MT&F

MATA-PEREZ · TAMAYO · FRANCISCO

ATTORNEYS AT LAW

TAX JOURNAL

DECEMBER 2020

Highlights

BIR ISSUANCES

Revenue Regulations (RR)

- RR No. 32-2020 further amends Revenue Regulations No. 4-2019, as amended, by extending the period of availment of Tax Amnesty on Delinquencies until June 30, 2021 (Page 3)
- RR No. 33-2020 amends certain provisions of the Voluntary Assessment and payment Program under RR No. 21-2020 (Page 3)
- RR No. 34-2020 prescribes the guidelines and procedures on the submission of BIR Form No. 1709, Transfer Pricing Documentation and other supporting documents, amending pertinent provisions of Revenue Regulations Nos. 19-2020 and 21-2002, as amended by RR No. 15-2010 (Page 3)

Revenue Memorandum Circular (RMC)

- RMC No. 124-2020 clarifies certain provisions of RMO No. 76-2010 in relation to the Joint Rules and Regulations Implementing Articles 60, 61, and 144 of Republic Act No. 9520, Otherwise known as the "Philippine Cooperative Code of 2008 and Other Related Revenue Issuances (Page 4)
- RMC No. 127-2020 provides for the suspension of All Audit and Other Field Operations of the Bureau of Internal Revenue Effective December 15, 2020 (Page 4)
- RMC No. 130-2020 prescribes the policies and guidelines in the conduct of online meetings/conference with taxpayers (Page 5)
- RMC No. 132-2020 prescribes the new BIR Form No. 2200-C (Excise Tax Return for Cosmetic Procedures) January 2018 Version (Page 5)
- RMC No. 133-2020 allows manual filing of tax returns and manual payments of taxes due thereon during unavailability of the Electronic Filing and Payment System due to typhoon Rolly and Ulysess (Page 5)

Revenue Memorandum Order (RMO)

- RMO No. 41-2020 clarifies the policies and procedures in the processing of claims for Value-Added Tax (VAT) refund of Resident Foreign Missions, their qualified personnel and the personnel's dependents, amending for these purposes Revenue Memorandum Order No. 10-2019 and other pertinent revenue issuances (Page 6)
- RMO No. 43-2020 streamlines the process of issuing Tax Residency Certificates (TRCs), amending for this purpose pertinent provision of RMO No. 51-2019 (Page 6)

COURT DECISIONS

CTA Division

- National Development Company v. Commissioner of Internal Revenue (CIR) (Page 7)
- Luzviminda Land Holdings, Inc. v. CIR (Page 7)
- Rappler Holding Corp. v. Hon. Cornejo-Tomacruz (Page 8)
- Loadstar Shipping Co. Inc. v. CIR (Page 9)
- Garchitorena v. Hon. Lapena (Page 10)

CTA EN BANC

- CIR, BOC v. RMJR Grains Center Corporation (Page 11)
- Hotel Specialist, Inc. v. CIR (Page 11)
- Mandaluyong City Gov't v. Republic of the Philippines (Page 12)
- People of the Philippines v. Cross Country Oil and Petroleum Corp (Page 13)

Supreme Court Decisions

- City of Davao and Mr. Erwin Alparague v. AP Holdings, Inc. (Page 14)
- Municipality of Cainta, Rizal v. Sps. Braña and City of Pasig (Page 15)
- The City of Makati v. The Municipality of Bakin and Luzon Hydro Corporation (Page 15)
- Zuellig-Pharma Asia Pacific Ltd. Phils. Rohq v. CIR (Page 16)
- CIR v. Bank of the Philippine Islands (Page 17)

BIR ISSUANCES

REVENUE REGULATIONS (RR)

RR No. 32-2020 issued on December 21, 2020

- This Regulations provides for the extension of the period of availment of the Amnesty on Delinquencies to June 30, 2021.

RR No. 33-2020 issued on December 21, 2020

- This Regulations provides for the extension of the period of availment of the Amnesty on Delinquencies to June 30, 2021, unless further extended by the Secretary of Finance
- This Regulations amends RR No. 21-2020 which originally set the deadline for the availment until December 31, 2020.
- Further, the Regulations provide that no denial of application or invalidation of previously-issued Certificate of Availment shall be valid unless the taxpayer is formally notified.
- In addition, the Regulations provide that the taxpayer has a right to appeal in case of denial or invalidation of application within 30 days from receipt of notice of denial.

RR No. 34-2020 issued on December 21, 2020

- This Regulations prescribes the guidelines for the submission of BIR Form No. 1709, Transfer Pricing Documentation (TPD) and other supporting documents.
- This new regulation now limits the submission of BIR Form No. 1709 to the following taxpayers:
    a. Large Taxpayers;
    b. Taxpayers enjoying tax incentives;
    c. Taxpayers reporting net operating losses for the current taxable year and the immediately preceding two (2) consecutive taxable years; and
    d. A related party, which has transactions with a., b., or c.
- The preparation and submission of TPDs and all other relevant issuances shall be mandatory for taxpayers required to submit BIR Form No. 1709 who meet the following materiality thresholds:
    a. Annual gross sales/revenue for the subject taxable period PhP150 Million and the total amount of related party transactions with foreign and domestic related parties exceeds PhP90 Million;
    b. Related party transactions meeting the following materiality threshold within the taxable year:
        i. If involving the sale of tangible goods in the aggregate amount exceeding PhP60 Million;
        ii. If involving service transaction, payment of interest, utilization of intangible goods or other related party transaction in the aggregate amount exceeding PhP15 Million; or
    c. If TPD was required to be prepared during the immediately preceding taxable period for exceeding either a. or b. above.
- The TPDs and other supporting documents shall no longer be attached to the BIR Form 1709. Instead, it shall now be submitted within 30 calendar days upon receipt of request by the Commissioner or his/her duly authorized representatives, pursuant to a duly issued Letter of Authority covering All Internal Revenue Taxes (AITR), subject to a non-extendible period of 30 calendar days based on meritorious grounds.

REVENUE MEMORANDUM CIRCULAR (RMC)

RMC No. 124-2020 issued on November 26, 2020

- This Circular clarifies certain issues and concerns related to the Philippine Cooperative Code of 2008.
- It provides the documentary requirements for securing a Certificate of Tax Exemption (CTE) for new applications and for renewal.
- Further, it provides for the obligations of the cooperatives with duly issued CTEs.
- It discussed the requirements of Tax Identification Number (TIN) of the members of the cooperative for the purpose of the application.
- The Circular reiterates that members of the cooperative shall not be subject to any taxes and fees including but not limited to final taxes on members' deposits and documentary tax.
- As to creditable withholding tax (CWT), the cooperative is exempt from assessment of 1% and 2% CWT provided it is not considered a Top Withholding Agent. If it is considered as a Top Withholding Agent, all purchases made with its regular supplies or any single purchase of more the PhP10,000 shall be subject to withholding tax.
- The statutory contributions of Cooperatives as employers, such as to GSIS, SSS, Medicare, and Pag-Ibig contributions, are excluded from gross income.
- The Circular provides that cooperatives which transact business with both members and non-members and whose accumulated reserves and undivided net savings are more than PhP10,000,000.00 shall be prioritized for audit or investigation. Other cooperatives with income not related to the main or principal business shall also be covered by the priority audit.
- Remedies available to cooperatives are similar with the ones provided in the Tax Code:

Upon receipt of the Preliminary Assessment Notice (PAN)	It has a period of fifteen (15) days to respond
Upon receipt of Formal Letter of Demand or Final Assessment Notice (FLD/FAN)	It has a period of thirty (30) days to protest, either by filing a motion for reconsideration or reinvestigation
Upon receipt of Final Decision on Disputed Assessment (FDDA)	It has a period of thirty (30) days either to appeal to the CTA or to protest it by filing a request for reconsideration to the CIR
Upon receipt of Decisions of CIR on administrative protest	It has a period of thirty (30) days to appeal to the CTA

RMC No. 127-2020 issued on December 4, 2020

- This Circular suspends all audit and other field operations of the BIR relative to examinations and verifications of taxpayers' books of accounts, records, and other transactions for the period December 15, 2020 to January 7, 2021.
- No field audit, field operations, or any form of business visitation in execution of eLetters of Authority/Audit Notices, or Mission Orders should be conducted. Likewise, no written orders to audit and/or investigate taxpayers' internal revenue tax liabilities shall be served except in the following cases:

- Investigation of cases prescribing on or before April 15, 2021;
- Tax evasion cases;
- Processing and verification of Estate Tax returns, Donor's Tax returns, Capital Gains Tax returns and Withholding Tax returns on the sale of real properties or shares of stocks, together with the Documentary Stamp Tax returns related thereto;
- Examination and/or verification of internal revenue tax liabilities of taxpayers retiring from business;
- Audit of National Government Agencies (NGAs), Local Government Units (LGUs) and Government-Owned and Controlled Corporations (GOCCs), including subsidiaries and affiliates of GOCCs;
- Monitoring of privilege stores (tiangge); and
- Other matters/concerns where deadlines have been imposed or under the orders of the Commissioner of Internal Revenue.

RMC No. 130-2020 issued on December 11, 2020

- This RMC prescribes the policies and guidelines in the conduct of online meetings/conferences with taxpayers amidst the COVID-19 Pandemic where face-to-face meetings/conferences are highly discouraged.
- A memorandum request must be filed by the revenue official/employee prior to the initiation of the meeting/conference. All meetings/conferences with the taxpayers shall be hosted by the BIR and must be pre-approved in writing by the proper officers.
- In sending invitations, revenue officials and employees shall only use the prescribed BIR email address.
- In cases of power interruption and/or poor connectivity, the online meeting/conference may be rescheduled on a date and time agreed upon by both parties.
- The proceedings shall be strictly confidential. Any unauthorized recording or disclosure of the meeting shall be subject to appropriate criminal, civil, and administrative liability.

RMC No. 132-2020 issued on December 11, 2020

- This Circular prescribes the new BIR Form No. 2200-C (Excise Tax Return for Cosmetic Procedures) January 2018 version. The new return is already available in the BIR website; however, the form is not yet available in the Electronic Filing and Payment System (eFPS) and Electronic Bureau of Internal Revenue Forms (eBIRForms). Thus, eFPS/eBIRForms filers shall continue to use BIR Form No. 0605 in filing and paying the Excise Tax due until the said return becomes available.
- The deadline for filing and paying the Excise Tax due is within 10 days following the close of the month. Furthermore, in cases when no invasive cosmetic procedure was performed during the return period, BIR Form No. 2200-C shall still be filed even if no Excise Tax is due with the:
    a. Excise Large Taxpayers Field Operations Division for Large Taxpayers; or
    b. Revenue District Office (RDO) for taxpayers in the National Capital Region (NCR); or
    c. Excise Tax Area for taxpayers outside NCR.
- Manual filers shall download and print the PDF version of the form, and completely fill-out the applicable fields. Otherwise, penalties under Section 250 of the Tax Code, as amended, shall be imposed.

RMC No. 133-2020 issued on December 11, 2020

- This RMC provides that during the unavailability of the BIR's eFPS, all authorized agent banks (AABs) are advised under Bank Bulletin No. 2019-08 to accept "over-the-counter" filing of eFPS.

- Due to the unavailability of the eFPS, remittance of withholding taxes by eFPS taxpayers can be made until the close of the banking hours of November 20, 2020 without collecting the corresponding penalties for late payment.
- The period covered by the Regulation is between November 10 to 14, 2020 as taxpayers enrolled in the eFPS were not able to file their withholding tax returns (BIR Form Nos. 1600, 1601C, 0619-E and 0619F) and pay the corresponding taxes due thereon for the month of October 2020 and whose remittance deadline fell on November 10, 2020.
- The extension for the remittance of withholding taxes is applicable only to eFPS taxpayers with activated e-payment accounts with the AABs.
- The Regulation provided that the taxpayer may pay with the following online payment facilities:
    - Land Bank of the Philippines (LBP) Link.Biz Portal
    - Development Bank of the Philippines' (DBP) Pay Tax Online
    - Union Bank Online Web and Mobile Payment Facility
    - Mobile payment (GCash/PayMaya)
- The Regulation further provided an extension to taxpayers who were affected by Typhoon Rolly and Ulysses. The taxpayers may manually file their respective tax returns and manually pay the taxes due without the imposition of corresponding penalties.

REVENUE MEMORANDUM ORDER (RMO)

RMO No. 41-2020 issued on December 1, 2020

- This RMO clarifies the procedures governing the processing of claims for VAT refund of Resident Foreign Missions (RFMs), their qualified personnel and the personnel's dependents.
- The Regulation provides that all business establishments are directed to honor and recognize the VAT Certificate or VAT Identification Card issued by the BIR to RFMs, their qualified personnel and the other personnel's dependents when presented by them at the point of sale, and to accord them with the VAT exemption privileges to which they are entitled.
- In claiming for VAT refund, the VAT invoice or official receipt presented by RFMs, their qualified personnel and the personnel's dependents need not contain the name, address and TIN of the purchaser. However, an invoice or official receipt, be it manual, electronic, loose-leaf or generated from a BIR-registered CRM/POS, must contain at least the name of the purchaser for cash transactions when presented for refund.
- Further, the Regulation provides what should be presented by the RFMs, their personnel and the other personnel's dependents for VAT refunds in different transactions, such as credit card transactions, on cash basis, and online transactions.
- Lastly, the Regulation provides for the documentary requirements and procedures for the processing of claims for VAT refund of RFMs, their qualified personnel and the personnel's dependents for purchases of goods and services, including lease of property, and purchase of motor vehicles.

RMO No. 43-2020 issued on December 1, 2020

- This RMO provides for the streamlining of the process for the issuance of TRCs.
- It provides for the documentary requirements for the TRC application of individuals and non-individuals.
- This Regulation provides for the revised guidelines and procedure for the application of a TRCs.
- Further, it provides for the revised guidelines and procedures for the application and issuances of TRCs. For applications, a taxpayer must now file a BIR Form No. 0902 instead

of a letter-request. All TRC applications shall be acted upon within 14 working days from the submission of the complete requirements.

- In addition, the Regulation discusses the processing of Third-Party Information. The ITAD will convey relevant information to the concerned RDO or LTD, or National Investigation Division which will use the information to verify the foreign source income declared by a taxpayer.
- Lastly, the Regulations provides that when taxpayers fail to secure a TRC they shall not be allowed to claim foreign tax credits.

COURT DECISIONS

CTA DIVISION DECISIONS

National Development Company v. CIR
CTA Case No. 9633 promulgated on November 26, 2020

Facts:

Petitioner Corporation is a GOCC organized under PD No. 1648. Petitioner realized that it committed a mistake in not utilizing the 7% standard input VAT on the sale of goods or services to the Government as a credit against its output VAT pursuant to Section 114 (c) of the Tax Code which requires the Petitioner to deduct and withhold the VAT due at the rate of five percent (5%) of the gross payment before making payment on account of each purchase of goods or services, hence, they filed a claim for refund with the BIR for the alleged overpaid VAT.

Respondent denied such claim primarily on the ground that Petitioner failed to fully substantiate its claim for refund pursuant to Section 110(A) and 113(A) and (B) of the Tax Code, as implemented by RR No. 16-2005.

Issue:

Is the Petitioner entitled to the VAT refund?

Ruling:

No. The Court ruled that Petitioner failed to substantially prove its claim for refund of the excessively paid VAT. In this case, Petitioner presented and offered its VAT Returns, Certificates of Tax Withheld, Schedule of Input VAT, and proof of payment of the VAT returns.

While Petitioner presented its schedule of input VAT, the same does not constitute sufficient proof of the actual input VAT incurred by Petitioner. Rather, the necessary documents to prove the actual input VAT incurred by Petitioner are the VAT invoices and/or VAT receipts emanating from Petitioner's purchases of goods, properties, and services in accordance with the substantiation requirements prescribed under Sections 110 (A) and 113 (A) and (B) of the Tax Code, as amended, and as RR No. 16-2005.

Luzviminda Land Holdings, Inc. v. CIR
CTA Case No. 10035 promulgated on December 03, 2020

Facts:

Petitioner and Company M entered into a merger wherein the former will be the surviving corporation. The merger was approved by the Securities and Exchange Commission (SEC) on May 27, 2009. Pursuant to the merger, Company M transferred one of its real property ("IPIL property") to Petitioner.

On December 17, 2009, Petitioner filed a request for ruling on the tax-exempt status of the merger pursuant to Section 40(C)(2) of the Tax Code. Upon follow up with the BIR sometime in 2016, Petitioner was informed that the docket for the request for ruling was missing. Petitioner then submitted anew all its documents to the BIR-Law & Legislative Division on October 17, 2016. However, no ruling confirming the exempt-status of the merger was issued.

Meanwhile, Petitioner agreed to sell the Ipil Property to Company I. While Petitioner was in the process of securing a Certificate Authorizing Registration (CAR) for the transfer of the Ipil Property to Company I, it was informed that it should first pay the Withholding taxes (WT) and Documentary Stamp Taxes (DST) amounting to PhP33 Million to which Petitioner paid.

On May 21, 2018, Petitioner filed an administrative claim for refund or issuance of a TCC of the erroneously paid or illegally collected WT and DST arising from the transfer of Ipil Property from Company M to Petitioner. Without any decision on its claim for refund or issuance of a TCC, Petitioner filed a Petition for Review on February 26, 2019 with the Court of Tax Appeals.

Issue:

1. Is the Petitioner entitled to a refund?
2. Is a BIR confirmatory ruling required before a petitioner could avail of the non-recognition of gain in a merger transaction?

Ruling:

1. Yes. The merger between Petitioner and Company M is a legal merger and it was entered into for a bona fide business purpose. The merger was done in accordance with the provisions of the Corporation Code. Moreover, the fact that petitioner continues to operate, after taking over Company M's business over a decade ago, only attests to the fact that the merger was for a legitimate business purpose.

   With the above, the merger transaction between Petitioner and Company M qualifies as a tax-free exchange under Section 40(C)(2) of the Tax Code. Consequently, the imposition of WT and DST are without legal mooring. The imposition of the tax due contemplates the sale of real properties. Such is not the scenario in a merger transaction. Thus, petitioner is entitled to the refund of the WT and DST paid.

2. No. A BIR confirmation ruling is not required. Nowhere in Section 40(C)(2)(a) in relation to Section 40(C)(6)(b) of the Tax Code requires a prior BIR ruling validating an exchange transaction (pursuant to a merger) as tax-free before petitioner may reap the benefits of the foregoing provisions. The Court cannot read into the law what obviously was not intended by Congress, to do so would be judicial legislation.

Rappler Holdings Corp. v. Hon. Cornejo-Tomacruz
CTA Case No. 10323 promulgated on December 04, 2020

Facts:

Petitioner was granted bail before the RTC during the proceedings for the alleged violations of Section 255 of the Tax Code for failure to supply accurate information on the VAT returns and failure to report total quarterly sales receipt. Throughout the duration of the proceedings, Petitioner was granted permission to travel for over 30 international flights upon the posting of a travel bond.

When the COVID-19 pandemic broke out in the country, travel restrictions were enforced by the National Government. Due to this, the Court denied the Petitioner's Urgent Motion to travel to the US to attend certain conferences and interviews amidst the pandemic. Aggrieved, Petitioner filed a Petition for *Certiorari* to this court praying for the issuance of an *ex-parte* TRO/Writ of Injunction to temporarily allow Petitioner to travel.

Issue:

1. Is the Petitioner entitled to a TRO and /or Writ of Preliminary Injunction?
2. Does the CTA have jurisdiction?

Ruling:

1. No. The Court declared that on the date of filing of the last pleading in this case, the necessity of travel alleged in the petition have already lapsed, and have, therefore, become moot and academic. The Court further declared that the constitutional right to travel has its limitations, such as when the National Government declares a health pandemic, authorizing restrictions on travels inside and outside the country. These circumstances directly bear upon the issue of whether the petitioner can physically return to the Philippines to continue her trial if she goes abroad.

   The Court also takes judicial notice of the pandemic spreading throughout the world, which the Philippine government has addressed by declaring a public health emergency and by imposing community quarantines that restricted land, sea, and air travels, here and outside the borders. Further, the Court established in this case that it has jurisdiction over the present controversy pursuant to Section 1 of RA No. 1125 as a court of record having *certiorari* jurisdiction over interlocutory orders issued by the RTC over which it has appellate review.

2. Yes. Under Ursal v. CTA, the Supreme Court held that the CTA under RA No. 1125 was created as part of the judicial system. Further, the CTA's power of judicial review is provided under Section 1, Article VII of the 1987 Constitution. The CTA's jurisdiction was further expanded under RA No. 9282, wherein its rank was elevated to the level of a collegiate court with special jurisdiction and possessing all the inherent powers of the Court of Justice.

   In the pertinent case of City of Manila v. Hon. Grecia-Cuerdo, the Supreme Court explicitly recognized the inherent power of the CTA to issue writs of certiorari under Rule 65, in aid of its appellate jurisdiction. Thus, it is clear that the CTA possess *certiorari* jurisdiction under Rule 65 of the Rules of Court over interlocutory orders issued by the RTC over which it has appellate review. It is clear that the CTA has jurisdiction over the case of Petitioner.

Loadstar Shipping Co., Inc. v. CIR
CTA Case No. 9902 promulgated on December 07, 2020

Facts:

Petitioner was assessed for deficiency income tax (IT) and WT during the taxable year 2014. It was primarily argued by the Petitioner that such assessment was void due to the fact that the person who received the notices and correspondences was merely a telephone operator, not an authorized officer to receive notices pursuant to the Rules of Court. By reason of such, the Petitioner argues that they were deprived of due process, making the assessment void. On the other hand, Respondent contends that the Court no longer has jurisdiction since the assessment has become final, executory, and demandable.

Issue:

Was the Assessment against the Petitioner valid?

Ruling:

Yes. As the records show, petitioner does not deny receipt of the assessment notices, only that they were not allegedly served on its authorized officers. Due to this, the Court declared that it no longer has jurisdiction over the case since the subject assessment has already attained finality pursuant to Section 228 of the Tax Code in relation to RR No. 12-99, as further amended by RR No. 18-2013. The Revised Rules of the CTA provides that the Court has jurisdiction over cases involving disputed assessments. A disputed assessment presupposes that an administrative protest has been filed before the CIR or his duly authorized representative. The records of the case is bereft of any showing that the petitioner filed an administrative protest to the assessment.

Further, there was no violation of due process in this case since the Rule on Service of Summons under the Rules of Court applies to the courts and not to the Respondent who belongs to the executive branch of the government.

Garchitorena v. Hon. Lapena
CTA Case No. 9972 promulgated on December 09, 2020

Facts:

Petitioner sought to import into the country his personal motor vehicle, a Silver 2004 Rolls Royce Sedan. In a Memorandum dated May 31, 2017, a director of the Import Assessment Service (IAS) recommended that the vehicle be valued at US76,320.00 instead of its declared Free on Board (FOB) value of US54,460.00.

Subsequently, Petitioner was able to procure an Authority to Release Imported Goods (ATRIG) wherein the shipment's value was indicated to be US54,460.00. Petitioner sought reconsideration of the Memorandum dated May 31, 2017 claiming that the shipment's value should be based on the vehicle's actual purchase price of 200,000 Dirhams as stated in the Car Selling Agreement, which was granted. Petitioner failed to process his shipment within the reglementary period, and his shipment was tagged as "abandoned" twice, where his Request for Continuous Processing of Entry was also granted twice.

Despite the grant of the request, on February 5, 2018, the Acting Deputy Collector for Operations issued an Alert Order (AO) against the vehicle for suspected violations of various customs law. Thereafter, on February 8, 2018, Petitioner paid the customs duties for the subject shipment. On February 13, 2008, a Warrant of Seizure and Detention (WSD) against the vehicle claiming that it was grossly undervalued and that the invoice submitted by the petitioner is spurious since he also appeared to be the issuer thereof. Thereafter, on June 19, 2018, an order was issued for the forfeiture of the vehicle in favor of the government.

Issue:

Is there a legal basis for the forfeiture of the subject shipment?

Ruling:

None. Respondent failed to prove the supposed undervaluation of the vehicle or that the petitioner sought to defraud the government. Equally, Respondent's agents have also not supported their claim of the higher valuation of US76,320.00. Thus, there is no reason for the Respondent to deny the release of the Petitioner's shipment.

Under Section 1111 of the Customs Modernization and Tariff Act (CMTA), an alert order will result in the suspension of the processing of the goods declaration. In this case, the AO only came after the issuance of an ATRIG and after two separate requests for continuous

processing of the shipment had been granted and the petitioner was able to pay customs duties despite the AO's issuance. The processing of goods covered by an AO shall continue only after a negative finding of the grounds for its issuance. The Court ruled against the presumption of regularity of Respondents since the Petitioner was nevertheless allowed to pay the customs duties on the subject shipment despite the AO's issuance.

Furthermore, the facts do not disclose that the shipment was even physically examined by Respondent either before or after the issuance of the AO which is required under Section 5.2 of Customs Memorandum Order 35-2015. Neither the May 31, 2017 Memorandum nor the June 19, 2018 order states the basis for the US76,320.00 valuation. Moreover, Petitioner declared the vehicle's FOB value at US54,460.00 in importing his vehicle based on its purchase price of 200,000 Dirhams. Therefore, such valuation must prevail unless the shipment's proper value cannot be determined in accordance with Section 701 of the CMTA (Transaction Value System).

Lastly, Respondent is silent on whether Petitioner caused the irregularity of the invoice. In this case, Respondent did not even allege that the Petitioner caused the execution of the supposedly spurious documents but only the existence of the irregularity.

CTA EN BANC DECISIONS

CIR v. RMJR Grains Center Corporation
CTA EB No. 2113 promulgated on November 23, 2020

Facts:

On November 3, 2013, a shipment containing Thai white rice consigned to Respondent arrived and it paid the duties and taxes due. The shipment was examined by the Petitioner's Manila International Container Port and there was a finding of excess rice not covered by import permits (IP). The excess white rice was seized, forfeited and sold at auction in favor of the government.

Respondent filed a Petition for Review which was granted by the CTA in Division where it ruled that that the excess rice was legally imported as the shipment occurred during the period of July 1, 2012 to July 2014, wherein the special treatment under the World Trade Organization (WTO) Agreement was suspended. Thus, the Petitioner had no authority to require IPs. Petitioner questioned the Division's decision and claimed that it had authority to require the IPs for the importation and even cited RA 8178.

Issue:

Does the Petitioner have authority to require the IPs?

Ruling:

No. The Court ruled that during the interregnum from July 1, 2012 to July 24, 2014, wherein the Waiver Relating to Special Treatment for Rice was issued, Petitioner had no authority to issue and require IPs as provided for under the WTO Agreement. Thus, the shipment of Respondent which falls within the interregnum was legally imported even without the IPs. The proceeds from the forfeited imported rice, or the value thereof, should be returned to Respondent.

Hotel Specialist, Inc. v. CIR
CTA EB No. 2084 promulgated on November 25, 2020

Facts:

Petitioner was assessed for deficiency IT, VAT, and WT with the corresponding 25% surcharge and 20% delinquency interest pursuant to Section 248 and Section 249 of the Tax Code. Petitioner is of the position that it paid the deficiency taxes in due time, hence, the imposition of the surcharge and interest is unfounded. In addition, Petitioner argues that since it paid the Withholding taxes after issuance of the FDDA, the disallowed expenses due to non-withholding should be deleted. Furthermore, the Petitioner argues that 100% of the Service Charge it collected and distributed to employees should not be subject to VAT. Lastly, Petitioner argues that the compromise penalty should be deleted for having been imposed without the consent from the part of Petitioner.

Issue:

Was the assessment against the Petitioner correct?

Ruling:

Yes. The Court held that the surcharge and delinquency interest was correctly imposed in this case since the Petitioner failed to pay the deficiency taxes in due time. It was further held that the deduction due to non-withholding should not be allowed since Petitioner only paid the deficiency withholding tax after the issuance of the FDDA and not at the time of the audit investigation or reinvestigation/reconsideration pursuant to RR 2-98 as amended.

Lastly, Petitioner failed to substantiate its claims that the service charges should not be subject to VAT. Petitioner merely presented proof that a portion of the service charge was distributed to its employees, the Court could not conclude if such amount was not indeed subjected to VAT. In the absence of evidence on how such receipt was substantiated and recorded by Petitioner, the subject assessment must necessarily be upheld.

The Court however agrees with Petitioner's contention that the compromise penalty should be deleted for having been imposed without the consent of Petitioner.

Mandaluyong City Gov't v. Republic of the Philippines
CTA EB No. 2078 promulgated on December 04, 2020

Facts:

Respondent, through the Department of Transportation, entered into a Build, Lease and Transfer Agreement of a Light Rail System with Company M. Upon completion of the EDSA MRT III, the rights of Company M were transferred to Respondent. In 2001 and 2003, Petitioner demanded payment of real property tax (RPT) from Respondent for taxable years 2000 until 2003.

Thereafter, Petitioner issued a Notice of Delinquency against Respondent for assessed deficiency RPT. The EDSA MRT III property was eventually subjected to public auction and was forfeited in favor of Petitioner. Respondent was prompted to file a complaint against Petitioner with the RTC praying for the issuances of temporary restraining order, preliminary writ of injunction and permanent injunction against any action on the EDSA MRT III property which was denied.

Initially, Respondent filed a Petitioner for Certiorari against Petition with the Court of Appeals (CA). Ten years later, it filed a Petition for Certiorari with the CTA. The CTA in Division ruled in favor of Respondent. Petitioner filed a Petition for Review and claims that the CTA has no jurisdiction because the Petition for Certiorari with the CTA was filed ten years late and the RTC did not act with grave abuse of discretion. In addition, Petitioner claims that there was no abuse of discretion in the RTC's order of denial to injunctive relief filed by Respondent.

Issue:

1. Was the Petition for Certiorari timely filed?
2. Did the RTC committed grave abuse of discretion when it denied Respondent's application for injunctive relief?

Ruling:

1. Yes. Under Section 4, Rule 65 of the Rules of Court, a petition for certiorari must be filed not later than 60 days from notice of judgment, order or resolution complained of. However, the foregoing rule admits exceptions. Among the exceptional circumstances for the relaxation of the 60-day period is when there are peculiar legal and equitable circumstances or special or compelling circumstances that will cause injustice should the rules of procedure be strictly applied.

   In this case, the Petition for Certiorari was indeed filed out of time. However, the circumstances warrant the application of the exception because it was only in 2014 when the case of City of Manila v. Grecia-Cuerdo (Grecia case) was promulgated which provided that the certiorari powers of the CTA. The Grecia case was promulgated almost seven years after Respondent filed its Petition with the CA. Prior to the Grecia case, the CTA has been dismissing petitions for certiorari filed before it for lack of jurisdiction.

   It is clear that the lack of clear pronouncement as to the jurisdiction of the CTA over petitions for certiorari under Rule 65 during the filing of Respondent of its Petition with the CA is a peculiar legal and equitable circumstance warranting the relaxation of the 60-day period.

2. Yes. Grave abuse of discretion has been defined as capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law.

   In this case, the denial of the RTC to Respondent's prayer for injunctive relief constitutes grave abuse of discretion. Respondent was able to prove that the property is intended for public use and considered as a property of public dominion under Article 420 of the Civil Code. Further, under Section 133(o) and 234(a) of the Local Government Code (LGC), real property owned by the Republic of the Philippines is exempted from the payment of RPT.

   As applied in this case, the Respondent was able to prove the property should not be subject to RPT. It should have been protected from being taxed and from being sold in a public auction. The RTC should have granted the injunctive reliefs prayed for by Respondent. Thus, the RTC's denial is considered as grave abuse of discretion.

People of the Philippines v. Cross Country Oil and Petroleum Corp.
CTA EB Crim No. 071 promulgated on December 04, 2020

Facts:

An Information was filed in the RTC against the Respondent Corporation for violating Section 255 in relation to Sections 253(d) and 256 of the Tax Code. A Demurrer to Evidence was later on filed and granted by the RTC on the ground that there was no valid Letter of Authority (LOA) issued, resulting to the acquittal of the Respondent Corporation.

A Petition for Review is filed after the denial of the MR. Petitioner mainly argued that the civil aspect of the criminal case can still be collected. On the other hand, Respondent contends that the acquittal in the RTC also extinguishes their civil liability *ex delicto*.

Issue:

Did the acquittal of the Respondent in the RTC result in the extinguishment of its civil liability?

Ruling:

Yes. The court declared that the acquittal in the RTC in this case extinguishes the corresponding civil liability attached thereto. The RTC acquitted the Respondent Corporation on the ground that the LOA was served beyond the mandated 30-day period under RAMO No. 1-00.

As a rule, the acquittal of the accused in a criminal case does not always translate to the extinguishment of his civil liability ex delicto. It is only deemed extinguished when there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise does not exist. The acquittal in this case is based on the findings that the Respondent did not commit the crime charged, resulting in the exoneration of civil liability attached to the crime.

Further, it was held that Petitioner failed to prove that Respondent Corporation was required to pay the assessed deficiency taxes on the ground that the assessments issued were null and void for want of a valid LOA.

SUPREME COURT DECISIONS

City of Davao v. AP Holdings, Inc.
G.R. No. 245887 promulgated on January 22, 2020

Facts:

Petitioner sought for the reversal of the decision of the CTA which granted the refund of erroneously paid local business tax (LBT) on the dividends earned by Respondent from its preferred shares in Corporation S and interest from money market placements.

Petitioner claims that Respondent is not entitled to a refund as it is a non-bank financial intermediary or an investment company for it owned a substantial number of shares and received millions of peso dividends from its investments. Petitioner maintains that its earnings should be subject to LBT.

On the other hand, Respondent contends that it is not a bank or non-bank financial intermediary because it is not engaged in lending money, investing, reinvesting or trading securities on a regular and recurring basis. Further, it is a holding company and is expressly prohibited to act as a financial intermediary under it Articles of Incorporation (AOI).

Issue:

Is Respondent entitled to refund for erroneously paid LBT?

Ruling:

Yes. Respondent is not considered as a non-bank financial intermediary since its investment and placement of funds are not done in a regular or recurring manner for the purpose of earning profit. The management of dividends in Corporation S by Respondent is only in furtherance of its purpose as a CIIF holding company for the benefit of the Republic.

Under Section 133(o) of the LGC, LGUs cannot tax the National Government. The entire CIIF block in Corporation S that Respondent is holding are public assets owned by the Republic of the Philippines. The assets are considered as government assets and cannot be

subject to LBT. Thus, the dividends and any income from these shares are exempt from LBT.

Municipality of Cainta Rizal v. Sps. Braña and City of Pasig
G.R. No. 199290 promulgated on February 3, 2020

Facts:

Petitioner assailed the decision of the RTC ordering the Respondent Spouses to pay RPT to the Respondent City over their properties which are part of the territories disputed in a civil case. The decision of the RTC was based on the locational entries appearing on the Transfer Certificate of Title (TCT) of the Respondent Spouses' property which indicates that the property is located in the Respondent City.

Issue:

Is the location indicated in the TCT the basis for the imposition of RPT?

Ruling:

No. The Real Property Tax Code and the LGC provides that it is the LGU where the property is situated which has the right to collect taxes. However, in this case, the property of Respondent Spouses is the subject of a pending boundary dispute case between the Respondent City and Petitioner. The location indicated in the TCT cannot be relied for the determination of the location as it is in dispute.

The City of Makati v. The Municipality of Bakun and Luzon Hydro Corporation
G.R. No. 225226 promulgated on July 7, 2020

Facts:

A special civil action for Interpleader was filed by Corporation L with the RTC which sought for Petitioner City, Respondent Municipality and Municipality A to litigate among themselves the conflicting claims for its liability for LBT under the LGC. Corporation L is operating a hydroelectric power plant which is situated through the provinces of Ilocos Sur and Benguet but maintained an office in Petitioner City. In 2004, after the expiration of its tax holiday, Corporation L started paying LBT to Petitioner City, Respondent Municipality and Municipality A in a sharing scheme where the 70% of the LBT was equally apportioned.

The sharing scheme was questioned by Respondent Municipality and the Bureau of Local Government and Finance (BLGF) opined that it is only Respondent Municipality and Municipality A which should share in the 70% LBT because Petitioner City is a mere "administrative office". According to the BLGF opinion, Petitioner may only collect mayor's permit fee and other regulatory fees under its existing local tax ordinance. The RTC ruled that Petitioner City is a "project office" and is entitled to a share in the LBT.

Respondent Municipality appealed the RTC's decision and the appeal was granted by the CTA and affirmed by the CTA En Banc. The decision was based on where the sales, transactions, and operations were undertaken, which in this case was not in Petitioner City. Corporation L's Makati office was considered as a mere administrative office and Petitioner City is not entitled to the portion of the LBT.

Petitioner City questioned the CTA En Banc's decision and claimed that Municipality A did not appeal the decision of the RTC and such has become final and executory against it.

Issue:

1. Is Petitioner City entitled to the portion of the LBT?
2. Is Municipality A entitled to the ruling in the appeal filed by Respondent Municipality?

Ruling:

1. No. Based on the Corporation L's sales, transactions and operations, the records show that none of it occurred in the Makati office and it is considered as a mere administrative office. Further, under Section 5(a)(3) of Department of Finance-Local Finance Circular No. 3-95, a "project office" as equivalent to the factory of a manufacturer.

   Under the rule on tax allocation in relation to tax situs under Section 150 of the LGC, when a business does not operate a branch or sales office outside of its principal office where all sales are recorded, but has a factory, project office, plant, or plantation situation in different localities, whether or not sales are made in these localities. Thus, even if there were no sales recorded in Corporation L's Makati office Petitioner City would have been entitled to LBT. However, Petitioner City failed to show that the Makati office was a project office akin to a factory. Hence, Section 150 is inapplicable in this case and Petitioner City is not entitled to LBT.

2. Yes. There is commonality of interest between Respondent Municipality and Municipality A. The fact that only Respondent Municipality who appealed from the RTC's decision does not preclude Municipality A from benefiting in a judgment favoring Respondent Municipality.

Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. CIR
G.R. No. 244154 promulgated on July 15, 2020

Facts:

On February 7, 2011, Company Z filed an administrative claim of refund with attached Application for Tax Credits/Refunds of its excess and unutilized input VAT for Calendar Year 2010. In a letter dated June 29, 2011, the BIR requested Company Z to present its records and submit supporting documents in relation to its administrative claim for refund. In response thereto, Company Z submitted the requested documents to the BIR on July 5, 2011.

According to Company Z, the BIR made further verbal requests for submission of documents from 2012 to 2014, to which Company Z acceded and consequently, made submissions on May 8, 2012, July 25, 2012, December 6, 2012, and September 11, 2013.

Due to the delay in processing the refund claim, Company Z sent a letter on March 5, 2014 to then Commissioner Kim Jacinto-Henares requesting that its application be resolved at the soonest possible time. Thereafter RO Manzanares requested Company Z to resubmit certain documents to which the latter complied as evidenced by a letter dated April 29, 2014, which was also stamped received on the same day. Furthermore, in the same letter, Company Z manifested that it had already submitted the complete documents in support of its application for refund. For failure of the BIR to act on the claim for refund, Company Z filed a petition for review before the CTA on September 25, 2014.

The CTA ruled that Company Z's petition for review is filed out of time. The 120-day period within which the BIR should act on the administrative claim for refund must be reckoned from the date Company Z submitted the requested documents on July 5, 2011, which was in response to the BIR's written request dated June 29, 2011. Furthermore, the CTA disregarded the subsequent verbal requests for written documents since the notice for additional documents should be in writing.

Issue:

Is the petition for review filed out of time?

Ruling:

No. Under Section 112 of the Tax Code, the CIR has a period of 120 days from the date of submission of complete documents within which to evaluate an administrative claim for tax credit or refund of creditable input taxes. If the CIR denies the claim or remains unacted upon the expiration of the 120-day period, the taxpayer may within 30 days from the denial or expiration of the 120-day period, file a judicial claim for refund. There is no requirement under the Tax Code or under RMC No. 49-2003, which provides for the procedure in instances where there are pending administrative claims for refund but with incomplete documents, that the taxing authority's request for additional documents should be made in a specific form. In other words, nowhere in the law does it require that the request for additional documents must always and absolutely be made in written form.

In this case, records show that Company Z complied with the BIR officials' written and verbal requests for additional documents. Thus, the 120-day period should be reckoned from the April 29, 2014 letter of Company Z wherein it stated that it already submitted the complete documents. In turn, the BIR had 120 days or until August 27, 2014 to act on the claim for refund. For failure of the BIR to act on the claim for refund within the said period, Company Z had 30 days or until September 26, 2014 to file its judicial claim. Thus, the Petition for Review was timely filed on September 25, 2014.

CIR v. Bank of the Philippine Islands
G.R. No. 227049 promulgated on September 15, 2020

Facts:

On May 6, 1991, the CIR issued Assessment Notices to Corporation A in connection with its alleged deficiency internal revenue taxes for year 1986. The said assessments came after Corporation A's execution of three waivers dated August 11, 1989, July 12, 1990, and November 8, 1990 allegedly extending the prescriptive period of the assessment. Corporation A protested the assessments on May 30, 1991 and again on February 17, 1992. On October 4, 1996, Corporation A and Corporation B entered into a merger, with Corporation B as the surviving corporation.

On November 4, 2011, Corporation B received a Warrant of Distraint and Levy (WDL) in relation to the Corporation A's deficiency expanded withholding tax, withholding tax on deposit substitutes, real estate dealer's fixed tax, and withholding tax on compensation. Corporation B assailed the said WDL alleging that the assessments have already prescribed.

Both the CTA in Division and En Banc found that the CIR's issuance of the assessment notices on May 6, 1991 was already beyond the three-year period. Moreover, out of the three waivers previously executed by Corporation A, only the August 11, 1989 waiver was valid and extended the period for assessment to August 31, 1990. The other waivers did not conform with the RMO No. 20-90 as the said waivers did not contain the signature of the CIR. Further, the period to collect has already lapsed considering that the WDL was only issued in November 2011.

Issue:

Are the periods for assessment and collection already prescribed?

Ruling:

Yes. First, the waivers are invalid since they did not conform with the formal requirements under RMO 20-90. Second, the CIR may no longer collect the alleged deficiency taxes citing the 1977 Tax Code prescribing for a three-year period to collect following the assessment of the tax sought to be collected. The latest possible time the CIR could have released the assessment was the same day Corporation A protested the same or on May 30, 1991. From

this time, the CIR had three years to collect the alleged deficiency taxes, or until May 30, 1994. No matter how the CIR frames the arguments, it is glaring from the 20-year gap between the issuance of the assessment and enforcement of collection that prescription had already set in.

MATA-PEREZ TAMAYO & FRANCISCO (MTF)
Attorneys-at-Law

MTF Counsel is a full-service law firm comprised of experienced, multi-disciplined and innovative tax, customs and international trade, corporate, and litigation attorneys.