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## Highlights

### BIR ISSUANCES

- **Revenue Regulations (RR) No. 20-2020** amends certain provisions of RR No. 06-2008, on determining the fair market value (FMV) of shares of stock. (Page 3)
- **RR No. 21-2020** provides for the Voluntary Assessment and Payment Program (VAPP) for the Taxable Years 2018 pursuant to Section 244, in relation to Sections 6 and 204 of the National Internal Revenue Code, as amended (“Tax Code”). (Page 3)
- **RR No. 22-2020** amends certain Sections of RR No. 12-1999, as amended by RR No. 18-2013 and RR No. 7-2018, in relation to the due process requirements in the issuance of deficiency tax assessment. (Page 4)
- **Revenue Memorandum Circular (RMC) No. 83-2020** discussed the tax implications of quarantine measures and travel restrictions, in relation to a) Cross-border workers or individuals who are stranded or quarantined in a country that is not their country of residence and to b) to unintended creation of permanent establishment (PE) of foreign enterprises as a consequence of the extended stay of their employees in the Philippines. (Page 4)
- **RMC No. 92-2020** further extends the deadline for business registration of those into digital transactions under RMC Nos. 60-2020 and 75-2020 from September 1, 2020 to September 30, 2020. (Page 5)
- **RMC No. 94-2020** provides for the guidelines on the collection and disbursement of Fuel Marking Fees (FMF) pursuant to DOF-DBM-COA Permanent Committee Joint Circular 001.2018 and payment of FMF using BIR Form No. 0623. (Page 5)
- **RMC No. 96-2020** reiterates the provisions of RMC No. 47-2020, as amended by RMC No. 59-2020. It is relative to the temporary measures adopted by taxpayers on the receipting/invoicing requirements during the MECQ. (Page 5)
- **RMC No. 97-2020** clarifies the proper application of the use of BIR Form No. 0605 for Excise Tax purposes. (Page 5)
- **RMC No. 98-2020** clarifies the submission of BIR Form No. 1709 or the Related Party Transaction (RPT Form), and its attachments as prescribed in RR No. 19-2020. (Page 6)

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#### BOC ISSUANCE

- **Customs Memorandum Order No. 25 - 2020** provides for the guidelines for refund or tax credit for overpayment or erroneous payment and other refund duties and taxes as implemented under Customs Administrative Order (CAO) No. 04-2019, and ones arising from final decisions in protest cases, judicial decisions, special laws, and Executive or Presidential issuances, as well as for refund claims duly approved and endorsed by the Bureau of Internal Revenue (BIR) to the Bureau of Customs (BOC). (Page 14)

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#### PCC ISSUANCE

- **PCC Memorandum Circular No. 20-003** provides information and guidance to the public regarding mergers and acquisitions entered prior to the effectivity of R.A. No. 11494 or The Bayanihan To Recover As One Act. (Page 16)

## BIR ISSUANCES

### REVENUE REGULATIONS (RR)

#### RR No. 20-2020 issued on August 17, 2020

- This Regulation amends certain provisions of RR No. 06-2008, on determining the fair market value (FMV) of shares of stock. For sale, barter or exchange of shares not listed and traded in the local stock exchange, the fair market value shall be determined, as follows:

Type of Shares	Determination of FMV
Common Shares	Book value based on the latest available financial statements duly certified by an independent public accountant prior to the date of sale, but not earlier than the immediately preceding taxable year
Preferred Shares	Liquidation value – Equal to the redemption price of the preferred shares as of balance sheet date nearest to the transaction date, including any premium and cumulative preferred dividends in arrears, shall be considered as fair market value.
When there is both Common and Preferred Shares	Book value per common shares from the total equity of the corporation and dividing the results of the number of outstanding common shares as of balance sheet date nearest to the transaction date

- For this purpose, the book value of the common shares of stock or the liquidation value of the preferred shares of stock, need not be adjusted to include any appraisal surplus from any property of the corporation not reflected or included in the latest audited financial statements, in order to determine the fair market value of the shares of stock.
- The latest audited financial statements shall be sufficient in determining the fair market value of the shares of stock subject of the sale, barter, exchange or other disposition.
- Effectivity: After 15 days following its publication in the Official Gazette or in a newspaper of general circulation.

#### RR No. 21-2020 issued on August 18, 2020

- This Regulation provides for the Voluntary Assessment and Payment Program (VAPP) for the Taxable Years 2018 pursuant to Section 244, in relation to Sections 6 and 204 of the National Internal Revenue Code, as amended (“Tax Code”).
- Coverage:
  - As to tax covered: Apply to all internal revenue taxes, including taxes on one-time transactions (ONETT) such as estate tax, donor’s tax, capital gains tax (CGT), as well as ONETT-related creditable withholding tax (CWT)/ expanded withholding tax and documentary stamp tax (DST)
  - As to period: Taxable year ending December 31, 2018, and fiscal year 2018 ending on the last day of the months of July 2018 to June 2019
- Who can avail: Any person, natural or juridical, including estates and trusts, liable to pay internal revenue taxes for the above specified period/s who, due to inadvertence or otherwise erroneously paid his/its internal revenue tax liabilities or failed to file tax returns/pay taxes, except:

- Taxpayers who have already been issued a Final Assessment Notice (FAN) that have become final and executory, on or before the effectivity of these Regulations;
  - Persons under investigation as a result of verified information filed by a Tax Informer under Section 282 of the Tax Code, with respect to the deficiency taxes that may be due out of such verified information;
  - Those with cases involving tax fraud filed and pending in the Department of Justice or in the courts; and
  - Those with pending cases involving tax evasion and other criminal offenses under Chapter II of Title X of the Tax Code.
- Period of Availment: Until December 31, 2020, unless extended the Secretary of Finance
  - Effectivity: After 15 days following its publication in the Official Gazette or in a newspaper of general circulation.

### **RR No. 22-2020 issued on September 15, 2020**

- This Regulation amends certain Sections of RR No. 12-1999, as amended by RR No. 18-2013 and RR No. 7-2018, in relation to the due process requirements in the issuance of deficiency tax assessment.
- A Notice of Discrepancy shall now be issued instead of a Notice of Informal Conference.
- In this Regulation, the taxpayer who is found to have tax deficiencies will undergo the process called Discussion of Discrepancy to be held within five (5) up to thirty (30) days from receipt of the notice.
- In the Discussion of Discrepancy, the taxpayer is given the opportunity to present his side of the case and to explain the discrepancy and provide supporting documents. The documents must be submitted by the taxpayer within thirty (30) days after receipt of notice.
- A Preliminary Assessment Notice (PAN) shall be issued within ten (10) days from the conclusion of the discussion if there's still a finding of tax deficiency.

## **REVENUE MEMORANDUM CIRCULARS (RMC)**

### **RMC No. 83-2020 issued on August 17, 2020**

- This Circular discussed the tax implications of quarantine measures and travel restrictions, in relation to:
  - Cross-border workers or individuals who are stranded or quarantined in a country that is not their country of residence
  - To unintended creation of permanent establishment (PE) of foreign enterprises as a consequence of the extended stay of their employees in the Philippines.
- Income from Employment
  - The BIR will not be strict in counting the days the foreign employee is present in the Philippines.
  - The unintended/stranded days due to travel restriction will be considered as “force majeure” for the purpose of establishing the individual’s tax residency, provided that he or she leaves the Philippines as soon as the circumstances would permit.
- Inadvertent creation of PE
  - The effect of the COVID-19 will not result in the creation of a PE if the following requirements are met:
    1. The non-resident foreign company did not have a permanent establishment in the Philippines before the effects of COVID-19;
    2. There are no other changes in the company’s circumstances save for the extended stay of its employee, partner, or agent in the Philippines because of travel restrictions; and

3. The employee, partner, or agent should leave the country as soon as the circumstances would permit.
- Documentary Requirements to prove that the extended presence in the Philippines was due to COVID-related travel restrictions:
    1. Authenticated sworn certification
    2. Duly executed contract/s
    3. Certified true copy of the confirmed booking or flight itinerary for the original flight;
    4. Certified true copy of the confirmed booking or flight itinerary for the re-booked flight;
    5. Certified true copy of the travel advisory on the cancellation of flight issued by the airline company;
    6. Certified true copy of boarding pass;
    7. Certified true copy of the employee's passport
    8. Other documents that the Bureau shall deem necessary depending on the circumstances.
  - Effectivity: The Circular shall take effect immediately

**RMC No. 92-2020 issued on September 1, 2020**

- This Circular further extends the deadline for business registration of those into digital transactions under RMC Nos. 60-2020 and 75-2020 from September 1, 2020 to September 30, 2020.

**RMC No. 94-2020 issued on September 4, 2020**

- This circular provides for the guidelines on the collection and disbursement of Fuel Marking Fees (FMF) pursuant to DOF-DBM-COA Permanent Committee Joint Circular 001.2018 and payment of FMF using BIR Form No. 0623
- It provides for the computation of FMF, as follows:

For Gasoline	FMF = Declared volume x 110% x PhP0.06884 (VAT inclusive)
For Diesel	FMF = Declared volume x 102% x PhP0.06884 (VAT inclusive)
For Kerosene	FMF = Declared volume x PhP0.06884 (VAT inclusive)

**RMC No. 96-2020 issued on September 7, 2020**

- Under RMC No. 47-2020, as amended by RMC No. 59-2020, for August 4 to 18, 2020, taxpayers were allowed to adopt workaround procedures on the issuance of duly authorized/approved receipts or invoices to be able to continue its business operations due to the MECQ
- Taxpayers who adopted these temporary measures during MECQ are required to:
  - Comply with RMC No. 47-2020
  - Submit the Summary of Temporary Receipts/Invoices Issued to their respective Revenue District Offices within ninety (90) days from the date of the lifting of MECQ.
- Effectivity: The Circular shall take effect immediately

**RMC No. 97-2020 issued on September 9, 2020**

- This Circular clarifies the proper application of the use of BIR Form No. 0605 for Excise Tax purposes.
- The BIR through this circular has now expressly limited the use of BIR Form No. 0605 to the following:
  1. Payment on export products pursuant to the Product Replenishment Scheme under R.R. No. 3-2008

2. Payment for Excise Tax on Non-essential Services for Excisable Cosmetic Procedures until such time that BIR Form No. 2200-C will be available for use; and
  3. Payments for deficiency excise tax.
- All other excise tax payments on domestic removals of excisable articles shall use their corresponding excise tax returns (BIR Form No. 2200 series)
  - Effectivity: The Circular shall take effect immediately

**RMC No. 98-2020 issued on September 15, 2020**

- This Circular clarifies the submission of BIR Form No. 1709 or the Related Party Transaction (RPT Form), and its attachments as prescribed in RR No. 19-2020
- It provides a new schedule and further extends the deadline for the submission of the RPT Form and its required documents. The extended deadlines for filing the RPT Form are as follows:

Annual Income Tax Return	Extended Deadline
For Fiscal Year Ending March 31, 2020 and April 30, 2020	December 29, 2020
For Fiscal Year Ending May 31, 2020 and June 30, 2020	January 31, 2021
For Fiscal Year Ending July 31, 2020 and August 31, 2020	March 1, 2021
For Fiscal Year Ending September 30, 2020 and October 31, 2020	March 31, 2021
For Fiscal Year Ending November 30, 2020 and Calendar Year Ending December 31, 2020	April 30, 2021

## COURT DECISIONS

### CTA DIVISION DECISIONS

**Lafarge Holdings (Philippines, Inc.) v. City of Taguig**

CTA AC No. 227 promulgated on June 24, 2020

**Facts:**

- Petitioner was assessed for local business tax (LBT) for the second and third quarter pursuant to its renewal of business permit in 2018. The assessment was made through a Billing Statement issued by the Taguig City Business Permit and Licensing Office. Petitioner questioned the validity of the LBT assessment and filed for a Petition for Refund with the Regional Trial Court (RTC) which was dismissed for allegedly being filed out of time.

**Issue:**

- Whether the Petition for Refund was properly dismissed by the RTC

**Ruling: No.**

- Under that the Local Government Code (LGC), Section 195 refers to protesting an assessment of LBT, which is triggered by a notice of assessment made by the local treasurer or his duly authorized representative. On the other hand, Section 196 of the LGC is the rule on claiming for refund of tax credit which provides for a two-year period from the date of payment of the tax, fee, or charge to file the claim.
- In this case, the Billing Statement is not considered as an assessment as it was not prepared by the local treasurer. Thus, the applicable provision is Section 196 of the LGC and Petitioner properly invoked the remedy and filed within the two-period provided.

### **Morning Star Milling Corporation v. CIR**

CTA Case No. 9294 promulgated on August 26, 2020

**Facts:**

- Petitioner was subject to an assessment and received a copy of an undated PAN and an unreadable photocopy of a FAN from Respondent, which found it liable for deficiency income tax, including withholding taxes. Thereafter, Petitioner filed its Notice of Availment of Tax Amnesty under RA No. 9480. However, Respondent issued a final decision on disputed assessment (FDDA) still finding Petitioner liable for deficiency taxes.
- Petitioner argued that the PAN and FAN were void and that RA No. 9480 extends to withholding agents with respect to their withholding tax liabilities

**Issue:**

- Whether there is a valid tax assessment tax amnesty and whether the tax amnesty extends to withholding agents

**Ruling: No.**

- Section 8 (a) of RA 9480 is clear that the tax amnesty provided in Section 5 of the said law shall not extend to withholding agents with respect to their withholding tax liabilities. Thus, the Petitioner, as a withholding agent, is not entitled to apply for Tax Amnesty on its withholding tax liabilities.
- However, the PAN and FAN issued to the petitioner is not valid for not complying with Section 228 of the Tax Code, which mandates the BIR to inform taxpayers, in writing, of the law and facts on which the assessment is made; otherwise, the assessment shall be void. In the given case, the undated PAN, FAN, and LFD did not explain the factual and legal basis of the assessments.

### **Jollibee Worldwide Pte. Ltd. v. CIR**

CTA Case No. 9005 promulgated on August 26, 2020

**Facts:**

- Petitioner was subject to a tax assessment wherein the Respondent issued a PAN on December 28, 2012. Thereafter, it received a FAN and FLD on January 15, 2013, finding it liable for deficiency income tax, withholding tax on compensation, and expanded withholding tax.
- Petitioner filed its reply to the PAN on January 25, 2013 and its Protest Letter to FAN on February 14, 2013. However, it received a Final Decision on February 4, 2015 and accordingly filed a Petition for Review. During the pendency of the case, Respondent collected against the Petitioner through garnishment which prompted Petitioner to file a Supplemental Petition for Review praying for refund of the amount garnished.

**Issue:**

- Whether Petitioner was denied due process.

**Ruling: Yes.**

- Under Section 3 of RR No. 12-99, a taxpayer is granted 15 days from receipt of the PAN before the BIR can issue the FLD and FAN. In this case, the assessment against Petitioner is invalid because of the denial of due process. Petitioner was able to establish during trial that it received the PAN only on January 10, 2013 and that before it could respond to the PAN, it received the FAN and FLD on January 15, 2013, which is only 5 days from the receipt of the PAN. Accordingly, the assessment is void and Petitioner is entitled to refund.

**Sciindustrial Corporation v. BIR**

CTA Case No. 9616, August 27, 2020

- Under Revenue Memorandum Order (RMO) No. 43-90, the officials authorized to issue and sign an LOA are the Regional Directors, Deputy Commissioners, and the Commissioner. They are the ones who can issue a valid grant of authority to conduct an assessment of tax deficiency. A deficiency assessment is invalid if there is an absence of authority of the revenue officer who conducted the examination.
- In this case, based on the records the assessment was made based on a Memorandum of Assignment (MOA) which was issued by an RDO. There was no valid grant of authority for the assessment against Petitioner and the assessment is invalid.

**Premiumleisure and Amusement, Inc. v. CIR**

CTA Case No. 9798, September 02, 2020

**Facts:**

- Petitioner filed a Petition for Review praying for a tax refund or issuance of a tax credit certificate for allegedly erroneously paid income tax for calendar year 2015. Respondent contended that the two-year prescriptive period to file a petition for a tax refund under Section 229 of the Tax Code is reckoned from the filing of the quarterly ITR and payment of income tax due. Further, Respondent contended that the two-year prescriptive period would only be reckoned from the filing of the AITR when the error is due to adjustments, error in computation, or the estimation of payment.

**Issue:**

- Whether the two-year period is reckoned from the filing of the quarterly ITR

**Ruling: No.**

- Under Section 229 of the Tax Code, the two-year prescriptive period is reckoned from the time when the Final Adjustment Return or the AITR are filed not on the quarterly ITR and payment of income tax due. Further, Petitioner was able to prove that it was a contractee and licensee of PAGCOR, the exemption of PAGCOR from income tax on gaming revenues applies to the petitioner. In view thereof, the income tax it paid for calendar year 2015 were erroneously paid taxes.

**Light Rail Manila Corporation v. City of Caloocan**

CTA AC No. 224 promulgated on September 2, 2020

**Facts:**

- The Petitioner decided to cede the operation of the LRTI to a private company through public bidding where the Petitioner won for the operation and management of Manila LRTI. The Respondent began to assess Petitioner of local business taxes on their gross receipts for its transportation services pursuant to their authority under the LGC and Section 311 of the Caloocan Updated Revenue Code (CURC).

**Issue:**

- Is Petitioner liable for local business tax?

**Ruling: No.**

- Under Article 1732 of the New Civil Code of the Philippines, a common carrier is defined as persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to

the public. Common carriers are exempt from payment of local business taxes under Section 113(j) of the LGC.

- In this case, Petitioner is a common carrier and is exempt from paying local business taxes under the LGC. Further, it ruled that Section 311 of the CURC is null and void for being violative of the LGC for requiring “payment under protest” for local business taxes.

**PAG-ASA Steel Works, Inc. v. BIR**

CTA Case No. 9506 promulgated on September 2, 2020

**Facts:**

- Petitioner was assessed by BIR for its VAT and was found to be liable for VAT deficiency amounting to PhP23,000,000. Petitioner questioned the assessment and claimed that it has excess input VAT and its transactions on sales discount, zero-rated sales, offsetting of receivables and hauling expenses are not subject to VAT
- Respondent contended that the sales discount is subject to VAT for non-compliance with Section 106(D) of the Tax Code, the sales to an entity in an ecozone was not done within the territory and is subject to VAT and the offsetting and hauling expenses are subject to VAT due to improper invoicing required under Section 113 in relation to Section 237 of the Tax Code.

**Issue:**

- Are the transactions subject to VAT?

**Ruling: Yes.**

- Under Section 106(D) of the Tax Code, a sales discount shall be an allowable deduction from the gross selling price when it is indicated in the sales invoice at the time of the sale. In this case, the price adjustments were not indicated as sales discounts by Petitioner at the time of the sale. Thus, the claim for output VAT was properly denied.
- In the Supreme Court case of CIR v. Seagate Technology (Philippines), the sale of goods or services by a VAT-registered person in a customs territory must enter the ecozone for the grant of effective zero-rating. In this case, the transactions of Petitioner were not performed within the ecozone and subject to VAT.
- Under Section 113 (A) and (B) of the Tax Code, the invoicing and accounting requirements of a VAT-Registered are provided. In this case, Petitioner failed to present the official receipt (OR) issued by its supplier for its purchases and some ORs did not contain the information required under the Tax Code and Section 4.113-1(B) of RR No. 16-05. Thus, Petitioner cannot validly claim it as input VAT.

**Robinsons Toys, Inc. v. CIR**

CTA Case No. 9161 promulgated on September 02, 2020

**Facts:**

- Respondent issued an LOA to examine the books of Petitioner for the taxable year of 2009. After the assessment, it was found to be liable for deficiency income tax, VAT, WTC, EWT, FT, and DST. Petitioner questioned the assessment due to the failure of Respondent to comply with RMO Nos. 62-2010 and 69-2010 which requires the issuance of an electronic LOA in place of a manually issued LOA.

**Issue:**

- Is the tax assessment by virtue of an LOA valid?

**Ruling: No.**

- Under RMO Nos. 62-2010 and 69-2010, there is a requirement for the issuance of an eLOA be issued in place of the manually issued LOA within the parameters stated in the issuance.

- In this case, the Respondent did not comply with the RMOs, as what Petitioner received was a manually issued LOA instead of an eLOA. Further, the assessment was declared void because the FLD and FDDA against Petitioner did not contain the definite amount of tax liability and the definite due date to pay the assessed deficiency taxes.

**Taguig City Government v. Serendra Condominium Corporation**

CTA AC No. 229 promulgated on September 10, 2020

**Facts:**

- Respondent, a condominium corporation, applied for the renewal of its permit to operate in the City of Taguig for the year 2013. As a condition of the issuance of the permit, Petitioner is required to pay LBT based on the association dues collected by the Petitioner. Petitioner contended that it is not liable for LBT.

**Issue:**

- Are condominium corporations liable for LBT?

**Ruling: No.**

- In the case of *Yamane v. BA Lepanto Condominium*, it has been held that condominium corporations are not engaged in business when they collect assessments or dues from unit owners and are not subject to pay LBT. In this case, Respondents being a condominium corporation and is exempt from LBT.

**Carmen Copper Corporation v. CIR**

CTA Case No. 9659 promulgated on September 10, 2020

**Facts:**

- The Petitioner engaged in zero-rated sales in the form of export sales to various customers abroad. Petitioner filed a claim tax credit/refund with the Respondent for unutilized excess input VAT. Respondent only partially granted the claim due to Petitioner's failure to comply with invoicing requirements.

**Issue:**

- Is Petitioner entitled to a full amount claimed as a tax refund?

**Ruling: No.**

- Under Section 113(A) and (B) in relation to Section 4.113-1(A) and (B) of RR No. 16-05, export sales must be supported with the appropriate sales invoices and bills of lading. In addition, BIR Form No. 1600 or the Monthly Remittance Return of Value-Added Tax Withheld must be filed with the BIR.
- In this case, Petitioner did not present the sales invoices and bills of lading for its export sales, failed to submit BIR Form No. 1600 and failed to provide the proper breakdown of its input VAT amortizations, which arose from the importation of capital equipment.

**City Government of Valenzuela v. CIR**

CTA Case No. 9872 promulgated on September 17, 2020

- Petitioner was impelled to acquire a parcel of land from a delinquent taxpayer for non-payment of RPT due to the failure to redeem the property. Petitioner registered a claim for a refund for its payment of CGT and DST due to such transaction.

**Issue:**

- Is an involuntary sale such as a forfeiture proceeding subject to CGT?

Ruling: Yes.

- Under Section 263 of the LGC, the local government can purchase a property for want of bidder. The purchase of the property by the local government is considered as a regular sale of property and can be subject to taxation. In this case, the purchase of Petitioner of the parcel of land, which is classified as a capital asset, through an involuntary sale in the forfeiture proceeding is still subject to CGT under Section 27(D)(A) of the Tax Code. As to the DST, the Petitioner is exempt from paying pursuant to Section 281 of the LGC.

## CTA EN BANC DECISIONS

### **People v. Corazon C. Gernale**

CTA EB Crim No. 063 promulgated on July 30, 2020

Facts

- Petitioner appeals the civil aspect of the Decision rendered by the Court in Division acquitting Respondent, being the treasurer and responsible officer of Gernale Electrical Contractor Corporation (“GECC”), of violation of Section 225, in relation to Section 253(d) of the Tax Code for failure to pay the deficiency taxes of GECC for the taxable year 2003.

Issue:

- Is Respondent civilly liable for failure to pay deficiency taxes?

Ruling: No.

- Taxes are personal to the taxpayer and can only be enforced against the corporate taxpayer and cannot be imposed on its officers, as held in *Proton Pilipinas Corporation v. Republic of the Philippines*. Thus, Respondent cannot be made civilly liable with GECC for the alleged deficiency income tax and value-added tax for taxable year 2003.
- Under Section 13 of the Tax Code, an LOA is indispensable for a BIR officer to subject a taxpayer to audit. In this case, the letter notice (LN) which was never converted into a letter of authority (LOA) cannot result into a valid assessment.

### **CIR v. Ale Mart Corporation**

CTA EB No. 1983 promulgated on July 29, 2020

- Section 228 of the Tax Code provides for the requirements of a valid tax assessment. One of the requirements of a valid assessment is the indication of the definite period within which the tax liabilities should be paid. The period to pay is indispensable as it dictates the time when the penalties, surcharges, and interest imposed under the Tax Code. In this case, the assessment did not contain the definite period to pay and is considered an invalid assessment.

### **BAP Credit Bureau, Inc. v. CIR**

CTA EB No. 2095 promulgated on September 3, 2020

Facts:

- Petitioner was charged for penalties due to the late filing of its Annual Income Tax Return (AITR) for the taxable year of 2014. Petitioner claims that the failure to file was due to the unavailability of BIR's Electronic Filing and Payment System (eFPS).

Issue:

- Were penalties properly imposed on Petitioner for failure to file its AITR?

Ruling: Yes

- The Guidelines and Procedures in the Adoption of eFPS (RMO No. 5-2002) provides that in case the eFPS is not available during due dates, as declared by the BIR, taxpayer shall manually

file their returns. In this case, Petitioner failed to manually file its AITR on the due date when the eFPS was unavailable. It manually filed only after the due date. Thus, the penalty for late filing was not erroneously paid and cannot be refunded.

**CIR v. Securities Transfer Services, Inc.**

CTA EB No.2057 promulgated on September 3, 2020

**Facts:**

- Respondent received an LOA authorizing the named officers of the BIR to examine its books of account and other accounting records for all internal revenue taxes for 2009. Thereafter, the OIC-Chief of LTS-RAD issued the first MOA referring to the continuation of the audit and investigation to other revenue officers. A second MOA was issued by the BIR for the reassignment of the Respondent’s audit investigation to other revenue officers, who then made the assessment against Respondent.

**Issue:**

- Was there a valid tax assessment against Respondent?

**Ruling: No.**

- Under RMO No. 43-90, a new LOA must be issued in case of re-assignment/transfer of cases to another revenue officer. While a MOA may be issued by the head of investigation office in cases of reassignment, the same is not sufficient to properly confer authority upon the revenue officer to examine a taxpayer’s books of accounts and accounting records. In this case, the absence of the new LOA rendered the assessment invalid.

**Kuehne+Nagel, Inc. v. City of Paranaque**

CTA EB Case No. 2208 promulgated on September 9, 2020

**Facts:**

- Petitioner filed its protest to a Notice of Assessment issued by the Respondent on November 3, 2014. The Respondent failed to decide within 60 days, thus, the protest is deemed denied “due to inaction” by operation of law. Petitioner failed to file a judicial protest within 30 days from the deemed denial or on or before February 2, 2015. Petitioner filed its complaint before the RTC only on June 15, 2015.

**Issue:**

- Was the judicial protest filed within the prescribed period?

**Ruling: No.**

- Under Section 195 of the LGC, a taxpayer shall have thirty days from the receipt of the denial of the protest or from the lapse of the sixty-day period for the local treasurer to decide on the protest within which to appeal with the court of competent jurisdiction, otherwise, the assessment becomes conclusive and unappealable. In this case, Petitioner’s complaint was filed beyond the 30-day period.

**CIR v. Sabre Travel Network**

CTA Case EB No. 1932 promulgated on September 3, 2020

**Facts:**

- Respondent was charged with P19 million for alleged deficiency taxes with a 25% surcharge imposed, and imposition of 20% deficiency interest and 20% delinquency interest. Respondent claims that its booking commissions are VAT zero-rated sale, its communications and marketing expenses are mere reimbursement, and there is an error in the simultaneous imposition of deficiency and delinquency interest.

**Issue:**

- Was the imposition of the simultaneous interest proper?

**Ruling:** Partially granted

- Under RR No. 21-2018, the imposition of deficiency and delinquency interest were clarified. For tax liabilities or deficiencies which became due on or before December 31, 2017, there can be simultaneous imposition of interest with the previous rate of 20%. On the other hand, for tax liabilities or deficiencies that fall due after the effectivity of RA No. 10963 (TRAIN I), there can be no double imposition of deficiency and delinquency interest and the new applicable interest rate is 12%. In this case, the imposition of simultaneous interest on Respondent's tax liabilities after the effectivity of TRAIN I is not proper.

**Marily Development Corporation v. CIR**

CTA Case No. 9756 promulgated on September 10, 2020

**Facts:**

- Petitioner was subject to an assessment for the taxable year 2006. However, it received the FAN only in 2011.

**Issue:**

- Was there a valid tax assessment?

**Ruling:** No.

- Section 13 of the Tax Code requires that an LOA must be issued for the tax assessment of a taxpayer to be valid. In addition, Section 103 of the Tax Code provides that the period for assessment and collection shall only be within three (3) years after the last day prescribed by law for the filing of the return. In this case, there was no evidence of a validly issued LOA and the assessment was conducted beyond the 3-year period provided in the Tax Code.

**Swedish Match Philippines, Inc. v. The City Treasurer of Manila**

CTA EB No. 2043 promulgated on September 11, 2020

**Facts:**

- Petitioner was assessed by Respondent for LBT pursuant to Section 14 and 21 of the Manila Revenue Code for the first and second quarters of the taxable year 2007, which it paid. Petitioner filed a letter arguing that the assessment for both sections constitutes double taxation and filed a Petition for Refund with RTC for the amount of PhP264,261.84.
- Respondent contended that the RTC has no jurisdiction as the jurisdictional amount falls within the jurisdiction of the Metropolitan Trial Court (MTC).

**Issue:**

- Does the RTC have jurisdiction over the Petition for Refund?

**Ruling:** No.

- Under the ruling of *Philippine-Japan Active Carbon Corporation v. Habib Borgaily*, when the action is capable of pecuniary estimation, and the jurisdiction lies with the municipal trial courts if the amount of the claim does not exceed PhP300,000 outside of Metro Manila, and does not exceed PhP400,000 within Metro Manila. The court which has jurisdiction over the claim of refund of LBT is dependent on the amount of the claim.
- In this case, the amount subject of Petition for Refund of Petitioner is below the jurisdictional amount over which the RTC can exercise its jurisdiction. Thus, the Petition for Refund should have been filed with the MTC.

## SUPREME COURT DECISION

### **Philippine Contractors Accreditation Board v. Manila Water Company, Inc.**

G.R. No. 217590 promulgated on March 10, 2020

**Facts:**

- Petitioner sought the reversal of the resolution and order of the trial court which granted the petition for declaratory relief filed by Respondent and declared Section 3.1, Rule 3 of the Revised Rules and Regulations Governing Licensing and Accreditation of Contractors in the Philippines or the Implementing Rules and Regulations (IRR) of Republic Act No. 4566 (Contractors' License Law) (RA 4566).
- Petitioner contends that the IRR does not restrict the construction industry to Filipinos, but merely regulates the issuance of licenses to foreign contractors, subject to reasonable regulatory measures pertinent to their nature of being based outside the Philippines. Furthermore, the regulatory measures contained in the IRR are consistent with the Constitution, which mandates that the practice of all professions in the Philippines be limited to Filipino citizens, save in cases prescribed by law.

**Issue:**

- Is there a nationality restriction on construction companies?

**Ruling: No.**

- A contractor under RA No. 465, as amended by RA No. 6511 (An Act to Standardize the Examination and Registration Fees Charged by the National Examining Boards, and for Other Purposes) does not refer to a specific practice of a profession, *i.e.* architecture, engineering, medicine, etc. Further, a construction firm cannot be considered a professional that is being exclusively restricted by the Constitution and other laws to Filipino citizens – the licensing of contractors is not to engage in the practice of a profession, but rather to engage in the business of contracting/construction.
- Moreover, nowhere in RA No. 4566 is it indicated that Petitioner is authorized to set an equity limit for a contractor's license. It is also emphasized that "private domestic construction contracts" were also removed from the Foreign Investments Negative List starting 1998.

## BUREAU OF CUSTOMS ISSUANCE

### **CMO No. 25-2020 issued on September 24, 2020**

- This Order provides for guidelines on refund of duties and taxes and tax credit. It applies to the refund of overpayment or erroneous payment and other refund of duties and taxes to claimants as implemented under CAO No. 04-2019.
- It likewise applies to payment and refund arising from final decisions in protest cases, judicial decisions, special laws, and executive or presidential issuances, as well as to payment of refund claims approved and endorsed by BOC and the BIR.
- Highlights of the CMO:

Minimum amount of claim:	Claims with the amount of PhP5,000 or more
When to File:	Within twelve (12) months or three hundred sixty (360) days from date of payment of duties and taxes
Where to File:	Office of the District Collector (ODC) of the Port where duties and taxes were paid
Processing Fees:	PhP700 to PhP5,000, depending on the amount of the claim
Period of Processing:	Sixty (60) days from the submission of all the mandatory documentary requirements

Mode of Payment of Refund: Cash or Tax Credit Certificate (TCC)

- When a claimant elects for a TCC instead of cash, or where cash payment is not authorized under the law, the TCC issued in the name of the claimant shall not be assigned or transferred to any person or entity.
- When claim is for refund of purely internal revenue taxes only, such as Value Added Tax (VAT), Excise Tax, etc., the application must be filed by the claimant with the BIR.
  - In case the claimant erroneously filed an application for refund of purely internal revenue taxes with the Bureau of Customs, the ODC shall immediately inform the claimant to submit the application to the BIR and decline the processing of the said erroneously filed application on account of improper venue.
- Effectivity: October 9, 2020.

## **DEPARTMENT OF LABOR & EMPLOYMENT ISSUANCE**

### **New System of Filing Labor Reports**

- The DOLE launched an online system in establishment reports for flexible work schedules, temporary closures, retrenchments, and closure of establishments. The process for the new system of filing provides:
  1. Registration – for those companies not yet registered, the Company will have to register to the DOLE system. If already registered, proceed to the login page.
  2. Online report – The Company must fill out the online report form and upload necessary documents.
  3. Submit Report – After submission, the Company will receive an email acknowledgement form.
  4. Notification – Afterwards, the Company has the option to print or fill out another form. The Company will be notified through System notification.
- The new system of filing was launched by the DOLE pursuant to Labor Advisory No. 17-A, Series of 2020, which required the submission of DOLE Establishment Report. In addition, it was launched due to the transition to the new normal.
- The submission to the system is on the implementation of flexible work arrangement or alternative work scheme, temporary closure, retrenchment or reduction of workforce, and permanent closure.

## **SECURITIES AND EXCHANGE COMMISSION ISSUANCE**

### **SEC Memorandum Circular No. 25 s. 2020 issued on August 20, 2020**

- This Circular provides for the guidelines for the manner of filing, investigation, and resolution of complaints for the violation of the right to inspect and/or reproduce corporate records under Section 73 of the Revised Corporation Code (RCC)
- Under the Circular, the one who can file a report is the aggrieved party in the form of a Verified Complaint with the Company Registration and Monitoring Department (CRMD) of the SEC.
- The filing fee is in the amount of P10,130.00.
- In addition, it discussed the grounds for filing, required contents of the Verified Complaint, grounds for dismissal of the complaint, and other procedural requirements.

## PHILIPPINE COMPETITION COMMISSION ISSUANCE

### PCC Memorandum Circular No. 20-003 issued on September 17, 2020

- This Circular provides information and guidance to the public regarding mergers and acquisitions entered prior to the effectivity of R.A. No. 11494 or The Bayanihan To Recover As One Act:

All mergers and acquisitions with transaction values below PhP50 Billion	Exempt from: <ol style="list-style-type: none"> <li>1. Compulsory notification under Section 17 of the Philippine Competition Act (PCA), if entered into within a period of two (2) years from the effectivity of RA No. 11494; and</li> <li>2. Review by the PCC of mergers and acquisitions motu proprio under Section 12 of the PCA, for a period of one (1) year from the effectivity of RA No. 11494.</li> </ol>
Mergers and acquisitions exceeding the threshold of PhP2.4 Billion for Size of Transaction	Still subject to the compulsory notification and review
Mergers and acquisitions exceeding PhP6 Billion for the Size of Parties	

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

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