MT&F

MATA-PEREZ · TAMAYO · FRANCISCO

ATTORNEYS AT LAW

# TAX JOURNAL

**NOVEMBER 2020**

## *Highlights*

### BIR ISSUANCES

Revenue Regulations (RR)

- RR 30-2020 prescribes the rules and regulations to implement Section 11(f) and (g) of RA No. 11494 (Bayanihan 2) on the taxes derived from gaming and non-gaming operations as other sources of funding to address the COVID-19 pandemic (Page 3)

Revenue Memorandum Circular (RMC)

- RMC No. 120-2020 further clarifies the retirement benefits exempt from Income Tax pursuant to Bayanihan 2 as implemented under RR No. 29-2020 (Page 3)

### COURT DECISIONS

CTA Division

- First Gen Hydro Power Corporation v. Commissioner of Internal Revenue (CIR) (Page 4)
- San Carlos Biopower, Inc. v. CIR (Page 4)
- National Transmission Corporation v. City of Digos (Page 5)
- Progressive Grains Milling Corp. v. Commissioner of Customs (Page 5)

CTA EN BANC

- University of the Philippines System Admin v. CIR (Page 6)
- CIR v. Max's Sta Mesa, Inc. (Page 6)
- UPS-DELBROS Transport, Inc. v. CIR (Page 7)

Supreme Court Decisions

- CIR v. Bases Conversion and Development Authority (Page 8)
- CIR of Internal Revenue v. Lucio L. Co, et al. (Page 9)
- Qatar Airways Company with Limited Liability v. CIR (Page 10)
- CIR v. Deutsche Knowledge Services Pte. Ltd. (Page 10)
- Kepco Philippines v. CIR (Page 11)
- CIR v. T Shuttle Services, Inc. (Page 11)

### SUPREME COURT ISSUANCE

- Administrative Order No. 251-2020 provides guidelines on the implementation in the Philippines of the Hague Service Convention on the service abroad of judicial documents in civil and commercial matters (Page 12)

### SEC ISSUANCES

- MC No. 28 s. 2020 provides the requirement for corporations, partnerships, associations, and individuals to create and/or designate e-mail account address and cellphone number for transaction with the Commission (Page 13)
- MC No. 30 s. 2020 provides for the revision of the general information sheet (GIS) of foreign corporations to include Beneficial Ownership Information (Page 13)

- MC No. 31, s. of 2020 prescribes the non-imposition of fines and other monetary penalties for non-filing, late filing and failure to comply with compulsory notification and other reportorial requirements (Page 14)
- Opinion No. 20-02 Re: Corporate Term under the Corporation Code (Page 14)
- MC No. 32 s.2020 provides the basis of preparation of audited financial statements for BSP Supervised Financial Institutions (BSFIs) (Page 14)

## DOLE ISSUANCE

- Labor Advisory No. 31-20 provides for the payment of deferred holiday pay during national emergency arising from the COVID-19 situation (Page 14)

## MALACAÑAN ISSUANCE

- Memorandum Order No. 50 provides for the approved 2020 Investment Priorities Plan (Page 15)

# BIR ISSUANCES

## REVENUE REGULATIONS (RR)

**RR No. 30-2020 issued on October 30, 2020**

- This RR prescribes the rules and regulations to implement Section 11(f) and (g) of Bayanihan 2, providing various sources of funding to address the COVID-19 Pandemic.
- In this RR, the sources of funding for the subsidy, stimulus measures, and other measures to address the COVID-19 pandemic are:

  (a) Franchise Tax at the rate of 5% imposed on the gross bets or turnovers, or the agreed predetermined minimum monthly revenues from gaming operations, whichever is higher, earned by offshore gaming licensees, including gaming operators, gaming agent, service providers, and gaming support providers; and
  (b) Income tax, VAT, and other applicable taxes imposed on income from non-gaming operations earned by offshore gaming licensees, including gaming operators, gaming agents, service providers, and gaming support providers.
- These taxes shall be computed on the peso equivalent of the foreign currency used and based on the prevailing official exchange rate at the time of payment.
- Non-payment, underpayment, or payment of taxes computed in accordance with the prevailing official exchange rate at the time of payment shall be considered as fraudulent acts.
- These fraudulent acts are subject to penalties under the National Internal Revenue Code, amended (Tax Code).
- Furthermore, The BIR shall implement closure orders those who fail to pay the taxes due or committed any of the fraudulent acts and such erring entities shall cease to operate.
- This RR shall take effect immediately after publication in the Official Gazette or a newspaper of general circulation, whichever comes first.

## REVENUE MEMORANDUM CIRCULARS (RMC)

**RMC No. 120-2020 issued on October 30, 2020**

- This RMC further clarifies the exemption from income tax of the retirement benefits received by employees of private firms pursuant to Bayanihan 2 as implemented under RR No. 29-2020.
- Covered Period: Retirements where the date of retirement and receipt of retirement benefits fall within the period of June 5, 2020 to December 31, 2020.
- A duly registered retirement plan contemplated is one which has been issued a Certificate of Qualification as a Reasonable Employees' Retirement Benefit Plan.
- The exemption applies to all retirement benefit plans registered with the BIR, even if the employee did not meet the conditions, such as length of service.
- The exemption from income tax will still apply even if the employee is re-employed, provided the re-employment is beyond the 12-month period, reckoned from the date of retirement.
- The amount covered by the exemption is the amount provided in the registered retirement plan. Any amount in excess will be subject to income tax.
- Lastly, aside from the requirement of inclusion of the employees in the list of recipients of income payments exempt from income tax under RR No. 29-2020, they shall still be included in the Annual Alphabetic List of Employees required to be submitted on or before January 31 of each year, indicating the income received inclusive of the retirement benefits and other income payments.

# COURT DECISIONS

## CTA DIVISION DECISIONS

**First Gen Hydro Power Corporation v. CIR**
CTA Case No. 9889 promulgated on October 29, 2020

*Facts:*

The Petitioner filed an application for tax credits/refund for its alleged unutilized input value-added tax (VAT), from its domestic sales of goods and services, importations and non-capital goods, and services rendered by non-residents, for the fourth quarter of the calendar year 2016. Petitioner was classified as a renewable energy (RE) developer and argued that the sales of power generated through its hydropower plants are subject to zero percent VAT under Section 108 of the Tax Code. Petitioner presented its Certificate of Compliance (COC) from the Energy Commissioner (ERC) as required under Section 6 of RA No. 9136. Respondent denied the administrative claim.

*Issue:*

Is Petitioner entitled to tax credit or refund?

*Ruling:*

No. Under Section 108(B)(7) of the Tax Code, the sale of power generated through renewable sources of energy is one of the transactions subject to zero percent VAT. However, a generation company must comply with RA No. 9136.

In this case, Petitioner was only about to secure its COC from ERC on March 1, 2016 and only the zero-rated sales from that period shall be considered because the COC is a mandatory requirement to avail of the tax benefit. With only the zero-rated sales after it secured its COC being counted, Petitioner no longer has any excess input VAT available for tax credit or refund.

**San Carlos Biopower, Inc. v. CIR**
CTA Case No. 9919 promulgated on November 4, 2020

*Facts:*

The Petitioner prayed for a refund of the alleged erroneously paid documentary stamp tax (DST) in relation to the Loan Agreement executed between the former and the International Finance Corporation (IFC). Petitioner mainly argued that the Loan Agreement entered into with IFC is exempt from the imposition of DST in view of the immunities and privileges the IFC is entitled to under the IFC Articles of Agreement.

*Issue:*

Is the Petitioner entitled to a claim for refund or issuance of tax credit certificate for its alleged erroneously paid DST?

*Ruling:*

No. Under Section 173 of the Tax Code, when one of the parties to the taxable transaction is exempt from the DST, the other party who is not exempt shall be the one directly liable therefor.

In this case, based on the IFC Articles of Agreement, it is clear that the IFC itself, and its transactions are exempt from all taxation including payment of DST. Further, Petitioner did not present any evidence to prove that the loan agreement was authorized by the IFC Articles of Agreement. Immunity from taxes is personal only to IFC and does not extend to Petitioner. Hence, the Petitioner cannot invoke such exemption and is liable for the payment of DST.

**National Transmission Corporation v. City of Digos**
CTA AC No. 220 promulgated on November 4, 2020

*Facts:*

Petitioner was assessed by the Respondent City for alleged franchise tax liabilities. The contested transaction which was being assessed by the Respondent City was the supply of energy by Petitioner in bulk to Corporation A, while Corporation A, in turn, delivers the same to end-users.

Petitioner claims that there is an improper situs of taxation in the assessment made by Respondent City. Petitioner maintains it cannot be subject to the Franchise Tax being imposed by Respondent City due to the fact that the Petitioner holds no facility within Respondent City.

*Issue:*

Is the Petitioner liable for local franchise taxes?

*Ruling:*

No. Under Section 137 of the Local Government Code (LGC), the proper tax situs of local franchise tax is the taxpayer's principal place of business. In this case, Petitioner cannot be held liable for local franchise taxes even if it caters its services within the Respondent City's territory, as its principal place of business is not within the city.

**Progressive Grains Milling Corp. v. Commissioner of Customs**
CTA Case No. 9847 promulgated on November 18, 2020

*Facts:*

Petitioner was granted a Certificate of Eligibility (COE) to import 9,250 MT of Thai white rice and an Import Permit (IP) by the National Food Authority (NFA) which covered the importation of 7,200 MT of white rice. Upon the arrival of the shipment, the release of the white rice was stopped because of an excess of 603.15 MT not covered by an IP. The excess was seized and forfeited in favor of the government due to the absence of an IP from the NFA.

Petitioner argues that the importation of white rice was no longer regulated due to the expiration of the special treatment granted by the World Trade Organization (WTO). Respondent contends that the IP from NFA is necessary and the excess was deemed illegally imported.

*Issue:*

Is the Petitioner entitled to the release of the subject white rice?

*Ruling:*

Yes. It was established during the proceedings that at the time of the importation, the NFA still had the authority to issue IPs based on RA 8178. However, the delay in the issuance of the IP until after the expiration of the special treatment is not the fault of the petitioner.

When the assailed decision was rendered, the Philippines' special treatment had already expired making the issuance of QRs (such as an IP) prohibited under the WTO Agreement or at the very least, unnecessary. In addition, the fact that the petitioner paid in advance and prior to the importation of all the taxes and duties clearly suggests the absence of any fraud on the Petitioner's part. Thus, the Respondent was ordered to pay the assessed customs duties covering the excess and release the subject 603.15 MT of white rice to Petitioner.

## CTA EN BANC DECISIONS

**University of the Philippines System Admin v. CIR**
CTA EB No. 1946 promulgated on November 18, 2020

*Facts:*

The Petitioner was assessed for deficiency VAT and expanded withholding tax (EWT) for the taxable year 2006. The Respondent assessed deficiency taxes on the Petitioner due to its receipt of rental income from the International Rice Research Institute (IRRI) and the Petitioner's income payments from Constituent Universities under the UP System. The Petitioner primarily argues that they are granted tax-exempt status under Act No. 1870, as modified by RA 9500.

*Issue:*

Is the Petitioner exempt from paying deficiency VAT and EWT?

*Ruling:*

No. It was declared by the Court that RA 9500 is not applicable in this case since such law was passed only in April 2008, meanwhile, the subject assessment was for the taxable year 2006. The exemption granted under RA 9500 cannot be applied in this case as the law was not yet in existence at the time of the assessment. It is a basic tenet that laws are to be applied prospectively unless the retroactive application was provided for.

**CIR v. Max's Sta Mesa, Inc**
CTA EB No. 2036 promulgated on November 18, 2020

*Facts:*

The BIR issued a Preliminary Assessment Notice (PAN) dated January 8, 2013 to Respondent for deficiency taxes for the year ending December 31, 2009. The Respondent filed its protest dated January 16, 2013 to the PAN, which was received by the BIR on January 21, 2013. Later, the Respondent also received a Formal Letter of Demand (FLD), together with Assessment Notice (AN) on the same day. On February 20, 2013, Respondent filed its protest to the FLD but nevertheless, the BIR issued the Final Decision on Disputed Assessment (FDDA).

The CTA Division ruled in favor of the Respondent and cancelled and withdrew the deficiency assessment. Petitioner alleged that the CTA Division had no jurisdiction over the case since the assessment had become final, executory, and demandable for the failure of the Respondent to submit supporting documents within 60 days from the filing of its protest to the FLD, which was a request for reinvestigation quoting that the Respondent's company books and returns, which were available for verification to disprove the deficiency taxes.

*Issue:*

1. Is the protest filed by Respondent to the PAN a request for reconsideration or a request for reinvestigation?
2. Is the FLD issued by the BIR valid?

*Ruling:*

1. It is a request for reconsideration. Under RR No. 18- 2013, amending RR 12-99, it states that: A **request for reconsideration** refers to a plea for a re-evaluation of an assessment on the basis of existing records without the need of additional evidence, while a **request for reinvestigation** refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation.

   In this case, the Respondent's protest did not clearly state whether it is a request for reconsideration or a request for reinvestigation. While it is correct that indeed Respondent stated that its records were available for verification, the Petitioner conveniently omitted the succeeding sentences showing that the Respondent did not intend to submit additional documents and instead pointed out previous submissions it made when it filed its protest to the PAN. Thus, the failure of the respondent to submit additional evidence within 60 days from the protest did not make the assessment final since the protest was a request for reconsideration and not a request for reinvestigation.

2. No, the FLD is not valid for the failure of the BIR to accord due process to the Respondent. Furthermore, since the last day to file a protest to the PAN is on January 19, 2013 which fell on a Saturday, the Respondent had until the next working day or January 21, 2013 to file its reply to the PAN. Thus, the FLD was void as it was issued before the expiration of the period within which the respondent could submit its protest to the PAN. In not awaiting the 15-day period (to reply to the PAN) to fully expire, Petitioner did not accord Respondent due process as the FLD was issued on the very same day when the protest to the PAN was submitted to the BIR.

**UPS-DELBROS Transport, Inc. v. CIR**
CTA EB No.2031 and 2031 promulgated on November 19, 2020

*Facts:*

This is a consolidated Petitioner for Review wherein Petitioner questioned the validity of the three waivers it executed on the ground that the waiver did not comply with Revenue Memorandum Order (RMO) No. 20-90 and had fatal defects. The alleged fatal defects of the waivers are the wrong citation of the provisions of the Tax Code and failure to state the kind of tax covered by the waiver and the amount due.

Further, Petitioner claims that the assessment of deficiency expanded withholding tax (EWT) is not valid for being a mere conjecture and speculative. Petitioner claims that Respondent merely used Petitioner's Accounts Payable (A/P) register. Petitioner presented its Annual Information Return (BIR Form No. 1604-E) to prove that it properly withheld its taxes. Lastly, it claims that the simultaneous imposition of the deficiency interest and the delinquency interest did not comply with RMC No. 46-99, and it is clearly excessive and unconscionable.

On the other hand, Respondent CIR contends that there was an under declaration of Petitioner's income which the amount constitutes the return as a false return, warranting the application of the 10-year prescriptive period.

*Issue:*

1. Are the waivers executed by Petitioner valid?
2. Is the assessment on the deficiency EWT liability valid?
3. Is the simultaneous imposition of deficiency interest and delinquency interest valid?

*Ruling:*

1. Yes. Under RMO No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01, the requisites of a valid waiver does not include that the waiver must state the kind of tax and the amount due covered by the waiver.

   In this case, the defects on the waiver are not fatal defects which will cause the nullification of the waivers.

2. Yes. Under the Best Evidence Obtainable Rule, assessments based on estimates or approximates are valid, wherein when a tax report required by law for the purpose of the assessment is not available or when the tax report is incomplete or fraudulent. Further, there is a presumption of regularity in the tax assessments by tax examiners. The burden of proving the illegality of an assessment lies upon the taxpayer.

   In this case, the use of Petitioner's A/P register by Respondent to compute the deficiency EWT was valid under the best evidence obtainable rule. The presentation of BIR From No. 1604-E by Petitioner was not sufficient to refute the EWT assessment. The Court notes that Petitioner could have easily presented a breakdown of its income payments showing that the same were properly subject to withholding taxes in relation to the month it was paid.

3. No. Section 249 of the Tax Code, prior to the TRAIN law amendment, allows the simultaneous imposition of the deficiency interest and delinquency interest. The Court notes that a deficiency interest is imposed for the shortage of taxes paid, while delinquency interest is imposed for the delay in payment of taxes. The two interests are different in nature and cannot be considered as double imposition of interest.

   In this case, the simultaneous imposition of interest for the interest due for the period up to December 31, 2017 was upheld as valid and the 12% interest rate, as provided under the TRAIN law, shall be applied for the period starting January 01, 2018 until full settlement by Petitioner.

## SUPREME COURT DECISIONS

**CIR v. Bases Conversion and Development Authority (BCDA)**
G.R. No. 217898 promulgated on January 15, 2020

*Facts:*

BCDA is the owner of four real properties in Bonifacio Global City, Taguig City known as the "Expanded Big Delta Lots". It entered into a contract to sell with the Net Group, an unincorporated joint venture composed of four corporations. BCDA and the Net Group executed a Deed of Absolute Sale. For failure of BCDA to present a certification of tax exemption, the Net Group deducted the corresponding Creditable Tax Withheld at source (CWT) and remitted the amount to the BIR. BCDA claimed for a tax refund of the amount before the BIR stating it was exempt from taxes and fees arising from the sale pursuant to Section 8 its charter, RA No. 7227, as amended by RA No. 7917, otherwise known as the Bases Conversion and Development Act of 1992. The BIR, on the other hand, asserts that BCDA is liable for tax under Section 27 of the Tax Code.

*Issue:*

Is BCDA entitled to the refund of the CWT on the sale of its Global City properties?

*Ruling:*

Yes. Section 8 of RA No. 7227, as amended by RA No. 7917, expressly enjoins that the proceeds of the sale of certain properties in Fort Bonifacio and Villamor Air Bases shall not

be diminished by any item or circumstance, including all forms of taxes and fees. Further, the sale proceeds are not considered income of BCDA but form part of public funds subject to the distribution scheme and purposes provided by the law itself.

Moreover, the Tax Code is a general law imposing tax on all corporations, agencies, or instrumentalities owned and controlled by the Government (GOCCs), and directs GOCCs to pay such a rate of tax upon their taxable income as are imposed in the Tax Code. On the other hand, RA No. 7227, as amended by RA No. 7917, is a special law that provides tax exemption from the sale proceeds from any kind of fees and taxes on the disposition of property by BCDA. Thus, BCDA is entitled to the refund of the CWT.

**CIR v. Lucio L. Co., et al.**
G.R. No. 241424 promulgated on February 26, 2020

*Facts:*

The Respondents were majority shareholders of two corporations, corporation A and B. Respondents entered into a deed of exchange with another party where they agreed that they will transfer their shares in corporation A in exchange for shares in corporation B. As a result of the exchange corporation B acquired majority ownership of corporation A. In addition, the stockholdings of Respondents in corporation B increased from 66% to 75%. Respondents collectively paid capital gains tax (CGT) including interest and/or compromise penalty on the transfer.

Thereafter, Respondents claimed that their payment of the CGT was erroneous since under Section 40(C)(2) of the Tax Code, the transfer should be a tax-exempt transaction and they sought for a refund. Petitioner contended that there are certain conditions for the transaction to be tax-exempt as provided in RR No. 18-2001 which requires prior application for a BIR certification or ruling to be secured. Thus, Petitioner denied Respondent's claim for refund

*Issue:*

1. Is the transfer of shares a tax-exempt transaction under Section 40(C)(2)?
2. Is prior application for BIR certification or ruling necessary for tax-exemption?

*Ruling:*

1. Yes. Under Section 40(C)(2) of the Tax Code, no gain or loss shall be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such corporation of which as a result of such exchange said person, alone or together with others, not exceeding four persons, gains control of said corporation,

   In this case, the share swap is a tax-free exchange as contemplated in Section 40(C)(2) since the Respondents collectively increased their control in corporation B. Thus, Respondents cannot be held liable for income taxes on the supposed gain which may have resulted in the transfer.

2. No. Section 40(C)(2) of the Tax Code does not require that a taxpayer must first secure a prior confirmatory ruling before the transaction may be considered as a tax-free exchange. Petitioner should not impose additional requirements not provided by law, which would negate the availment of tax exemption.

   Further, the Court notes that in practice, a taxpayer often secures a BIR ruling, prior to entering into a transaction to prepare for any tax liability. However, in case a taxpayer already paid the tax, believing to be liable therefor, and later on files a claim for refund on

the basis of an exemption provided under the law, a prior BIR ruling as a condition for the approval of the refund is illogical.

**Qatar Airways Company with Limited Liability v. CIR**
G.R. No. 238914 promulgated on June 8, 2020

*Facts:*

Petitioner filed its 2nd Quarter income tax return (ITR) for the fiscal year ending March 31, 2012 through electronic filing and payment system (eFPS) and paid the corresponding tax due. The filing was one day late from the deadline and Petitioner claims that this was due to the unavailability of the eFPS. Further, Petitioner claims that it had difficulty in interpreting the correct Gross Philippine Billings Computation for income tax under the then newly issued RR No. 11-2011. Respondent charged Petitioner with a 25% surcharge, interest for late payment, and a compromise penalty. Petitioner paid the interest and compromise penalty but sought for the abatement of the surcharge claiming that such was unjust and excessive.

*Issue:*

Is the surcharge unjust and excessive and should be abated?

*Ruling:*

No. Under Section 204 of the Tax Code, the CIR has the authority to abate or cancel a tax liability. The guidelines on the implementation of the said authority is provided under RR No. 13-2001, which provides that one of the grounds for abatement of penalties and or interest is when it is unjust or excessive.

However, as applied in this case, the imposition of the 25% surcharge is not considered as unjust or excessive. The imposition has a legal basis due to the late filing of Petitioner. The claim of Petitioner that the late filing was due to the unavailability of the eFPS has no merit. A technical malfunction is not a situation wherein the Petitioner was without recourse. The delay in the filing could have been avoided if it was filed before the deadline. With regard to the difficulty in the computation, the Petitioner could have filed a tentative quarterly ITR before the deadline, which it can modify, change, or amend after to avoid the late filing.

**CIR v. Deutsche Knowledge Services Pte. Ltd.**
G.R. No. 234445 promulgated on July 15, 2020

*Facts:*

Petitioner is a licensed branch to operate as a regional operating headquarter (ROHQ) that provides general administration and planning, sourcing, logistics services, personnel management, and other related services ("qualifying services") to its foreign affiliates/related parties. Petitioner filed an administrative claim for refund of unutilized input VAT for its zero-rated sales to foreign affiliates-clients.

The Petitioner is of the position that its sale of services was subject to zero-rated VAT pursuant to Section 112 of the NIRC. In order to support its claim for zero-rated VAT, Petitioner presented the SEC Certification of Non-registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation in order to establish the Non-resident Foreign Corporation (NRFC) status of some of its clientele.

*Issue:*

Is the Petitioner entitled to a claim for refund or issuance of tax credit certificate for its unutilized input VAT?

*Ruling:*

No. It was declared that Petitioner is not entitled to a tax refund/credit by reason of its failure to prove that all their clients were indeed foreign corporations doing business outside the Philippines pursuant to Section 4.112-1(a) of RR No. 16-05 in relation to Section 112 of the NIRC.

Even though the Petitioner was able to present the SEC Certifications of Non-registration of its clientele, the absence of the Articles of Association/Certificates of Incorporation of some of its clients proving that the affiliate/client is not doing business here in the Philippines was fatal to its claim for credit or refund of excess input VAT attributable to zero-rated sales.

The Petitioner in this case was only able to prove the NRFC status of 11 foreign affiliates/clients out of the initial 34 entities it claimed.

**Kepco Philippines v. CIR**
G.R. No. 225750-51 promulgated on July 28, 2020

*Facts:*

On June 25, 2010, Company K filed a petition for review before the CTA Division wherein its petition was partially granted. Thereafter, Company K elevated the case to the CTA *en banc* which dismissed Company K's petition for being filed out of time and ruled in favor of the BIR. Company K then filed a Petition for Review before the Supreme Court.

During the Petition for Review before the Supreme Court, Company K filed a Manifestation stating that it entered into a compromise agreement with the CIR on its tax assessment for the years 2006, 2007, and 2009, and presented a Certificate of Availment issued by the Respondent on December 11, 2017 certifying that the National Evaluation Board (NEB) approved the Compromise settlement. Thus, since the taxable year 2006 is the subject of the instant petition, Company K moved that the case be closed and terminated. The Office of the Solicitor General (OSG) avers that the compromise agreement is not valid because there is no doubtful validity as a ground for a compromise settlement and Company K did not pay in full the compromise amount upon the filing of the application.

*Issue:*

Should the compromise settlement be upheld?

*Ruling:*

Yes. RR No. 30-2002 enumerates the bases for acceptance of compromise settlement on the ground of doubtful validity wherein Company K's case falls within paragraph (e) in cases where the taxpayer failed to elevate to the CTA an adverse decision of the Commissioner within 30 days from receipt thereof and there is no reason to believe that the assessment is lacking in legal and/or factual basis.

Furthermore, as a rule, the authority of the CIR to compromise is purely discretionary and the courts cannot interfere with his exercise of discretionary functions, absent grave abuse of discretion. Here, no grave abuse exists and Company K complied with all the procedures prescribed under the BIR rules on the application and approval of compromise settlement on the ground of doubtful validity.

**CIR v. T Shuttle Services, Inc.**
G.R. No. 240729 promulgated on August 24, 2020

*Facts:*

The BIR issued the PAN assessing the Company T deficiency taxes calendar year (CY) 2007 and subsequently the FAN was issued. On November 28, 2012, the Revenue District Officer (RDO) issued a preliminary collection letter requesting Company T to pay the assessed tax liability within 10 days from notice. On January 23, 2013, the RDO issued a Final Notice Before Seizure (FNBS) giving Company T the last opportunity to settle its tax liability within 10 days from notice.

The Company T sent a letter to the RDO stating that it was not aware of its pending liability for CY 2007 and that Mr. B., who signed and received the preliminary notices was a disgruntled rank-and-file employee who was not authorized to receive the notices, and that Mr. B. did not forward the notices to them.

The CTA held that Company T was not accorded due process in the issuance of the PAN and the FAN as there was a failure to prove that the notices were properly and duly served upon and received by Company T.

*Issue:*

Is the service of the PAN and FAN to Respondent valid?

*Ruling:*

No. The question on whether the PAN and FAN were properly and duly served is a question of fact, the CTA's findings on questions of fact may only be disturbed if there is gross error or abuse on the part of the CTA, which is absent in this case.

Moreover, Section 228 of the Tax Code requires the assessment to inform the taxpayer in writing of the law and the facts on which the assessment is made. Under Section 3 of RR 12-99, the service of the PAN or FAN may be made by registered mail. There is a disputable presumption that a letter duly directed and mailed was received in the regular course of mail.

In this case, the Company T categorically denied the receipt of the PAN and the FAN, and thus, the burden is shifted to the BIR to prove that the mailed assessments were indeed duly received by the Company T. The BIR's mere presentation of registry receipts was insufficient and that the witnesses for the BIR failed to identify and authenticate the signatures appearing in the registry receipts. Thus, it cannot be ascertained whether the signatures appearing in the documents were those of Company T's authorized representatives.

## SUPREME COURT ISSUANCE

**Administrative Order No. 251-2020 issued on September 11, 2020**

- Pursuant to the 2019 Amendments to the Rules on Civil Procedure, the provisions on extraterritorial service has been amended to include modes of service as provided for in International Conventions to which the Philippines is a party, *i.e.* the Hague Service Convention.
- This issuance shall govern the operation and implementation of the Hague Service Convention in the Philippines, insofar as they concern judicial documents in civil or commercial matters.
- In order for the Hague Service Convention to apply, the following must apply:
  (a) a document must be transmitted from one State Party for service to another State Party;
  (b) the address of the intended recipient in the receiving State is known;
  (c) the document to be served is a judicial document; and
  (d) lastly, the document to be served must be related to a civil or commercial matter.

- This issuance discusses the proper procedure and documentary requirements for Requests for Extraterritorial Service of Judicial Documents from the Philippines to Other State Parties (Outbound Requests for Service) and Requests for Extraterritorial Service of Judicial Documents in the Philippines from Other State Parties (Inbound Requests for Service)

## SECURITIES AND EXCHANGE COMMISSION ISSUANCES

### SEC Memorandum Circular No. 28 s. 2020 issued on November 3, 2020

- This Memorandum Circular (MC) requires every corporation, partnership, association, and individual under the jurisdiction and supervision of the SEC to submit a valid official email address and a valid official cellphone number to the SEC within 60 days from the effectivity of MC No. 28.
- For future applications and those applications which are still pending primary registration with the Company Registration and Monitoring Department (CRMD) of the SEC, the required information should be either indicated during the filling up of the registration forms or submitted within 30 days from the issuance of the certificate of registration, license, or authority. In addition, an alternate email address and alternate cellular phone number shall also be submitted.
- Furthermore, the submission of the email addresses and cellular phone numbers shall be accompanied by a duly signed Authorization or Certification of Authorization allowing the SEC to send notices, letter-replies, orders, decisions, and/or other documents through the email addresses and cellular phone numbers provided, for the purpose of complying with the notice requirement of administrative due process.
- The email address and cellular phone numbers shall be under the control of the corporate secretary, the person charged with the administration and management of the corporation sole, the resident agent of the foreign corporation, the managing partner, the individual, or the duly authorized representative, with proof of the authorized representative's authority.
- This MC shall take effect immediately after its publication in two national newspapers of general circulation and its posting in the SEC website.

### SEC Memorandum Circular No. 30 s. 2020 issued on November 3, 2020

- This Circular provides the revisions of the GIS of foreign corporations to include beneficial ownership information. It applies to both stock and non-stock SEC-registered foreign corporations, both stock and non-stock, required to submit a GIS under the existing laws, rules and regulations.
- All foreign corporations will be required to disclose their beneficial owners in their GIS.
- The resident agent, country or regional, area head of the foreign corporation shall exercise the due diligence required in obtaining, keeping, reporting and updating information on its beneficial ownership.
- The SEC shall be timely apprised of all relevant changes in the submitted beneficial ownership information as they arise. The change shall be indicated in the Notification Update Form and shall be submitted to the SEC within thirty (30) days after such change occurred or became effective.
- The Circular provides penalties for the failure to disclose the beneficial owners of foreign corporations. The resident agents, country or regional head can be held liable for the violations and will be penalized in accordance with Section 11 (ii) of SEC MC No. 15, series of 2019.
- This Circular shall take effect immediately after its publication in two (2) national newspapers of general circulation and its posting in the Commission's website.

**SEC Memorandum Circular No. 31 s. 2020 issued on November 9, 2020**

- This Circular provides the implementation of the SEC of regulatory intervention pursuant to Section 4 of the Bayanihan 2.
- The regulatory intervention is the non-imposition of fines and other monetary penalties for non-filing, late filing and failure to comply with compulsory notification and other reportorial requirements.
- For the purpose of the Circular, the violations refer to non-filing and late filing of general information sheet (GIS) and audited financial statement (AFS) including other reportorial requirements that the SEC may require, and non-compliance with compulsory notification.
- The non-imposition of fines and other monetary penalties shall cover violations that will fall due from 14 September 2020 until 19 December 2020.
- Further, corporations may still apply for monitoring from September 2020 until December 2020 to secure monitoring clearance.
- The Circular will also apply to foreign corporations except on matters pertaining to Securities Deposits and Change of Resident Agent.
- This circular shall take effect immediately.

**Opinion No. 20-02 issued on November 10, 2020**

- SOS Children's Village Calabayog, Inc. (SOS-CV Calabayog) was incorporated on February 2, 1970, when the Corporation Code was still in force which limited the corporate term of corporations to 50 years. In the letter-request of the Olivia Firme & Associates Law Firm, they inquired with the SEC whether the corporate term of SOS-CV Calabayog has already been deemed amended to the effect that the corporation has now perpetual existence pursuant to the Revised Corporation Code (RCC) without performing any positive act.
- Under Section 11 of the RCC, it states that corporations with certificates of incorporation issued prior to the effectivity of the RCC, and which continue to exist, shall have perpetual existence, unless the corporation, upon vote of its stockholders representing a majority of its outstanding capital stock notifies the SEC that it elects to retain its specific corporate term pursuant to its articles of incorporation. Thus, corporations existing prior to, and which continues to exist after the effectivity of the RCC, are ipso jure granted perpetual existence without further action on their part.

**SEC Memorandum Circular No. 32 s. 2020 issued on November 18, 2020**

- This Circular provides for the basis of preparation of Audited Financial Statements for BSFIs in relation to BSP Memorandum No. M-2020-008 as amended allowing certain regulatory relief measures amidst the COVID-19 pandemic.
- These relief measures aim to strengthen the ability of BSFI's to continue to operate and service the financing requirements of the general public and are intended to reduce the impact of losses that BSFI's may incur due to the pandemic.
- This Circular further provides the documentary and procedural requirements in order to comply with the requirements laid down by the BSP and the SEC.

## DEPARTMENT OF LABOR ISSUANCE

**Labor Advisory 31-20 issued on November 25, 2020**

- This Advisory provides that all employers that were allowed to defer payment of holiday pay of their employees on account of the existence of a national emergency arising from the Covid-19 situation are required to pay all the deferred holiday pay on or before December 31, 2020.
- The deferred holiday pay to be paid must be equivalent to 100% of their daily wage.

# MALACAÑAN PALACE ISSUANCE

**Memorandum Order No. 50-2020 issued on November 18, 2020**

- Pursuant to Article 29 of EO No. 226 (s.1987) or the "Omnibus Investment Code of 1987", as amended, this issuance outlines the preferred activities for investment and other related priority investment areas for government agencies and entities to issue the necessary regulations to ensure their implementation and grant of incentives.
- Further, this issuance encompasses several areas of investment which are aimed towards the continued campaign against the COVID-19 Pandemic and the eventual economic recovery of the Philippines.
- Preferred activities such as, but not limited to the Production or Manufacture of Essential Goods and Services, Investments in activities which generate employment, Strategic Services, Healthcare and Disaster Risk Reduction Management Services, and others, have been outlined in this issuance.
- The aforementioned Preferred Activities and Areas of Investment are granted incentives pursuant to EO No. 226, as amended.

**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.