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ATTORNEYS AT LAW

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Highlights

BIR ISSUANCES

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- RR No. 24-2020 implementing Section 4 (uu) of RA No. 11494, on the exemption from Documentary Stamp Tax (DST) of loans extended or credits restructured (Page 3)
- RR No. 25-2020 provides the rules and regulations implementing Section 4 (bbb) of RA No. 11494 relative to Net Operating Loss Carry-Over (NOLCO) under Section 34 (D)(3) of the National Internal Revenue Code, as amended (Tax Code) (Page 3)
- RR No. 27-2020 provides for regulations suspending the filing and ninety (90) day processing of Value-Added Tax (VAT) refund claims anchored under Section 112 of the Tax Code of 1997, as amended, in relation to Section 4 (tt) of Republic Act No. 11494 (Page 4)
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REVENUE REGULATIONS (RR)

RR No. 23-2020 issued on September 14, 2020

- This RR repeals Section 127 (B) of the Tax Code which provides for tax on shares of stock sold, bartered, exchanged or other disposition through Initial Public Offering (IPO). Thus, every sale, barter, exchange or other disposition through IPO of shares of stock in closely held corporations shall no longer be subject to the tax imposed under Section 127(B).
- The RR is effective immediately.

RR No. 24-2020 issued on September 14, 2020

- This RR implements Section 4 (uu) of RA No. 11494 (Bayanihan II) which provides that loan term extensions or restructuring pursuant to the one-time sixty (60)-day grace period shall be exempt from DST.
- Pursuant to Section 4 (uu), no additional documentary stamp tax imposed under Sections 179, 195, and 198 of the Tax Code, as amended, shall apply to term extensions and credit restructuring, micro-lending including those obtained from pawnshops and extensions thereof granted by covered institutions for loans falling due, or any part thereof, on or before December 31, 2020.
- The exemption from DST shall cover all extensions of payments and/or maturity periods of all loans falling due, or any part thereof, on or before December 31, 2020, including but not limited to:
    - Salary
    - Personal
    - Housing
    - Commercial
    - Motor Vehicle loans
    6. Amortizations
    7. Financial lease payments
    8. Premium payments
    9. Credit card payments.

- It also includes the extension of maturity periods that may result from the grant of grace periods for these payments, whether or not such maturity period originally falls due on or before December 31, 2020. As well as credit restructuring, micro-lending including those obtained from pawnshops, and extensions thereof made on or before December 31, 2020.
- The regulation provides that interbank loans and bank borrowings are not included in the exemption to DST.
- The RR shall take effect upon its publication in the Official Gazette or a newspaper of general circulation.

RR No. 25-2020 issued on September 20, 2020

- This RR provides that, unless otherwise disqualified, the business enterprise which incurred a net operating loss for taxable years 2020 and 2021 shall be allowed to carry over the same as a deduction from the gross income for the next five (5) consecutive taxable years immediately following the year of such loss pursuant to Section 4 (bbbb) of Bayanihan II.
- The net operating loss for said taxable years may be still carried over as a deduction even after the expiration of Bayanihan II provided the same is claimed within the next five (5) consecutive taxable years immediately following the year of such loss.
- The RR shall take effect immediately.

RR No. 27-2020 issued on October 6, 2020

- This RR provides for the suspension of the 90-day processing of VAT refund claims pursuant to Section 112 (C) of the Tax Code whose prescription fall during the effectivity of Bayanihan II, the suspension is until December 19, 2020. Further, in areas where the ECQ or MECQ is in force after the effectivity of Bayanihan II, certain guidelines have been set by the BIR to accommodate the deadlines affected by the pandemic.
- To prevent the expected influx of numerous filers of VAT refund claims, the following deadlines shall be extended to the following dates:

Taxable Quarter	Deadline
Calendar quarter ending September 30, 2018	December 31, 2020
Fiscal quarter ending October 31, 2018	January 15, 2021
Fiscal quarter ending November 30, 2018	January 31, 2021
Calendar quarter ending December 31, 2018	February 15, 2021

- The RR shall take effect immediately and shall be in full and effect until the next adjournment of the 18th Congress on December 19, 2020, except for Section 5 which shall continue to take effect until the declaration of national emergency on COVID-19 has been lifted by the President.

RR No. 28-2020 issued on October 15, 2020

- This RR is promulgated to implement Section 4 (cc) of Bayanihan II on the liberalization of the grant of incentives for the manufacture or importation of critical or needed equipment or supplies or essential goods, including healthcare equipment and supplies.
- The coverage of this RR includes those importations from June 25, 2020 to December 19, 2020 of the following goods identified as critical goods, essential goods, and equipment or supplies needed to contain and mitigate COVID-19 which shall be exempt from VAT, excise tax, and other fees:

    1. Goods which may include personal protective equipment (PPE) and other medical equipment as determined by the Department of Trade and Industry (DTI) and Department of Health (DOH).
    2. Equipment for waste management approved by the Department of Environment and Natural Resources (DENR), Department of Health (DOH) or other concerned regulatory agencies.
    3. Inputs, raw materials, and equipment necessary for the manufacture or production of essential goods related to the containment or mitigation of COVID-19.

- To qualify for exemption from import duties, taxes, and other fees, a certification from the DTI that the equipment and supplies being imported are not locally available or of insufficient quality must be presented.
- The subject importations shall not be subject to the issuance of Authority to Release Imported Goods (ATRIG) and may be released by the Bureau of Customs (BOC) without the need of ATRIG.
- The grant of exemption for the importation of goods enumerated is deemed to be in effect beginning June 25, 2020, following the lapse of RA No. 11469 or the first Bayanihan to Heal as One Act, as indicated by Section 18 of RA No. 11494. The VAT paid on the said

importations from June 25, 2020 to September 14, 2020 shall be refunded provided that the input tax on the imported items have not been reported and claimed as an input tax credit.

- Furthermore, donations of these imported articles for the use of the National Government or any of its agencies, or to any political subdivision of the government which is not conducted for profit is exempted from donor's tax.
- However, the sale of finished goods/products of the items mentioned, whether locally manufactured or imported, is subject to VAT.
- The RR shall take effect immediately and shall be in full force and effect until December 19, 2020.

RR No. 29-2020 issued on October 15, 2020

- This RR is promulgated to implement the exemption from tax of certain income payments pursuant to Bayanihan II.
- Under this RR, the following income payments shall be excluded from gross income and shall not be subject to income tax:
    1. Retirement benefits received by officials and employees of private firms, whether individual or corporate, from June 5, 2020 to December 31, 2020, provided that the amount received is in accordance with the retirement plan duly-registered with the BIR; provided, re-employment of such official or employee in the same firm and its related parties within the succeeding 12-month period shall be considered as proof of non-retirement, subject to the rules provided in this RR.
    2. COVID-19 Special Risk Allowance which is the monthly allowance given to public and private health workers directly catering to or in contact with COVID-19 patients line during the COVID-19 state of emergency.
    3. Actual Hazard Duty pay given to temporary Human Resources for Health (HRH) serving in the front line during the state of emergency due to COVID-19;
    4. Compensation paid to private and public health workers who have contracted COVID-19 in the line of duty or dies while fighting COVID-19, amounting to:
        - PhP1 Million in case of death (this shall also not to be included as part of the gross estate of the decedent subject to estate tax);
        - PhP100,000 in case of severe or critical sickness; or
        - PhP15,000 in case of mild or moderate sickness.

- The mentioned income payments shall be included in the Alphabetical List of Employees/Payees being submitted annually by employers. In addition, a one-time list of recipients shall be provided no later than January 15, 2021 to the Revenue District Office (RDO) or concerned office under the Large Taxpayers Service (LTS) having jurisdiction over the employer/implementing government agency.
- The RR shall take effect immediately after publication in the Official Gazette or in a newspaper of general circulation, whichever comes first.

REVENUE MEMORANDUM CIRCULARS (RMC)

RMC No. 108-2020 issued on October 6, 2020

- This RMC prescribes the use of BIR Form No. 2119 (VAPP Application Form) and BIR Form No. 0622 (VAPP Payment Form) in relation to the implementation of the VAPP under RR No. 21-2020.
- The said forms are available on the BIR website (www. bir.gov.ph) under the BIR Forms section. However, the forms are not available in the eFPS and electronic Bureau of Internal

Revenue Forms (eBIRForms). Thus, taxpayers registered in the eFPS or eBIRForms shall download the PDF version of the said forms.

- Payment of the tax due thereon shall be made through any BIR Authorized Agent Bank (AAB) or Revenue Collection Officer (RCO) where the taxpayer is registered or having jurisdiction over the transaction, as the case may be.
- Payment through BIR electronic payment channels such as Gcash and PayMaya are not allowed.

RMC No. 110-2020 issued on October 6, 2020

- This RMC provides for the guidelines on the proper service of electronic Letter of Authority (eLA). The eLA must be served to the taxpayer through personal service by delivering personally a copy of the eLA at his registered or known address.
- Substituted service or by mail can only be resorted to when the party is not present at the registered or known address.
- It also provides for the required attachments on the envelope containing the eLA and what must be indicated in the Acknowledgment of Receipt. Further, it provides for the list of documents that has to be attached to the docket of the case.
- Service is complete upon delivery, for personal service; upon actual receipt or after five (5) days from the date of receipt of first notice of the postmaster, for service by registered mail; and upon expiration of 10 days after mailing, for service by ordinary mail.

RMC No. 111-2020 issued on October 15, 2020

- This RMC clarifies issues relative to the VAPP pursuant to RR No. 21-2020.
- The periods covered are calendar year 2018 and fiscal year 2018 ending in July, August, September, October, and November, as well as those ending in January, February, March, April, May, and June 2019.
- As for ONETT of individuals and taxpayers on a calendar basis, it covers all transactions from January to December 2018; and for the fiscal year 2018.
- The Circular provides the proper payment method of the voluntary tax, which can be done through an AAB or the revenue collection officer. It may also be paid through a check, provided that it conforms to the payment requirements of the BIR. E-payment and payment through tax remittance advice are not allowed.
- As to the manner of filing the application for VAPP, it may be filed in person or through a courier service to the concerned BIR office.
- The Circular likewise provides clarification on the computation of the voluntary tax to be paid and what is considered in the computation.
- The effects of the VAPP as to existing or on-going audit or investigation were also discussed in the Circular.
- The RMC also clarified the procedure when the application is approved or denied.

RMC No. 112-2020 issued on October 16, 2020

- This RMC provides for the postponement of the effectivity of the enlisted and delisted taxpayers of the LTS to January 1, 2021.
- All transactions of affected taxpayers, both Head Office/s and all Branches shall be handled by the RDOs or concerned offices at the LTS where they are registered prior to July 1, 2020.
- All Certificates of Registration issued by the concerned offices at the LTS/RDOs on or after July 01, 2020 to the affected Large Taxpayer shall be valid and may be posted at the principal place of business.

- Principal and supplementary receipts or invoices printed based on duly approved Authority to Print (ATP) issued on or after July 01, 2020 shall remain valid.

RMC No. 114-2020 issued on September 25, 2020

- This RMC provides the guidelines and procedures for the Mandatory Filing of BIR Form No. 220-S in eFPS for the Excise Tax on Sweetened Beverages and to exclude BIR Form No. 0605.
- A system walkthrough is laid out in this circular in order to advise the taxpayers on the appropriate procedure in filing BIR Form No. 2200-S using the eFPS Site.
- Detailed discussions are laid out clarifying the scenarios given by the BIR in order to further guide the taxpayers in filing BIR Form No. 2200-S using the eFPS Site.

REVENUE MEMORANDUM ORDER (RMO)

RMO No. 36-2020 issued on October 15, 2020

- The RMO provides that the filing for a written claim to the Commissioner for credit or refund must be done within two (2) years from the payment of the tax or penalty.
- It shall be filed with the respective RDO or the Large Taxpayers Audit Division (LTAD) where the taxpayer-claimant is registered
- The RMO also provides for the documentary requirements to be submitted pertaining to the VAT refund, as well as the steps in the processing and verification of claims.
- The RMO shall take effect immediately.

RMO No. 39-2020 issued on October 26, 2020

- This RMO prescribes the policies, guidelines, and procedures in processing of applications for the VAPP.
- It provides for the creation of a Technical Working Group (TWG) in the LTAD, LT Divisions (LTDs), and RDOs which will receive and process the applications of taxpayers for the availment of VAPP.
- The Systems Development Division (SDD) shall likewise develop and deploy the Data Entry Module to be used for the Document Processing Division (DPD) and Large Taxpayers Document Processing and Quality Assurance Division (LTDPQAD).
- Further, the Order provides for the procedures in the processing of applications.
- The RMO shall take effect immediately.

BANK BULLETIN

Bank Bulletin 2020-15 issued on September 25, 2020

- Pursuant to RMC No. 92-2020 dated September 1, 2020 amending RMC 60-2020 and RMC 75-2020, the deadline for business Registration of taxpayers who are into Digital Transactions will be further extended until September 30, 2020.
- Further, taxpayers who have prior transactions are also encouraged to voluntarily declare the same and pay the corresponding taxes due thereon, with no penalty for late filing and payment, provided that the same is done on or before the extended due date.
- Under this bulletin, all AABs are hereby advised to accept payments from taxpayers registered into Digital Transactions without the imposition of the corresponding penalty for late filing and late payments.
- Lastly, upon the manual filing of returns and the payment of the corresponding taxes due thereon, said taxpayers are required to attach their Certificate of Registration.

COURT DECISIONS

CTA DIVISION DECISIONS

North Negros Biopower, Inc. v. CIR
CTA Case No. 9920 promulgated on September 21, 2020

Facts:

The Petitioner prayed for a refund of the alleged erroneously paid 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 IFC is entitled to under the IFC Articles of Agreement.

Issue:

Is Petitioner entitled to a claim for refund or issuance of a tax credit certificate (TCC) for its alleged erroneously paid documentary stamp?

Ruling:

No. Section 173 of the Tax Code, as implemented by RR No. 9-2000, provides that whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax. In this case, the IFG Articles of Agreement provides that it is IFC which is exempt from the imposition of DST and not Petitioner.

Further, the Loan Agreement provides that it is the borrowers, which includes Petitioner, who should pay all tax including the DST or "stamp taxes" due on the transaction. Thus, Petitioner cannot invoke such exemption and is therefore liable for the payment of DST.

CIR v. Fortune Tobacco Corporation
CTA Case No. 1971 promulgated on September 22, 2020

Facts:

Respondent was assessed for deficiency taxes for the calendar year 2009 by the Petitioner, including Improperly Accumulated Earnings Tax (IAET) for not declaring dividends under Section 29 of the Tax Code.

Respondent alleges that the non-declaration of dividends for the year 2009 is because of the existence of a syndicated loan agreement amounting to PhP20 Billion.

Issue:

Is the Respondent liable for IAET?

Ruling:

No. Section 29 of the Tax Code states that to avoid the imposition of IAET, the earnings or profits accumulated must be for the reasonable needs of the business. Section 3 of RR No. 02-01 provides that one instance where the accumulation of earnings is for the reasonable needs of the business is when the earnings are reserved for the compliance with any loan covenant or pre-existing obligation established under a legitimate business agreement.

In this case, there was an immediate need for the Respondent to set aside funds for the full repayment of the debt in 2013.

Thus, the Respondent could not possibly distribute all its earnings as it will need all funds as required by the loan agreement's covenants. The failure to pay dividends is due to the reasonable needs of the business, thus, the accumulated or undistributed earnings are not subject to tax.

CIR v. Joyfoods Corporation
CTA Case No. 2061 promulgated on September 22, 2020

Facts:

Pursuant to a mission order, Petitioner conducted verification and validation of Respondent's registration and bookkeeping requirements, compliance with invoicing requirements, and use of cash register machines and/or point of sales (POS) machine. This resulted in the finding of alleged violations of no books, no official receipts, no back-end report, and unaccounted POS by Respondent. Petitioner ordered the payment of penalties in the total amount of PhP7,750,000.00, which Respondent paid.

Respondent filed an administrative claim for refund of the penalties it paid on the basis that it was not provided with any factual and legal bases for the amount of penalties imposed against it, nor was it provided with a breakdown of the amount of penalties imposed. Petitioner did not act on the administrative claim and Respondent filed a judicial claim for refund which was granted.

Petitioner sought for the reconsideration of the grant of refund claiming that there was no erroneous assessment, erroneous collection, illegal assessment, or illegal collection of tax against Respondent.

Issue:

Is Respondent entitled to refund on its payment of compromise penalties imposed without authority or wrongfully collected?

Ruling:

Yes. Under RMO No. 19-2007, otherwise known as "The Consolidated Revised Schedule of Compromise Penalties for Violations of the Tax Code", one of the requirements is strict adherence to the schedule of penalties listed under Annex A of the RMO. In all cases, all amounts of compromise penalties incident to violations shall be itemized in an assessment notice and/or demand letter, and if the compromise offer is higher, then all offers must be in writing.

In this case, Petitioner failed to comply with RMO No. 19-2007 as the compromise penalty was not itemized and there was no written offer given to the Respondent. Thus, the non-compliance with RMO No. 19-2007 has the effect of the penalties being collected without authority and must be refunded.

Medical Center Trading Corp. v. CIR
CTA Case No. 9412 promulgated on September 23, 2020

Facts:

On May 25, 2010, Petitioner received an LOA from Respondent dated May 14, 2010 authorizing the examination of Petitioner's books of accounts and other accounting records for the taxable year which ended on December 31, 2009.

During the audit, the Petitioner executed four (4) waivers of the defense of prescription under the statute of limitations of the Tax Code.

Thereafter, the Petitioner received from the Respondent a preliminary assessment notice (PAN), assessing it liable for deficiency taxes, and thereafter a final letter of demand (FLD) was received by petitioner on August 4, 2014 with Details of Discrepancies and attached undated final assessment notice (FAN).

Issue:

Is the Petitioner liable for deficiency taxes?

Ruling:

No. Under RMO No. 20-90, a valid waiver must indicate the specific tax involved and the exact amount of the tax due.

In this case, the waivers are void as it failed to indicate the specific tax involved and the exact amount of tax to be assessed or collected, thus, the same are not valid and binding. Further, the assessment is void in the absence of an electronic LOA (eLOA) as required under RMO No. 69-10, which mandates that there must be a retrieval and replacement of a new eLOA for all LOAs, manually or electronically issued, from March 1, 2010 covering cases for the year 2009.

Municipality (now City) Government of Taguig, et. Al. v. Veterans Federation of the Philippines
CTA AC No. 212 promulgated on September 25, 2020

Facts:

The Veterans Center is a property that serves as a center for the different activities of Filipino war veterans pursuant to Proclamation No. 192. Petitioner assessed Respondent for deficiency real property tax (RPT) for the land which it leased out to business establishments.

Respondent contends that it is exempt from taxation as it is a government instrumentality based on RA 2640 and that the land is owned by the government. In Section 133 of the Local Government Code (LGC), government instrumentalities are exempt from local taxes including RPT. Further, Section 234 of the LGC provides that a real property owned by the Republic of the Philippines is exempt from RPT.

Issue:

Can RPT be imposed on the Veterans Center?

Ruling:

Yes. The Respondent is a government instrumentality and the Veterans Center is owned by the Republic of the Philippines and as such, it is exempt from the payment of RPT pursuant to Section 234 of the LGC. However, under the beneficial use rule, the tax exemption of the property of the Republic or its instrumentality ceases if the use of the property has been granted to a taxable person.

As applied in this case, the portions of the land leased out by Respondent for commercial use is subject to tax. However, it is the taxable private entity that is liable for the RPT and not the government instrumentality.

People of the Philippines v. Valencia, et. al.
CTA Crim Case No. O-624-626 promulgated on September 30, 2020

Facts:

Respondents were charged with the alleged violation of Sections 3601 and 3602 of the Tariff and Customs Code of the Philippines (TCCP), or unlawful importation or smuggling and various fraudulent practices against customs revenue, respectively. They allegedly unlawfully imported six boxes containing a total of 413 pieces of G-Shock wristwatches which were declared as personal effects without commercial value or quantity.

Petitioner presented the Sender's Export Declaration and Packing List and the Informal Declaration and Entry (IIDE) document which contained the misdeclaration of the contents of the packages.

Issue:

Did Respondents violate Sections 3601 and 3602 of the TCCP?

Ruling:

No. Under Section 3601 of the TCCP, the violation can be committed in various ways, one being through intentional fraud. Intentional fraud includes false representation or statements or omissions of material facts. On the other hand, violation of Section 3602 of the TCCP includes the punishable fraudulent practice of making or attempting to make any entry of imported or exported articles by means of any false or fraudulent invoice, declaration, affidavit, letter, or paper.

In this case, Petitioner failed to show that Respondents participated in the execution of the documents used to allow the importation of the six boxes. Other than being the named consignees, there was no clear evidence that they ordered or controlled, or in any way participated in the inaccurate or untruthful declaration of the goods. Thus, Respondents are not liable under the TCCP and were acquitted.

Sonoma Services, Inc. v. CIR
CTA Case No. 9808 promulgated on October 1, 2020

Facts:

Petitioner prayed for a refund of its excess and unutilized creditable withholding tax (CWT).

Respondent contends that the claims for a refund or issuance of the tax credit was not duly substantiated and lacked sufficient proof to support their claim for refund.

Issue:

Is Petitioner entitled to its claim for refund of or issuance of TCC for its excess and unutilized CWT?

Ruling:

Yes. Under Section 76 of the Tax Code, there are options available on how excess CWT can be utilized. A corporation whenever it overpays its income tax for a given taxable year may choose: (1) to carry over and apply the overpayment as a tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (which is also known as an automatic tax credit) until fully utilized (which means that there is no prescriptive period); or (2) to apply for a cash refund or issuance of a tax credit certificate within the prescribed period.

Under RR No. 02-98, claims for tax credit or refund of any creditable income tax may be given due course only when the taxpayer was able to show it actually withheld the income tax sought to be refunded.

In this case, Petitioner opted to refund its excess CWT which was fully substantiated and documented in its original Annual Income Tax Return (ITR) and Amended Annual ITR. Further, the Petitioner was able to prove that it indeed withheld the tax sought to be refunded with the submission of BIR Form No. 2307, in compliance with RR No. 02-98.

Oceanagold (Philippines), Inc. v. CIR
CTA Case No. 9289 promulgated on October 7, 2020

Facts:

Petitioner filed a claim for refund or tax credit with the BIR seeking the recovery of excise taxes paid for the removal of copper concentrated in the possession of the Government. Petitioner argued that it is exempt from paying excise tax until the end of the five (5) year recovery period pursuant to their Financial and Technical Assistance Agreement (FTAA). Respondent contends that the Petitioner's exemption from paying excise taxes was overturned by RMC No. 17-2013, which revoked BIR Ruling No. 10-2007, the ruling which granted the Petitioner certain tax exemptions during the five (5) year recovery period.

Issue:

- Is Petitioner exempt from paying excise taxes during the so-called recovery period?

Ruling:

No. Under Section 151 of the Tax Code, the language is clear that there is an intention to impose excise tax on mineral products. On the other hand, Section 81 of RA No. 7942, provides that the excise tax on mineral products from a FTAA is merely deferred, or until it "has fully recovered its pre-operating expenses, exploration, and development expenditures".

In this case, Petitioner, as assignee and the contractor to the said FTAA, is entitled to recover its pre-operating and property expenses for five (5) years, which begins from the date of commencement of commercial production, before the right of the government to share in the net revenue (which includes the collection of excise taxes) accrues. Such being the case, there can be no merit in the Petitioner's plea for refund.

Further, Petitioner failed to prove that the payments it made of the subject excise taxes were during the recovery period. Thus, the claim for refund must be denied.

BW Shipping Philippines, Inc. v. CIR
CTA Case No. 9660 promulgated on October 7, 2020

Facts:

Petitioner sought for the refund or a TCC representing its unutilized input tax attributable to its zero-rated sales for the taxable year 2015 in the amount of PhP4,953,983.07.

Respondent contends that Petitioner failed to fully substantiate its claim with proper documents. Further, it claims that the clients of Petitioners are not non-resident foreign corporations doing business outside of the Philippines.

Issue:

- Is Petitioner entitled to refund or issuance of TCC for its unutilized input tax?

Ruling:

Yes. Section 112 (A) of the Tax Code provides for the requirements for claims of refund or tax credit of input tax for zero-rated or effectively zero-rated sales. Further, the requisites for a valid claim of credit or fund of input VAT for zero-rated sales have been jurisprudentially laid down, one of which is that the recipient of services is doing business outside of the Philippines.

In order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least by both Securities and Exchange Commission (SEC) certificate of non-registration of corporation/partnership and proof of incorporation, association, and registration in a foreign country, and that there is no indication that the said foreign corporation is doing business in the Philippines.

In this case, Petitioner was able to present the Certificates of Non-Registration of Company issued by the SEC, Certificate of Registration, Articles of Association, and Memorandum of Association of its foreign clients. Further, based on its Service Agreements, it clearly showed that Petitioner was not continuing the body or substance of its clients' shipping activities. Thus, the foreign clients cannot be considered as doing business in the Philippines and Petitioner was able to comply with the requisites for a valid claim of refund or credit for input VAT for its zero-rated sales.

Bicycle Poker, Inc v. CIR
CTA Case No. 9868 promulgated on October 7, 2020

Facts:

Petitioner prayed for the cancellation of the assessment issued by the Respondent on the ground of lack of authority of the revenue officer (RO) who conducted the assessment. Based on the records, Respondent initially issued an LOA granting authority to assess Petitioner. Subsequently, Respondent issued a memorandum of assignment (MOA) to authorize the continuation of the assessment by different ROs other than the one named in the original LOA. Thereafter, the Respondent issued a new LOA to reflect the transfer of authority to assess the newly assigned ROs.

Issue:

Is the assessment valid?

Ruling:

No. Pursuant to Section 6 (A) and Section 13 of the Tax Code, as amended, an LOA is an authority given to the appropriate RO assigned to perform assessment functions. In the absence of such, the assessment is a nullity. In case of reassignment or transfer of cases to another RO, a new LOA must be issued with the corresponding notation therein to continue the investigation or audit.

In this case, the authority of the new ROs who conducted the assessment against Petitioner emanated from the mere issuance of an MOA signed by a revenue district officer. The issuance by Respondent of a subsequent LOA did not cure the defect due to the fact that the investigation was already conducted when the said subsequent LOA was issued. Thus, the assessment was declared invalid.

Ishida Philippines Tube Co., Inc. v. CIR
CTA Case No. 9729 promulgated on October 8, 2020

Facts:

Petitioner was assessed for deficiency Income Tax, VAT, expanded withholding tax (EWT), and final withholding tax (FWT). Several assessment issues were raised but a big portion of the assessments comes from the disallowed management fees paid by Petitioner to its parent company, Ishida Ironworks Company, Ltd. (IICL), a Japanese NRFC

Respondent argued that the management fee paid by Petitioner to its Japanese Parent Company was actually a payment of royalties as the services were rendered outside of the Philippines but were used/consumed within the country and is subject to FWT. Respondent further argued that the amount should be disallowed since the Service Agreement from which the payment arose is outdated. In addition, Respondent alleged that the management fees paid pursuant to Petitioner's Service Agreement were not valid business expenses.

Issues:

1. Is the management fee paid by the petitioner to its Japanese Parent Company payment of royalties?
2. Is the management fee subject to FWT?
3. Is the management fee a valid deductible expense?

Ruling:

1. No. Under Section 42(B) of the Tax Code, royalties are taxable when the use of or the right or privilege to use is in the Philippines. In this case, the management fees in the service contract of Petitioner with the Japanese firm does not constitute payment of royalties because the agreement was found to be solely for the purpose of management and sales support rendered outside of the Philippines.

   Further, the service agreement of Petitioner provides that the undertaking does not involve the transfer of any of the Service Provider's technology, know-how or other intellectual property rights.

2. No. The agreement showed that the services for which the payment was made by Petitioner are considered business profits that are not subject to FWT pursuant to the RP-Japan Treaty.

   Pursuant to the RP-Japan Tax Treaty, payments for business profits are exempt from taxes unless the Japanese Parent Company maintains a "permanent establishment" (PE) in the Philippines. In this case, there was no evidence to show that Petitioner's Japanese Parent Company maintains a PE in the Philippines. Thus, the management fees paid to it are not subject to FWT under Section 57 (A) of the Tax Code, as the services rendered offshore are in the nature of business profits.

3. Yes. As to the deductibility of the management fee, the management fees of Petitioner is a valid deductible expense pursuant to Section 34 (A) of the Tax Code since it was fully substantiated and is an ordinary and necessary expense normally incurred by entities providing goods and services to PEZA-registered and export-oriented enterprises.

FEU v. City of Manila, City Mayor and City Treasurer
CTA AC No. 223 promulgated on October 14, 2020

Facts:

On June 19, 2015, Petitioner, an educational institution and domestic corporation duly organized and existing under the laws of the Philippines, received a Notice of Collection dated June 18, 2015 from Respondent with attached computation assessing it for deficiency local business tax (LBT) and mayor's permit fees covering the taxable period 2009 to 2013.

Petitioner contends that as an educational institution, it is not subject to LBT. Furthermore, Petitioner contends that Respondent issued the assessment on June 18, 2015 and was received by Petitioner on June 19, 2015, which was beyond the 5-year assessment period of local taxes for 2009 and 2010. The Petitioner claims that the Court of Tax Appeals may order the refund of the incorrect payment without filing a claim for refund with the City Treasurer due to the pendency of the case.

Issue:

Is the Respondent authorized to impose business tax on the tuition and educational fees collected by the Petitioner?

Ruling:

Yes. Respondent is authorized to impose business taxes on tuition and educational fees collected by Petitioner since it is a stock and proprietary educational institution, and its tuition fees, as a source of income, is not within the prohibited subjects of the LBT and does not fall under any of the common limitations as provided in Section 113 of the LGC.

Furthermore, Petitioner failed to prove and present the basis for its tax exemption under Section 143(h) of the LGC and Section 29 of the Manila Revenue Code.

However, the Respondent's right to assess Petitioner for the years 2009 and 2010 has prescribed since it is beyond the 5-year assessment period for local taxes unless there is fraud or intent to evade the payment of taxes, in which case, the period to assess is ten (10) years from discovery thereof. Respondents failed to show the existence of fraud or intention to evade payment against Petitioner. Thus, considering that the assessment was issued on June 18, 2015, only the assessment for the years 2011, 2012, and 2013 would remain.

Lastly, although the assessment for the years 2009 and 2010 has prescribed, Petitioner is not entitled to a refund for the taxes paid for the said years for failing to file its written claim for refund with the local treasurer as required under Section 196 of the LGC.

Citiaire Industrial Services Corporation v. CIR
CTA Case No. 9713 promulgated on October 14, 2020

Facts:

In September 2017, Petitioner received Respondent's Warrant of Garnishment (WG) dated June 29, 2017 and the same was sent to the Union Bank of the Philippines.

Petitioner contends that the WG is improper since it did not receive deficiency tax assessments for the taxable year 2012. Petitioner also found out that on June 24, 2016, the FLD and FAN were sent to its former address and not to its new address.

Issues:

1. Is the assessment of Respondent valid and final?
2. Does the CTA have jurisdiction over the case?

Ruling:

1. Yes. The Respondent's service of the FLD and the FAN on June 24, 2016 was valid and binding since the Petitioner failed to notify Respondent of its change of business address.

   Under Section 228 of the Tax Code, there is a 30-day prescriptive period for a taxpayer to file its protest. Further, RR No. 12-99 provides that if the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within 30 days from the receipt thereof, the assessment shall become final, executory, and demandable. In this case,

Petitioner filed its protest with request for reinvestigation on September 27, 2017, or after a year from its receipt of the FLD, Thus, the assessment against Petitioner has become final and executory for failing to file a protest within the prescribed period.

2. No. The CTA is a court of special jurisdiction, with the power to review by appeal decisions involving disputed assessments. However, it can only take cognizance of such matters as are clearly within its statutory authority. In this case, the assessment has already attained finality, thus, the CTA has no jurisdiction over the assessment and should dismiss any appeal disputing the same.

Petron Corporation v. CIR
CTA Case No. 8544 promulgated on October 21, 2020

Facts:

Petitioner imported 12,802,660 liters of alkylate and such was subjected to excise taxes of PhP4.35 per liter or in the aggregate amount of PhP55,691,571.00 by Respondent pursuant to CMC No. 164-2012.

Petitioner argues that alkylate should not be subject to excise tax because the same cannot be used as a "motor fuel" as contemplated in Section 148 of the Tax Code. Further, Petitioner maintains that excise tax applies only to goods manufactured or produced in the Philippines or to imported goods for domestic sale or consumption or for any other disposition and that the imposition of excise tax amounts to double taxation.

Respondent contends that the excise tax paid by Petitioner is neither erroneous nor illegal and that the importation is indeed subject to excise tax.

Issue: Is the importation of alkylate subject to excise tax?

Ruling:

Yes. Under Section 129, 131, and 148 (e) of the Tax Code, it is clear that excise tax shall attach to mineral oils or motor fuels like naphtha, regular gasoline, and *other similar products of distillation*, as soon as they come into existence. The imposition is premised on CMO No. 164-2012.

The clear language of Section 148 (e) does not limit its application that distillation should be the primary or direct process through which the product is formed in order to fall within its scope. As long as the process of distillation is employed, whether directly or indirectly, the resulting product thereon may fall within the ambit of *"other similar products of distillation"*, subject to excise tax.

In this case, based on the testimony of expert witnesses, it was shown that the process of distillation is also employed after alkylation to improve the quality of produced alkylates. Further in the findings of the Department of Energy (DOE), while distillation does not directly cause the production of alkylate, alkylation is a separate chemical process utilizing products from distillation. It is clear that the process of distillation contributes to the production, purification, and enhancement of alkylate in order for it to be fitted as fuel additives or blending components in the production of motor fuel or gasoline.
Thus, the importation of Petitioner was correctly subject to excise tax under Section 148 (e) of the Tax Code and Petitioner is not entitled to refund.

M. Tech Products Philippines, Inc. v. CIR
CTA EB No. 2114 promulgated on October 21, 2020

FACTS:

A Letter of Authority was received by the Petitioner dated November 21, 2011 authorizing the examination of the books of accounts and accounting records of the petitioner for the taxable year 2010 by the Respondent. On December 1, 2014, The Petitioner received a PAN from Respondent assessing it liable for deficiency taxes. In the Details of Discrepancy attached to the PAN, it is indicated that the Petitioner's authorized representative executed a Waiver of the defense of prescription under the statute of limitations provided on December 20, 2013 and that the period to assess was suspended from the date of execution until December 31, 2014. Subsequently, Petitioner received the FAN on December 18, 2014. Thus, the petitioner filed its protest to the assessment on April 1, 2015. In this case, the Petitioner contends that the Waiver is invalid pursuant to RMO No. 20-90 and RDAO 01-05 since there was no written and notarized authorization of the representative of the Petitioner who signed the Waiver, thus, the assessment was beyond the 3-year prescriptive period.

ISSUE:

Is the period for assessment for the internal revenue taxes of Petitioner for the taxable yea 2010 already prescribed?

HELD:

No. In the execution of Waivers, the taxpayer has the primary responsibility for the proper preparation of the waiver of the prescriptive period for assessing deficiency taxes. As provided in the *Next Mobile case*, when both parties are evidently in *pari delicto,* a defectively executed waiver may result in the extension of BIR's period to assess the internal revenue taxes of the taxpayer.

In this case, the petitioner admitted that the signatory of the waiver was in fact authorized as stated in the petitioner's letter dated April 1, 2015 wherein it stipulates that "the waiver was returned to the BIR after the company have it signed by their authorized representative". On the other hand, the BIR failed to require from the representative of the petitioner the written and notarized authorization before accepting the Waiver. Both are equally remiss in ensuring compliance with legal requirements. Thus, they are estopped from questioning the validity of the subject Waiver because they performed contributory acts in the invalidity thereof.

Furthermore, the assessment has become final, executory, and demandable and the court has no jurisdiction. Under Section 228 of the Tax Code, the protest must be filed within thirty (30) days from the assessment, and in RR No. 12-99, if the taxpayer fails to file a valid protest against the FLD/FAN within 30 days from the date of receipt, the assessment shall become final, executory and demandable. In this case, the FAN was received by the petitioner on December 18, 2014, however, they filed their protest only on April 1, 2015 which is beyond the 30-day period allowed to file the protest.

Philippine Geothermal Production Company, Inc. v. CIR
CTA Case No. 9663 promulgated on October 28, 2020

Facts:

Petitioner filed an application for a tax credit or refund for its unutilized input taxes for all four (4) quarters of the taxable year 2015 in the aggregate amount of PhP24,548,041.82. Petitioner claims thatbased on RA No. 9513, renewable energy (RE) developers are entitled

to zero-rating treatment of its sale of fuel or power generated from renewable sources of energy and its purchases of local supply. In addition, Petitioner cites Section 108 (B)(7) of the Tax Code which subjects transactions of geothermal energy resources to a zero percent rate.

Respondent partially granted the refund and not the full amount of claim as it contends that Petitioner failed to substantiate its input VAT claimed is directly attributable to its zero-rated sales. Further, it claims that Petitioner's proper recourse was against the seller who had shifted to it the output VAT following RMC No. 42-03 and the ruling in Coral Bay v. CIR.

Issue:

Is Petitioner entitled to refund of its unutilized input taxes?

Ruling:

Yes. Under Section 15 of RA 9513, RE developers are entitled to VAT zero-rating treatment of their sale or fuel or power generated from renewable sources of energy. The entitlement to subject the condition that the RE developer is duly certified by the Department of Energy (DOE).

In the IRR of RA 9513, there must be registration with the DOE and the Board of Investments (BOI), and a certificate of endorsement (COE) by the DOE.

In this case, Petitioner is registered with the DOE and the BOI. As to the COE, it was not presented by Petitioner but due to the partial grant of refund by Respondent, the presumption of regularity applies and Petitioner's sales of energy are deemed to be subject to zero-rated VAT.

However, Petitioner's refund is only partially granted which is limited only to its local supplies and not to international purchases. Further, it is limited to the claims which were properly substantiated with documents by Petitioner.

CTA EN BANC DECISIONS

City Assessor's Office of Valenzuela City v. NGCP and CBA
CTA EB Crim No. 2100 promulgated on September 23, 2020

Facts:

Petitioner issued a Notice of Assessment (NOA) notifying the Respondent of its liability to pay RPT for its transmission lines for the years 2002 to 2012 covered by the subject Tax Declarations.

Respondent claims that the subject properties are exempt under its franchise and that it does not need to pay under protest.

Issues:

1. Is Respondent exempt from RPT?
2. Has the Assessment been final, executory, and unappealable for Petitioner's failure to pay under protest?

Ruling:

1. No. Under Section 9 of RA No. 9511, the exemption from RPT of Petitioner is clear and indisputable. However, the exemption is not automatic, as it is premised on its payment of franchise tax in lieu of payment of income tax and any and all taxes, duties, fees, and charges of any kind, nature, or description on its franchise and on properties used in connection

with its franchise. Further, the exemption does not exempt Petitioner from compliance with documentary requirements under the LGC.

2. Yes. As to the payment under protest of RPT, it is provided under Section 252 of the LGC, that it is an indispensable requirement and the failure to pay under protest is fatal to a taxpayer's appeal.

   In this case, Petitioner failed to comply with the conditions of its exemption to RPT. It did not comply with the submission of the documents under the LGC and the Petitioner did not present evidence that it paid its franchise tax. Further, it did not comply with the requirement to pay under protest. Thus, the NOA has become final, executory, and unappealable.

Y&R Philippines Inc. v. CIR
CTA EB Crim No. 2019-2020 promulgated on September 25, 2020

Facts:

Petitioner was subjected to an assessment for all internal revenue taxes covering the period of January 1 to December 31, 2007. Respondent alleged that Petitioner is liable for deficiency taxes for the said period. Thereafter, Respondent garnished Petitioner's deposit accounts with the total amount of PhP17,202,373.31.

Petitioner alleged that the PAN and FAN were not properly addressed to them since it was sent to their old address and prayed that they be given a refund on the garnished amount.

Respondent contends that Petitioner did not comply with Section 11 of RR No. 12-85 and RAO No. 15-00 with regard to the change of address, as it did not notify the Revenue Data Center or Accounts Receivable Division of the BIR National Office of its change of address.

Issue:

Is Petitioner entitled to a refund?

Ruling:

Yes. Under RMO 40-04, otherwise known as the "Modified Standard Procedures in Handling Taxpayers' Request for Transfer of Registration", a taxpayer changing its office address is only required to notify the RDO having jurisdiction over the old office address and the RDO having jurisdiction over the new office address.

In this case, RR No. 12-85 and RAO No. 15-00 are not applicable and the court records show that Petitioner properly notified the Respondent of its change of address.

Further, there was evidence that Respondent had actual knowledge of the new address as it sent a letter to Petitioner's new address. The failure to properly serve the assessment in the correct address is a violation of the taxpayer's right to due process. Thus, the assessments are null and void.

CIR v. Anapi-Multipurpose Cooperative
CTA EB No. 2063 promulgated on October 6, 2020

Facts:

Respondent was assessed by Petitioner and found to be liable for alleged deficiency VAT for the taxable year 2005.

Petitioner maintains that Respondent is liable for VAT as it is neither the producer nor the owner of raw sugar cane. Further, it claims that assessments are presumed correct and made in good faith, and it is the duty of the taxpayer to prove otherwise.

Respondent contended that it is a tax-exempt cooperative and was the owner of the refined sugar withdrawn from the sugar mill in the year 2005 covered by their respective Authorization Allowing the Release of Refined Sugar. Further, Petitioner claims that the assessment is void for lack of any factual or legal bases.

Issue:

Is the VAT assessment valid?

Ruling:

No. An assessment should always be based on facts and cannot be based on mere presumptions. In order to stand judicial scrutiny, it must be shown that it has sufficient basis and foundation, and is not arbitrary or capricious.

In this case, Petitioner failed to present supporting documents on record to validate any of its allegations or conclusions arrived at in the assessment, stating that Respondent is not the owner or producer of the sugar. Thus, the VAT assessment is considered as a "naked assessment", or one that is without any rational basis.

SECURITIES AND EXCHANGE COMMISSION ISSUANCES

SEC Memorandum Circular No. 26 s. 2020 issued on September 25, 2020

- This Circular provides the guidelines in the implementation of a risk-based approach to Anti-Money Laundering/combating the financing of Terrorism, and the adoption and development of a risk rating system.
- This Circular applies to all SEC covered persons as enumerated Section 3 (a) of the Anti-Money Laundering Act (AMLA) and Section 1.2 of the SEC Memorandum Circular No. 16, Series of 2018.
- Under this Circular, SEC-covered persons are mandated to conduct an Institutional Risk Assessment taking into account the quantitative and qualitative information obtained from relevant internal and external sources to identify, manage, and mitigate risks. The risk factors and different kinds of risks are enumerated in the Circular.
- The Circular provides for the Risk Rating System, which is a supervisory tool that is to be used by the SEC in the conduct of its on-site examinations of covered persons. It is intended to ensure that supervisory attention is appropriately focused on entities with inadequacies in their procedures and policies in relation to money laundering and terrorist financing.
- This circular takes effect after 15 days following its publication in two (2) national newspapers of general circulation and its posting on the SEC website.

SEC Memorandum Circular No. 27 s. 2020 issued on October 14, 2020

- This Circular provides for the guidelines on the conversion from an Ordinary Stock Corporation (OSC) to a One Person Corporation (OPC), as well as OPC to OSC. It operationalizes Title XIII, Chapter III of RA No. 11232 (Revised Corporation Code).
- Further, this Circular provides for the documentary requirements for the conversion and the procedure for the conversion. In addition, it provides for the amount of fees that are applicable to convert the corporation.
- In addition, this Circular provides that the conversion from OSC to OPC is optional but the conversion of OPC to OSC is mandatory, unless when winding-up or dissolution is appropriate.

- Upon the issuance of the Certificate of Filing of Amended Articles of Incorporation (AOI) by the SEC reflecting the conversion from OSC to OPC and *vice versa*, the AOI and By-laws of the OSC/OPC shall be deemed superseded.
- The date of issuance of the Certificate of Filing of Amended AOI and By-laws (for the conversion of OPC to OSC) shall be deemed as the date of approval of the conversion.
- The Circular provides for the sample form of the Application for Conversion and Notice of Conversion.

DEPARTMENT OF LABOR ISSUANCES

Labor Advisory No. 28 Series of 2020 issued on October 16, 2020

- DOLE has reiterated the mandatory requirement of providing the 13th Month pay to employees pursuant to P.D. No. 851 (The 13th Month Pay Law).
- Under this advisory, no request for exemption from payment of 13th month pay, or of deferment of the payment thereof shall be accepted and allowed.
- The employer shall pay the 13th month pay on or before December 24, 2020.
- Rank-and-file employees in the private sector shall be entitled to 13th month pay regardless of their position, designation, or employment status, and irrespective of the method their wages are paid, provided they have worked for at least one (1) month during the calendar year
- Further, the 13th month pay required by law shall not be less than one-twelfth of the total basic salary earned by an employee within a calendar year.
- Lastly, Employers are required to make a report of their compliance with the law to the nearest Regional Office not later than January 15 of the following year.

Labor Department Order No. 215 issued on October 23, 2020

- This Department Order amends Section 12 Rule I, Rules Implementing Book VI of the Labor Code on suspension of employment relationship in case of suspension of operation of business or undertaking of the employer for a period not exceeding 6 months.
- In this Department Order, in case of declaration of pandemic and other similar national emergencies, the employer and the employees, through the union if any, or with the assistance of the Department of Labor and Employment (DOLE), shall meet in good faith for the purpose of extending the suspension of employment for a period not exceeding 6 months, provided that the employer shall report to DOLE, through the regional offices, the extension of suspension of employment 10 days prior to the effectivity of the extension subject to inspection.
- Furthermore, employees shall not lose their employment in case the employees find an alternative employment during the extended suspension of employment, except in cases of written, unequivocal, and voluntary resignation.
- In case retrenchment is necessary before or after the expiration of the extension of suspension of employment, the affected employee shall be entitled to separation pay as prescribed by the Labor Code, company policy or CBA, whichever is higher. Also, the retrenched employees shall be priority in the re-hiring if they indicate their desire to resume their work not later than 1 month from the resumption of operations.
- By mutual agreement of the employer and the employees, through the union, if any, or with the assistance of DOLE, employees may be recalled to work or retrenched subject to the requirement of notice and separation pay, any time before the expiration of the extension of suspension of employment.
- The extension of suspension of employment shall not affect the right of the employees to separation pay. The first 6 months of suspension of employment shall be included in the computation of employee's separation pay.

BANGKO SENTRAL NG PILIPINAS ISSUANCE

BSP Memorandum Order No. M-2020-74 issued on September 28, 2020

- This issuance provides for the implementing rules and regulations (IRR) and FAQs on Section 4 (uu) of Bayanihan II.
- MO No. M-2020-74 provides that all Bangko Sentral Supervised Financial Institutions (BSFIs) are required to implement a non-extendible mandatory one-time sixty (60)-day grace period for all existing, current and outstanding loans with principal and/or interest, including amortizations falling due on or before December 31, 2020 without incurring interest or interest, penalties, fees or other charges.
- The covered institutions under the IRR are BSFIs with lending operation and shall include banks, quasi-banks, non-stock savings and loan associations, credit card issuers, trust departments/corporations, pawnshops, and other credit-granting entities under the supervision of the Bangko Sentral ng Pilipinas (BSP).
- The mandatory grace period applies to all loans, which shall include, but is not limited to:
    1. Salary
    2. Personal
    3. Housing
    4. Commercial
    5. Motor Vehicle loans
    6. Amortizations
    7. Financial lease payments
    8. Premium payments
    9. Credit card payments.

- The issuance provides that interbank loans and bank borrowings are not covered by the mandatory grace period.
- The IRR provides for the effect of the grace period, which are not limited to
    - Non-imposition of interest on interest, penalties, fees, and other charges
    - The borrower can pay the principal on a staggered basis until December 31, 2020 or as agreed upon by the parties.
    - As to loan accounts covered by post-dated checks, auto-debit or auto deduct arrangements, the covered institutions shall coordinate with their clients and secure the clients' consent to proceed with the transaction or arrangement.
    - Regulatory relief was provided for banks and non-bank financial institutions (NBFIs) who will implement the mandatory grace period, which are not limited to:
        a. Staggered booking of allowances for credit losses
        b. Exemption from loan-loss provisioning
        c. Exemption from the limits on real estate loans, when applicable
        d. Exemption from related party transaction restrictions
        e. Non-inclusion in the bank's or NBFI's reporting on non-performing loans
- The Memorandum Order shall take effect immediately upon its publication in the Official Gazette or a newspaper of general circulation.

BUREAU OF CUSTOMS ISSUANCE

Customs Memorandum Order No. 26-2020 issued on October 9, 2020

- This issuance provides for the Rules and Regulations in the Disposition of Goods under Customs custody through Negotiated Sale.
- Goods which remain unsold after at least two (2) failed biddings that are not suitable either for official use or donation may be sold through a negotiated sale.

- After complying with the Notification, Publication, and Public Viewing requirements, a Pre-offer Conference will be held for those offerors who have signified their intent to participate in the negotiated sale.
- The participants whose offer is considered the most advantageous to the interest of the government shall be required to pay a guarantee cash deposit in the amount equivalent to twenty percent (20%) of the offer.
- Lastly, upon full payment and presentation of the official receipts evidencing payment of the accepted offer, the Secretariat shall issue a Notice of award, subject to the approval or disapproval of the Department of Finance.
- The CMO shall take effect immediately and shall last until revoked.