee, principal-agent, consultant-client, or other types of relationships. From a tax perspective, the arrangement could

determine the status as an employer, principal, client, employee, agent, consultant and their respective tax obligations may also differ.

In essence, the nature of the arrangements between the foreign business and the individuals would also affect the tax impact to both parties. But let me defer the discussion of the tax consequences to the individuals to a later article. In the meantime, let me discuss the tax impact to the supposed foreign employer or principal, specifically in relation to the assignment of employees in the Philippines.

A few years ago, our tax authority issued a ruling holding that a foreign company had a permanent establishment (PE) in the Philippines. In doing so, it counted all the number of days that the assigned employees were present in the Philippines while doing the services. And since the number of days for the creation of a PE was breached as provided in the concerned tax treaty, the tax authority concluded that a PE was indeed created. This was elevated to the Department of Finance (DOF) and upon review, the latter reversed the ruling. The DOF found that while the employees are formally the employees of the foreign company, some of them were actually seconded to the local company. As employees of the local entity, their presence in the country should not be counted or attributed to that of the foreign entity. As such, no PE is created for the foreign entity.

Apparently, in the DOF opinion, an employment relationship is severed between the employer/assignor and the employee when the latter is seconded to another entity. This opinion is effectively embracing the "economic employer" concept, that is, while an employee remains to be employed in his home country, he is economically employed in a host country. That economic employer should also be considered as the employer for tax purposes. In essence, upon secondment, the seconded employee no longer represents the foreign employer. Accordingly, his presence in the Philippines is not attributed to the foreign entity.

We have not formally adopted the economic employer rule. But our tax laws had adopted the labor laws in so far as the determination of the existence of an employer-employee relationship is concerned. And these rules espouse the so-called four-fold test in determining the existence of an employer-employees: (1) who hires the employees, (2) who pays their wages, (3) who has the power to dismiss, (4) who has the power of control, with the last one being the most important. Thus, in general, the relationship of the employer and the employee exists when the person to whom the services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished but also to the details and the means by which the result is accomplished. This also espouses the concept

that individuals who follow an independent trade, business or profession and are offering their services to the public are not employees.

Using this as basis, if control is lodged with the local entity, it is less likely that the foreign "employer" may be considered to have PE in the Philippines. And from a broader perspective, it is not doing business in the Philippines. It follows that it is not taxable in the Philippines.

What if the foreign entity still earns income in the Philippines despite the supposed absence in the Philippines? That's a different story. The income could still be attributed to the work of the individual and taxed to the foreign entity.

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