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TAX JOURNAL

JULY 2022

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EXECUTIVE ISSUANCE

Executive Order No. 175 issued on June 27, 2022

- In this Executive Order (EO), the President of the Philippines promulgated the 12th Regular Foreign Investment Negative List (FINL).
- In this list, only the investment areas and/or activities listed in the 12th FINL shall be reserved for Philippine Nationals, subject to the exceptions and conditions indicated therein. List A contains the investment areas and/or activities wherein foreign ownership is limited by mandate of the Constitution and specific laws, while List B contains those limited for reasons of security, defense, risk to health and morals and protection of small and medium scale enterprises. The 12th FINL also lists down professions where foreigners are not allowed to practice in the Philippines except if subject to reciprocity as provided in the pertinent laws, as well as the corporate practices of professions that have foreign equity restrictions under pertinent laws.
- Certain investment acts and/or activities enumerated in the 11th FINL have been deleted from the 12th FINL and several have also been added in the latter.
- List A: In the 11th FINL, listed in activities with no foreign equity allowed are retail trade enterprises with paid-up capital of less than USD2,500,000.00. However, in the 12thFINL, the amount is changed to PhP25,000,000.00 pursuant to Section 2 of Republic Act (RA) No. 11595, amending RA No. 8762. Cooperatives now have an exception attached to it, which is when the investments are made by former natural born citizens of the Philippines as provided under Section 4 of RA No. 8179 which amended RA No. 7042.
- Other changes are found under the listed activities wherein foreign equity up to 40% is allowed. First, the 12th FINL simplified the category into "procurement of infrastructure projects", pursuant to Section 23.4.2.1(b), (c), and (e) of the Implementing Rules and Regulations (IRR) of RA No. 9184.
- An exception is appended to "ownership of private lands", wherein a natural born citizen who has lost his Philippine citizenship and has the legal capacity to enter into a contract under Philippine laws as provided under Section 10, RA No. 7042 as amended by Section 5, RA No. 8179 is allowed to own private land.
- The exceptions under "operation of public utilities" have been removed, and "culture, production, milling, processing, trading, except retailing, of rice and corn and acquiring, by barter, purchase or otherwise, rice and corn and the by-products thereof" have been subjected to period of divestment under National Food Authority (NFA) Council Resolution No. 193, s. 1998.
- List B: In the 11th FINL, listed in activities where up to 40% foreign equity is allowed are the manufacture, repair, storage, and/or distribution of products requiring Department of National Defense (DND) clearance. However, in the 12th FINL, this item is deleted. The classification of market enterprises with paid-in equity capital of less than the equivalent of US$ 200,000 is now applicable to micro and small domestic market enterprises.
- Micro and small domestic market enterprises now include those which: (1) involve advance technology as determined by the Department of Science and Technology (DOST), or (2) are endorsed as startup or startup or startup enablers by the lead host agencies (Department of Trade and Industry, Department of Information and Communications Technology, or DOST), or (3) with a majority of their direct employees as Filipinos, but the number of Filipino employees cannot be less than 15, with paid-in equity capital of USD100,000.00.
- Lastly, in the Annex of Professions, added in the list of professions where foreigners are not allowed to practice in the Philippines except if subject to reciprocity are Criminology, Fisheries profession, Food Technology, Marine Deck and Engineering, Professional Teaching, Radiologic and X-ray Technology, and Speech Language Pathology. Under the list of professions where corporate practice of professions is allowed with foreign equity restrictions under pertinent laws, only the profession Architecture remains.

BIR ISSUANCES

REVENUE REGULATIONS (RR)

RR No. 6-2022 issued on June 30, 2022

- This regulation removes the five-year validity period on receipts/invoices.
- The five-year validity period of the Permit to Use (PTU) and/or system-generated receipts/invoices will no longer apply to the following:
    - Authority to Print (ATP) Official Receipts, Sales Invoices and Other Commercial Invoices based on Revenue Memorandum Order (RMO) No. 12-2013;
    - Registration of Computerized Accounting System (CAS)/Component of CAS based on RMC No. 10-2020, RMC No. 5-2021 and RMO No. 9-2021; and
    - PTU Cash Register Machines and Point-of-Sale (POS) machines based on RR No. 11-2004 and RMO No. 10-2005.
- The above shall now be valid unless revoked by the BIR.
- The phrase "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE", and the phrase "Valid Until" shall now be OMITTED at the bottom portion of the invoice/receipt.
    - ATP principal and supplementary receipts/invoices inclusive of its serial numbers and its usage shall have no expiration; thus, the phrase "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE ATP." and the phrase "Valid Until (mm/dd/yyyy)" on the manual receipts/invoices previously required shall also be OMITTED (or DISREGARDED for unused receipts/invoices).
    - Previously generated and unused invoices and receipts that were issued with the aforementioned phrases shall be disregarded, but must omit those phrases in the future.

RR No. 7-2022 issued on June 30, 2022

- Section 4 of this Regulation provides for fiscal incentives for renewable energy (RE) projects and activities.

  The duly registered RE Developer shall be exempt from income taxes levied by the National Government for the period as follows:
  (1) Existing RE Projects - Availment of income tax holiday (ITH) for seven years from the start of commercial operations which is when the RE project has been issued a Certificate of Compliance (COC) and is ready to inject power grid
  (2) New investment in RE Resources - Availment of ITH for seven years from the start of commercial operations resulting from new investments
  (3) Additional investments in the RE Project - Availment of ITH for additional investments in RE project shall not be more than three times the period of initial availment by the existing or new RE Project or covering new or additional investments.

- *Net Operating Loss Carry-Over (NOLCO)* - The NOLCO of the RE Developer during the first three years from the start of commercial operation shall be carried over as deduction from gross income for the next seven consecutive taxable years immediately following the year of such loss, subject to the following conditions:
  (1) The NOLCO has not been previously offset as a deduction from gross income; and
  (2) The loss should be a result from the operation and not from the availment of incentives.

- *Corporate Tax Rate* - After the availment of the ITH, all registered RE Developers shall pay a corporate tax of ten percent (10%) on their net taxable income as defined in the Tax Code.
- *Accelerated Depreciation* - If an RE project fails to receive an ITH before full operation, the RE developer may apply for accelerated depreciation in its tax books and be taxed on the basis of the same. If an RE Developer applies for an accelerated depreciation, the project or its expansions shall no longer be eligible to avail of the ITH.
- *Zero Percent Value-Added Tax (VAT) Rate* - The sale of power of fuel generated through renewable sources of energy shall be subject to 0% VAT pursuant to the Tax Code, provided that ancillary service granted through renewable sources of energy shall also be subject to zero percent (0%) VAT.
- On the other hand, the purchase by an RE Developer of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE Developers, and the whole process of exploration and development of RE sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors shall also be subject to 0% VAT.
- Accordingly, local suppliers/sellers of goods, properties, and services of duly registered RE developers should not pass on the 12% VAT on the latter's purchases of goods, properties, and services that will be used for the development, construction, and installation of power plant facilities.
- *Tax Exemption of Carbon Credits* - All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes.
- Section 6 of this Regulation provides for incentives for commercialization. All manufacturers, fabricators, and suppliers of locally produced RE equipment and components duly recognized and accredited by the Department of Energy (DOE) and upon registration with the Board of Investments (BOI) shall be entitled to the following privileges:
    A. VAT-free importation of components, parts, and materials;
    B. ITH for seven years starting from the date of registration and accreditation with the appropriate government agencies such as the DOE and BOI; and,
    C. Zero-rated VAT transaction.

RR No. 9-2022 issued on June 30, 2022

- This Regulation prescribes the policies and guidelines for the admissibility of sales documents (invoices/receipts) in electronic format in relation to the implementation of Sections 237 (issuance of receipts or sales or commercial invoices) and 237-A (Electronic Sales Reporting System) of the Tax Code, as amended by RA No. 10963 (Tax Reform for Acceleration and Inclusion [TRAIN] Law).
- This regulation shall cover the following taxpayer groups:
    - Taxpayers engaged in the export of goods and services;
    - Taxpayers engaged in electronic commerce (e-commerce);
    - Taxpayers under the Large Taxpayers Service; and,
    - Other taxpayers authorized by the BIR to issue electronic sales invoices /Official Receipts through the web-based facility of the Electronic Invoicing/Receipting and Sales Reporting System (EIS).
- Taxpayers duly authorized to use the EIS, whether through the web-based format or through Application Programming Interface (API) transmission of sales data, shall not be required to submit printed copies of invoices or receipts.
    - A separate reporting to EIS is required for each sales classification, particularly VATable, zero-rated, and exempt.
    - Only purchases data validated in the EIS shall be allowed for purposes of claiming input VAT or for claiming deductible expenses for Income Tax.

  - Receipts and invoices presented or claimed, but not reported in the EIS, by the supplier shall be construed as unreported sales and shall be subject to further investigation.
  - Sales and purchases data generated and verified through the EIS will be admissible in tax audits and investigations.
  - Subject to approval of the CIR or his authorized representative, taxpayers may be required to present or submit hard copies of the receipts or invoices or allow access to the computerized system for purposes of investigation, validation, or completion of irregular entries in the IES.
- Revenue Officers (ROs) may access the respective CAS or POS/Cash Register Machines of the taxpayer under the EIS to validate whether the sales data transmitted to the EIS matches the sales recorded in their electronic systems
- Refusal to allow the ROs to access the CAS pursuant to Section 7 of RR No. 9-2009 shall give authority to the Revenue Officers to employ alternative means in verification of records or result in disallowances or assessments.
- Under Section 12 of this Regulation, any violation of its provisions may result in prosecution of the taxpayer by the BIR.
- Upon conviction, the taxpayer shall be held liable for the penalties provided under Section 255 of the Tax Code, in addition to any other penalties otherwise payable.
- This may also result in the revocation of the Acknowledgement Certificate or PTU CAS of the taxpayer, upon recommendation of the Revenue Officer.

REVENUE MEMORANDUM CIRCULAR (RMC)

RMC No. 82-2022 issued on June 28, 2022

- This Circular is issued to clarify the service of Letter of Authority (LOA) pursuant to Revenue Audit Memorandum Order (RAMO) No. 1-2000.
- RAMO No. 1-2020 deleted the provision on the 30-day period and revalidation in RAMO No. 1-2000.
- The Circular provides that the deletion of the 30-day period to serve the electronic LOA (eLA) shall in no case be an excuse for the concerned RO to delay its service nor for a taxpayer to refuse its service or to question its validity, in case the same is served beyond the 30-day period.
- What is crucial is that the entire audit process shall be completed within a period of 180 days for Revenue District Office (RDO) cases/240 days for Large Taxpayer (LT) cases from the date of issuance of eLA. Therefore, a LOA which remains unserved upon the effectivity of this RMC No. 82-2022 or have been served beyond the 30-day period from the date of its issuance shall still be considered valid and enforceable, provided that the 180-day/240-day period to complete the audit process has not yet expired.
- It should be necessary for all concerned ROs as a duty or responsibility to serve the LOA immediately, considering that the entire audit process must be completed within a period of 180 days for RDO cases/240 days for LT cases from the date of issuance of LOA.
- Non-observance on the aforesaid timeline is gross neglect of duty which is a grave offense subject to appropriate administrative sanctions pursuant to RMO No. 53-2010.

COURT DECISIONS

SUPREME COURT DECISIONS

CIR vs. Philippine Bank of Communications
G.R. No. 211348 promulgated on February 23, 2022 (Uploaded on July 6, 2022)

(Failure in proving an administrative claim for a CWT refund/credit does not preclude the judicial claim of the with the CTA. The CTA's decision should be solely based on the evidence formally presented before it, notwithstanding any pieces of evidence that may have been submitted (or not submitted) to the CIR.)

Facts:

Philippine Bank of Communications (PBCOM) filed with the BIR its Annual Income Tax Return (AITR) for the year 2006. This was amended to reflect a net loss of PhP903,582.307.00 and a creditable tax withheld for the fourth quarter of 2006 in the amount of PhP24,716,655.00. It also indicated its intention to apply for the issuance of a tax credit certificate (TCC) for its excess/unutilized creditable withholding tax (CWT) for taxable year 2006 in the amount of PhP24,716,655.00.

PBCOM filed with the BIR its letter requesting the issuance of a TCC. Due to the inaction of the CIR, it filed a petition for review with the Court of Tax Appeals (CTA). The CIR argued, however, that PBCOM's claim for the issuance of a TCC is in the nature of a refund and is subject to administrative examination by the BIR, and PBCOM failed to fully comply with the requirements provided in RR No. 6-86 and jurisprudence. The CTA Division partially granted PBCOM's petition and ordered the CIR to issue a TCC in the amount of PhP4,624,554.63 representing the excess/unutilized CWT of PBCOM for the taxable year 2006. This was affirmed by the CTA en banc.

Issue:

Is PBCOM partially entitled to a tax credit/refund of its CWT?

Ruling:

Yes.

PBCOM's claim covers its AITR for taxable year 2006, which it filed on April 16, 2007. When PBCOM filed its administrative claim on April 3, 2009, and its judicial claim before the CTA on April 15, 2009, both of these were within the two-year prescriptive period.

In determining the CWT amount to be credited, the same must be supported by the required BIR Forms 2307 and must also correspond with the income included in the tax return of the claimant, upon which the taxes were withheld. PBCOM is only entitled to PhP4,624,554.63, out of the Php7,738,179.01, worth of CWT supported by the required BIR Forms, as the former is the amount that corresponds to the income payments in the aggregate amount of Php100,231,922.69, which the CTA verified to have been included in PBCOM's General Ledger and Annual Income Tax Return for taxable year 2006.

The failure in proving an administrative claim for a CWT refund/credit does not preclude the judicial claim of the same. Here, since the claim for tax refund/credit was litigated anew before the CTA, the latter's decision should be solely based on the evidence formally presented before it, notwithstanding any pieces of evidence that may have been submitted (or not submitted) to the CIR. Thus, what is vital in the determination of a judicial claim for

a tax credit/refund of CWT is the evidence presented before the CTA, regardless of the body of evidence found in the administrative claim.

BIR vs. Samuel B. Cagang
G.R. No. 230104 promulgated on March 16, 2022 (Uploaded on July 6, 2022)

(The Corporate Secretary/Treasurer as indicated in the General information Sheet filed with the SEC may be found responsible or criminally liable for violations of the Tax Code pursuant to Section 254(d) of the Tax Code.)

Facts:

The BIR issued a Final Decision on Disputed Assessment (FDDA) setting forth the deficiency income tax, expanded withholding tax, and VAT due from CEDCO, Inc. (CEDCO) for the years 2000 and 2001.

On November 28, 2007, CEDCO availed of the tax amnesty under RA No. 9480. The amnesty granted by the law covered "all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, and that have remained unpaid as of December 31, 2005 […]." Section 6 of the law also provides that those who availed themselves of its benefits became "immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under Tax Code, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years."

On August 14, 2009, a complaint-affidavit was filed against Cagang and Paredes (in their official capacities as CEDCO's treasurer and president, respectively) for violation of Section 255 of the Tax Code, charging them with willful failure to pay CEDCO's deficiency taxes for taxable years 2000 and 2001.

Issues:

1. Is CEDCO disqualified from availing of the tax amnesty provision of RA No. 9480?
2. Is there probable cause to charge Cagang for the violation of Section 255 of the Tax Code?

Ruling:

1. Yes, but only with regard to its withholding tax liabilities.

   Although Section 6 of the said law provides immunity from appurtenant civil, criminal or administrative penalties, it is not without exception. Section 8 enumerates those persons and cases that are not covered by the law, including: 1) withholding agents with respect to their withholding tax liabilities; and 2) those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the Tax Code, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code.

   The same exceptions are found in the Department of Finance's Department Order No. 29-07, which provides for the Implementing Rules and Regulations (IRR) of RA No. 9480.

   As to the deficiency taxes pertaining to CEDCO's income tax and VAT, CEDCO is entitled or qualified to avail of the tax amnesty considering that it had submitted the necessary documents and complied with the requirements under RA No. 9480, which the BIR does not dispute.

2. Yes. Section 253(d) enumerates who can be found responsible or criminally liable for violations of the Tax Code, to wit: "[...] partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation."

   The Board Resolution appointing Cagang as the Corporate Secretary/Treasurer in the General information Sheet filed with the Securities and Exchange Commission (SEC) for the fiscal year 2003 sufficiently established that Cagang was the treasurer for CEDCO.

BIR vs. TICO Insurance Company, Inc., et al.
G.R. No. 204226 promulgated on April 18, 2022 (Uploaded on July 13, 2022)

(A special preferred credit under Article 2242(7) of the Civil Code is superior to BIR's tax claim which is only an ordinary preferred credit.)

Facts:

TICO Insurance Company, Inc. (TICO) is engaged in the sale of life insurance until it was placed under liquidation by the Insurance Commission in 2002. Respondents Glowide and PMI are clients of TICO that took out a fire insurance policy over several properties in 1997.

Due to TICO's failure to pay the full amount of the insurance proceeds despite demand, Glowide and PMI filed a Complaint for sum of money and damages. At this time, TICO had pending tax assessments from 1996-1998 wherein the BIR argues that it enjoyed preference above all other credits.

A warrant of distraint and/or levy (WDL) was issued by the BIR against the real and personal properties of TICO. The Regional Trial Court (RTC) ruled that the claim of BIR over the condominium units is superior to that of Glowide and PMI pursuant to Article 2242 of the Civil Code. On appeal, the Court of Appeals (CA) reversed the RTC's decision by ruling that Glowide and PMI are entitled to the possession and conveyance of the condominium units, since their rights over the condominium units which revert to the date of the annotation of the levy on attachment, i.e., December 22, 2000, are superior to the BIR's claim, since the latter's notice of tax lien on titles was annotated only on February 15, 2005.

Issue:

Is the BIR's claim superior to PMI and Glowide's claim?

Ruling:

No.

Glowide and PMI's rights over the condominium units are superior to the BIR's claim, and are thus entitled to possession. and conveyance of the condominium units. The judgment in favor of Glowide and PMI has already attained finality and enforced through the sale of the condominium units to Glowide and PMI. The corresponding certificate of sale was issued, and also annotated on the certificates of title of the condominium units in April 2004. As a result of the execution sale, title to the condominium units vested immediately in Glowide and PMI, subject only to TICO's right to repurchase. When TICO failed to redeem the property after the expiration of the redemption period, it was divested of its rights over the condominium units, and the sheriff of RTC executed the corresponding final deed of sale in favor of Glowide and PMI on April 15, 2005. The prior registration of a lien creates a preference as the act of registration is the operative act that conveys and affects the land, even against subsequent judgment creditors.

Further, the annotation of the levy on attachment, or on execution, creates a preference that retroacts to the date of the levy. Hence, even if a prior unregistered sale is subsequently registered before the sale on execution but after the levy is made, the validity of the execution sale should be upheld because it retroacts to the date of levy. When the condominium units were sold on execution to Glowide and PMI in 2004, the sale - and the rights acquired by Glowide and PMI when it purchased the condominium units - retroacted to the date of inscription of their notice of levy on December 22, 2000.

Section 219 of the Tax Code provides that a tax lien is enforceable against all property and rights to property belonging to the taxpayer and retroacts to the time when the tax assessment was made. However, the tax lien shall not be valid against any judgment creditor until notice of such lien is filed with the Register of Deeds of the city, or province, where the taxpayer's properties are located. The proviso in Section 219 of the Tax Code precludes any effect of the tax lien against any judgment creditor prior to the annotation of the tax lien on the title of the property concerned. In other words, it is only after the notice of tax lien is annotated on the pertinent title that a judgment creditor's rights can be affected and the tax lien may be considered to retroact to the date of assessment. Guided by the foregoing, the BIR's tax lien could only have been enforceable against Glowide and PMI when it annotated its tax lien on February 15, 2005, which was already after the annotation of their levy on attachment and sale of the condominium units in Glowide and PMI's favor. At this point, Glowide and PMI already had rights over the condominium units, subject only to TICO's right of redemption.

TICO's tax claim is only an ordinary preferred credit under Article 2244 since it is not based on taxes due on the condominium units but on TICO's deficiency in payment of its income tax, annual registration fees, value added tax, percentage tax, withholding tax on wages, expanded withholding tax, and documentary stamp tax. On the other hand, Glowide and PMI's claim is a special preferred credit under Article 2242 (7) of the Civil Code, and thus superior to BIR's tax claim which is only an ordinary preferred credit. Indeed, duties, taxes, and fees due the Government enjoy priority only when they are with reference to a specific movable property, under Article 2241(1) of the Civil Code, or immovable property, under Article 2242(1) of the same Code. However, with reference to the other real and personal property of the debtor, sometimes referred to as "free property," the taxes and assessments due the National Government, other than those in Articles 2241(1) and 2242(1) of the Civil Code, will come only in ninth place in the order of preference.

Total Office Products and Services (Topros), Inc. vs. John Charles Chang, et al.
G.R. No. 200070-71 promulgated on December 7, 2021 (Uploaded on July 8, 2022)

(The doctrine on corporate opportunity is a recognition that fiduciary standards may not be upheld where the fiduciary was acting for two or more entities with competing interests. It rests fundamentally on the unfairness of an officer or director taking advantage of an opportunity for his own personal profit when the interest of the corporation justly calls for protection.)

Facts:

Sometime in 1982, spouses Ty wanted to establish a corporation that would be the sole distributor of Minolta plain paper copiers in the Philippines. Chang, their former employee, was given the duty to manage the new corporation. The spouses gave Chang shares in the corporation in exchange for his exclusive and loyal service thereto. A year after, TOPROS was incorporated, with Chang being the only incorporator who was not a member of the Ty family. He also served as Corporate Director and officer of the corporation. TOPROS later grew into a multi-million enterprise; but, despite its success, no substantial cash dividends were distributed to the stockholders since the corporation was allegedly investing its funds

in several Manila properties according to Chang. This raised suspicion on part of the spouses, who eventually launched an investigation. They later found out that Chang was siphoning the assets, funds and goodwill of TOPROS into the respondent-corporations which he himself incorporated. As such, TOPROS filed a petition for injunction, mandatory injunction and damages before the SEC against Chang, alleging that the latter violated his fiduciary duties and must be held accountable under Sections 30 and 33 of the Revised Corporation Code (RCC). The case was subsequently transferred from the SEC to the RTC upon passage of RA No. 8799 (Securities Regulation Code). The RTC ruled in favor of TOPROS, which the CA reversed. Hence, this petition for review on certiorari before the SC.

Issue:

Is Chang liable for violation of his fiduciary duties under the Corporation Code?

Ruling:

Yes.

Sections 30 and 33 of the RCC, which codifies the duty of loyalty of a director, provides that it is the director's duty to inform and offer to the corporation business opportunities which, by reason of their office, they acquire or become aware of, and their concomitant liabilities once they fail to do so. The doctrine of corporate opportunity governs the legal responsibility of directors, officers, and controlling stockholders in a corporation not to take such opportunities for themselves, without first disclosing said opportunity to the board and giving them the option to decline the opportunity on behalf of the corporation. Once violated, the fiduciary also violates his or her duty of loyalty, and the corporation will be entitled to a constructive trust of all profits obtained from the wrongful transaction.

Recognizing the absence of parameters to follow in determining what is considered as corporate opportunity that can give rise to a claim of damages, the Supreme Court in this case outlined four guiding factors to consider, to wit:

a. The corporation is financially able to exploit the opportunity;
b. The opportunity is within the corporation's line of business;
c. The corporation has an interest or expectancy in the opportunity; and,
d. By taking the opportunity for his own, the corporate fiduciary will thereby be placed in a position inimical to his duties to the corporation.

In this case, Chang committed several acts showing pecuniary interest that were in conflict with his duties as director and officer of TOPROS. First, it was sufficiently shown that he established and owned several corporations engaged in the same line of business as TOPROS. It was also shown on record that these corporations entered into similar service contract agreements with clients of TOPROS and published printed advertisements substantially similar to that of the latter. Particularly, one of these corporations used the same address as TOPROS, which not only gave it the opportunity to use TOPROS' resources, but also led the public to believe that they were one and the same entity.

Moreover, even if the incorporation of the respondent-corporations was within the full knowledge of the Ty family, this does not equate to consent or compliance required under Section 33 to absolve him of disloyalty. The law explicitly requires that where a director acquires for himself a business opportunity which should belong to the corporation, he must account to the latter for all profits by refunding them, unless his act has been ratified by a vote of the stockholders owning at least 2/3 of the outstanding capital stock.

CTA EN BANC DECISIONS

City of Caloocan vs. Light Rail Manila Corporation
CTA EB No. 2446 promulgated on June 30, 2022

(Article 1732 of the Civil Code does not provide for the requirement of having a legislative franchise before being classified as a common carrier.)

Facts:

Light Rail Transit Line 1 (LRT1) was originally under the management of Light Rail Transport Authority (LRTA), an entity created by EO No. 603. LRTA decided to cede the operation of LRT1 to private corporation and conducted a public bidding where petitioner participated and eventually won for the Manila LRT1 Extension. Thereafter, the City of Caloocan began to assess petitioner for business taxes on the gross receipts for its transportation services. Aggrieved, the Light Rail Manila Corporation (LRMC) continuously protested against the imposition of business tax against it. The City of Caloocan argues that the LRMC is not a common carrier that is exempt from local business tax. LRMC counter-argues that the CTA Division correctly ruled that it is a common carrier exempt from payment of local business tax on gross receipts derived from transportation services.

Issue:

Did the CTA Division err when it reversed the Decision of the RTC and ordered petitioners to desist from further assessing respondent for local business taxes on its gross receipts?

Ruling:

No.

To simply equate the concept of a common carrier to ownership of a facility or vehicle used for transportation restricts its definition as contemplated under Article 1732 of the Civil Code as well as the notion of "public service" under Commonwealth Act No. 146.

Article 1732 of the Civil Code does not even provide for such requirement, neither does it make any distinction between one whose principal business activity is carrying of persons or goods or both, and one who does such carrying only as an ancillary activity.

With this, the LRMC is considered a common carrier that is exempt from the payment of local business taxes under Section 133(j) of the Local Government Code of 1991 (LGC).

National Food Authority vs. Province of Nueva Vizcaya
CTA EB No. 2361 promulgated on June 27, 2022

(The NFA's failure to file the necessary protest pursuant to Section 252 of the LGC and to pay the tax under protest made the subject RPT assessments final, executory, and demandable. A Petition for Prohibition is not an adequate remedy when administrative remedies are outlined clearly by law)

Facts:

The Provincial Treasurer of the Province of Nueva Vizcaya issued seven (7) Notices of Delinquency demanding payment for real property taxes (RPT) on various properties declared in the name of the National Food Authority (NFA) located in the Province of Nueva Vizcaya. Hence, the NFA filed a Petition for Prohibition before the RTC of Bayombong, Nueva Vizcaya, questioning the authority and power of the Province to impose and collect RPT on the ground that it is a government instrumentality that is exempt. The RTC dismissed the Petition.

The NFA filed a Petition for Review with the CTA which likewise denied the Petition on the ground that it has no jurisdiction to entertain the Petition for the NFA's alleged failure to comply with the procedural requirements under the LGC.

Issue:

Did the CTA Division err in holding that it has no jurisdiction to entertain the case for petitioner's failure to comply with the procedural requirements under the LGC?

Ruling:

No.

Central to the remedy of Prohibition is the absence of any appeal or any other plain, speedy and adequate remedy in the ordinary course of law. In this case, the available plain and adequate administrative remedy against an RPT assessment found in the provisions of the LGC:

1. Pay the tax and file a protest with the local treasurer (Section 252);
2. Appeal to the Local Board of Assessment Appeals (Section 226);
3. Appeal to the Central Board of Assessment Appeals; and
4. Appeal to the CTA.

Contrary to the NFA's contention, jurisprudence holds that a claim for tax exemption from the payment of RPT is a question that deals with the reasonableness or correctness of an assessment, which requires compliance with Section 252 of the LGC.

Thus, the NFA's failure to file the necessary protest pursuant to Section 252 of the LGC and to pay the tax under protest made the subject RPT assessments final, executory, and demandable. It is well-settled that the CTA has no jurisdiction over final and executory assessments.

People of the Philippines vs. Robiegie Corporation and Grace Sucksuphan
CTA EB Crim No. 084 promulgated on June 30, 2022

(The officer's failure to pay the corporate taxpayer's deficiency tax liabilities cannot be considered willful, unless it is proven that the officer indeed received the LOA and the assessment notices.)

Facts:

Robiegie Corporation received a Preliminary Assessment Notice (PAN) from the BIR, assessing it for alleged deficiency taxes for taxable year (TY) 2011. Later, it was issued a Formal Letter of Demand (FLD) with Assessment Notices (AN). On separate dates, Robiegie was issued and set via registered mail a Preliminary Collection Letter (PCL) and a Final Notice Before Seizure (FNBS). Since these were unheeded, a WDL was issued against Robiegie.

On the strength of a Joint Complaint-Affidavit filed by two ROs, the Office of the City Prosecutor of Manila recommended that Robiegie, its president Galicia, and its treasurer Sucksuphan, be indicted for violation of Sections 255 and 256 of the Tax Code, as amended, for their alleged refusal and failure to pay deficiency taxes. Warrants of arrest were issued against Galicia and Sucksuphan. Because of Galicia's passing, the BIR filed an amended information where the name of accused Galicia no longer appeared, and the accusatory portion read: "xxx Robiegie Corporation and its Corporate Treasurer Grace Sucksuphan xxx did then and there willfully and unlawfully fail, refuse and neglect, as they fall [sic], refuse and neglect to pay their deficiency internal revenue tax liabilities for the taxable year 2011 in

the amount of Php3,850,524.77 under ANs with numbers 31-11-IT-7070 and 31-11-WE-7072, despite notice and service of said assessments, without formally protesting against or appealing the same, and repeated demands made upon them to do so."

Issue:

Does the CTA have jurisdiction over the offense charged against Robiegie Corporation and Sucksuphan?

Ruling:

Yes.

Based on the facts alleged in the Amended Information, it is the CTA, and not the regular courts, which has jurisdiction over the subject matter or the offense charged in this case.

Pursuant to Section 7(b)(1) of RA No. 1125 as amended by RA No. 9282, the CTA exercises exclusive original jurisdiction over all criminal offenses arising from violations of the Tax Code, as amended, unless the amount claimed is less than PhP1 Million pesos, exclusive of charges and penalties, or where there is no specified amount claimed, in which case, jurisdiction shall be vested in the regular courts. Further, Section 3(b)(1), Rule 4 of the Revised Rules of the CTA (RRCTA) clarifies that the CTA Division exercises exclusive original jurisdiction over criminal cases arising from violation of the Tax Code, as amended, and other laws administered by the BIR where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is PhP1 Million pesos or more.

While it is true that there is no phrase referring to the amount of deficiency taxes as the "principal amount of taxes and fees, exclusive of penalties and charges" in the Information filed against Robiegie and Sucksuphan, the absence thereof does not make the amount claimed so ambiguous as to render the Amended Information defective because there is another phrase of similar import. It can still be deduced clearly that the amount of unpaid deficiency internal revenue tax liabilities indicated therein pertains to no other but the basic or principal amount of tax due. The Amended Information makes direct and express reference to the ANs, and the sum of the basic tax due stated in the said ANs (i.e. PhP3,846,459.33 and PhP4,065.44, respectively) is PhP3,850,524.77, which is the amount stated in the Amended Information.

CIR vs. Solutions Using Renewable Energy, Inc.
CTA EB No. 2387 promulgated on June 23, 2022

(The CIR or his duly authorized representative is duty bound to wait for the expiration of fifteen (15) days from the date of receipt of the PAN before issuing the FLD and AN.)

Facts:

On January 7, 2014, Solutions Using Renewable Energy, Inc. (SURE) allegedly received a PAN dated December 27, 2013. Thereafter, on January 13, 2014**,** the CIR issued two (2) FLDs, and six (6) ANs, assessing SURE for deficiency taxes for TY 2010.

Issue:

Were the FLDs and ANs issued in violation of SURE's right to due process?

Ruling:

Yes.

The CIR or his duly authorized representative is duty bound to wait for the expiration of fifteen (15) days from the date of receipt of the PAN before issuing the FLD and AN. Such procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment. In this case, SURE alleged that it received the PAN only on January 7, 2014. This was corroborated by SURE's witness. The burden was shifted to the CIR to prove receipt of the PAN by SURE at a date earlier than January 7, 2014 to show the CIR's observance of the15-day period, but the CIR failed to present any counter-evidence.

Having established that SURE received a copy of the PAN on January 7, 2014, it had fifteen (15) days from said date, or until January 22, 2014, to protest or respond. Thus, the FLDs and ANs were prematurely issued and received by SURE on January 13, 2014, only 8 days after SURE received the PAN.

CIR vs. Zenith Foods Corporation
CTA EB No. 2409 promulgated on June 23, 2022

(Issuance of FAN/FLD after the 3-year period renders the deficiency assessment void because the period had already lapsed.)

Facts:

Zenith Foods Corporation's (ZFC) books of account and accounting records for calendar year (CY) 2004 were subjected to an audit pursuant to a Letter of Authority. On July 23, 2008, ZFC received a letter from the BIR an FLD/DAN dated June 10, 2008, demanding payment of the alleged deficiency internal revenue taxes. CIR insists that the assessment against the ZFC has not prescribed and that the FLD/FAN were valid. ZFC insists that the CTA Division did not err in ruling that the assessment was void because the right of the petitioner to assess respondent has already prescribed. ZFC further postulates that it is entitled to its claim for refund of illegally assessed and collected taxes.

Issue:

Were the alleged deficiency assessments already prescribed?

Ruling:

Yes.

Based on the records of the case, the BIR issued the FAN/FLD only on July 10, 2008, which was beyond the three-year prescriptive period. Furthermore, what inescapably caught the attention of the court is the absence of supporting evidence that will link the amount being assessed by the Regional Director (RD) that were earlier protested by respondent and eventually settled with the RDO. In other words, this amount only contained indirectly with the Notice of Disaccreditation as Improper dated September 16, 2015. No PAN, FAN, or FLD were presented in support of this assessment.

CIR vs. Global Fresh Products, Inc.
CTA EB No. 2392 promulgated on June 30, 2022

(A memorandum of assignment (MOA) cannot be considered as a valid substitute for the required LOA as the law requires the issuance of a new LOA in cases of reassignment/transfer of cases to another revenue officer.)

Facts:

On January 17, 2017, Global Fresh Products, Inc. (GFPI) received a PAN with Details of Discrepancies dated December 28, 2016, representing alleged deficiency taxes for the TY

2013. On January 27, 2017, GFPI received the CIR's AN and a FAN, all dated January 13, 2017.

GFPI protested the ANs and FAN for being devoid of any legal and factual bases. The CIR did not act on GFPI's protest against the FAN within the 180-day period, prompting GFPI to file a Petition for Review before the CTA for the cancellation and withdrawal of the assessment for deficiency taxes for TY 2013.

The CIR argues that the subject assessment for deficiency taxes is valid because RO Lagundi, who conducted the audit investigation of GFPI's books of accounts and other accounting records, was validly authorized through a MOA pursuant to RMO No. 69-2010.

On the other hand, GFPI maintains that RO Lagundi had no authority to conduct the assessment and that the FAN and ANs were issued prematurely.

Issues:

1. Did RO Lagundi have authority to conduct the audit?
2. Was GFPI denied the right to due process?

Ruling:

1. No.

   An RO must be clothed with authority, through a LOA, to conduct the audit or investigation of a taxpayer. In this case, the audit of GFPI was initially assigned to RO Caymo and Group Supervisor (GS) Fuertes by virtue of a LOA. Thereafter, on April 6, 2016, a MOA was issued directing RO Lagundi and GS Lacson to continue the audit and investigation of respondent's internal revenue tax liabilities. The LOA does not reflect or carry the names of RO Lagundi and GS Lacson as those authorized to examine GFPI's books of accounts and other accounting records. RO Lagundi even testified during her cross-examination that her authority is only by virtue of a MOA signed by an RDO and that she was the one who audited or examined GFPI's documents and prepared the report detailing the results of the said audit or examination.

   While it may be argued that RO Lagundi was equipped with a MOA, the same cannot be considered as a valid substitute for the required LOA as the law requires the issuance of a new LOA in cases of reassignment/transfer of cases to another RO (RMO No. 43-90). 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

2. Yes.

   The issuance of the PAN, as well as giving the taxpayer 15 days from receipt thereof to respond to such notice, is part of due process in the issuance of tax assessments. If the taxpayer fails to respond to the PAN within the said 15-day period, the taxpayer shall be considered in default. Only then can the CIR or his duly authorized representative validly issue the FAN (Section 228, Tax Code; Section 3, RR No. 12-99).

   Here, it is undisputed that GFPI received a copy of the PAN on January 17, 2017. GFPI thus had until February 1, 2017 within which to file its reply thereto. However, as the records show, the CIR issued the FAN and the five (5) ANs on January 13, 2017, without waiting for GFPI's reply to the PAN or at least the expiration of the 15-day period provided by law, in clear violation of the due process requirement in the issuance of tax assessments. Consequently, the FAN and the ANs are void and the assessment for deficiency taxes contained therein must not be given any effect.

Deutsche Knowledge Services Pte. Ltd., vs. CIR
CTA EB No. 2421 promulgated on July 1, 2022

(The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.)

Facts:

Deutsche Knowledge Services Pte. Ltd. (DKSPL) filed its original quarterly VAT return for the first quarter of CY 2007 with the BIR. Through the electronic filing and payment system, DKSPL filed an amended quarterly VAT return for the first quarter of CY 2007. DKSPL filed with the BIR an application for Tax Credits/Refund of its excess unutilized input VAT for the first quarter of CT 2007. Due to CIR's inaction, DKSPL filed a Petition for Review. DKSPL argues that its input VAT in the amount of PhP12,549, 447.30 for the 1st quarter of CY 2007 is properly substantiated and attributable to its zero-rated sales. The CIR counters that the documents submitted by DKSPL failed to specifically prove that its clients are non-resident foreign corporations doing business outside the Philippines. Moreover, DKSPL allegedly failed to fully substantiate its alleged incurred input VAT in the amount of PhP12,549,447.30 attributed to zero-rated sales.

Issue:

Is DKSPL entitled to its claim for refund or issuance of TCC of its alleged excess or unutilized input VAT attributable to zero-rated sales for 1st quarter of CY 2007?

Ruling:

No.

Actions for tax refund or credit are in the nature of a claim for tax exemption, and the law is not only constructed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption is also *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.

DKSPL failed to adduce competent proof that all of its clients are not engaged in trade or business in the Philippines.

CIR vs. Indra Verhomal Menghrajani
CTA EB No. 2338 promulgated on June 30, 2022

(A Letter Notice (LN) cannot be converted into a LOA required under the law even if the same was issued by the CIR himself or herself. The LN is entirely different and serves a different purpose than a LOA.)

Facts:

Indra Verhomal Menghrajani (Indra) received a copy of a LN informing her of the 100% discrepancy between her value-added tax returns and the information provided by third-party sources amounting to P4,521,787.99 for CY ending 2008. A WDL was subsequently served at Indra Garments Manufacturing, Inc.'s (IGMI) registered address. Indra wrote letters to the RD of Revenue Region No. 6 maintaining that the WDL should be canceled because she never received the PAN and the FAN, as proved by the Certifications obtained from the Office of the Postmaster of the Central Post Office in Manila that the PAN and

FAN were returned to sender. Indra also questioned the mailing of the letters to her old address. The RD informed Indra that the PAN and FAN were mailed as proven Registry Receipts. The CIR also asserted that as per Bureau of Revenue records, there was no showing that Indra officially changed her registered address. As a result, the PAN and FAN were validly issued, the assessment had attained finality, and the WDL was enforced as a matter of course.

Indra filed an appeal of the RD's decision with the CIR, but this was denied. Indra then filed a Petition for Review with the CTA. The CIR argued that: (1) the presentation of the registry receipt is sufficient to prove actual mailing and raise the presumption of receipt of the mail matter, and (2) the LN suffices for ROs to validly conduct the examination and no LOA is needed since the LN was issued by the CIR herself.

Issues:

1. Is the assessment void for the alleged failure on the part of the CIR to prove service thereof to IGMI?
2. Is the assessment void for the alleged lack of authority on the revenue officers to conduct the audit of IGMI?

Ruling:

1. Yes.

   The mere presentation of registry receipts is insufficient to prove receipt of the ANs. Although there is a **disputable** presumption that "a letter duly directed and mailed was received in the regular course of the mail," such presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee *(CIR vs. T Shuttle Services, Inc.)*.

   In the present case, IGMI has consistently denied receiving the subject ANs. As such, the burden is shifted to the CIR to establish that IGMI actually received the subject PAN and FLD with ANs. The CIR heavily relies on the disputable presumption instead of discharging the burden of proving actual receipt. On the other hand, Indra has amply proven that she did not receive the subject ANs, as evidenced by the Certifications obtained from the Central Post Office in Manila stating that the mails containing the foregoing were both returned to sender. Furthermore, it is also worthy to mention that despite the PAN being returned to sender, the BIR still mailed the formal letter of demand to the same address. Worse, after Indra filed her Annual Income Tax Return for CY 2012 stating a different address, the CIR still did not attempt to serve the ANs to Indra thereat. The absence of a formal written notice of change of address is of no moment as long as the CIR was aware of the new address *(CIR vs. BASF Coating + Inks Phils., Inc.)*.

2. Yes.

   There must be a grant of authority before any RO can conduct an examination or assessment. In the absence of such an authority. the assessment or examination is a nullity *(CIR vs. Sony Philippines, Inc.)*. In this case, the subject assessment emanated from the CIR's issuance of an LN, followed by a MOA in favor of RO Rellon and GS Hernandez. As the LN was not followed by a LOA but a mere MOA (which is signed by an official who is not authorized to issue an LOA pursuant to existing laws, rules and regulations), the examination must be declared a nullity. The same conclusion is to be arrived at irrespective of the fact the LN was issued by the CIR himself or herself. The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself. The LN is entirely different and serves a different purpose than an LOA. Due

process demands, as recognized under RMO No. 32-2005, that after a LN has served its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner.

Furthermore, RO-Reviewer Bolledo participated in the audit of Indra without being authorized to do so through an LOA. Only the ROs actually named in the LOA are authorized to examine the taxpayer.

CIR vs. Compania de Garay, Inc.
CTA EB No. 2219 promulgated on June 21, 2022

(An LN cannot be interchanged with a LOA. An LN is a mere notification from the BIR to a taxpayer informing the latter that a discrepancy is found based on the BIR's RELIEF System, through the computerized matching conducted between the taxpayer's return/s and third-party sources. A LOA, on the other hand, assigns a particular RO to examine the books of account and other accounting records of a taxpayer for a particular type of tax for a specific taxable period.)

Facts:

On August 26, 2014, Compania De Garay, Inc. (CDG) received a Letter Notice, finding a 100% under-declaration on sales in the amount of around 2.6M pesos. On the same date, CDG received a letter from the BIR affording it the opportunity to reconcile said discrepancy.

On January 29, 2016, CDG received the FLD and the subject AN. On February 23, 2016, CDG sent its Letter-Protest, raising the issue that no LOA was ever issued in favor of the petitioner, thus putting the validity of the assessment in question.

Issue:

Can the LN issued by the CIR be used as a substitute for LOA?

Ruling:

No.

According to Section 6(a) of the Tax Code, the CIR or his or her duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax. In other words, an authority emanating from the CIR or his or her representative is required before an examination and an assessment may be made against a taxpayer. In relation to this, Section 13 of the Tax Code provides that the authority of a revenue officer to examine or recommend the assessment of any deficiency tax due must be exercised pursuant to a LOA issued by the Revenue Regional Director. Without a LOA, tax agents other than the CIR himself or his duly authorized representative may not validly conduct any of the aforementioned examination or assessment of a taxpayer' books of accounts and liabilities. In the absence of such authority, the assessment or examination shall be null and void.

In this case, no LOA was ever issued in favor of the petitioner. The LN purportedly signed by the CIR himself cannot be used as a substitute for a LOA.

An LN is a mere notification from the BIR to a taxpayer informing the latter that a discrepancy is found based on the BIR's RELIEF System, through the computerized matching conducted between the taxpayer's return/s and third-party sources. Upon receipt of an LN, the concerned taxpayer will be given an opportunity to reconcile its records with those of the BIR within 120 days from issuance of the LN. If the discrepancies remain unresolved upon lapse of the period, the revenue officer shall recommend the issuance of a LOA to

replace the LN pursuant to RMO No. 32-2005. The Court itself cannot convert the LN into the LOA required under the law, even if it was issued by the CIR himself or herself.

Thus, since no LOA was ever issued in favor of the petitioner, the assessments done pertaining the tax liabilities of CDG therefore are null and void for lack of authority.

CIR vs. NYK-Filjapan Shipping Corp.
CTA EB No. 2402 promulgated on July 7, 2022

(An RO must be clothed with authority, through an LOA, to conduct the audit or investigation of a taxpayer.)

Facts:

On July 3, 2008, respondent NYK-Filjapan Shipping Corp. (NSC) received a LOA authorizing RO Juan M. Luna, Jr. (Luna) to conduct an audit of respondent's tax records for the TY 2007. However, on March 3, 2010, then Officer-in-Charge Chief Edralin M. Silario (OIC-Chief Silario) of the LT Regular Audit Division issued a Memorandum, referring the entire docket of respondent's case to RO William F. Sundiam (Sundiam) and Group Supervisor Joriz U. Saldajeno (GS Saldajeno), for the continuance of respondent's audit investigation.

The CIR argued that RO Sundiam need not be authorized through another LOA separate from the LOA which authorized a certain RO Luna to conduct an audit of respondent, and deemed that the MOAs issued by then OIC-Chief Silario are sufficient to authorize RO Sundiam to continue the investigation of NSC, by virtue RMO No. 08-2006, which states that in case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned RO and/or GS.

Issue:

Are the tax assessments void for the want of a valid LOA authorizing the ROs who conducted the audit?

Ruling:

Yes.

An RO must be clothed with authority, through an LOA, to conduct the audit or investigation of a taxpayer. Absent such grant of authority through an LOA, the ROs cannot conduct the audit of the taxpayer's books of accounts and other accounting records because such right is statutorily conferred only upon the CIR or his duly authorized representatives.

In this case, a mere MOA signed by the OIC-Chief of the LT Regular Audit Division I did not and could not confer authority to RO Sundiam and GS Saldajeno to continue the audit or investigation of respondent's books of accounts for TY 2007. Hence, the subject MOAs that then OIC-Chief Silario signed were not the equivalent of an LOA nor a supplement thereto, as to validly give the new set of RO and GS the same kind of authority vested by the LOA to RO Luna.

Likewise, RMO No. 08-2006 cited by the CIR has been superseded by RMO No. 12-2007, which proscribe the use of memoranda, referrals, and similar documents in the conduct of tax assessments. Thus, the assessment issued against NSC is indisputably void.

CIR vs. Meridien East Realty & Development Corporation
CTA EB No. 2287 promulgated on July 14, 2022

(Any change of opinion by the CIR with respect to a BIR Ruling which is prejudicial to the taxpayer shall only be applied prospectively.)

Facts:

The CIR issued BIR Ruling No. DA-245-05 wherein he confirmed in favor of Meridien East Realty & Development Corporation (Meridien) that "conveyance of the land and common areas of the Project in favor of the Meridien being without monetary consideration and is not in connection with a sale made to the condominium corporation is not subject to income tax, expanded withholding tax (EWT), documentary stamp tax (DST) and VAT. In the said BIR Ruling, the BIR initially opined that the conveyance of the land and common areas to Meridien is not a sale subject to income tax, EWT, DST, and VAT. However, under RMC No. 20-10, this prior position was abandoned by the CIR, and a new one was issued declaring the subject transaction as part of the pre-selling agreement, hence, subject to aforementioned taxes.

Issue:

Is the retroactive application of a reversal of a BIR Ruling allowed if the same will be prejudicial to the taxpayer?

Ruling:

No.

Any change of opinion by the CIR with respect to a BIR Ruling which is prejudicial to the taxpayer shall only be applied prospectively. In numerous cases, the Supreme Court has consistently ruled that reversals of BIR Rulings, Circulars, Rules, and Regulations issued would have no retroactive application if the same would be prejudicial to the taxpayer. This means that a taxpayer has the right to rely upon a BIR Ruling until the same has been reversed or overruled by the CIR or by the Supreme Court. This is known as the doctrine of operative fact. The only exceptions to this rule are: (1) where the taxpayer deliberately misstates or omits material facts from its return or in any document required by the BIR; (2) where the facts subsequently gathered by the BIR are materially different from the facts on which the ruling is based; or (3) where the taxpayer acted in bad faith.

Here, the Meridien was prejudiced when RMC No. 20-10 overturned BIR Ruling No. DA-245-05. Therefore, RMC No. 245-05 should be the prevailing issuance with regard to Meridien.

CTA DIVISION DECISIONS

Basic Housing Solutions, Inc. vs. CIR
CTA Case No. 9905 promulgated on June 28, 2022

(For the examination to be valid, a LOA must be issued either by the CIR himself/herself or by his duly authorized representative.)

Facts:

Basic Housing Solutions, Inc. (Basic Housing) received copies of letter issued by the BOI informing it that its sales are not eligible for ITH. A MOA was issued by the RDO authorizing RO Magpantay to evaluate Basic Housing's ITH. Subsequently, Basic Housing filed an MR with the BOI's incentive department. Pending the resolution of the MR, Basic Housing received a PAN finding it liable for deficiency income tax. Basic Housing responded

to the FLD asserting that the assessment is void for lack of legal and factual bases. Basic Housing insists that the facts on which the assessment was made was couched on general terms, thus it was prevented from forwarding a proper refutation. The CIR maintains that Basic Housing is liable because it cannot claim exemption prior to the approval of its application for ITH.

Issue:

Is Basic Housing liable for deficiency income tax?

Ruling:

No.

No LOA was issued for the examination of Basic Housing's books of accounts and other accounting records. RO Magpantay's authority merely sprung from the MOA. By virtue of the MOA, the said ROs conducted the Basic Housing's availment of ITH and recommended the issuance of PAN. Thus, for the examination to be valid, a LOA must be issued either by the CIR himself/herself or by his duly authorized representative. In this case, aside from the fact that no LOA was issued, the MOA relied upon by the CIR was executed by a mere RDO.

Tricom Systems (Philippines), Inc., vs. CIR
CTA Case No. 9514 promulgated on July 7, 2022

(Under RMO No. 43-90, in case of reassignment or transfer of cases to another RO, it is mandatory that a new LOA be issued with the corresponding notation thereto. In the absence of such an authority, the assessment or examination is a nullity.)

Facts:

Tricom Systems (Philippines), Inc. (Tricom) received a LOA informing it that the Bureau of Internal Revenue officers are being authorized to examine its books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2006 to December 31, 2006. The LOA was revalidated to give authority to RO Cruz, RO Vega, and GS Zamora. Thereafter, a MOA directing RO Gazzingan and GS Gorospe to continue the audit and investigation of petitioner's internal revenue taxes for the taxable year 2006, and to replace the previously assigned revenue officers. Thereafter, another MOA was issued referring RO Lao and GS Gorospe for "ONE TIME TRANSACTIONS," again, pursuant to the original LOA.

Issue:

Did the ROs have authority to conduct an examination of Tricom's records?

Ruling:

No.

The authority of a revenue officer to examine taxpayers or to recommend the assessment of any deficiency tax due must be exercised pursuant to a LOA. In the case at bar, the supposed authority of RO Cruz, RO Vega, and GS Zamora to conduct the investigation of Tricom was merely based on the revalidated LOA; the authority of RO Gazzingan and GS Gorospe to continue the audit and investigation was based on the MOA dated November 4, 2009; and the authority of RO Lao and GS Gorospe for "one time transactions" was based on second MOA. There is no showing that a new LOA was issued specifically authorizing said ROs to continue the audit investigation of Tricom.

RMO No. 43-90 provides that all audit investigations must be conducted by a duly designated RO authorized to perform the audit and examination of the taxpayer's books and accounting

records pursuant to a LOA. In case of reassignment or transfer of cases to another revenue officer, it is mandatory that a new LOA be issued with the corresponding notation thereto. In the absence of such an authority, the assessment or examination is a nullity.

Here, Tricom received the two Reassignment/Revalidation Notices not because of a failure to serve the LOA within 30 days nor because of a failure to render an investigation report within 120 days after the issuance of the LOA, but because its examination was reassigned to different ROs. Since this case involves reassignments or transfers—and not simply a revalidation—a new LOA should have been issued. Likewise, a MOA is not sufficient to grant authority to a RO. In both instances, a new LOA must be issued.

Ammex I-Support Corporation vs. CIR
CTA Case No. 9773 promulgated on July 14, 2022

(In order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported at the very least by both an SEC Certification of Non-Registration of the Company and proof of incorporation or registration in a foreign country.)

Facts:

On September 28, 2017, Ammex-I Support Corportation (Ammex) filed an administrative claim for refund of its unutilized VAT for the 3rd Quarter of CY 2015 in the amount. Due to the BIR's inaction, Ammex filed the present Petition for Review, praying that judgment be rendered granting its request for refund of unutilized input VAT. Ammex argues that it satisfied all the requirements to be entitled to the unutilized input VAT payments directly attributable to zero-rated or effectively zero-rated sales.

Issue:

Should the claim for refund be granted?

Ruling:

No.

Ammex failed to establish that it was engaged in zero-rated sales or effectively zero-rated sales during the 3rd quarter of CY 2015.

Ammex failed to submit in evidence the service agreement between Ammex and its clients that would establish the nature of services to be performed. Hence, while Ammex is primarily engaged in services other than processing, manufacturing, or repacking of goods, no proof was presented that the services rendered to the clients indeed falls in the category of "other than processing, manufacturing, or repacking of goods." Settled is the rule that bare allegations do not establish fact. It is still incumbent upon Ammex to submit in evidence proof that would substantiate its allegations

Secondly, in order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported at the very least by both an SEC Certification of Non-Registration of the Company and proof of incorporation or registration in a foreign country. The SEC Certifications only establish the first component (i.e., that the affiliate is foreign) while proof of incorporation or registration in a foreign country (e.g., articles of association/certificates of incorporation) proves the second component (i.e., that the affiliate is not doing business here in the Philippines).

Perusal of the records shows that Ammex failed to submit in evidence any proof that its foreign clients are not doing business in the Philippines. Ammex did not submit any Certificate of Incorporation, Memorandum of Association, Articles of Association, or any

equivalent document that would establish that its clients are not doing business in the Philippines. Consequently, Ammex failed to prove compliance with the perusal of the records shows that Ammex failed to submit in evidence any proof that its foreign clients are not doing business in the Philippines.

Lastly, Ammex also failed to establish that the service be performed in the Philippines by VAT-registered persons. Given that Ammex failed to present the service agreement with its purported clients, the Court cannot ascertain whether the services were performed in the Philippines. Therefore, Ammex's claim for refund should be denied.

SECURITIES AND EXCHANGE COMMISSION CASES

In re: Rappler, Inc. and Rappler Holdings Corporation
SEC SP Case No. 08-17-001 promulgated on June 28, 2022

(*The constitutional provision prohibiting foreign equity in a mass media entity is violated the moment the control is granted to a foreign entity, regardless of actual exercise or not.*)

Facts:

In 2018, the SEC ordered the revocation of Rappler's license to operate. It held that Rappler's issuance of Philippine Depositary Receipts (PDRs) to its foreign investor the Omidyar Network constituted foreign control in mass media corporations prohibited by the Constitution and Presidential Decree (PD) No. 1018. Rappler appealed to the CA, which held that the SEC is correct in determining that Rappler is a mass media corporation and that "the mere grant of control" regardless of actual exercise already violates the foreign equity restriction on mass media. Rather than affirming the SEC Order, however, the CA remanded the case to the SEC upon a showing that the Omidyar Network donated all its PDRs to Rappler during the pendency of the case. The SEC as ordered to "conduct an evaluation of the legal effect of the alleged supervening donation".

Issues:

1. Is the revocation of Rappler's license to operate proper?
2. Does the alleged Donation produce any legal effect?

Ruling:

1. Yes.

The constitutional provision prohibiting foreign equity in a mass media entity was violated the moment the PDRs granted control to a foreign entity. Incorporation is a privilege granted to those who comply with all the statutory and regulatory requirements. The grant of corporate existence is subject to the continuing obligation to comply with the Constitution.

2. No.

The Donation is void for being contrary to law and public policy. The PDRs issued in violation of the 1987 Constitution are void. Being void, they cannot be the object of a donation. As the object of the donation is void for being contrary to law, the Donation itself is void under Article 1409(1) of the Civil Code for being contrary to law and public policy. As the Donation itself is void, it cannot be ratified for the purpose of curing a violation already committed.

In re: Wellcons Unlimited Systems, Inc. for Revocation of Certificate of Incorporation
Order of Revocation issued on July 5, 2022

(Securities shall not be sold or offered for sale or distribution within the country without first filing a registration statement with and approved by the SEC.)

Facts:

This pertains to an order of revocation of certificate of incorporation of Wellcons Unlimited Systems, Inc. (Wellcons) for violation of provisions of the SRC.

The case stemmed from various email messages inquiring and reporting about certain transactions by the public with Wellcons. In particular, one email informed the SEC that Wellcons primarily operates by giving out products or "packages" to members upon payment of a "joining fee", where income is generated through referral fees as more members join in. Making use of social media, Wellcons has also consistently advertised a scheme that can purportedly double one's investment in just seven (7) months. As a result, SEC conducted an inquiry and investigation on the business operations of Wellcons and found out that the company was inviting the public to invest through a "2 in 1 system" called the Binary System and Pangkabuhayan System. The scheme was a combination of Ponzi structure with a double-your-money program, where before one can avail of a Pangkabuhayan Package, the prospective buyer first has to avail of a package under its Binary System. Under the latter, the purchaser shall earn various amounts for direct and indirect referrals, as well as for sales match bonuses.

As Wellcons appeared to be engaged in selling investment contracts, SEC sought certification from various offices that the securities are registered and that the company has a permit to offer securities for sale. Said offices reverted back, stating that the company has neither applied for a permit to sell securities to the public nor has it taken any steps to register said securities with the Commission. SEC later issued an advisory, warning the public to avoid dealing with the corporation given that it has no license to issue investment contracts and other forms of securities. Despite this however, Wellcons continued its operations, which prompted the SEC to issue a Show Cause Order against the company. Wellcons requested SEC to lift the advisory, arguing that it has simply offered its product to the public through packages, which correspond to varying amounts to be paid by the buyer. Upon purchase, Wellcons argued that the buyer is merely given corresponding "reward points" for patronizing its products. Since Wellcons continued to ignore the SEC orders and advisories issued to the public, the SEC was eventually constrained to issue a Cease and Desist Order against the corporation.

Issue:

Do Wellcons' products qualify as investment contracts?

Ruling:

Yes.

Section 3.1. of the SRC defines securities as shares, participation or interest in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract or instrument, whether written or electronic in character. Among others, it includes investment contracts, which in turn are defined as those contracts where a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others. Prescinding from this definition, five (5) elements may be inferred, namely:

a. A contract, transaction or scheme;
b. An investment of money;

c. A common enterprise;
d. Expectation of profits; and,
e. Profits arising primarily from the entrepreneurial and managerial efforts of others.

In this case, all the elements of an investment contract are manifest in the investments being offered by Wellcons. First, there was an investment of money from the public since Wellcons actually received money from the public who were enticed to invest in their scheme. Second, there was a common enterprise in the sense that Wellcons pooled the money invested in a profit-making venture. Third, there was clearly an expectation of profit on part of its investors who only joined the scheme on the promise that they will receive profits and multiply their investments. Finally, the corporation's promise of guaranteed return in the form of passive income clearly shows that the profits are mainly due to the efforts of Wellcons and the investors themselves need not do anything but wait until the lapse of a specific period of time.

This being the case, Wellcons' investment products are effectively investment contracts, a form of securities which, according to Section 8 in relation to Section 12 of the SRC, shall not be sold or offered for sale or distribution within the country without first filing a registration statement with and approved by the SEC.

Anent the issue on whether Wellcons' actuations over social media qualifies as "public offering", Rule 3.1.17 of the 2015 SRC IRR defines such as any offering of securities to the public or to anyone, whether solicited or unsolicited. The same rule provides that an offering may be done through advertisement or announcement through electronic communications, information communication technology or any other forms of communications. Certainly therefore, its advertisements and announcements over social media qualifies as "public offering" contemplated by the rules.

It also bears stressing that a corporation is only allowed to exercise powers inherent to its corporate existence, circumscribed by its primary purpose clause as contained in its own Articles of Incorporation (AOI). In this case, the primary purpose as stated in the AOI of Wellcons itself provided that the corporation shall have no authority to solicit or accept investments from the public. This being the case, its act of selling said investment products is entirely irrelevant to its primary purpose and must be considered as ultra vires.

Given the foregoing, and pursuant to SEC's power to revoke the certificate of registration of corporations under Section 6 of PD No. 902-A, the SEC resolved to revoke the certificate of incorporation/registration of Wellcons on the ground of serious misrepresentation, which caused great prejudice and damage to the general public.

BUREAU OF CUSTOMS ISSUANCE

CAO No. 7-2022 issued on July 5, 2022

- This CAO covers all importers who will transact with the BOC in relation to the importation, movement, and clearance of goods.
- This Order mandates the use of receipt of electronic notices and seeks to establish and implement an accreditation information management system making full use of the information and communications technology.
- Only accredited Importers can transact with the BOC using the Bureau's automated customs processing system.
- The customs accreditation shall be valid for a period of one (1) year from the date of its approval, unless suspended, revoked, or cancelled. It may be automatically renewed. A

Processing Fee of Two Thousand Pesos (PhP2,000.00) shall be required for new application or renewal of accreditation.

- The period to act on the application for accreditation is now seven working days from receipt of complete documentary requirements. This effectively shortened the previous timeline of 15 working days under CAO No. 11-2014.
- For transactions through BOC's automated cargo clearance system, this Order mandates enrollment in the Bureau's Client Profile Registration System (CPRS), or the system where client information obtained during the accreditation or registration of various clients and stakeholders are captured and recorded. The following shall be disclosed therein: (1) Responsible Officers of the Importer, (2) Declarants of the Importer, if any, and (3) other Material information.
- The following persons may be registered by the Importer as their Declarant: (1) for natural persons, importer(s) or his/her authorized representative through a Special Power of Attorney, and (2) for juridical entities and other government agencies, responsible officer(s) authorized through a Secretary's or Partners' Certificate, or by the Head of Office for government agencies. The Declarant, other than a registered and licensed customs broker, shall be authorized to act as such for only one Importer.
- Further, the BOC may allow one-time accreditation privilege to Importers with a high level of customs compliance record under the Authorized Economic Operators (AEOs) and other trade facilitation programs.
- This CAO governs the accreditation of the following Importers:
    1. Other government agencies or instrumentalities,
    2. Foreign embassies, consulates, legations, agencies of other foreign governments,
    3. International organizations with diplomatic status and recognized by the Philippine government, including foreign workers and consultants, or
    4. Foreign officials and employees of foreign embassies, legates, consular officers and other representatives of foreign governments.
- However, under this CAO, the BOC is mandated to issue guidelines for the accreditation, registration, or monitoring of other types of Importers, such as:
    1. Non-regular importers, or persons/entities who import goods and consequently transacts with the BOC on one occasion only covered by a single bill of lading or air waybill within 365 days to be reckoned from the approval of the application for registration as non-regular Importer,
    2. Importers of postal items,
    3. Importers of goods cleared exclusively through informal entry process, unless allowed by the Bureau's automated system,
    4. Registered business enterprises/locators of free zones, and
    5. Other Importers as may be determined by the Commissioner.
- The abovementioned Importers are still subject to the same responsibilities and penalties as provided under this CAO.
- This CAO outlines the application process for first time or new applicants and for renewal of accreditation. There are additional requirements in case of Joint Venture applicants and a different set of documentary requirements for applicants from other government agencies and instrumentalities or those enjoying special or diplomatic privileges. Under the CAO, the BOC Commissioner may dispense with some of the requirements, or prescribe additional documents, to support the application.
- The CAO also enumerates the responsibilities of the Importer in relation to its *accreditation*, which includes (1) declaration of correct information on the application, (2) declaration of responsible officers and designated Declarants, (3) assumption of full responsibility in protecting and securing passwords, (4) report of changes in business information, (5) maintenance of a record of the contract by a Third Party Importer, (6) maintenance of a principal office and/or branches, and warehouse/storage facility, if available, (7) maintenance of a business name signage, and (8) attendance to seminar/webinar/trainings

or other fora on matters related to duties and responsibilities as accredited Importer and other rules and regulations issued by the BOC.

- In relation to *goods declaration*, the following are the responsibilities of an accredited Importer: (1) accuracy of goods declaration, and (2) submission of true and authentic documents in support of the goods declaration.
- In relation to *post-clearance audit purposes*, the accredited Importer is responsible for the following: (1) retention of records for a period of three (3) years, (2) access to records, and (3) other responsibilities provided for under existing CAO and other regulations pertaining to post-clearance audit.
- This CAO also reiterated that the accredited Importer is responsible for payment of all duties, taxes, and other charges due on the imported goods, as well as payment of deficiencies, including fines, resulting from the conduct of post clearance audit.
- The accredited Importer is also responsible to cooperate in the enforcement of the Customs Modernization and Tariff Act, specifically (1) submitting of pertinent papers and documents, as well as issue statement, affidavits, and attestations during any investigation conducted by the BOC; (2) refraining from filing or procuring or assisting in the filing of any claim, or of any document, affidavit, or other paper known by the Importer to be false and fraudulent or knowingly giving or soliciting or procuring the giving of any false or misleading information or testimony in any matter pending before the BOC or official representative thereof; and (3) refraining from importation of prohibited, restricted, or regulated goods without permit or clearance.
- The CAO also provides a table of violations and corresponding penalties in relation to the responsibilities enumerated under the CAO without prejudice to criminal or other actions that may be initiated by the BOC against the erring Importer. The Order also states the different mitigating and/or aggravating circumstances that may be appreciated in imposing the penalty.
- The CAO provides that in case of conviction of a crime involving moral turpitude at any time after filing of an application for accreditation or during the period of its validity, the Importer, responsible officers in case of partnerships, corporations, or cooperative, and the declarant shall be barred or blacklisted from transacting with the BOC. Further, such offender shall be disqualified from applying for customs accreditation under another business name or entity, or from being declared as such under a new customs accreditation application, and may no longer be allowed to enter customs premises.
- The Order further elaborates on the different treatment of suspended, cancelled, and revoked accreditations.
- The CAO also provides that in case of suspension of accreditation, the Importer may request for continuous processing of all its shipments which are still in transit or which arrived at the ports on or prior to the suspension.
- The CAO further provides remedies of the Importer in case of disapproved applications and suspension, revocation, or blacklisting.

NATIONAL PRIVACY COMMISSION ISSUANCE

Joint Administrative Order No. 22-01 series of 2022 issued on March 4, 2022

- Due to the altered economic structures centered around e-Commerce and the drastic rise in consumer complaints, Joint Administrative Order (JAO) No. 22-01 with a view to increase consumer confidence in business-to-consumer and business-to-business e-Commerce transactions.
- This issuance seeks to ensure that online consumers, on one hand, are informed of their rights and mechanisms for redress; and e-Commerce platforms or merchants, on the other, are properly guided about the rules, regulations and responsibilities in the conduct of their online businesses. In brief, the JAO reiterates existing policies, procedures and guidelines that should apply to online business. For example, Section 5 of the order enunciates the

responsibilities of online businesses, where principles on fair treatment of consumers and ensured quality and safety as found in the ASEAN Online Business Code of Conduct are reproduced. Section 6 on "Protection of Online Consumers Against Hazards to Health and Safety" enumerates existing Philippine laws and regulations pertinent to it, such as RA No. 4109 or the "Standards Law" and RA No. 10611 of the "Food and Safety Act of 2013". Short of reproducing entire laws in the provisions, Sections 7, 8, 11 on protection of consumers against unfair practices, responsibilities of online businesses in relation to tag placement and liabilities of online businesses respectively, handpicked provisions found in several laws pertinent to the aforementioned sections. In particular, Section 7 enumerates deceptive online sales acts or practices (as proscribed under Art. 50 of the Intellectual Property [IP] Code) such as the act of making it appear in a transaction that a consumer product or service has the sponsorship, approval, performance, characteristic, ingredients, accessories, uses or benefits it does not have, among others. Under the same section, online businesses are made explicitly subject to several provisions of RA Nos. 7394 and 8293 (IP Code). It also defined "unfair or unconscionable sales acts or practices" as those transactions that are grossly inimical to the interests of the consumer or grossly one-sided in favor of the online seller.

- Section 8 on the other hand borrows provisions mainly from RA Nos. 7394 and 9711 in mandating online businesses to observe minimum labeling requirements for consumer products, whether manufactured locally or imported. Highlighted particularly in the same section are the labelling requirements for food, drugs, household urban hazardous substances and tobacco products, among others. As mandated under RA 7394, the section also reminded online sellers to place "price tags" on the products or services they are selling in an online marketplace or platform. In case of violation, Sections 11, 12 and 13 stitch together penalties and provisions from various laws in providing for their liabilities, i.e., for defective product and service, sale of counterfeit and pirated goods and violation by e-Commerce platforms and marketplaces.
- The JAO also expressly defines the responsibilities of online sellers under RA No. 10173 or the "Data Privacy Act, for the purpose of ensuring transparency, legitimacy and proportionality of data collection and processing. In particular, Section 10 of the JAO provides that online sellers shall publish in their websites or online platforms a Privacy Notice, providing consumers with information regarding the purpose and extent of the processing of their personal data in relation to their transaction.
- Lastly, the JAO also provides certain remedies available to consumers under Section 16. Among others, the same section enunciates the JAO's "No Wrong-Door Policy" which provides that any consumer complaint filed with the Department of Trade and Industry (DTI) shall be accepted for appropriate assistance, regardless of whether or not the subject matter falls under its jurisdiction, and subject only to limitations imposed by law. After, the DTI is then mandated to guide and forward their complaint to the appropriate agency having proper jurisdiction over the subject matter. However, the same section provides that, prior resorting to intervention by the relevant government agency or DTI, the consumer may first opt to seek primary resolution through the internal complaint mechanisms of the online businesses.

DEPARTMENT OF FINANCE ISSUANCE

DOF Opinion No. 012-2022 dated June 29, 2022

Facts:

Rolex filed with the BIR a request for interpretation/confirmatory ruling that wristwatches made of precious metals are not included in the coverage of Section 150(a) of the Tax Code, as amended, and therefore, not subject to excise tax at 20%. However, Rolex received from the CIR a ruling that says wristwatches made of precious metals are subject to excise tax under the second paragraph of Section 150(a) of the Tax Code.

The CIR concluded that the three phrases therein are separate enumerations of taxable items subject to excise tax at 20%. He opined that since the third phrase which pertains to "opera glasses and lorgnettes" are not considered jewelry, only the first phrase of Section 150(a) pertains to jewelry. In fine, the second phrase which pertains to "goods made of, ornamented, mounted or fitted with precious metals or ivory…", can cover the wristwatches imported to sale by Rolex in the Philippines.

Rolex appealed the BIR ruling arguing that the phrase "goods made of, ornamented, mounted or fitted with precious metals or ivory…" should not be considered as a separate taxable item apart from the matter that precedes it.

Issue:

Are wristwatches and clocks considered non-essential goods under the Tax Code?

Ruling:

No.

Wristwatches and clocks are not considered non-essential goods under Section 150(a). A perusal of how the Tax Code defined non-essential goods was by providing an enumeration of goods deemed falling within its category or classification. When the classification of non-essential goods was first introduced, the said provision enumerated jewelry, automobiles, toilet preparations and others, as those subject to percentage tax. It appears that wristwatches and clocks were not all considered.

Moreover, the mere fact that the tax on semi-essential goods such as watches was repealed does not automatically mean that those goods classified therein would change characterization from semi-essential to non-essential. It is the function of the object that determines whether it is non-essential or semi-essential. Further, it should be noted that the price of value of the items do not necessarily dictate whether certain goods are non-essential or semi-essential. A watch is a semi-essential device which allows the wearer to keep track of time. Jewelry, on the other hand, is solely for personal adornment and, thus, is classified as non-essential.

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.