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BIR ISSUANCES

REVENUE REGULATIONS

RR No. 18-2021 issued on September 10, 2021

- This Regulations prescribes the rules for the affixture of new internal revenue stamps on imported and locally manufactured cigarettes, heated tobacco products, and vapor products whether for domestic sale or for export, including the strict supervision of production, release, affixture, inventory and sales of cigarettes, heated tobacco products and vapor products by the Revenue Officer on Premise (ROOP) and the use of the Enhanced Internal Revenue Stamp Integrated System (Enhanced IRSIS) for the ordering, distribution, monitoring and report generation thereof.

Highlights

- Tobacco firms are required to attach the new internal revenue stamps in packs and cartons of cigarettes, heated tobacco, and vapor products by October 1, 2021 to prove their compliance with excise tax obligations.
- By January 1, 2022, all cigarettes, heated tobacco, and vapor products, whether made here or imported, should include the new internal revenue stamps.
- The stamps should be placed on the upper portion of the container of cigarettes, heated tobacco, and vapor products, whether they are stored in hardpack, softpack, carton, tin can, pod or bottle, provided that health warnings must be seen in spite of the new addition to the packaging.
- Manufacturers and importers of tobacco products should enroll in the Enhanced IRSIS for the ordering, distribution, monitoring, report generation, and incorporating the strict supervision of production, release, affixture, inventory, and sale of cigarettes.
- An order will only be approved by the BIR once the applicant has paid the excise tax due on the total number of stamps. In addition, in case there is an increase in the rate, a top-up will be collected by the BIR that will be recorded in the enhanced IRSIS based on the remaining inventory of the stamps.
- Bad orders or spoiled stamps which are damaged to the point that they can no longer be affixed on the cigarette boxes, must be surrendered to the BIR within six (6) months for manufacturers and ten (10) months for importers.

REVENUE MEMORANDUM CIRCULAR

RMC No. 99-2021 issued on September 1, 2021

- This Circular clarifies issues relative to the VAT Exemption of certain medicines and other medicinal devices for COVID-19 under Sections 109(1)(AA) and 109(1)(BB)(ii) of the Tax Code, as amended by RA Nos. 10963 (TRAIN Law), 11467, and 11534 (CREATE Act).

Highlights

- The General Guidelines of Joint Administrative Order No. 2-2018 provides that "the sale of drugs not included in the list of VAT-exempt diabetes, high-cholesterol and hypertension drugs published by the Food and Drug Administration (FDA) shall not be exempt from

VAT". Hence, the VAT exemption for the drugs shall take effect on the date of publication by the FDA of the consolidated list of VAT-exempt products which was on July 17, 2021.

- The VAT exemption is exclusive only to the items enumerated in said consolidated list of VAT-Exempt Products, with specific dosage strength and dosage form and route of administration, submitted by the FDA to the Bureau of Internal Revenue (BIR).
- The consolidated list of VAT-Exempt Products, which includes the previously circularized lists through RMC Nos. 4-2019, 62-2020, and 101-2020 provided by FDA to BIR and circularized through RMC No. 81-2021 is now the controlling list.
- The treatment for unutilized input VAT on the now VAT-exempt on-hand inventories from their specified effectivity under RA No. 11534 on January 1, 2021 until the effectivity of RR No. 4-2021 may be carried-over to the succeeding taxable quarter/s or be charged as part of costs. Input VAT which are directly attributable to goods now classified as VAT-exempt may be allowed as part of cost. For input VAT that cannot be attributed to goods now classified as VAT-exempt, only a ratable portion thereof shall be charged to the cost.
- RR No. 18-2020 provides that when said VAT is claimed as input VAT credit and consequently allocated to either VATable, zero-rated or exempt sales, this only means that there was already a utilization of input tax. Hence, claiming it again under Section 204 is no longer permissible as this is already tantamount to claiming the alleged erroneously paid VAT twice. Moreover, under RR No. 16-2005, as amended, input tax attributable to VAT-exempt sales shall not be allowed as credit against output VAT but should be treated as part of cost or expense.

RMC No. 101-2021 issued on September 21, 2021

- This Circular extends the deadline for the filing of applications and suspends the 90-day processing of VAT refund claims with the VCAD.

Highlights

- In cases where the two (2) year period within which to file the claim for VAT Refund falls on September 30, 2021, the same shall be extended until October 15, 2021, following the temporary closure of VCAD due to the existing health protocols for the mitigation of the COVID-19 pandemic.
- The 90-day period of processing of all VAT refund claims pending with VCAD during temporary closure until October 3, 2021 is also suspended pursuant to Section 5(3) of RR No. 27-2020.

COURT DECISIONS

SUPREME COURT DECISIONS

Energy Development Corporation vs. CIR
G.R. No. 203367 promulgated on March 17, 2021 (Uploaded on September 21, 2021)

(Section 112 (A) of the Tax Code cannot simply be invoked as the prescriptive period for both administrative and judicial claims of input VAT tax refund or credit with the CIR.)

Facts:

On March 30, 2009, Energy Development Corporation (EDC) filed an administrative claim for tax credit or refund of its unutilized input VAT for its zero-rated sales amounting for the taxable year 2007. On April 24, 2009, EDC filed a petition for review with the CTA.

On October 6, 2010, the Supreme Court promulgated the *Aichi* Decision which delineated the prescriptive periods for filing separate administrative and judicial claims for input VAT refund or tax credit of the then Section 112 (A) and (C) of Tax Code. Then, the CIR filed a Motion to Dismiss EDC's petition for review citing EDC's failure to comply with the prescriptive periods under Section 112 (C) of the Tax Code. The CIR alleged that EDC did not wait for (a) the CIR's action on its administrative claim for input VAT tax credit or refund before appealing to the CTA within 30 days, and (b) in the alternative of the CIR's inaction, reckon the 30-day period to appeal from the expiration of 120 days from the date of the submission of complete documents to support the administrative claim under Section 112(A).

The CTA Division, citing *Aichi*, explained that after the filing of the administrative claim, the taxpayer must wait for the decision of the CIR thereon or the lapse of the 120-day period from the submission of the complete documents in support thereof before filing a petition for review with the CTA. In both instances, the filing of the judicial claim must be made within 30 days of either reckoning event or period. Hence, dismissed the petition for review of EDC.

Subsequently, the CTA En Banc ruled that while EDC timely filed its administrative claim for input VAT tax credit or refund under Section 112 (A) of the Tax Code, EDC, however, prematurely filed its judicial claim or the appeal to the CTA when it did not comply with the indispensable requirement for the taxpayer to await the action or inaction of the CIR within the 120-day period as prescribed in Section 112 (C) and that the dismissal of EDC's petition for review was correct but ought to have been based on lack of cause of action.

Issue:

Is the *Aichi* case retroactively applicable to cases already filed or pending in courts prior to its promulgation?

Ruling:

The subject matter is moot. Subsections (A) and (C) of Section 112 of the Tax Code speak of different periods within which different claims ought to be made. Although these subsections are not specifically designated as either an "administrative claim" or a "judicial claim," the classification of claims and their distinct and separate prescriptive periods can be gleaned from the wordings thereof. As held in *Aichi*, there is nothing in Section 112 of the Tax Code which sanctions the simultaneous filing of administrative and judicial claims, and the filing of the judicial claim prior to the action of the CIR or the lapse of the 120-day period within which the CIR is required to act on the administrative claim. Section 112 (A) simply cannot be invoked as the prescriptive period for both administrative and judicial claims of input VAT tax refund or credit with the CIR. The taxpayer claiming input VAT tax credit or refund should not ignore subsection (C) on judicial claims.

Clearly, in this case, EDC did not comply with Section 112 (C) of the Tax Code relative to the filing of its judicial claim before the CTA. Thus, even without dwelling on the applicability of *Aichi*, EDC's premature judicial claim has no leg to stand on. However, applying the exception of the *San Roque* case that all taxpayers can rely on BIR Ruling No. DA-489-03, which states that taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review, from the time of its issuance on December 10, 2003 up to its reversal by this in *Aichi* on October 6, 2010. EDC's petition for review before the CTA which was filed on April 24, 2009 should be reinstated since the filing of its administrative and judicial claims fell within the 2-year period.

La Flor Dela Isabela, Inc. vs. CIR
G.R. No. 202105 promulgated on April 28, 2021 (Uploaded on September 21, 2021)

(Section 222(b) of the NIRC is explicit that the period agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.)

Facts:

On September 6, 2000, the CIR issued a Letter of Authority (LOA) for the examination of La Flor's books of account for "all internal revenue taxes for the period January 1, 1999 to December 31,1999. In connection thereto, La Flor executed five waivers of the statute of limitations to extend the CIR's period to assess and collect the deficiency taxes, to wit:

a. First Waiver dated May 28, 2002 to expire on December 1, 2002;
b. Second Waiver dated October 2, 2002 effective until June 30, 2003. The waiver was received by the CIR on the same day but was notarized only on November 4, 2002;
c. Third Waiver dated April 11, 2003 which was effective until December 31, 2003. The said Waiver was notarized on the same day but was submitted to the CIR's Large Taxpayers Audit and Investigation Division (LTAID) II only on April 14, 2003. It was signed by Assistant Commissioner for LTAID II Edwin R Abella;
d. Fourth Waiver dated January 6, 2004 effective until December 31, 2004; and
e. Fifth and final Waiver on November 4, 2004 effective until June 30, 2005.

On November 23, 2007, the La Flor received an undated Warrant of Distraint and/or Levy (WDL). La Flor argues that the waivers were null and void and thus did not toll the running of the prescriptive period for the CIR to make the assessment.

Issue:

Are the waivers executed by La Flor valid?

Ruling:

No. The waivers subject of this case failed to strictly comply with the requirements under the law.

First, the first and fourth waivers executed on May 28, 2002 and January 6, 2004, respectively, failed to specify the date of acceptance by the CIR or his duly authorized representative for the purpose of determining whether the said waivers were validly accepted before the expiration of the original three-year period and the period agreed upon in case of subsequent agreement.

Second, all five waivers were signed by Cesar C. Maranan (Maranan), the Accounting Manager of La Flor. Section 25 of Batas Pambansa Blg. 68, also known as The Corporation Code of the Philippines, states that the corporate officers of a stock corporation are the president, secretary, treasurer, or any other officers as may be provided for in the by-laws. No notarized written authority was attached to the waivers authorizing Maranan to sign the waivers for and on behalf of La Flor. Neither was there any evidence showing that Maranan was among the responsible officials of La Flor authorized by its by-laws to execute a waiver.

Third, even assuming that the first three waivers were validly executed and that Maranan had authority to sign the waivers on behalf of La Flor, the fourth Waiver was executed and notarized only on January 6, 2004, clearly beyond the expiry of the third waiver on December 31, 2003. The fourth waiver did not also indicate the date of acceptance by the

CIR or his duly authorized representative. It bears noting that both the execution and the acceptance of the subsequent waiver should be made before the expiration of the period of prescription or before the lapse of the period agreed upon in the prior or preceding waiver. Patently, the fourth Waiver was executed and accepted on January 6, 2004, or beyond the period agreed upon by La Flor and the CIR in the third Waiver, i.e. until December 31, 2003.

Consequently, with the nullity of the fourth waiver, the execution and acceptance of the fifth waiver on November 4, 2004 were not valid since there was no more period to extend for which the CIR could assess La Flor's internal revenue taxes for taxable year 1999. Section 222(b) of the NIRC is explicit that the period agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

Hence, considering the foregoing defects in the waivers executed by the parties, the periods for the CIR to assess or collect the alleged deficiency taxes were not extended. The period within which the CIR could assess the internal revenue taxes of La Flor had already prescribed.

CIR vs. Standard Insurance Co., Inc.
G.R. No. 219340 promulgated on April 28, 2021 [(Uploaded on September 21, 2021)

(Section 218 of the Tax Code expressly provides that no court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee, or charge imposed by the code. An exception to this rule, provided under Section 11 of RA 1125 obtains only when in the opinion of the CTA the collection thereof may jeopardize the interest of the government and/or the taxpayer.)

Facts:

Standard Insurance received a Final Decision on Disputed Assessments (FDDA) for taxable year 2011 from the CIR and sought reconsideration thereto, objecting the tax imposed pursuant to Section 184 of the Tax Code as violative of the constitutional limitations on taxation. Meanwhile, Standard Insurance also received a demand for the payment of its deficiency taxes for taxable year 2012 which it protested in its letter on the ground that the VAT rate and DST rate imposed on premiums charged on non-life property insurance pursuant to Sections 108 and 184 of the Tax Code are violative of the constitutional limitations on taxation. Subsequently, Standard Insurance commenced a civil case in the Regional Trial Court (RTC) with prayer for the issuance of a temporary restraining order (TRO) and a writ of preliminary injunction (WPI) for the judicial determination of the constitutionality of Sections 108 and 184 of the Tax Code with respect to the taxes charged against the non-life insurance companies.

Standard Insurance contended that the facts of the case must be appreciated in light of the effectivity of RA 10001 entitled An Act Reducing the Taxes on Life Insurance Policies, whereby the tax rate for life insurance premiums was reduced from 5% to 2%; and the pendency of deliberations on House Bill 3235, whereby an equal treatment for both life and non-life companies was being sought as a response to the supposed inequality generated by the enactment of RA 10001. The RTC issued a TRO enjoining the BIR, its agents, representatives, assignees, or any persons acting for and on its behalf from implementing the provisions of the Tax Code adverted to with respect to the FDDA.

Issue:

Does the RTC have the jurisdiction to take cognizance of the petition for declaratory relief and issue injunctive relief against the implementation of Sections 108 and 184 of the Tax Code?

Ruling:

No. The RTC acted without jurisdiction in taking cognizance of the Petition for Declaratory Relief and issuing an injunction against the collection of taxes.

Petitions for declaratory relief do not apply to cases where a taxpayer questions his liability for the payment of any tax under any law administered by the BIR. Commonwealth Act No. 55 (CA 55) Thus, the courts have no jurisdiction over petitions for declaratory relief against the imposition of tax liability or validity of tax assessments.

taxes being the lifeblood of the government should be collected promptly, without unnecessary hindrance or delay. In line with this principle, Section 218 of the Tax Code expressly provides that no court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee, or charge imposed by the code.

An exception to this rule, provided under Section 11 of *RA 1125* obtains only when in the opinion of the CTA the collection thereof may jeopardize the interest of the government and/or the taxpayer.

CTA EN BANC DECISIONS

Commissioner of Internal Revenue vs. BASF Philippines, Inc.
CTA EB No. 2323 promulgated on August 2, 2021

(An LOA is, in essence, a contract of agency. In a LOA, the CIR is the principal -as he is the one mandated by the law to make assessments -and the Regional Director, his agent. On the other hand, the Regional Director may appoint a sub-agent.)

Facts:

BASF received a LOA from the BIR authorizing Revenue Officer (RO) Rhodora De Villa and Group Supervisor (GS) Angelo Palomer to examine the books of accounts and other accounting records of BASF Philippines, Inc. (BASF) for the year 2013.

Subsequently, BASF was informed by Revenue District Officer (RDO) Florante Aninag, through a Letter dated April 7, 2016, that RO Villaflor A. Lagundi under GS Eulogina E. Lacson will continue the audit and investigation of BASF due to the transfer of RO De Villa to another District Office.

Issue:

Do the revenue officers who conducted audit examination have the authority?

Ruling:

No. The Revenue Officers have no authority to conduct the audit examination. The power of the CIR to conduct assessments is granted to him under the Tax Code. The issuance of the LOA is a delegable power which the CIR may devolve to Revenue Regional Directors.

A LOA is, in essence, a contract of agency. In a LOA, the CIR is the principal -as he is the one mandated by the law to make assessments -and the Regional Director, his agent.

On the other hand, the Regional Director may appoint a sub-agent. This power to appoint a sub-agent necessarily includes the power to revoke the same.

Thus, the authority given to RO Rhodora De Villa and GS Angelo Palomer who were originally named in the LOA may be revoked, transferred and reassigned to RO Lagundi and GS Lacson for continuance of audit. RO Lagundi and GS Lacson who conducted the examination of BASF's records may be deemed authorized to do so without the need for a new LOA if said letter or notice or memorandum was signed by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service.

Under RMO No. 29-07, the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants, for they are the ones authorized to issue an LOA, to wit:

> "2. All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner /Head Revenue Executive Assistants."

In the instant case, the MOA was signed by Revenue District Officer Florante R. Aninag. Hence, RDO Aninag has no power to authorize the examination of taxpayer's accounts. Therefore, RO Villaflor A. Lagundi and GS Eulogina E. Lacson were without authority to continue the audit. Hence, the assessment against BASF is null and void.

DEPARTMENT OF LABOR AND EMPLOYMENT ISSUANCE

Labor Advisory No. 16-21 issued on August 31, 2021

- This advisory discusses the procedure for the issuance of alien employment permit or certificate of exemption/exclusion to foreign nationals intending to come to the Philippines for long-term employment.
- The application for Alien Employment Permit (AEP and Certificate of Exclusion/Exemption (COE) shall be filed with the concerned Department of Labor and Employment (DOLE) Regional Office (RO) by the Philippine-based employer.
- The documentary requirements shall be in accordance with Joint Memorandum Circular No. 1 series of 2019 and Department Order No. 221 series of 2021, except for the copy of the valid visa of the foreign national which shall be submitted within 30 working days after completion of the 14-day protocol.
- The AEP shall be issued within five working days after the completion of the labor market test or publication of AEP application in a newspaper of general circulation and payment of required fees, while the COE shall be issued within three working days after receipt of application subject to submission of documentary requirements and payment of required fees.
- The AEP shall be and the COE may be released to the Philippine-based employer to facilitate the application of appropriate work visa with the Bureau of Immigration or other visa-issuing agency.

NATIONAL PRIVACY COMMISSION ISSUANCES

NPC Advisory Opinion No. 2021-028 issued on July 16, 2021

- This Opinion answers whether a condominium corporation may validly refuse the request of the BIR to provide the list of tenants of the condominium.
- Andrea North Condominium Corporation (ANCC) is incorporated to manage, administer, and operate the condominium project (Project). ANCC requires its unit owners to provide details about its tenants which includes personal information, government-issued

identification (IDs) and contracts of lease. The purpose of such requirement is to validate the tenant-occupant's authority over the condominium unit/property.

- ANCC recently received a letter from a BIR RDO requesting for a list of tenants of the Project. The BIR RDO also included in the letter a form, to be distributed to and filled out by all unit owners asking them to submit documents such as contracts to sell, statements of account/schedule of amortization, official receipts issued by the developer/seller for payments made and deeds of sale. The requested information will be used for BIR's Tax Verification Drive to enhance tax compliance and boost its tax collection efforts.
- The NPC opined that the Data Privacy Act of 2012 (DPA) and its Implementing Rules and Regulations provide for a list of specified information which do not fall within the scope of the law. In particular, information necessary to carry out functions of a public authority are considered special cases under the DPA.
- Moreover, the NPC opined that the BIR is tasked to, among others, ensure compliance with Tax Code and other relevant tax laws and regulations. The DPA recognizes the authority of the BIR Commissioner under Section 5 of the Tax Code to obtain information, and to summon, examine, and take testimony of persons in determining the liability of any person for any internal revenue tax or in collecting such liability or in evaluating tax compliance.

NPC Advisory Opinion No. 2021-030 issued on July 30, 2021

- This Opinion is on the publication of copyright registrations.
- The Bureau of Copyright and Other Related Rights (Bureau) of the Intellectual Property Office of the Philippines (IPOPHL) plans to publish a list of copyright registrations received and processed by the Bureau.
- The list will contain copyright registrations by category of copyrighted work and four data elements: (1) registration number, (2) name of copyright owner, (3) title of the work, and (4) date of registration. The new form of the Bureau contains the standard data privacy notification and consent adopted by IPOPHL.
- The purposes of publication are the following:
    1. To operate as notice to the public of the fact of registration of a copyrighted work;
    2. To allow aggrieved and/or contesting parties to put forward a challenge to erroneously registered works because the registrant is not the true owner, or the work is not an original creative expression of the registrant; and
    3. To encourage the registration of more works.
- The IPOPHL relies on Section 182 of RA No. 8293 or the Intellectual Property Code of the Philippines (IPC) mandating the publication in the IPOPHL Gazette of the fact of assignment, transfer, and exclusive licensing of copyright, which mandate extends to copyright registration by way of necessary implication.
- The NPC defers to the IPOPHL's authority on the proper interpretation of the Section 182 of the IPC as to whether the mandate extends to copyright registration by way of necessary implication. As mentioned in the IPOPHL's letter, the above provision is applicable since there is nothing to amend, assign, transfer, or grant exclusive license on IPOPHL's records if the same has not been first registered.
- The publication of copyright registration to inform the public of such fact may be considered as lawful processing under the DPA as authorized by virtue of law or regulation
- Moreover, the Bureau contains the standard data privacy notification and consent adopted by the IPOPHL. Since the lawful basis of the IPOPHL in the processing of copyright registrations is its mandate, there is no need to obtain consent of the data subject for such processing. The standard data privacy notification, which we assume to be the privacy notice, should already suffice for this purpose.

NPC Advisory Opinion No. 2021-034 issued on August 17, 2021

- In this Opinion, the Department of Foreign Affairs (DFA) – Office of Consular Affairs (OCA) received requests for information from various government agencies, specifically law enforcement agencies, and financial regulatory agencies.
- Bureau of Internal Revenue (BIR) sent a letter to OCA requesting for information about a particular taxpayer. On the other hand, the Presidential Commission on Good Government (PCGG) likewise sent a letter to the OCA requesting for information of persons in relation to a Supreme Court case.
- The NPC opined that the DPA and its Implementing Rules and Regulations (IRR) provide for a list of specified information that are not covered by certain requirements of the law, which includes information necessary to carry out functions of a public authority. The BIR's duty and authority to, among others, ensure compliance with the Tax Code, as amended, and other relevant tax laws and regulations. Particularly, the authority of the BIR Commissioner to obtain information in the evaluation of the tax compliance of any person.
- Hence, the OCA may disclose personal data to the BIR and the PCGG without necessarily violating the provisions of the DPA and the rights of the data subjects.
- As for the request of PCGG, the NPC noted that under Section 3(g) of Executive Order No. 13, the PCGG has the power to seek and secure the assistance of any office, agency, or instrumentality of the government, in relation to the recovery of all ill-gotten wealth by Former President Marcos, his immediate family, relatives, subordinates, and close associates, and the investigation of such cases of graft and corruption as the President may assign to the Commission from time to time. The NPC supposed that the said request is pursuant to the exercise of the PCGG's mandates which includes the conduct investigations, sequestrations, among others.
- Moreover, the requests for information from the BIR and the PCGG are valid even though they were made through letter requests and not through subpoenas.
- Under Section 34(b)(1) of the IRR, it provides that when a data subject objects or withholds consent, the personal information controller shall no longer process the personal data, unless the personal data is needed pursuant to a subpoena. The said provision pertains only to the limitations on the exercise of the right to object, specifically when processing is based on consent and the data subject has withdrawn the same, but processing may continue if the personal data is needed pursuant to a subpoena.
- The NPC emphasized that the provision does not operate to provide a limitation on how personal data can be requested by government agencies. The issuance of a subpoena may not always be appropriate at a particular stage of an inquiry, investigation, enforcement action, or other applicable government action. Requests for information may come in various forms, i.e., court orders, subpoena, letters, orders, other official communications, among others. It is also important to note that not all government agencies are granted subpoena powers.

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

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