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BIR ISSUANCES

REVENUE MEMORANDUM CIRCULAR (RMC)

RMC No. 105-2021 issued on October 4, 2021

- This Circular circularizes Memorandum Circular No. 89 issued by the Office of the President titled "Updating the Inventory of Exceptions to the Right to Access of Information Under Executive Order (EO) No. 02, Series of 2016".

Highlights:

- The following are the exceptions to the right of access to information, as recognized by the Constitution, existing laws, or jurisprudence:

    a. Information covered by Executive privilege;
    b. Privileged information relating to national security, defense, or international relations;
    c. Information concerning law enforcement and protection of public and personal safety;
    d. Information deemed confidential for the protection of the privacy of persons and certain individuals such as minors, victims of crimes, or the accused;
    e. Information, documents or records known by reason of official capacity and are deemed as confidential, including those submitted or disclosed by entities to government agencies, tribunals, boards, or officers, in relation to the performance of their functions, or to inquiries or investigation conducted by them in the exercise of their administrative, regulatory or quasi-judicial powers;
    f. Prejudicial premature disclosure;
    g. Records of proceedings or information from proceedings which, pursuant to law or relevant rules and regulations, are treated as confidential or privileged;
    h. Matters considered confidential under banking and finance laws, and their amendatory laws; and
    i. Other exceptions to the right to information under laws, jurisprudence, rules and regulations.

COURT DECISIONS

SUPREME COURT DECISIONS

Philippine Veterans Bank vs. CIR
G.R. No. 205261 promulgated on April 26, 2021 (Uploaded on October 7, 2021)

(Documentary Stamp Tax [DST] is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale, or transfer of an obligation, right, or property incident thereto. In imposing the DST, the Court considers not only the document but also the nature and character of the transaction.)

Facts:

In the years 1994-1996, Philippine Veterans Bank offered the following financial products to its clients: (i) Special Savings Account, (ii) Special Savings Deposit (Government), and (iii) Golden V (Private) (collectively, the Special Savings Accounts). These accounts earned interest income in favor of the bank's clients. The Special Savings Accounts have the

following features: (i) they are withdrawable by the depositor at any time through the presentation of a passbook; (ii) the amount of deposit usually runs into millions of pesos; (iii) the deposit is subject to a special rate of interest; (iv) the deposit allows posting of additional or multiple deposits; (v) the deposit allows partial or multiple withdrawals; (vi) the account has no fixed maturity; (vii) the deposit cannot be negotiated nor assigned; and (viii) the deposit cannot be pre-terminated, as there is no fixed maturity.

On December 9, 1999, the BIR sent the Philippine Veterans Bank a Final Notice of Assessment assessing Philippine Veterans Bank for deficiency DST on the Special Savings Accounts for taxable years 1994 and 1995. Thereafter, the BIR issued a Formal Letter of Demand (FLD) requiring the Philippine Veterans Bank to pay deficiency Gross Receipts Tax (GRT) for the year 1996 and deficiency DST for the year 1996.

With respect to the deficiency GRT, the BIR included the amount of final withholding taxes on the gross interest income of the bank, to determine the bank's GRT. For the deficiency DST, the BIR imposed DST on the Special Savings Account.

Issue:

1. Should the Special Savings Accounts of the Philippine Veterans Bank be subject to DST?
2. Should final withholding taxes on the gross interest income of Philippine Veterans Bank be deductible from gross receipts for purpose of determining the bank's gross receipts tax?

Ruling:

1. Yes, the Special Savings Accounts are subject to DST. The Philippine Veterans Bank offered the Special Savings Accounts subject of this case in the years 1994 to 1996. At the time of the offer and perfection of the said bank deposits, the prevailing tax code was the Tax Code of 1977, as amended by Republic Act No. 7660, and not the Tax Code of 1997. Hence, the applicable tax provision in respect of the imposable DST on the said Special Savings Accounts is Section 180 of the Tax Code of 1977 and not the current Section 179 (renumbered from Section 180) of the Tax Code of 1997.

   DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale, or transfer of an obligation, right or property incident thereto. In imposing the DST, the Court considers not only the document but also the nature and character of the transaction. The imposition of DST on bank deposits depends on the classification and features of such deposits. If the bank deposit is a regular savings deposit (which is withdrawable upon demand), it is exempt from DST. If the bank deposit is a time deposit (which has a maturity period), it is subject to DST. If the bank deposit combines the features of a regular savings deposit and a time deposit, such as the offer of higher interest rates in consideration of a holding period prior to withdrawability, or there is a stipulation of fees, charges, or penalties for pre-termination or early withdrawal, then the same is subject to DST.

   In this case, the Special Savings Accounts, while not technically considered time deposits, combine the features of a regular savings deposit and a time deposit. Accordingly, the Special Savings Accounts of the Philippine Veterans Bank are subject to DST.

2. No, the final withholding tax on gross interest income of the bank is not deductible from gross receipts for purposes of determining gross receipts tax. The Tax Code governing the period covered by the assessment of deficiency GRT, in this case, is the Tax Code of 1977. Section 260 of the said law provides the basis for the 5% GRT on banking institutions. The gross receipts are the tax base and 5% is the tax rate, for the GRT. Moreover, gross receipts include the interest income of a bank. This interest income is subject to 20% FWT which forms part of the taxable gross receipts for purposes of computing the 5% GRT.

Hence, the determination of gross receipts tax, the term "gross receipts" includes the FWT of the bank's gross interest income. Accordingly, the 20% FWT on the Philippine Veterans Bank's gross interest income forms part of the taxable gross receipts for purposes of computing the 5% GRT.

CIR vs. McDonald's Philippines Realty Corp.
G.R. No. 242670 promulgated on May 10, 2021 (Uploaded on October 7, 2021)

(The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the Letter of Authority [LOA], and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative.)

Facts:

McDonald's Philippines Realty Corporation (McDonald's) established its branch office in the Philippines to purchase and leaseback two existing McDonald's Restaurants to Golden Arches Development Corporation, and to engage in the development of new McDonald's restaurant sites, which would then be leased to McGeorge Foods, Inc.

On August 31, 2007, the BIR Large Taxpayers Service issued an LOA to the following revenue officers: Eulema Demadura, Lover Loveres, Josa Gomez, and Emalyn dela Cruz. The LOA authorized the said revenue officers to examine the books of accounts and other accounting records of McDonald's for all internal revenue taxes for January 1, 2006 to December 31, 2006. However, on December 2, 2008, the BIR transferred the assignment of Demadura and, under a Referral Memorandum, directed and designated Rona Marcellano (Marcellano) to continue the audit of the McDonald's books of accounts. No new LOA was issued in the name of Marcellano to continue the conduct of the audit of the McDonald's books of accounts. Moreover, the August 31, 2007 LOA was not amended or modified to include the name of Marcellano. The referral memorandum states that Marcellano will continue the pending audit of Demadura pursuant to the August 31, 2007 LOA.

Issue:

Should a separate or amended LOA be issued in the name of a substitute or replacement revenue officer in case of reassignment or transfer of a revenue officer originally named in a previously issued LOA?

Ruling:

Yes. The issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. Identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment. Indeed, the service of a copy of a memorandum of assignment, referral memorandum, or such other equivalent internal BIR document may notify the taxpayer of the fact of reassignment and transfer of cases of revenue officers. However, the memorandum of assignment, referral memorandum, or any equivalent document is not proof of the existence of authority of the substitute or replacement revenue officer. The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate officials, and not signed or issued by the CIR or his duly authorized representative. Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or

investigation, is in effect supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives.

Moreover, Revenue Memorandum Order No. 43-90 expressly and specifically requires the issuance of a new LOA if revenue officers are reassigned or transferred. Hence, since there was no new LOA issued for Revenue Officer Marcellano, he was not authorized to continue the audit of the McDonald's books of accounts for CY 2006, rendering the assessment void.

CIR vs. Unioil Corporation
G.R. No. 204405 promulgated on August 4, 2021 (Uploaded on October 27, 2021)

(Ultimately, void assessment bears no valid fruit. Tax collection must be preceded by a valid assessment to allow the taxpayer to protest the assessment, present their case and adduce supporting evidence. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.)

Facts:

On January 26, 2009, Unioil Corporation (Unioil) received an FLD and Final Assessment Notice (FAN) finding it liable for deficiency withholding tax on compensation and deficiency expanded withholding tax for the year ending December 31, 2005. Unioil filed its protest to the FAN on February 25, 2009, and submitted its supporting documents on April 24, 2009. Thereafter, Unioil filed a Petition for Review on November 20, 2009, considering that the CIR failed to act on its protest and the one hundred eighty (180) day period had already expired. Unioil contends that the FAN issued on January 26, 2009, is null and void for being issued beyond the three-year prescriptive period, and that the FAN failed to apprise Unioil of the specific provision of the law or rules and regulations upon which the assessments were based. Moreover, Unioil contends that it did not receive a PAN prior to the issuance of the FAN, contrary to the procedures outlined in Revenue Regulations (RR) No. 12-99.

Issue:

1. Was a PAN served to Unioil prior to the issuance of the FAN?
2. Has the assessment against Unioil already been prescribed?
3. Were the FLD and FAN issued by the BIR valid?

Ruling:

1. No, Unioil denied receiving the PAN, thus, it follows that it is incumbent upon the CIR to prove the receipt of the subject assessment notice by contrary evidence. The CIR offered in evidence a draft PAN and a PAN dated November 27, 2008, to establish, among others, that a PAN was issued in compliance with existing revenue issuances; but the same failed to show that they were sent to Unioil, either through personal delivery or mail. No other documentary or testimonial evidence was submitted by the CIR to disprove Unioil's alleged non-receipt of the PAN and the CIR's failure to do so leads to the conclusion that no PAN was issued.

   The CIR failed to establish the fact of issuance of the PAN to Unioil. The CIR's failure to comply with the notice requirements under Section 228 of the Tax Code effectively denied Unioil of its right to due process. Consequently, the CIR's assessment was void. Although the CIR never wavered in its assertion that they issued a PAN, during the trial, however, they offered in evidence a mere draft thereof. The CIR's negligence in their power and duty to properly assess taxes is palpable in this case. Ultimately, void assessment bears no valid fruit. Tax collection must be preceded by a valid assessment to allow the taxpayer to protest the assessment, present their case and adduce supporting evidence. Without complying with

the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made.

2. Yes. It bears repeating that Section 203 of the Tax Code provides that internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return xxx." From the date of the FLD and the FAN which were simultaneously issued on January 14, 2009, and only received by Unioil on January 26, 2009, the three-year prescriptive period reckoned from the deadline set by law for the filing of the return, assessment of the January to November 2005 monthly remittance returns has palpably prescribed. As for the assessment for December 2005, suffice to state that all the circumstances obtained herein lead to no other conclusion that the assessment has likewise prescribed.

   Moreover, in *CIR v. Transitions Optical Philippines, Inc.,* the Supreme Court clarified that the assessment contemplated in Sections 203 and 222 of the Tax Code refers to the service of the FAN upon the taxpayer.

3. The FLD and FAN are void for failure to state the factual and legal bases for the assessment. In this case, the CIR only routinely assessed Unioil for deficiency withholding tax on compensation and expanded withholding tax and went through just the motions without due consideration. This is apparent from the haste in which the FLD and the FAN were issued on January 14, 2009, to ostensibly beat the three-year prescriptive period set after January 15, 2009. Moreover, Section 228 of the Tax Code and its implementing rule and regulation, Section 3 of RR No. 12-99, mandate the contents for an assessment: "[t]he taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void." The requirement set by law to state in writing the factual and legal bases for the assessment is not a hollow exhortation. The law imposes a substantive, not merely a formal, requirement.

CIR vs. CTA – Third Division and Citysuper, Incorporated
G.R. No. 239464 promulgated on May 10, 2021 (Uploaded on October 27, 2021)

(When a taxpayer files a petition for review before the Court of Tax Appeals without validly contesting the assessment with the Commissioner of Internal Revenue, the petition is premature and the Court of Tax Appeals has no jurisdiction.)

Facts:

On April 24, 2015, Citysuper received the Formal Letter of Demand and Assessment Notices for the unpaid taxes. In response, on April 29, 2015, Citysuper filed a letter with the BIR. On August 13, 2015, Citysuper filed before the CTA a Petition for Review.

In its December 15, 2017 Resolution, the CTA partially granted the Petition for Review. In a Motion for Reconsideration, the CIR argued that the CTA had no jurisdiction since Citysuper had admitted receiving the FLD and FAN on April 24, 2015, which meant that Citysuper had until May 24, 2015, to file its protest. While it allegedly filed a protest on April 29, 2015, the CIR claimed that the protest letter only had the assessment notices attached, and stated that Citysuper was still compiling supporting documents. With no protest, the CIR claims the assessment became final-depriving the CTA of jurisdiction. In its March 20, 2018 Resolution, the CTA denied the Motion for Reconsideration. It found that the defense of lack of jurisdiction was barred by laches, following *Tijam v. Sibonghanoy* (Tijam case), holding that the issue of prescription had never been raised until the December 15, 2017 Resolution was issued, hence, the CIR is barred from raising the issue on jurisdiction. On the other hand, Citysuper claims that the CTA validly acquired jurisdiction over the subject matter of the case. While it concedes that it filed its protest against the deficiency

assessments, stating that the active participation of the BIR during the proceedings in the CTA showed that it expressly and impliedly submitted to the tax court's jurisdiction.

On June 13, 2018, the CIR filed a Petition for Certiorari before the Supreme Court.

Issues:

1. Is a petition for certiorari the correct remedy to the December 15, 2017, and March 20, 2018 Resolutions of the CTA?
2. Was the CTA correct in finding that the CIR is barred from raising the issue of jurisdiction due to estoppel by laches?
3. Does the CTA have jurisdiction over the petition for review filed by Citysuper?

Ruling:

1. Yes, the CIR availed the correct remedy, which was likewise filed on time. Contrary to Citysuper's claim, the CTA's December 15, 2017 and March 20, 2018 Resolutions were interlocutory orders, only partially disposing of the issues raised in the case. Hence, being interlocutory orders, the Resolutions were the proper subject of a Rule 65 petition.

2. No, the CTA is incorrect. *Tijam* is the exception, not the rule, concerning the affirmative defense of lack of subject-matter jurisdiction. As a general rule, the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel. Only when exceptional circumstances exist similar to what took place in *Tijam*, such as an extraordinarily long period of time before the issue was raised, and the court's jurisdiction being assailed only after an unfavorable judgment, despite earlier obtaining an affirmative relief-should a party be barred from raising lack of jurisdiction as a defense.

   In the records, the BIR raised the issue of lack of jurisdiction as early as in their Answer to the Petition for Review. In the Answer, the CIR had already argued that Citysuper did not file a valid protest, which meant the assessments for deficiency tax had become final, executory, and demandable. There being no disputed assessment, the CTA had no jurisdiction over the Petition for Review. Thus, the CTA had no basis in finding that only when CIR assailed the December 15, 2017 Resolution did they raise the jurisdictional issue. When the defendant or respondent questions the court's jurisdiction from the start, *Tijam* case does not apply. Hence, the CIR is not estopped from questioning the jurisdiction of the CTA.

3. No. The CIR argues that the Court of Tax Appeals had no jurisdiction over Citysuper's Petition for Review because the assessment had attained finality before then. In this case, the CIR did not consider the April 29, 2015 letter as a valid protest. Nowhere in Citysuper's April 29, 2015 letter did it state the assessment notice's date and the applicable law, rules, and regulations, or jurisprudence on which its protest was based. Attaching copies of the audit results/assessment notices is not stating the date of the assessment notice, any more than attaching copies of assailed judgments to a petition without stating them in the petition itself complies with the rule on statements of material dates. While Citysuper claimed that it was "in the process of compiling the necessary documentation to support its protest to said assessments" could imply that it was requesting a reinvestigation, its failure to explicitly state this means that the BIR had no way of knowing whether it should monitor the 60-day period stated in RR No. 18-2013.

   Section 228 of the Tax Code provides that administrative protest must be filed in such form and manner as may be prescribed by implementing rules and regulations. Here, however, Citysuper's protest was void for failing to comply with the requirements of RR No. 18-2013, as mandated by Section 228 of the Tax Code. When a taxpayer files a petition for review before the CTA without validly contesting the assessment with the CIR, the appeal is

premature and the CTA has no jurisdiction. Hence, there was no administrative protest to speak of, and no decision on a disputed assessment to assail. Thus, the CTA had no jurisdiction over the Petition for Review.

CTA EN BANC DECISIONS

CIR vs. PGA Sompo Insurance Corporation
CTA EB No. 2203 promulgated on September 15, 2021

(To reiterate, only the CIR or his duly authorized representatives can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. Stated otherwise, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.)

Facts:

On November 10, 2010, the BIR issued a Letter of Authority signed by the Assistant Commissioner, Large Taxpayers Service, Nestor A. Valeroso, for the investigation of all revenue taxes for the taxable year 2009. The LOA authorized Revenue Officer (RO) Saidamen Marohombsar and Group Supervisor (GS) Adora Alberto to examine PGA's books of accounts and other accounting records. On April 5, 2013, Mr. Edwin T. Guzman, OIC-Chief of Large Taxpayers Regular Audit Division, issued a Memorandum of Assignment assigning Revenue Officer (RO) Luzviminda A. Pedrosa and GS Fe F. Caling for the continuation of the audit/investigation to replace the previously assigned Revenue Officer. On May 2, 2014, PGA received the Preliminary Assessment Notice (PAN), assessing PGA for deficiency taxes. Thereafter, they received an FLD/FAN and subsequently, an FDDA.

Issue:

Does the RO who conducted the audit investigation has no authority to conduct the same?

Ruling:

No. The RO who conducted the audit investigation has no authority to conduct the same. Hence, the deficiency tax assessment is void. In the instant case, the change in revenue officer and group supervisor occurred prior to the issuance of the assessment. Undoubtedly, it was the RO Pedrosa and GS Caling completed the audit and recommended for the issuance of the assessment. In the exercise of his assessment powers, the CIR is also empowered to conduct by himself the examination of any taxpayer, or he may authorize other tax officers to conduct such examination. Section 6(A) of the Tax Code likewise vested the CIR's duly authorized representatives the power to authorize the examination of any taxpayer to collect the correct amount of tax. The term "duly authorized representative" under Section 6(A) of the 1997 NIRC which may authorize examination of taxpayers refers to a Revenue Regional Director, under Sections 1 0 and 13 of the Tax Code. The term likewise refers to other tax officials with the rank equivalent to a division chief or higher, under the CIR's s authority to delegate powers vested in him under Section 7 of the Tax Code. With the foregoing provisions, Revenue Memorandum Order (RMO) No. 43-90 issued by the CIR identifies those officials who are authorized to issue and sign an LOA. It may be noted that an OIC-Chief of the Regular Large Taxpayers Audit Division II is not included therein.

To reiterate, only the CIR or his duly authorized representatives can authorize the audit examination of taxpayers for purposes of assessment of any deficiency taxes. Stated otherwise, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made. In this case, OIC-Chief of LTS-RLTAD II Mr. Edwin T. Guzman issued a MOA to the

concerned ROs. Not being one of the officials authorized to issue an LOA, the subject LOA is invalid for purposes of determining the validity of the assessment.

CTA DIVISION DECISIONS

Irish Fe N. Aguilar vs. CIR
CTA Case No. 9867 promulgated on September 30, 2021

(The compensation income of a Philippine national or a citizen of the Philippines, who are residing therein, from all sources within and without the Philippines, is subject to income tax. Such being the case, there is no need for separate legislation to tax the salaries and emoluments of officers and staff of ADB, who are Philippine nationals or citizens since the latter individuals are already covered by the Tax Code.)

Facts:

Petitioners are Filipino employees of the Asian Development Bank (ADB) at the time the alleged income tax payments were made. On April 12, 2013, the CIR issued RMC No. 31-2013, prescribing the Guidelines on the Taxation of Compensation Income of Philippine Nationals and Alien Individuals Employed by Foreign Governments/Embassies, Diplomatic Missions and International Organizations situated in the Philippines. Under RMC No. 31-2013, petitioners filed their Annual Income Tax Returns and paid their corresponding income taxes for the taxable year 2014 in installments. On September 30, 2014, the Regional Trial Court (RTC) -Branch 213 of Mandaluyong issued a decision nullifying Section 2(d)(1) of RMC No. 31-2013 as void. The petitioners then submitted a letter seeking the refund of the income tax payments for the taxable year 2014.

Petitioners argue that, as employees of the ADB, they are exempt from the payment of income tax. Petitioner invokes Article 56 of the Republic of the Philippines (RP)-ADB Agreement expressly exempts its employees from taxes that may be levied on salaries and emoluments paid by the ADB. Moreover, petitioners contend that according to the doctrine of pacta sunt servanda, the Philippines, is bound to comply with its obligations under the RP-ADB Agreement. Allegedly, Section 2(d)(1) of RMC No. 31-2013 has been declared unconstitutional by the RTC, hence, petitioners claim entitlement to the refund of their payment of income taxes based on an unconstitutional RMC. The CIR, on the other hand, argues that petitioners are not exempt from the payment of income tax and are not entitled to their claim of refund for the taxable year 2014 as the Tax Code clearly states that resident citizens are subject to tax on income derived from all sources within and without the Philippines. Moreover, since petitioners are Filipino citizens and employees of the ADB, they are liable for income tax on compensation income they earned on account of such employment. Likewise, the CIR argues that RMC No. 31-2013 is valid because it is only a mere clarification of existing policies embodied in the law; that under the said RMC, the exemption is still subject to the power of the government to tax its nationals, including petitioners.

Issue:

Are petitioners are entitled to claim for a refund for income taxes paid in the taxable year 2014?

Ruling:

No. The reliance of the petitioners on the decision of the RTC is without merit as only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system. In this case, however, the tax imposition on the compensation income of ADB's officers and staff, who are Philippine nationals, is not based on RMC No. 31-2013 issued by then-Commissioner Jacinto-Henares. Rather, the tax imposition is based on

pertinent provisions of the Tax Code (a legislative enactment), in relation to Section 45(b) of the RP-ADB Agreement.

The compensation income of a Philippine national or a citizen of the Philippines, who are residing therein, from all sources within and without the Philippines, is subject to income tax. Such being the case, there is no need for separate legislation to tax the salaries and emoluments of officers and staff of ADB, who are Philippine nationals or citizens, since the latter individuals are already covered by the Tax Code. There is no merit in the reliance of petitioners on the supposed "Reservation" under Section 45(b) of the RP-ADB Agreement, i.e., on the phrase "subject to the power of Government to tax its nationals", and their resulting contention that without any act from Congress specifically authorizing the exercise of the Government's right to tax its nationals, the tax exemption provision in the RP-ADB Agreement must stand. This is simply because a specific congressional act is unnecessary, since the power to tax Philippine nationals or citizens, as above shown, is already being exercised under the Tax Code.

The Philippine Legislature has exercised and has been exercising, its power to tax the income of Philippine nationals or citizens, at the time the RP-ADB Agreement, up to the present time. Thus, there is no basis in declaring that, at any one time, salaries and emoluments of ADB's officers and staff, who are Philippine nationals or citizens, were ever exempted from income tax.

Huey Commercial, Inc. vs. CIR
CTA Case No. 8985 promulgated on September 30, 2021

(Procedural standards must also be observed in issuing the LOA to ensure that such authority is not arbitrarily exercised. As part of due process, the purpose of the LOA is not only to give the subject taxpayer notice on the coverage of the tax investigation but also to prevent the examiner from claiming blanket authority to conduct the audit and investigation.)

Facts:

On August 26, 2011, Letter of Authority (LOA) was for the examination of Huye Commercial's books of accounts and other accounting records as a mandatory audit pursuant to a claim for an income tax refund by Huey Commercial. On September 2, 2011, RO San Antonio personally went to Huey Commercial's office where he was accommodated by a person named Noli Salarda who was the only person present in Huey Commercial's place of business. Upon being asked if he was an authorized representative of Huey Commercial, Salarda answered in the affirmative. RO San Antonio did not, however, ask for a company identification card from Salarda to verify such assertion. Instead, he immediately presumed that Salarda was an authorized representative of Huey Commercial who may be validly served a copy of the LOA. Thus, he served the LOA along with the First Notice and Checklist of Requirements to Salarda. Upon serving the LOA, RO San Antonio also asked Salarda to place his address on the receiving copy of the LOA so that other requests for documents may be sent to him should these become necessary. Salarada complied with the request and placed "73 Mariano Cuenco St., cor. Banawe, Quezon City" in the face of the receiving copy.

Issue:

Was the LOA validly issued and served against Huey Commercial?

Ruling:

No, the LOA was not properly served to Huey Commercial. Procedural standards must also be observed in issuing the LOA to ensure that such authority is not arbitrarily exercised. As part of due process, the purpose of the LOA is not only to give the subject taxpayer notice

on the coverage of the tax investigation but also to prevent the examiner from claiming blanket authority to conduct the audit and investigation.

In this case, the Huey Commerical denies receipt of the subject LOA. A review of the documents and testimony presented shows that although RO San Antonio personally went to Huey Commercial's registered business address located at B2 L4 Bais, Pio Cruzcosa, Calumpit Bulacan, no authorized person was present there. Instead, only one named Noli Salarda was there. RO San Antonio claims that Salarda answered in the affirmative when asked if he was an authorized representative of Huey Commercial. Thus, based solely on this representation, RO San Antonio served the subject LOA to Salarda, who in tum received the same by affixing his name and signature on the receiving copy of the LOA. However, RO San Antonio did not ask for any proof from Salarda showing his alleged lawful representation of Huey Commercial such as a company identification card. RO San Antonio simply relied on the bare assertions by Salarda,

Hence, the BIR indeed failed to properly serve a copy of the LOA to Huey Commercial and, as such, the latter was not able to receive the subject LOA. The negligence committed by RO San Antonio of not properly verifying if Salarda was an employee of Huey Commercial unfairly denied Huey Commercial of its right to due process in the tax assessment proceedings. By not receiving a copy of the LOA, Huey Commercial was not given a chance to participate in the tax audit and present its books of accounts and other accounting records to support its position that it has declared, paid, and remitted all taxes due. As provided above, an unserved LOA is a null and void LOA. Without a valid LOA, the revenue officers who conducted the tax audit are not properly authorized to do so. Accordingly, any tax assessment issued pursuant to such an audit is undoubtedly null and void.

Altimax Broadcasting Co., Inc. vs. CIR
CTA Case No. 10044 promulgated on October 6, 2021

(It has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was received by the addressee.)

Facts:

On January 31, 2019, Altimax Broadcasting Co., Inc. (Altimax) received a Warrant of Distraint and/or Levy (WDL), for alleged deficiency taxes for the taxable year 2013. On February 19, 2019, Altimax filed with the BIR Revenue Region No. 7 a letter, manifesting that Altimax did not receive a PAN and FAN as required under Section 228 of the Tax Code, and requesting the BIR to defer from any further action, in connection with the WDL, and for copies of the PAN and FAN, for Altimax to be adequately informed of the items of assessment from which the alleged deficiency tax liabilities were based. The CIR alleges that Altimax failed to timely file a valid protest to the FAN, which was served to Altimax through registered mail at its address at Unit 507 The Taipan Place F. Ortigas Jr., San Antonio, Ortigas Center, Pasig City.

Issue:

Were the subject notices were properly served to Altimax through registered mail?

Ruling:

No, the CIR violated Altimax's right to due process, the subject notices were not properly served by the CIR or the BIR. One of the modes of service of the PAN, FLD, and FAN is by service through registered mail. As for such mode of service, to constitute sufficient proof of mailing, the registry receipt issued by the post office must contain sufficiently identifiable details of the transaction. It has been settled that while a mailed letter is deemed received by

the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was received by the addressee.

Altimax directly denies due receipt of the subject notices, the burden is shifted to the CIR to prove that the same were indeed received by Altimax or by its authorized representative. To prove the service of the PAN and FAN, the CIR presented the registry receipts. Thus, the only evidence adduced by the CIR in proving the fact of service of the subject notices are the copies of the corresponding Registry Receipts issued by the Post Office. Unfortunately, these hardly suffice to prove that the said notices were indeed served and received by Altimax or any of its authorized representative/s. These Registry Receipts merely proved the fact of mailing, and nothing more. The glaring fact remains that nowhere can it be seen from the evidence presented by the CIR that the said PAN and FAN/FLD were actually served and received by Altimax or any of its authorized representative/s. The mere presentation of registry receipts is not sufficient. It is still required that the said registry receipts be signed by the concerned taxpayer's duly authorized representative and that the signatures are identified and authenticated. It is noteworthy that no signature whatsoever appears on the subject Registry Receipts. Thus, the fact of service to, or receipt of, Altimax of the subject PAN and FAN/FLD was never established by BIR. Hence, due process was not accorded to Altimax in the issuance of the subject PAN and FAN/FLD, making the assessment is void.

Catherine T. Loh/Arysta Marketing vs. BIR
CTA Case No. 9934 promulgated on October 15, 2021

(Section 228 of the Tax Code provides that a taxpayer adversely affected by the decision, relative to a protest against an assessment, may file an appeal before the CTA within 30 days from receipt of decision; otherwise, the decision shall become final, executory, and demandable.)

Facts:

The BIR the PAN against Catherine T. Loh informing the latter of the findings of the BIR after its investigation for deficiency taxes. On January 30, 2014, Loh received the BIR's FLD finding the former liable for deficiency taxes. The BIR also issued against Loh the corresponding Assessment Notices for the deficiency taxes, Thereafter, the BIR issued the Final Decision on Disputed Assessment (FDDA) dated June 30, 2015. Loh received a copy of the Final Decision dated August 14, 2018, denying her motion for reconsideration. Loh filed a Petition for Review with Motion to Suspend Collection of Taxes on September 24, 2018. Loh argues that the BIR did not issue a FAN but only an FLD, which was, however, improperly served, as there was no attempt to serve it personally to her. The BIR, on the other hand, contends that the CTA has no jurisdiction over the petition for review since the assessment has already become final, executory, and demandable.

Issue:

Does the CTA have jurisdiction over the case?

Ruling:

No, the CTA has no jurisdiction over the case. Section 228 of the Tax Code provides that a taxpayer adversely affected by the decision, relative to a protest against an assessment, may file an appeal before the CTA within 30 days from receipt of decision; otherwise, the decision shall become final, executory, and demandable. In this case, Loh was twice explicit that the date of receipt of the decision is August 22, 2018. It is clear that an admission made in the pleadings cannot be controverted by the party making such admission and is conclusive as to such party; and that the same party cannot subsequently take a position contrary to or inconsistent with what was pleaded. The FDDA dated June 30, 2015, denying

the Motion for Reconsideration, was received by Loh on August 22, 2018. Applying Section 228 of the Tax Code, Loh had only 30 days, or until September 21, 2018, to appeal such final decision of the BIR to the CTA. However, Loh only filed the Petition for Review before only on September 24, 2014; hence, the same was filed out of time. Consequently, the subject assessment had become final and executory when it was elevated to the CTA. Hence, the Petition for Review must be dismissed.

Drugmakers Biotech Research Laboratories, Inc. vs. CIR
CTA Case No. 9635 promulgated on October 15, 2021

(Based on jurisprudence, it is clear that while a mailed letter is deemed received by the addressee in the course of the mail, this is merely a disputable presumption subject to rebuttal. Consequently, the direct denial thereof shifts the burden to the sender to prove that the said letter was received by the addressee.)

Facts:

On January 4, 2012, the BIR issued the Letter Notice (LN) informing Drugmakers that a computerized matching conducted by the BIR on information/data provided by third party sources against Drugmaker's declarations per value-added tax (VAT) returns disclosed discrepancies for the calendar year 2008. Thereafter, the BIR issued to Drugmakers a Notice for Informal Conference (NIC) dated May 10, 2012. BIR then issued PAN dated February 19, 2013, with attached Details of Discrepancies, informing Drugmakers of its deficiency taxes. On June 28, 2017, a WDL was addressed to the Head of the Arrears Management Section of the Collection Division of BIR's Revenue Region No. 9 in San Pablo City, Laguna, was served on Drugmakers. On July 28, 2017, Drugmakers filed a Petition for Review with a Motion to Quash the Warrant of Distraint and/or Levy.

Drugmakers contend that it was not properly informed of the facts and law upon which the deficiency tax assessments were based considering that it received no NIC, PAN, Formal Assessment Notice (FAN), and/or Final Decision on Disputed Assessment (FDDA). Thus, according to Drugmakers, due process was violated, and BIR's assessment is invalid. On the other hand, the BIR claims that it was informed in writing of the law and the facts on which the assessment was made; and that both the PAN and the FAN stated clearly the same information.

Issue:

1. Was there a valid assessment in the absence of a Letter of Authority (LOA)?
2. Was the PAN validly served to Drugmakers?

Ruling:

1. No, the subject tax assessments and WDL are void, since the Revenue Officer who investigated Drugmakers was not duly authorized to do so. Sections 10 and 13 of the Tax Code provide that the authority of a Revenue Officer to examine or to recommend the assessment of any deficiency tax due must be exercised under an LOA.

   In this case, the BIR formally offered in evidence the LN to prove, among others, that Drugmakers was accorded due process and given the opportunity to explain the discrepancy noted. Granting for the sake of argument, that Drugmakers had indeed received the BIR's LN, he still cannot seek refuge under an LN to justify the examination of Drugmakers' records. There is no showing that the subject LN was converted into an LOA. Correspondingly, the proceedings that led to the issuance of deficiency tax assessments against Drugmakers had no prior approval and authorization from the CIR or his duly authorized representatives. Not having authority to examine Drugmakers in the first place, the subsequent assessments issued by the BIR are inescapably void. A void assessment bears

no valid fruit, and thus, must not be given any effect, including all the subsequent proceedings in pursuance thereof, such as the issuance of a WDL.

2. No, the BIR's failure to prove that the assessment notices were received by Drugmakers renders the subject assessments void for violation of Drugmakers' right to due process. Consequently, the WDL is likewise void. As a rule, when the CIR or his duly authorized representative finds that proper taxes should be assessed, the concerned taxpayer must first be notified of the BIR's findings, through a pre-assessment notice or a PAN. Furthermore, the said taxpayer is required to be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

   Based on jurisprudence, it is clear that while a mailed letter is deemed received by the addressee in the course of the mail, this is merely a disputable presumption subject to rebuttal. Consequently, the direct denial thereof shifts the burden to the sender to prove that the said letter was actually received by the addressee.

   In this case, the only evidence adduced by the BIR in proving the fact of mailing of the PAN is a copy of a Registry Return Receipt issued by the Philippine Postal Corporation and a Certification from the BIR's General Services Division. Unfortunately, these hardly suffice to prove that the said notices were indeed served and received by Drugmakers or by any of its authorized representatives. The said Registry Return Receipt merely proved the fact of mailing, and nothing more. The glaring fact remains that nowhere can it be seen from the evidence presented that the said PAN was actually served and received by Drugmakers or by any of its authorized representatives. Particularly, there is no indication in the subject Registry Return Receipt that the signature appearing therein refers to Drugmakers or its authorized representative. While the subject Registry Return Receipt indicates a signatory, there is no indication that the latter is Drugmakers' duly authorized representative. Thus, the said document cannot be treated as proof of the actual receipt of the subject PAN by Drugmakers or its duly authorized representative.

   Given the BIR's failure to prove that the PAN and FAN were properly and duly served upon or received by Drugmakers, the assessments made against Drugmakers for deficiency taxes for the taxable year 2008 are void, for failure to accord Drugmakers due process in the issuance thereof. Accordingly, there being no final and valid assessment to begin with, Drugmakers cannot be considered delinquent taxpayer.

BIR vs. Secretary of Justice and Camp John Hay Hotel Corp.
CTA Case No. 10298 promulgated on October 15, 2021

(A petition for certiorari is proper only when there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. Certiorari may not be issued if the error can be the subject of an ordinary appeal.)

Facts:

The BIR filed on March 26, 2015, a Joint Complaint-Affidavit against Camp John Hay for a violation under Section 266 of the Tax Code in relation to Section 5(C) of the same Code on the failure to obey the Subpoena Duces Tecum (SDT) on the failure to submit the documents requested by the BIR. The case was assigned for preliminary investigation. On June 23, 2015, Camp John Hay submitted his Counter Affidavit claiming that they exerted efforts to comply with the various requests of the BIR for the presentation and examination of records. It likewise maintained that after the last examination, they were never advised that there were still additional documents or records to be submitted prior to issuing SDT.

On February 24, 2016, The BIR received a copy of the Investigating Prosecutor's Resolution dated January 26, 2016, recommending the dismissal of the complaint against Camp John Hay. On July 12, 2016, the BIR filed a Petition for Review. On July 12, 2017, The BIR received a copy of the Resolution of the Secretary of Justice dismissing the Petition for Review. Hence, the BIR filed a Motion for Reconsideration dated July 26, 2017, which was denied. Thus, the BIR then filed a Petition for Certiorari on July 1, 2020.

Issue:

1. Does the CTA have jurisdiction to entertain the Petition for Certiorari?
2. Is the remedy of Petition for Certiorari available to the BIR?
3. Did the Secretary of Justice commit grave abuse of discretion by way of dismissing the criminal complaint against Camp John Hay?

Ruling:

1. Yes, the CTA has jurisdiction over petitions for certiorari. In the case of City of Manila vs. Grecia-Cuerdo, the court held the CTA now has the power of certiorari in cases within its appellate jurisdiction. Under Section 1, Article VIII of the 1987 Constitution, vesting judicial power in the Supreme Court and such lower courts as may be established by law, to determine whether or not there has been a grave abuse of discretion on the part of any branch or instrumentality of the Government, in relation to Section 5(5), Article VIII thereof, vesting upon it the power to promulgate rules concerning practice and procedure in all courts, the CA's original jurisdiction over a petition for certiorari assailing the Department of Justice (DOJ) resolution in a preliminary investigation involving tax and tariff offenses was necessarily transferred to the CTA under Section 7 of R.A. No. 9282. and that such petition shall be governed by Rule 65 of the Rules of Court. as amended.

   The CTA has jurisdiction over the petition for certiorari assailing the DOJ resolutions, affirming the dismissal of the complaint-affidavit for tax offenses, or specifically, for violations of the provisions of the Tax Code, due to lack of probable cause. Correspondingly, the CTA may validly entertain the present Petition for Certiorari since it questions a DOJ Resolution.

2. No, since in the instant case, the remedy of appeal was available to the BIR. A petition for certiorari is proper only when there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. Certiorari may not be issued if the error can be the subject of an ordinary appeal.

   In this case, the remedy of appeal was available to the BIR. Under Section 25, Chapter 4, Book VII, of the Administrative Code of 1987 (Executive Order No. 292, Series of 1987), it states that a decision of an agency of the National Government, which necessarily includes the DOJ, may be appealed within fifteen (15) days from receipt of a copy thereof. Nevertheless, the aggrieved party may file one (1) motion for reconsideration, and in case the same is denied, such movant must perfect his appeal during the remaining period for appeal reckoned from receipt of the resolution of denial.

   In this case, on July 12, 2017, the BIR received the Resolution of the Secretary of Justice. Thus, computing the 15-day reglementary period from such date of receipt, the BIR had until July 27, 2017. However, the BIR opted to file instead a Motion for Reconsideration on the said date or on such 15th day with the DOJ. Thus, upon receipt of the latter's Resolution on February 21, 2020, the BIR had only one (1) day or until February 22, 2020 to file its appeal. Nevertheless, since February 22, 2020 fell on a Saturday, the BIR had until February 24, 2020 to perfect such appeal, pursuant to Section 1, Rule 22 of the Rules of Court. In any event, no appeal was filed by the BIR. Such being the case, the appeal available to the BIR has been lost. As mentioned, a writ of certiorari is not a substitute for a lost appeal.

3. No, there was no grave abuse of discretion. The Secretary of Justice is afforded a wide latitude of discretion in the conduct of a preliminary investigation. Consequently, it is a sound judicial policy to refrain from interfering in the conduct of a preliminary investigation and to just leave to the DOJ the ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders.

   It is clear from the Investigating Prosecutor and the DOJ that the BIR has not given sufficient proof to warrant the filing of an Information against Camp John Hay. In other words, the prosecuting arm of the government opines that there is no evidence to support the BIR's allegation that there was a violation of Section 266 of the Tax Code on the part of Camp John Hay. Furthermore, it is likewise noted by the same Investigating Prosecutor and the DOJ that there is no evidence that Camp John Hay was appraised and informed of whatever records and documents which are still needed to be presented and submitted by him to the BIR to comply with the subject subpoena duces tecum. There was no failure on the part of Camp John Hay to submit the other subpoenaed documents, the BIR failed to present convincing evidence to show such failure. The Investigating Prosecutor and the DOJ were correct that the BIR has not given sufficient proof to warrant the filing of an Information against Camp John Hay. Hence, the petition for certiorari must be dismissed.

DEPARTMENT OF LABOR AND EMPLOYMENT ISSUANCE

Labor Advisory No. 19-21 issued on October 26, 2021

- Special (Non-Working) Day - November 1, 2021 (All Saints' Day)
  - If the employee did not work, the "no work, no pay" principle shall apply unless there is a favorable company policy, practice, or collective bargaining agreement (CBA) granting payment on a special day;
  - For work done during the special day, he/she shall be paid an additional 30% of his/her basic wage on the first eight hours of work [(Basic wage x 130%) + COLA]:
  - For work done in excess of eight hours (overtime work), he/she shall be paid an additional 30% of his/her hourly rate on said day [Hourly rate of the basic wage x 130% x 130% x number of hours worked];
  - For work done during a special day that also falls on his/her rest day, he/she shall be paid an additional 50% of his/her basic wage on the first eight hours of work [(Basic wage x 150%) + COLA]: and
  - For work done in excess of eight hours (overtime work) during a special day that also falls on his/her rest day, he/she shall be paid an additional 30% of his/her hourly rate on said day (Hourly rate of the basic wage x 150% x 130% x number of hours worked).
- Special (Working) Day - November 2, 2021 (All Souls' Day)
  - For work performed on a declared Special Working Day, an employee is entitled only to his/her daily wage. *No premium pay is required since work performed on said day is considered work on an ordinary working day.*
- Regular Holiday - November 30, 2021 (Bonifacio Day)
  - If the employee did not work, he/she shall be paid 100% of his/her wage for that day [(Basic wage + COLA) x 100%];
  - For work done during the regular holiday, the employee shall be paid a total of 200% of his/her wage for that day for the first eight hours ((Basic wage + COLA) x 200%];
  - For work done in excess of eight hours (overtime work), he/she shall be paid an additional 30% of his/her hourly rate on said day [Hourly rate of the basic wage × 200% x 130% x number of hours worked];

  - For work done during a regular holiday that also falls on his/her rest day, he/she shall be paid an additional 30% of his/her basic wage of 200% [(Basic wage + COLA) x 200%] + [30% (Basic wage x 200%)]; and
  - For work done in excess of eight hours (overtime work) during a regular holiday that also falls on his/her rest day, he/she shall be paid an additional 30% of his/her hourly rate on said day (Hourly rate of the basic wage x 200% x 130% x 130% x number of hours worked).
- In view of the existence of a national emergency arising from the COVID-19 situation, establishments that have totally closed or ceased operation during the community quarantine period are exempted from the payment of the holiday pay on November 30, 2021.

SECURITIES AND EXCHANGE COMMISSION ISSUANCE

Opinion No. 21-10 issued on September 21, 2021

- Mehitabel Incorporated ("Mehitabel" or the "Company"), pursuant to its amended Articles of Incorporation, has an authorized capital stock of PhP135,000,000.00 which includes 110,000,000 Preferred Shares with par value of Php 1.00 per share.
- The preferred shares are non-voting, non-participating, non-convertible and redeemable at the option of Mehitabel within five (5) years from the date of issue. The holders of preferred shares are entitled to receive cumulative cash dividends of not more than twenty-five percent (25%) per annum out of the unrestricted retained earnings and payable before any cash dividends are declared for distribution to holders of common shares.
- Mehitabel intends to redeem, at par value, all of preferred shares it has issued. Moreover, subsequent to the proposed redemption, the preferred shares reacquired will be considered retired and will no longer be reissued. The Company will remove these redeemed preferred shares from the treasury by applying for a decrease in its authorized capital stock.
- As of 31 December 2019, the Audited Financial Statements of Mehitabel reflect a retained earnings deficit of PhP79,345,843.00. Mehitabel has sufficient assets to cover its debts and liabilities prior to and after the proposed redemption and the proposed redemption will not cause insolvency or result in the inability of the Company to meet its debts as they mature.
- The SEC opined that under Section 40 of the Revised Corporation Code (RCC), it states the general rule that there must be unrestricted retained earnings before a corporation can redeem, repurchase, repurchase or reacquire its own shares. An exception to this general rule is Section 8 of the RCC which defines redeemable shares and provides that such shares may be purchased by the corporation from the holders thereof upon the expiration of a fixed period, regardless of the existence of unrestricted retained earnings in the books of the corporation.
- In short, although the general rule is that there must be unrestricted retained earnings before a corporation can redeem, repurchase, or reacquire its own shares, the exception is when the shares to be redeemed are redeemable as provided in the articles of incorporation and certificates of stock of the corporation. However, for any redemption of said shares to be valid, there must be sufficient assets to cover the debts and liabilities of the corporation6. Based on the foregoing, Mehitabel may purchase its redeemable shares from the holders thereof upon the expiration of a fixed period, as provided in its articles of incorporation and certificates of stock representing the said shares, regardless of the existence of unrestricted retained earnings in its books, considering that, based on its representation, it has, after such redemption, sufficient assets in its books to cover debts and liabilities inclusive of capital stock
- The SEC opined that, in this case, the amended Articles of Incorporation is silent on the "reissuable" nature of its redeemable preferred shares. As such, once its shares are redeemed, the same shall be considered retired and may no longer be reissued. To eliminate

the treasury shares, Mehitabel must file an application for the decrease of authorized capital stock with the Commission and comply with all the requirements set forth in Section 37 of the RCC which states among others, that no decrease of authorized capital stock shall be approved by the Commission if its effect shall prejudice the rights of corporate creditors.

NATIONAL PRIVACY COMMISSION ISSUANCE

NPC Advisory Opinion No. 2021-036 issued on September 23, 2021

- Atty. RAN, on behalf of his client, Mr. CGS, wrote to the Home Development Mutual Fund (Pag-IBIG Fund) Loans Origination Department – Cebu Housing Hub requesting certified copies of the vouchers on the check payment/s made to Ms. CVG.
- Mr. CGS allegedly lent money to Ms. CVG, through her brother, Mr. RV. Allegedly, Mr. RV bought two (2) Pag-IBIG Fund acquired assets (subject lots). Atty. RAN mentioned that the intention was to re-sell the lots and the proceeds used to pay Mr. CGS. However, when Mr. CGS demanded payment, Mr. RV declared that the properties are yet to be sold. Upon verification, Mr. CGS found out that the properties were purportedly bought by a certain Mr. ZPJ through a Pag-IBIG Fund housing loan with the proceeds released to the seller, Ms. CVG. Thus, Atty. RAN stated the vouchers are material evidence in his client's pursuit of justice in the event that Ms. CVG and her brother fail to settle their obligation.
- According to Pag-IBIG Fund, the requested documents pertain to personal data involving the housing loan borrower Mr. ZPJ and the seller, Ms. CVG, which are protected under the DPA and would thus require their consent prior to the disclosure of the information to third parties. On the other hand, Atty. RAN claims the following: (1) the request falls under Section 13(f) which states that the processing of sensitive personal information is allowed where the processing concerns the establishment, exercise or defense of legal claims…"; (2) Pag-IBIG Fund has been informed that his client, Mr. CGS, has a legal claim over the proceeds of the subject sale transaction between Mr. ZPJ and Ms. CVG who stood for her brother in the acquisition of the subject lots; and (3) it is simply impossible and illogical to obtain the consent of Ms. CVG who allegedly anticipates being sued criminally for misrepresentations made to his client.
- The NPC opined that the interpretation of the phrase "processing as necessary for the establishment of legal claims" does not require an existing court proceeding. The very idea of "establishment … of legal claims" presupposes that there is still no pending case since a case will only be filed once the required legal claims have already been established. The DPA is neither a tool to prevent the discovery of a crime nor a means to hinder legitimate proceedings.
- Hence, the establishment of legal claims requiring the processing of sensitive personal information is permitted under the DPA. The term establishment may include activities to obtain evidence by lawful means for prospective court proceedings. As such, the DPA does not require the establishment of actual or ongoing court proceedings in the application of Section 13(f).
- In the situation at hand, Mr. CGS, through his counsel, Atty. RAN, seeks to obtain information relating to the proceeds of the sale of the two subject lots under the MOA between him on the one hand and Mr. RV and Ms. CVG, on the other. To establish this legal claim, certified copies of the vouchers on the check payment/s made to Ms. CVG from the alleged sale with Mr. ZPJ are deemed necessary. Section 13(f) would be the lawful criterion for such a request if such vouchers contain sensitive personal information. Thus, Pag-IBIG Fund may release certified copies of the requested loan documents, without the consent of the data subjects involved.

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

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