Tax Bulletin

October 2020

In everything we do, we nurture leaders
and enable businesses for a better Philippines.

#SGVforABetterPhilippines

SGV
Building a better working world

Highlights

BIR Issuances

- Revenue Regulation (RR) No. 26-2020 provides for the implementation of Section 4 (zzz) of Republic Act (RA) No. 11494, otherwise known as the "Bayanihan to Recover as One Act", relative to donations of identified equipment for use in public schools. **(Page 6)**

- RR No. 27-2020 suspends the filing deadline and 90-day processing of VAT Refund Claims under Section 112 of the 1997 Tax Code, as amended, in relation to Section 4 (tt) of RA No. 11494. **(Page 7)**

- RR No. 28-2020 implements the tax exemption provision under Section 4 (cc) and Section 18 of RA No. 11494 on the incentives for the manufacture or importation of certain equipment, supplies or goods. **(Page 8)**

- RR No. 29-2020 implements RA No. 11494, relative to the tax exemption of certain income payments. **(Page 9)**

- RR No. 30-2020 implements Sections 11 (f) and (g) of RA No. 11494, on the taxes derived from gaming and non-gaming operations as other sources of funding to address the COVID-I9 pandemic. **(Page 10)**

- Revenue Memorandum Order (RMO) No. 32-2020 creates and modifies Alphanumeric Tax Codes (ATCs) for Excise Tax in BIR Form No. 2200-AN (Excise Tax Return for Automobiles and Non-Essential Goods) pursuant to the implementation of RA No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN) Law. **(Page 11)**

- RMO No. 33-2020 creates the ATC for Fuel Marking Fees pursuant to the implementation of the TRAIN Law. **(Page 13)**

- RMO No. 34-2020 creates ATCs for Voluntary Assessment and Payment Program (VAPP) pursuant to the implementation of RR No. 21-2020 for Taxable Year 2018 under certain conditions. **(Page 13)**

- RMO No. 36-2020 provides for guidelines and procedures in the refund of erroneously paid Value Added Tax (VAT) on imported drugs prescribed for diabetes, high cholesterol, and hypertension as implemented under R.R No. 18-2020 pursuant to Section 204 (C) of the Tax Code, as amended. **(Page 13)**

- RMO No. 37-2020 modifies the =ATCs)= in BIR Form No. 2200-M (Excise Tax Return for Mineral Products) in connection with the implementation of the TRAIN Law. **(Page 15)**

- RMO No. 39-2020 prescribes the policies, guidelines, and procedures in the processing of applications for VAPP pursuant to Revenue Regulations No. 21-2020. **(Page 15)**

Bureau of Customs

Disposition of Goods under Customs Custody through Negotiated Sale

- Customs Memorandum Order (CMO) No. 26-2020 provides for the Rules and Regulations in the Disposition of Goods under Customs Custody through Negotiated Sale. **(Page 17)**

PEZA

- PEZA MC No. 49 extends the applicability of PEZA MC No. 11 which authorizes IT Enterprises to implement courses of action to respond to and/or pre-empt any adverse COVID-19 eventuality without need for a Letter of Authority (LOA) from PEZA, and approves the WFH arrangement up to 90% of total revenues. **(Page 18)**

SEC Filing, Payments and Other Deadlines

SEC Requires Corporations, Partnerships, Associations, and Individuals to Create and/or Designate an E-mail Account Address and Cellphone Number for Transactions with the Commission

- The SEC prescribes the requirements and guidelines for the creation and/or designation of an official e-mail account and cellphone number for transactions with the Commission. **(Page 19)**

Guidelines for the Conversion of Corporations Either to One Person Corporation or to Ordinary Stock Corporation

- SEC MC No. 25 prescribes guidelines to operationalize Title XIII, Chapter III of Republic Act No. 11232, or the Revised Corporation Code of the Philippines (RCC), which allows the conversion from an Ordinary Stock Corporation (OSC) to a One Person Corporation (OPC), as well as the conversion from an OPC to an OSC. **(Page 21)**

Supreme Court Cases

Real Property Tax

- The province, city or municipality where the real property is located has the right to collect the taxes due on the properties. However, when the location of the property is in dispute, the location as indicated in the Transfer Certificate of Title (TCT) cannot be relied upon, and the boundary dispute must first be settled. **(Page 22)**

- While the liability for RPT generally rests on the owner of the real property at the time the tax accrues, personal liability for RPT may also expressly rest on the entity with the beneficial use of the real property. In either case, the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner. An Ecozone Facilities Enterprise entitled to the preferential 5% gross income tax, in lieu of all national and local taxes, is exempt from paying RPT. RPT can only be collected within 5 years from the date it became due. **(Page 24)**

Court of Tax Appeals Cases

Local Business Tax

- Tuition and educational fees collected by a stock or proprietary educational institution are subject to LBT. A taxpayer claiming refund of LBT erroneously paid tax must comply with the requisites prescribed by law. **(Page 25)**

Doing Business in the Philippines

- A foreign shipping company is not considered to be doing business in the Philippines even if it has an agreement with a local agent for the recruitment of Filipino seamen and providing IT and purchasing support services. **(Page 27)**

DST on related party transactions

- DST may be imposed even without a formal agreement or promissory note executed to cover the credit or loan extended to another party. Even if the assessment is based on a mere Note to the AFS, the fact a corporation entered into a loan transaction with its related parties is sufficient to be liable to DST. **(Page 28)**

Refund / Issuance of Tax Credit

- One of the essential requisites in a refund claim is that the taxpayer must show that the input taxes were not applied against any output VAT liability pursuant to Section 112 (A) of the Tax Code. **(Page 29)**

- The relationship of the payor-withholding agent and the BIR is akin to a contract of agency. Under the Philippine withholding tax system, the withholding agent acts as the government's agent for the collection of taxes in order to ensure its payment. Any failure on the part of the withholding agent to remit the amount withheld to the BIR is a breach on the part of the agent and not by the taxpayer. Hence, in a claim for refund of excess and unutilized CWTs, proof of actual remittance to the BIR of the withheld taxes is not required. **(Page 29)**

- The law merely requires that the creditable input VAT should be "attributable" to the zero-rated or effectively zero-rated sales. In other words, nowhere is it stated in Section 112 (A) of the Tax Code, that the refundable creditable input VAT should be "directly attributable" to such sales. Ubi lex non distinguit nee nos distingere debemos, thus "where the law does not distinguish, none must be made." With that said, there is no legal requirement on respondent's part to establish "direct attributability." When Section 112 (A) of the Tax Code states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being caused by such sales. **(Page 30)**

Assessment

- Earnings reserved for compliance with any loan covenant or pre-existing obligation established under a legitimate business agreement constitutes an accumulation of earnings for the reasonable needs of the business. **(Page 31)**

- All contractees and licensees of PAGCOR, upon payment of the 5% franchise tax, shall be exempted from all other taxes, including corporate income tax realized from the operation of casinos. **(Page 32)**

- It is a well-settled rule that the burden of proving exemption from local taxation is upon whom the subject real property is declared. By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, Section 206 implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. If there is failure to substantiate the claim for exemption, then necessarily, the property being taxed will remain on the assessment roll. **(Page 33)**

- Prior knowledge of the Commissioner of Internal Revenue (CIR) of the taxpayer's new address requires no further notification from the latter. **(Page 34)**

- A Waiver, to be valid and to have the effect of extending the three-year prescriptive period to assess, must indicate the nature and the amount of the tax due. According to the High court, these details are material as there can be no true and valid agreement between the tax and respondent absent this information. **(Page 35)**

- A Letter of Authority (LOA) and a Letter Notice (LN) serve two different purposes. The purpose of an LN is to notify a taxpayer that a discrepancy is found based on the RELIEF. On the other hand, the purpose of a LOA is to provide authority to a revenue officer to examine a taxpayer to determine the correct amount of taxes. Due process demands that after an LN has served its purpose, the revenue officer should properly secure a LOA before proceeding with the further examination and assessment of a taxpayer. The requirement of a LOA is not limited to physical examination of the taxpayer's books of accounts. As long as a taxpayer is subjected to an examination to determine the correct amount of taxes due from it, a LOA is necessary. **(Page 36)**

- An assessment refers to the determination of amounts due from a person obligated to make payments. In the context in which it is used in the Tax Code, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is definitely set and fixed. It must be emphasized that the date certain for the payment of tax liabilities is indispensable in an assessment as it dictates the time when the penalties, surcharges and interest begin to accrue against. The uncertainty in the date of payment is a far cry from the basic requirement, viz, a definite demand to immediately pay the assessed tax liabilities within a time certain. **(Page 38)**

- The OIC-Regional Director may issue a LOA with full authority in the same way that the same could have been signed by the Regional Director if he were then present and in the actual discharge of his functions, so as to ensure that the office continues its usual activities. Failure of the Revenue Officer to request for revalidation of the LOA, or the expiration of the revalidation period, will not automatically nullify the LOA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued. The interests from money market placements issued by banks have been consistently subjected to a final tax of 20% and it is the withholding agent-bank who has the responsibility and liability for the payment of the tax imposed on the interest income from banks as provided in Section 2.57 (A) of Revenue Regulations (RR) No. 2-98. No DST is due on the surrender and cancellation of the redeemable, preferred shares. Compromise penalties are amounts only suggested in the settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. **(Page 39)**

Others

- Section 196 of the Local Government Code (LGC) only applies when no notice of assessment was issued to the taxpayer. Otherwise, the reglementary period under Section 195 of the LGC is fatal to the taxpayer in claiming for administrative and judicial claim for refund. **(Page 43)**

BIR Issuances

RR No. 26-2020 provides for the implementation of Section 4 (zzz) of RA No. 11494, otherwise known as "Bayanihan to Recover as One Act", relative to donations of identified equipment for use in public schools.

RR No. 26-2020 issued on 6 October 2020

- These regulations shall cover all donations of personal computers, laptops, tablets, or similar equipment (i.e., mobile phone, printer) for use in teaching and learning in public schools from 15 September 2020 to 19 December 2020.

- The donor is entitled to the following tax incentives:

    1. Deduction from the gross income of the amount of contribution/ donation subject to limitations, conditions, and rules under Section 34(H) of the Tax Code, as amended, and to the following conditions:

        - The Deed of Donation shall indicate in detail the items donated, the quantity and the amount of the donation;

        - The deduction shall be availed of in the taxable year when the expenses were paid or incurred; and

        - Substantiation of the deduction with sufficient evidence, such as sales invoice, delivery receipt and other adequate records which must reflect the amount of expenses being claimed as a deduction or proof/acknowledgment of receipt of the contributed/donated property by recipient public school.

    2. Exemption from the payment of donor's tax pursuant to Sections101(A)(2) and (B)(2) Tax Code, as amended.

    3. In case of foreign donations, exemption from VAT for the importation of the aforementioned items by the Department of Education (DEPED), Commission on Higher Education (CHED), or Technical Education and Skills Development Authority (TESDA).

        - If the importer or consignee is other than DEPED, CHED, or TESDA, the importer shall present a Deed of Donation duly accepted by the said agencies.

        - The importations shall not be subject to the issuance of an Authority to Release Imported Goods (ATRIG) and may be released by the BOC without the said authority.

4. If the covered items are originally intended for sale or use in the course of business by the donor, the same will not be treated as a transaction deemed sale and thus, not subject to VAT. Further, any input VAT from the purchase of the donated items shall be creditable against any output tax, provided that the same has not been previously claimed as input tax.

- These rules shall also apply to donations by ECOZONE locators to the abovementioned agencies.
- No prior determination or ruling issued by the BIR shall be required to avail the said incentives.
- The amount of donations shall be based on the actual acquisition cost of personal computers, laptops, tablets, or similar equipment donated. The depreciated value shall be considered if the said items are already used.

RR No. 27-2020 suspends the filing deadline and the 90-day processing of VAT Refund Claims under Section 112 of the 1997 Tax Code, as amended, in relation to Section 4 (tt) of RA No. 11494.

RR No. 27-2020 issued on 6 October 2020

- The deadline for filing of VAT refund claims, the prescription of which falls during the effectivity of R.A. No. 11494, shall be suspended until the next adjournment of the Eighteenth Congress on 19 December 2020.
- The new VAT refund deadlines shall be extended to the following dates:

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

- During the effectivity of RA No. 11494, the following shall be observed in areas where the Enhanced Community Quarantine (ECQ) or the Modified ECQ (MECQ) is in force:

1. If deadline for the filing of the VAT refund claims falls within the ECQ or MECQ period, filing of the claim is extended for 30 days after the lifting of the ECQ or MECQ. This applies to affected areas of the processing offices or to the registered business address of the taxpayer-claimant where restrictions are strictly enforced.

2. The 90-day period of VAT refund claim processing is suspended during the ECQ or MECQ in the area and shall resume 30 days after the same has been lifted.

3. In case the processing office is temporary closed due to COVID-19 cases, the 90-day processing of VAT refund claims shall be suspended until the last day of the quarantine period for the affected processing office.

RR No. 28-2020 implements the tax exemption provision under Section 4 (cc) and Section 18 of RA No. 11494, on the incentives for the manufacture or importation of certain equipment, supplies or goods.

RR No. 28-2020 issued on 15 October 2020

- The importation from 25 June 2020 to 31 December 2020 of the goods enumerated below and identified as critical products, essential goods, equipment or supplies needed to contain and mitigate COVID-19, subject to the limitations and restrictions, shall be exempt from VAT, excise tax, and other fees:

    1. Goods, which may include personal protective equipment (PPE) such as gloves, gowns, masks, goggles, and face shields; surgical equipment and supplies; laboratory equipment and their reagents; medical equipment and devices; support and maintenance for laboratory and medical equipment, surgical equipment and supplies; medical supplies, tools, and consumables such as alcohol, sanitizers, tissue, thermometers, hand soap, detergent, sodium hypochlorite, cleaning materials, povidone iodine, common medicine (e.g. paracetamol tablets and suspension, mefenamic acid, vitamin tablets and suspension, hyoscine tablets and suspension, oral rehydration solutions, and cetirizine tablets and suspension); testing kits, and such other supplies or equipment as determined by the Department of Health (DOH) and Department of Trade and Industry (DTI);

    2. Equipment for waste management including, but not limited to, waste segregation, storage, collection, sorting, treatment and disposal services as approved by the Department of Environment and Natural Resources ("DENR"), DOH or other concerned regulatory agencies; and

    3. Inputs, raw materials and equipment necessary for the manufacture or production of essential goods related to the containment or mitigation of COVID-19.

- The taxpayer availing of the exemption must present a certification from the DTI that the equipment and supplies being imported are not locally available or of insufficient quality and preference.

- The importation shall not be subject to the issuance of an ATRIG and may be released by the BOC without the issuance of an ATRIG. However, the BIR may conduct post investigation or audit of importations released without an ATRIG.

- Donations of imported articles to or for the use of the National Government or any entity created by any of its agencies, which is not conducted for profit, or to any political subdivision of the Government are exempt from donor's tax and subject to the ordinary rules of deductibility under existing rules and issuances.

- The VAT on all covered and qualified shipments/importations that may have been paid from 25 June 2020 up to 14 September 2020 shall be refunded pursuant to Section 204(C) of the Tax Code, as amended, provided that the input tax on the imported items have not been reported and claimed as input tax credit in in the monthly and/or quarterly VAT returns. The same shall not be allowed as input tax credit pursuant to Section 110 of the Tax Code, as amended, for purposes of computing the VAT payable of the concerned taxpayers for the said period.

- Inputs, raw materials and equipment necessary for the manufacture of essential goods of medical grade related to the containment and mitigation of COVID-19 under the first item of the enumerated exempt goods above, and determined by the Food and Drug Authority ("FDA")-DOH, shall be exempt from VAT whether locally sourced or imported by the registered manufacturer, upon submission of the following:

    1. Certified true copy of the License to Operate (LTO), issued to the manufacturer-buyer by the FDA-DOH, authorizing the manufacture of essential goods of medical grade related to the containment and mitigation of COVID-19; and

    2. "Sworn Declaration" from the manufacturer-buyer that the items shall be used for the manufacture of essential goods of medical grade related to containment and mitigation of COVID-19.

- The sale of finished goods or products under the first item of exempt goods above, whether locally manufactured or imported, and the sale of inputs, raw materials, and equipment to a non-holder of LTO issued by the FDA-DOH are subject to VAT.

RR No. 29-2020 implements RA No. 11494 relative to the tax exemption of certain income payments.

RR No. 29-2020 issued on 15 October 2020

- The regulations provide for the following income payments, which shall be excluded from gross income and shall not be subject to income tax:

    1. Retirement benefits received by officials and employees of private firms from 5 June 2020 to 31 December 2020, provided that the amount received is in accordance with a retirement plan duly registered with the BIR. Any re-employment in the same firm and its related parties within the succeeding twelve-month period shall be considered as proof of non-retirement, and shall be subject to the following:

    2. If the re-employment happens within calendar year 2020, the employer shall include the retirement benefits in the gross income of the concerned official or employee for 2020.

    3. If the re-employment will occur in 2021 and within the twelve-month period, the concerned employee shall pay the taxes due on the retirement benefits received within 30 days from date of re-employment, or on the due date for the payment of the second installment payment of 2020 income tax, whichever comes later, without penalties.

- The COVID-19 Special Risk Allowance given to public and private health workers for every month that they are serving during the state of national emergency.

- Actual Hazard Pay given to Human Resources for Health (HRH) serving in the frontline during the state of national emergency due to COVID-19.

- Compensation paid to private and public health workers who have contracted COVID-19 in the line of duty or dies while fighting COVID-19, amounting to:

In case of:	Amount
Death (*the amount shall not be included as part of the gross estate of the decedent*)	P1,000,000.00
Severe or Critical Sickness	P100,000.00
Mild or Moderate Sickness	P15,000.00
Note: Said amount is given or to be given to the beneficiaries not later than three months after date of confinement or death, from 1 February 2020 and during the state of national emergency due to COVID-19.	

- The abovementioned income payments shall be included in the Alphabetical List of Employees/Payees being submitted annually by the employers.

- A one-time list of recipients shall be provided not later than 15 January 2021, to the Revenue District Office/concerned Office under the Large Taxpayers Service having jurisdiction over the employer/implementing government agency.

- Employers must also submit a quarterly list of employees who received retirement benefits but are re-employed during the 12-month period and must be submitted within 30 days from the close of all quarters in 2021 only.

- In case where taxes were withheld from the retirement benefits by private employers, individuals or corporate, it shall be refunded to the concerned employees.

- The employers of public or private health workers and HRHs shall also refund the income tax withheld from said employees after the year-end adjustment for purposes of determining the taxable compensation and corresponding tax due of the employees. If the adjustment resulted in excess tax remittance, such excess shall be deducted or applied as deduction in the succeeding withholding tax remittance.

RR No. 30-2020 implements Sections 11 (f) and (g) of Republic Act (RA) No. 11494 on the taxes derived from gaming and non-gaming operations as other sources of funding to address the COVID-I9 pandemic.

RR No. 30-2020 issued on 30 October 2020

- The sources of funding for the subsidy, stimulus measures, and other measures to address the COVID-19 Pandemic are as follows:

    1. Franchise tax at the rate of five percent (5%) on the gross bets or turnovers, or the agreed pre-determined minimum monthly revenues from gaming operations, whichever is higher, earned by offshore gaming licensees, including gaming operators, gaming agent, service providers and gaming support providers.

    2. Income tax, Value-Added tax, and other applicable taxes on income from Non-Gaming Operations earned by offshore gaming licensees, including gaming operators, gaming agent, service providers and gaming support providers.

- The taxes shall be computed on the peso equivalent of the foreign currency used and based on the prevailing official exchange rate at the time of payment.

- The PAGCOR and/or the company awarded or chosen as its third-party intermediary/audit platform shall furnish the Bureau of Internal Revenue ("BIR") with information pertaining to the following:

    1. Gross bets or turnovers earned by offshore gaming licensees, including gaming operators, gaming agent, service providers and gaming support providers;

    2. Minimum Guarantee Fee ("MGF") or the minimum amount of regulatory fees paid by offshore gaming licensees, including gaming operators, gaming agent, service providers and gaming support providers per month; and

    3. Other relevant data (i.e. List of licensees and accredited Service Providers, number of foreign nationals employed, etc.).

- The BIR can also obtain the above information or data from any government or authority that issue offshore gaming licenses, and other third parties.

- The non-payment, underpayment, and/or payment of taxes computed not in accordance with the prevailing official exchange rate at the time of payment shall be considered as fraudulent acts, and subject to penalties under Sections 248(8), 249(8), 253 and 255 of the Tax Code, as amended.

- The BIR shall implement closure orders against those who fail to pay the taxes due and/or committed any of the fraudulent acts in Section 5, and such erring entities shall cease to operate. The closure orders against operators, licensees, or agents shall necessarily include the closure of all their respective accredited service providers.

- The revenues derived from franchise taxes on gross bets or turnovers and income from non-gaming operations shall continue to be collected and shall accrue to the General Fund of the Government after two years or upon a determination that the threat of COVID-19 has been successfully contained or abated, whichever comes first.

RMO No. 32-2020 creates and modifies Alphanumeric Tax Codes (ATCs) for Excise Tax in BIR Form No. 2200-AN (Excise Tax Return for Automobiles and Non-Essential Goods) pursuant to the implementation of RA No. 10963, also known as TRAIN Law.

RMO No. 32-2020 issued on 6 October 2020

- The following ATCs are created:

ATC	Description	Tax Rate	Legal Basis	BIR Form No.
	Hybrid Vehicles	50% of the applicable excise tax rate on automobiles under Section 149 of the Tax Code as amended	RA No. 10963; RR No. 5-2018	2200-AN
XG071	Over P600,000 to P1,000,000			
XG072	Over P1,000,000 to P4,000,000			
XG073	Over P4,000,000			

- The following ATCs are modified:

Existing (per ATC Handbook)			Modified/New			BIR Form No.
ATC	Description	Tax Rate	Description	Tax Rate	Legal Basis	
Passenger Cars					RA No. 10963; RR No. 5-2018	2200-AN
XG021	Up to P600,000	2%	Up to P600,000	4%		
XG022	Over P600,000 to P1,100,000	P12,000 + 20% of the value in excess of P600,000	Over P600,000 to P1,000,000	10%		
XG023	Over P1,100,000 to P2,100,000	P112,000 + 40% in excess of P1,100,000	Over P1,000,000 to P4,000,000	20%		
XG024	Over P2,100,000	P512,000 + 60% of the value in excess of P2,100,000	Over P4,000,000	50%		
Utility Vehicles						
XG031	Up to P600,000	2%	Up to P600,000	4%		
XG032	Over P600,000 to P1,100,000	P12,000 + 20% of the value in excess of P600,000	Over P600,000 to P1,000,000	10%		
XG033	Over P1,100,000 to P2,100,000	P112,000 + 40% in excess of P1,100,000	Over P1,000,000 to P4,000,000	20%		
XG034	Over P2,100,000	P512,000 + 60% of the value in excess of P2,100,000	Over P4,000,000	50%		
Passenger Vans						
XG041	Up to P600,000	2%	Up to P600,000	4%		
XG042	Over P600,000 to P1,100,000	P12,000 + 20% of the value in excess of P600,000	Over P600,000 to P1,000,000	10%		
XG043	Over P1,100,000 to P2,100,000	P112,000 + 40% in excess of P1,100,000	Over P1,000,000 to P4,000,000	20%		
XG044	Over P2,100,000	P512,000 + 60% of the value in excess of P2,100,000	Over P4,000,000	50%		
XG068	Purely Electric Hybrid Vehicles	Exempt	Purely Electric Vehicles	Exempt		
Hybrid Vehicles						
XGO65	Up to P600,000	4%	Up to 600,000	50% of the applicable excise tax rate		
	Over P600,000 to P1,000,000	10%				
	Over P1,000,000 to P4,000,000	20%				
	Over P4,000,000	50%				

RMO No. 33-2020 creates the ATC for Fuel Marking Fee pursuant to the implementation of the TRAIN Law.

RMO No. 33-2020 issued on 6 October 2020

- To facilitate the proper identification and monitoring of collection of the Fuel Marking Fees in connection with the implementation of the Fuel Marking Program (FMP) under the TRAIN Law, an ATC is hereby created:

ATC	Description	BIR Form No.
NT010	Fuel Marking Fee	0623

RMO No. 34-2020 creates ATCs for VAPP pursuant to the implementation of RR No. 21-2020 for Taxable Year 2018 under certain conditions.

RMO No. 34-2020 issued on 6 October 2020

- To facilitate the proper identification and monitoring of tax collection from VAPP in connection with the implementation of RR No. 21-2020, the following ATCs are created:

ATC	Description	BIR Form No.
	On the revenue collected through VAPP:	2119 622
MC341	1. Income Tax, Value-Added Tax (VAT), Percentage Tax, Excise Tax, and Documentary Stamp Tax (DST) other than DST on One-Time Transactions (ONETT);	
MC342	2. Final Withholding Taxes (on Compensation, Fringe Benefits, etc.) and Creditable Withholding Taxes (CWT) other than CWT on ONETT;	
MC343	3. Taxes on ONETT, such as Estate Tax, Donor's Tax, Capital Gains Tax (CGT), ONETT-related CWT/Expanded Withholding Tax, and DST	

RMO No. 36-2020 provides for guidelines and procedures in the refund of erroneously paid VAT on imported drugs prescribed for diabetes, high cholesterol, and hypertension as implemented under R.R No. 18-2020 pursuant to Section 204 (C) of the Tax Code, as amended.

RMO No. 36-2020 issued on 15 October 2020

- Pursuant to Section 204(C) of the Tax Code of 1997, as amended, no credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty.
- Claims for refund of erroneously paid VAT on importation of drugs prescribed for diabetes, high cholesterol, and hypertension included in the DOH-FDA approved list from 23 January 2020 to 9 July 2020 shall be filed and processed at the respective Revenue District Offices (RDOs) or at the Large Taxpayers Audit Division (LTAD) under the Large Taxpayers Service (LTS) where the taxpayer-claimant is registered.
- The Revenue Officer (RO) assigned to receive the application must ensure that documents submitted are complete based on the checklist of required documents.

- The following are the guidelines for the processing and verification of claims:

    1. The Tax Verification Notices (TVN) shall be issued by the head of the processing office for the verification of the claims for VAT refund. The TVN shall not be construed as a regular tax audit/investigation.

    2. The assigned ROs shall ensure that the imported items have not been reported and claimed as input tax credit in the monthly and quarterly VAT returns pursuant to Section 110 of the Tax Code of 1997, as amended, for purposes of computing the VAT payable.

    3. The processing office shall validate the "VAT Payment Certification" issued by the Revenue Accounting Division of the Bureau of Customs (BOC-RAD), including the duly authenticated supporting Import Entry and Internal Revenue Declarations and/or Single Administrative Document, and Statement of Settlement of Duties and Taxes submitted by the taxpayer-claimant in support of claims for input VAT on importation.

    4. For taxpayer-claimants with outstanding delinquent tax liabilities, the assigned RO shall inform the claimant that its outstanding delinquent tax liabilities must be settled prior to endorsement of the memorandum together with the attachments to the BOC. For this purpose, a Certification of the Settlement of Outstanding Liabilities shall be requested from the Collection Division of the Revenue Region or from the LTCED, whichever is applicable, Accounts Monitoring Division, and the Appellate Division using the request format and procedures prescribed.

    5. The RO assigned to process the claim shall prepare, submit, and/or attach the reports/schedules and documents which shall form part of the complete docket of the claim.

    6. The recommendations on the claim for refund shall be reviewed, approved and acted upon, regardless of the amount of claim, in the following manner:

        - The Assessment Division/Office of the concerned Head Revenue Executive Assistant of the LTS shall review the report and the docket pertaining to the claim.

        - The Regional Director/Assistant Commissioner, LTS shall approve/ disapprove the recommendation for VAT refund and endorse a copy of the recommendation with a copy of the docket to the BOC for validation and payment, or for any appropriate action.

- The result of the evaluation of the VAT refund/credit claim, approved or otherwise, shall be communicated in writing to the taxpayer immediately after approval of the report by the designated approving BIR Official.

RMO No. 37-2020 modifies the ATCs in BIR Form No. 2200-M (Excise Tax Return for Mineral Products) in connection with the implementation of the TRAIN Law.

RMO No. 37-2020 issued on 15 October 2020

- To facilitate the proper accounting and monitoring of tax collection from excise taxes, the following ATCs are hereby modified:

EXISTING (per ATC Handbook)					Modified/ New
ATC	Description Tax Rate	Tax Rate	BIR Form No.	Legal Basis	Tax Rate
XM010	Coal and Coke Effective: 1 January 2018 1 January 2019 1 January 2020 and onwards	10.00/MT	2200-M	RA No. 10963 RR No. 1 -2018	P50.00/MT P100.00/MT P150.00/MT
XM020	Non-metallic minerals and quarry resources	2%			4%
XM030	Copper and other metallic minerals	2%			4%
XM040	Gold and Chromite	2%			4%
XM050	Indigenous Petroleum	3%			6%

RMO No. 39-2020 prescribes the policies, guidelines, and procedures in the processing of applications for VAPP pursuant to Revenue Regulations No. 21-2020.

RMO No. 39-2020 issued on 26 October 2020

- The Large Taxpayers (LT) Audit Divisions (LTAD)/LT Divisions (LTDs)/ Revenue District Offices (RDOs) shall receive and process the applications for VAPP.
- A Technical Working Group (TWG) shall be created in the said offices to ensure that all applications are acted upon within the prescribed period.
- The TWG shall be responsible for receiving and processing of the VAPP applications, including the issuance of Certificate of Availment (CA), in case of full compliance, or Denial Letter in cases where the VAPP availment is disapproved.
- The Systems Development Division (SDD) shall develop and deploy the Data Entry Module (DEM) to be used by the Document Processing Division (DPD) and Large Taxpayers Document Processing and Quality Assurance Division (LTDPQAD) to capture data on VAPP applications.
- The Assistant Chief, LT Office/ARDO shall review the VAPP application within five working days from receipt of the docket.

- Within 5 working days from receipt of the docket from the Assistant Chief LT Office/ARDO, the Chief, LT Office/RDO shall act on the recommendation for approval/disapproval of the VAPP application.

- The Chief, LT Office/RDO shall cause the preparation of CA, sign the CA, and issue the same within three (3) working days from approval of the application.

- In case of denial due to failure of the taxpayer to act on the notification or in case of invalid availments, or falsified information, the Chief, LT office/ RDO shall issue a Denial Letter within 3 working days from disapproval of the application.

- For approved availments for taxes on One-time Transactions (ONETT), the TWG shall forward the docket to the ONETT Team. The ONETT team shall issue/release the electronic Certificate Authorizing Registration (eCAR) to the taxpayer within 5 days from receipt of the docket. After release of the eCARs, the ONETT team shall transmit the docket to the Chief, LT Office/ Revenue District Officer.

- Based on the list of VAPP availments provided by the TWG, the Chief, LT Office/Revenue District Officer shall suspend the conduct of the audit of taxpayer whose availment is under evaluation. The TWG shall coordinate with the CAS regarding the approved/denied availments.

- The audit shall resume if the availment has been found invalid.

- If the claim is valid and approved, the issued Letter of Authority (LA), Tax Verification Notice (TVN), Notice for Informal Conference/Notice of Discrepancy for pending cases shall be withdrawn and cancelled.

- The Chief, LT Office/Revenue District Officer shall transmit all dockets on the approved/denied VAPP applications to the Office of the HREA, LTS/ Chief, AD not later than the 15th day of the month following the month of issuance of the CA/DL for post review.

- The ACIR, LTS/Regional Director shall issue and sign the Authority to Cancel Assessment (ATCA) for FANs covered by approved VAPP availments with duly issued CAs within 10 working days from receipt of the Monthly Report on Certificates of Availment/Denial Letters Issued from the Chief, LT Office/Revenue District Officer.

- After post review, the dockets of all applications for VAPP, whether approved or denied, shall be forwarded to the Records Management Division, for applications filed in the LT Audit Divisions in the National Office, or Administrative and Human Resource Management Division of the Regional Office, for applications filed in the RDOs, for safekeeping.

- Administrative sanctions shall be imposed upon concerned personnel who have been found remiss in their responsibilities in ensuring compliance with the policies and procedures on VAPP.

Bureau of Customs

Disposition of Goods under Customs Custody through Negotiated Sale

CMO No. 26-2020 provides for the Rules and Regulations in the Disposition of Goods under Customs Custody through Negotiated Sale.

Customs Memorandum Order (CMO) No. 26-2020 dated 9 October 2020

- Goods that are subject to negotiated sale are those which remain unsold after at least 2 failed biddings, that are not suitable either for official use or donation may be sold through a negotiated sale subject to the approval of the Secretary of Finance and executed in the presence of a Commission on Audit (COA) representative.

- The Notice of Negotiated Sale shall be published in a newspaper of general circulation and posted in the BOC website at least 10 calendar days prior to the scheduled date of negotiated sale.

- At least 2 calendar days prior to the date of negotiated sale, a pre-offer conference shall be held for those offerors who have signified their intent to participate to raise any questions they may have relative to the negotiated sale.

- On the date and time for submission of offers as specified in the Notice of Negotiated Sale, the participants shall submit all the documentary requirements to be placed in one main sealed long brown envelope.

- The eligibility requirements and sealed offers shall be opened and evaluated by the Committee in the presence of a representative of COA and the participants or their duly authorized representatives on the date, time, and place indicated in the Notice, and in accordance with the prescribed manner.

- The participants whose offer is considered the most advantageous to the interest of the government shall be required to pay a guarantee cash deposit in the amount equivalent to 20% of the offer within 24 hours from receipt of the Notice of Acceptance of the offer by the Committee, which shall he deposited in a special trust account, prior to referral to the Secretary of Finance for consideration.

    1. The 80% of the remaining balance shall be paid in full within 48 hours from receipt of the notice from the Committee on Negotiated Sale of the approval of the offer by the Secretary of Finance.

- A failed negotiated sale shall be declared by the Committee on Negotiated Sale when any of the following circumstances occurs:

    1. When there is no offer;

    2. When the highest offeror fails to comply with any of the payments required, said Offeror shall be disqualified from participating further in the negotiated sale thereof, without prejudice to the forfeiture of the cash bond and any payment made and imposition of other sanctions as may be warranted; or

    3. When the Department of Finance disapproves or rejects the offer of the Offeror.

- Upon full payment and presentation of the official receipts evidencing payments of the accepted offer price subject of negotiated sale, the Secretariat shall issue a Notice of Award and shall forward the records of the District Collector having jurisdiction over the goods.

- In case of a failed negotiated sale, the subject sale lot may be disposed of according to the other modes of disposition available under the CAO 03-2020 which cover all modes of disposition of seized, abandoned and forfeited goods by the BOC.

- CMO 26 - 2020 shall take effect immediately and shall last until revoked.

PEZA

PEZA MC No. 49 extends the applicability of PEZA MC No. 11 which authorizes IT Enterprises to implement courses of action to respond to and/or pre-empt any adverse COVID-19 eventuality without need for a LOA from PEZA, and approves the WFH arrangement up to 90% of total revenues.

PEZA Memorandum Circular (MC) No. 49 Series of 2020 dated 22 October 2020

- Until 31 December 2020, no prior LOA is required for the movement of IT equipment and other assets of Ecozone IT Enterprises from their PEZA-registered IT Center facilities.

- However, prior to the movement/withdrawal of IT equipment and other assets, the following documentary requirements shall be submitted by the Enterprise to the office of the PEZA Zone Manager of the PEZA IT Center where the IT equipment and other assets are located:

    1. PEZA Permit Form 8106;

    2. Certified List of IT Equipment and other Assets brought out of the IT Center, signed by the highest responsible official of the Enterprise; and

    3. Surety Bond to cover the amount of duties and taxes that would otherwise have been due on the said IT equipment and other assets as may be determined by the Bureau of Customs, with a copy of the Official Receipt evidencing payment of the Bond.

- Once PEZA issues the Guidelines and Application Forms for the WFH arrangements, all Ecozone IT Enterprises which have implemented or will implement the movement of their equipment and other assets and assignment of personnel from their PEZA-registered IT locations to WFH operations or to non-PEZA registered sites shall submit to PEZA the required documents within 30 days from issuance.

- In response to requests from PEZA Ecozone IT Enterprises, the PEZA Board has issued Board Resolution No. 20-330 allowing WFH arrangements of PEZA Ecozone IT Enterprises up to the equivalent of 90% of total revenues effective until 12 September 2021, the end of the period of the State of National Calamity under Proclamation No. 1021. Guidelines will be subsequently issued by PEZA.

SEC Filing, Payments and Other Deadlines

SEC Requires Corporations, Partnerships, Associations, and Individuals to Create and/or Designate E-mail Account Address and Cellphone Number for Transactions with the Commission

The SEC prescribes the requirements and guidelines for the creation and/or designation of an official e-mail account and cellphone number for transactions with the Commission.

SEC Memorandum Circular (MC) No. 28 Series of 2020 issued on 27 October 2020

- Every corporation, association, partnerships, person under the jurisdiction and supervision of the SEC shall submit a **valid email address** and a **valid official cellular phone number** within 60 days from the effectivity of these rules.
- For future applications and those applications which are still pending primary registration with the CRMD, such information should be either indicated during the filling up of the registration forms or submitted within 30 days from the issuance of the certificate of registration, license, or authority.
- **Alternate e-mail address and cellular phone number:** A valid alternate e-mail address and valid alternate cellular phone number must also be submitted.
- A **valid e-mail address** pertains to:

    1. An existing e-mail address which identifies an e-mail box
    2. With at least One Gigabyte of unused memory space
    3. The official e-mail address of the entity may be the official or alternate e-mail address of another entity or person; Provided, that the official e-mail address must be distinct from the alternate e-mail address of the entity or person.

- A **valid cellphone number** pertains to:

    1. Existing mobile phone number from any telecommunications company legal operating in the Philippines.
    2. The official cellular phone number of an entity or person may be the official or alternate cellular phone number of another entity; Provided, that the official cellular phone number is distinct from the alternate cellular phone number of the entity or person.

- **Person in Control:** The email addresses and cellular phone numbers shall be under the control of the corporate secretary, the person charged with the administration and management of the corporation sole, the resident agent of the foreign corporation, the managing partner, individual, or the duly authorized representative.

    1. The entity/person shall also submit proof of the authorized representative's authority (i.e. special power of attorney or secretary's certificate) to control the e-mail addresses and cellular phone numbers, and to sign and file the Submission, Authorization and/or Certification of Authorization.

- **Inclusion in GIS or NUF:** Beginning 23 February 2021 onwards, the e-mail address and cellular phone numbers shall be included in the General Information Sheet (GIS) or Notification update Form (NUF) regularly filed with the Commission. If a corporation fails to include the email address and cellular phone numbers in the GIS or NUF regularly filed, such GIS or NUF shall be considered incomplete.

- **Authorization:** The Submission of the e-mail addresses and cellular phone numbers shall be accompanied by a duly signed Authorization or Certification of Authorization, which shall state that the corporation, partnership, association, or person allows the Commission to send notices, letter-replies, orders, decisions, and/or other documents through the e-mail addresses and cellular phone numbers provided, for the purpose of complying with the notice requirement of administrative due process.

- **Purpose of cellphone numbers:** The designated official cellphone number registered with the SEC is an additional security measure to ensure that the person accessing the e-mails sent by the SEC is the authorized person of the corporation or partnership to receive and retrieve the same. For every transmittal, Multi-Factor Authentication (MFA) will be performed to said cell phone number which the authorized person will have to input before the e-mail message can be retrieved.

- **No internet access:** If an entity/person is unable to create an e-mail account due to the fact that the area where the principal office address is located has no internet access, only the official and alternate cellular phone numbers shall be required to be submitted to the Commission.

    1. The corporate secretary/person charged with the administration and management/duly authorized representative shall execute and file a Certification that the entity/person is unable to create an email account due to the lack of internet access in the principal office address. Within 30 days from the time internet access is gained, the entity/person shall submit the official email address and alternate email address to the SEC.

- **Change of e-mail address or cellphone number:** Change of e-mail address or cellphone number shall be filed with the Commission, within five days from the date the entity/person decides to change the e-mail address and/or cellular phone number.

- **Double filing:** In case of double filing of e-mail addresses and cellular phone numbers, the Commission may summon the parties involved to determine the cause for the double filing, and to determine whether an intra-corporate dispute exists.

- **Penalty:** Beginning 23 February 2021, an entity/person who fails to submit the e-mail addresses and cellular phone numbers within the period provided under these rules shall be administratively penalized in the amount of Ten Thousand Pesos (P10,000.00).

- The rules shall take effect immediately after its publication in the Official Gazette or in at least two newspapers of general circulation in the Philippines.

Guidelines for the Conversion of Corporations Either to One Person Corporation or to Ordinary Stock Corporation

SEC MC No. 25 prescribes guidelines to operationalize Title XIII, Chapter III of Republic Act No. 11232, or the RCC, which allows the conversion from an OSC to a OPC, as well as the conversion from an OPC to an OSC.

SEC Memorandum Circular (MC) No. 27 Series of 2020 dated 25 August 2020, issued on 14 October 2020

Part I. OSC to OPC

- If a natural person of legal age, a trust, or an estate ("single stockholder") has acquired all of the outstanding capital stock of an OSC, with the corresponding Certificate Authorizing Registration/tax clearance issued by the BIR, the OSC may apply for its conversion into an OPC by submitting the required documentary requirements, to be processed as an Amendment of the Articles of Incorporation,

- Upon the issuance of the Certificate of Filing of Amended AOI by the SEC reflecting the conversion to OPC, the AOI and By-laws of the OSC shall be deemed superseded. The date of issuance of the Certificate of Filing of Amended Articles of Incorporation shall be deemed as the date of approval of the conversion.

- The Certificate of Filing of Amended Articles of Incorporation shall bear and retain the corporation's original SEC Registration Number. Meanwhile, the name of the corporation shall have an "OPC" suffix in order to reflect its nature as a One Person Corporation.

- The provisions of Title XIII, Chapter III of the Revised Corporation Code shall apply primarily to OPCs, while other provisions of the Code apply suppletorily.

Part II. OPC to OSC

- When the shares in an OPC ceases to be held solely by a single stockholder, the OPC may be converted into an OSC after due notice to the Commission and after compliance with all the requirements for a stock corporation, and after evaluation of the documentary requirements.

- Following the transfer/s of shares in an OPC where there become at least 2 stockholders in the OPC, A Notice of Conversion of the One Person Corporations into an Ordinary Stock Corporation shall be filed with the Commission within 60 days from the transfer/s of shares. The period for filing the Notice shall be observed even though the conversion will be applied for, or will take place, afterwards.

- The date of transfer of shares shall be deemed to be the date of the corresponding Certificate Authorizing Registration/tax clearance from the BIR.

- If the Notice of Conversion is filed with the Commission beyond 60 days from the transfer of shares, the conversion may still be approved subject to prior payment of penalty if found liable for violation of Sec 132 in relation to Sec 158 of the RCC.

- The date of issuance of the Certificate of Filing of Amended AOI and of Bylaws shall be deemed as the date of approval of the conversion.

- The Certificate of Filing of Amended AOI and Bylaws shall bear and retain the corporation's original SEC Registration Number. The corporation shall not have the OPC suffix as part of its corporate name.

Part III. Provisions Common to Both Kinds of Conversion

- The signatories of the AOI of the converted corporation must clearly state that they voluntarily agreed to convert the OSC into an OPC, or the OPC into an OSC.

- By reason of the nature of these corporations, the conversion from an OSC to OPC shall be deemed as optional. On the other hand, the conversion from an OPC to OSC shall be deemed as mandatory, unless when winding-up and dissolution is appropriate.

- Processing of applications for conversion shall be done manually by the Commission. In case of opposition or dispute arising from the conversion, the aggrieved party may file a verified Petition for Cancellation of the issued certificate through a verified petition to the CRMD on the grounds of fraud.

- This MC shall take effect immediately after its publication in a newspaper of general circulation.

Supreme Court Cases

Real Property Tax

Municipality of Cainta, Rizal vs. Spouses Ernesto E. Braña and Edna C. Braña and City of Pasig
Supreme Court Third Division G.R. No. 199290, promulgated 3 February 2020

The province, city or municipality where the real property is located has the right to collect the taxes due on the properties. However, when the location of the property is in dispute, the location as indicated in the TCT cannot be relied upon, and the boundary dispute must first be settled.

Facts:

The Spouses Braña are registered owners of six parcels of land located at Phase 9, Pasig Green Park, Cainta, Rizal. They paid real property taxes (RPT) on the properties to the Municipality of Cainta from 1994 to 1996.

In 1997, Pasig City filed a civil case for collection of unpaid taxes against the Spouses and claimed that the properties were geographically located in Pasig. The Spouses deposited checks with the Pasig Metropolitan Trial Court representing RPT for 1995 to 1998.

However, Cainta continued to demand payment of RPT from the Spouses. Thus, the Spouses filed an action for interpleader to compel Cainta and Pasig to litigate with each other to determine who has a proper claim on the RPT.

Meanwhile, in 1994, Cainta filed a petition for settlement of boundary dispute against Pasig before the Antipolo RTC, which issued an order restraining Pasig from collecting RPT on the disputed areas (which included the location of the subject properties).

In the action for interpleader, Cainta claimed that it is entitled to the payment of the RPT because the properties are situated in Barangay San Isidro, Cainta, Rizal which is within the geographical jurisdiction of Cainta under the Progress

Map of CAD-688-D or the Cainta-Taytay Cadastral Survey, and the properties have long been registered in Cainta, for tax purposes, before Pasig assessed the RPT in 1997.

Pasig, however, claimed that the locational entries in the TCTs state that the properties are located in Barangay Santolan, Pasig. Moreover, the Department of Finance has consistently ruled that the location of the property as indicated in the certificate of title is controlling as to the venue of payment of RPT.

The Regional Trial Court (RTC) of Pasig ruled in favor of Pasig following the locational details appearing on the TCT of the properties. Following this decision, Cainta sought recourse with the Supreme Court.

Issues:

1. Is Cainta's recourse to the Supreme Court proper?

2. Should the RPT be paid to Pasig or Cainta?

Rulings:

1. Yes, Cainta's direct recourse to the Supreme Court is proper because the issue involved is purely a question of law. Thus, the hierarchy of courts need not be strictly observed.

   A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for the examination of the probative value of the evidence presented, the truth or falsity of facts being admitted.

   The question of law involved is whether the Pasig RTC interfered with the jurisdiction of the Antipolo RTC when it ruled that the Spouses should pay RPT to Pasig despite an order from the Antipolo RTC for Pasig to refrain from collecting RPT on the properties. This does not involve an examination of the evidence presented by the parties.

2. The RPT should not be paid to Pasig or Cainta in the meantime.

   The resolution of the boundary dispute is lodged with the Antipolo RTC.

   Under the Real Property Tax Code (PD No. 464) and the Local Government Code, the local government unit (LGU) where the property is located has the authority to assess or appraise the current and fair market value of the property, and to collect the taxes due thereon. Thus, it is necessary to determine the location of the property. The Supreme Court cannot make a definitive ruling on the location of the property due to the pending boundary dispute case between the Pasig and Cainta.

   Even if the location indicated in the TCTs is that of Pasig, Cainta had long assessed the property for tax purposes, and the Spouses have paid said taxes. It was only in 1997 that Pasig assessed the property for RPT.

   TCTs cannot be relied upon because the very location of the property is in dispute. The Antipolo RTC, which has jurisdiction over the boundary dispute, is the best forum to determine the precise metes and bounds of Pasig's and Cainta's respective territorial jurisdiction, as well as the extent of each local government unit's authority to assess and collect RPT.

While the dispute is ongoing, the Spouses are ordered to deposit the succeeding payment of RPT in an account with the Land Bank of the Philippines in escrow for the City of Pasig/the Municipality of Cainta. The proceeds will be released to the local government adjudged to be entitled by virtue of a final judgment on the boundary dispute.

(Editor's Note: In the Consolidated Cases of Municipality of Cainta vs. City of Pasig and Uniwide Sales Warehouse Club, Inc. and Uniwide Sales Warehouse Club, Inc., vs. City of Pasig and Municipality of Cainta (GR Nos. 176703 & 176721, promulgated 28 June 2017), the Supreme Court Second Division ruled that the location of real property stated in the Certificate of Title, until cancelled or amended through judicial proceedings, determines the situs of local taxation. The properties involved were subject of the Pasig-Cainta boundary dispute.)

Provincial Government of Cavite and Provincial Treasurer of Cavite vs. CQM Management, Inc. [as successor-in-interest of the Philippine Investment One (SPV-AMC), Inc.]
Supreme Court Second Division G.R. No. 248033, promulgated 15 July 2020

While the liability for RPT generally rests on the owner of the real property at the time the tax accrues, personal liability for RPT may also expressly rest on the entity with the beneficial use of the real property. In either case, the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner.

An Ecozone Facilities Enterprise entitled to the preferential 5% gross income tax, in lieu of all national and local taxes, is exempt from paying RPT.

RPT can only be collected within five years from the date it became due.

Facts:

Philippine Investment One (SPV-AMC) Inc. (PI One) acquired from Rizal Commercial Banking Corporation (RCBC) two non-performing loans – that of Maxon Systems Philippines, Inc. (Maxon) and Ultimate Electronic Components, Inc. (Ultimate).

The loans were individually secured by real estate mortgages over separate buildings located at the Philippine Economic Zone Authority (PEZA) economic zone, Rosario, Cavite. When PI One failed to collect the loans, it moved to foreclose the real estate mortgages. During the auction sale, the Maxon and Ultimate properties were sold to PI One and CQM Management, Inc. (CQM), respectively. Subsequently, PI One sold the rights over the Maxon property to CQM. Thus, in 2014, CQM became the owner of both the Maxon and Ultimate properties.

When CQM tried to consolidate its tax declarations over the properties, it was revealed that Maxon and Ultimate have unpaid RPT for the years 2000-2013, and 1997-2013, respectively. The Cavite Provincial Treasurer issued a tax assessment and warrant of levy against the properties, and scheduled a public auction.

Upon application of CQM, the Regional Trial Court issued an injunction and later ruled that CQM is not liable for the RPT as it is exempt under Section 24 of Republic Act (RA) No. 7916 or the Special Economic Zone Act. The Court of Appeals affirmed the decision of the RTC.

The Treasurer appealed to the Supreme Court and averred that CQM, as owner of the properties, is liable for the accrued RPT, and that CQM is not exempt from paying RPT. The Treasurer also argued that the right to collect the RPT has not prescribed.

Issues:

1. Is CQM, who became owner of the properties in 2014, liable to pay RPT for the period prior to acquiring ownership?

2. Is CQM, a PEZA-registered entity, exempt from paying RPT?

3. Is the collection of RPT barred by prescription?

Rulings:

1. No, CQM is not liable for the RPT for the period prior to acquiring ownership.

   While the liability for taxes generally rests on the owner of the real property at the time the tax accrues, personal liability for RPT may also expressly rest on the entity with the beneficial use of the real property. In either case, the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner.

   CQM was not yet the owner or the entity with the actual or beneficial use of the Maxon and Ultimate properties during the years the Treasurer sought to collect RPT.

2. Yes, CQM is exempt from paying RPT over the properties from the time it acquired ownership over them, under Section 24 of RA 7916, which provides that "(E)xcept for real property taxes on land owned by developers, no taxes, local and national, shall be imposed on business establishments operating with the ECOZONE. In lieu thereof, 5% of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted xx."

   Moreover, PEZA Memorandum Circular No. 200-4-024 provides, in part, that "PEZA-registered economic zone enterprises availing of the 5% [gross income tax] incentive are exempted from payment of all national and *local* taxes, except real property tax on land owned by developers."

   CQM, a registered Ecozone Facilities Enterprise (and not a developer) under RA 7916, is entitled to pay 5% gross income tax, and is exempt from payment of all national and local taxes, including RPT.

3. Yes, the collection of RPT is barred by prescription. Section 270 of the Local Government Code provides that RPT can only be collected within five years from the date it became due.

Local Business Tax

Far Eastern University vs. City of Manila, City Mayor and City Treasurer
CTA (Special 2nd Division) Case AC 223 promulgated 14 October 2020

Tuition and educational fees collected by a stock or proprietary educational institution are subject to LBT.

A taxpayer claiming refund of LBT erroneously paid tax must comply with the requisites prescribed by law.

Facts:

Respondent City Treasurer of Manila assessed F University on 29 June 2015 for deficiency local business taxes (LBT) for 2009 and 2013 from its tuition and education fees. F University protested. Upon denial, it filed a complaint with the Regional Trial Court, which dismissed it for lack of merit, prompting F University to elevate the case to the Court of Tax Appeals via a Petition for Review. Prior to the promulgation of the RTC's decision, F University paid the assessed LBT deficiency of P189.9 Million.

At the CTA, F University questioned the City Treasurer's authority to impose business tax on its tuition and educational fees, contending that education institutions are exempt from all taxes under the Constitution. In seeking a refund of the alleged erroneously paid LBT, it argued that it falls under Sec. 143 (h) of the Local Government Code, which provides that a business not specifically enumerated as subject to LBT is deemed exempt. F University also insisted that the City Treasurer's right to assess for 2009 and 2010 has prescribed following its receipt of the assessment beyond the 5-year prescriptive period.

The City Treasurer took the position that the tuition and education fees collected by F University, as a stock and proprietary education institution, can be subject to LBT as these are not included in the common limitations provided under Sec. 133 of the LGC.

Issues:

1. Is the City of Manila authorized to impose business tax on tuition and educational fees?

2. Can the LBT paid be refunded considering Manila's right to assess has prescribed?

Rulings:

1. Yes. The local government's power to create its own sources of revenue and to levy taxes is subject only to the limitations set forth in Sec. 133 of the LGC. The Manila Revenue Code provides that all businesses not specifically enumerated as exempt shall be subject to LBT.

   F University is a stock and proprietary educational institution as provided in its Articles of Incorporation. Tuition and educational fees, as F University's source of income, are not included in the prohibited subjects of LBT. It is excluded in the common limitations provided under Sec. 133 and falls squarely under Sec. 143 (h) of the LGC.

   The Court, quoting the deliberations of the 1986 Constitutional Commission, also held that unlike in a non-stock, non-profit education institution, a stock or proprietary educational institution such as F University may only be exempt from all taxes, save for real property taxes and duties, provided there is a law granting the same. In the instant case, there is no tax exemption that exists in favor of F University.

2. No. While the CTA ruled that Manila's right to assess the F University for 2009 and 2010 – with fraud not being established to justify the application of the 10-year prescriptive period – had prescribed, F University's failure to file a written claim within 2 years from the payment of LBT pursuant to Sec. 191 of the LGC does not entitle it to a refund. The CTA held that while the assessments had already prescribed, it is still incumbent upon F University to comply with the refund requisites provided by law.

Doing Business in the Philippines

BW Shipping Philippines, Inc. vs. Commissioner of Internal Revenue
CTA (Third Division) Case 9660 promulgated 7 October 2020

A foreign shipping company is not considered to be doing business in the Philippines even if it has an agreement with a local agent for the recruitment of Filipino seamen and providing IT and purchasing support services.

Facts:

Petitioner B Corp. filed a claim for refund of unutilized input VAT for 2015 attributable to its zero-rated sales of service to 6 non-resident foreign shipping companies. These services include recruitment of Filipino seamen and crew members for the vessels managed by the shipping companies.

Due to the Respondent CIR's inaction, B Corp filed a Petition for Review with the CTA, where it argued that it complied with all the requisites under Sec. 112 o the Tax Code, entitling it to the refund claim.

The BIR averred that B Corp. is not entitled to a VAT refund as it did not meet one of the requisites for a VAT refund, i.e., the recipients of its services are not persons engaged in business conducted outside the Philippines. The BIR contended that these shipping companies are considered entities doing business in the Philippines because of the appointment of B Corp. as its local "agent." As agent, B Corp. is continuously performing the body or substance of the business or enterprise for which these shipping companies were organized. The BIR additionally raised that since the agreements were executed as early as 2008, this implies continuity in the conduct and intention of these shipping companies to establish a continuous business in the Philippines.

Issue:

Are the shipping companies considered doing business in the Philippines with its appointment of B Corp. as its local agent?

Ruling:

No. Citing the decision of the Supreme Court in *MR Holdings, Ltd. vs. Sheriff Carlos P. Bajar, et al., G.R. No. 138104 promulgated on 11 April 2002*, the true test of whether a foreign company is doing business in the Philippines is either (1) it is continuing the body or substance of the business or enterprise for which it was organized or (2) it is substantially retired from it and turned it over to another.

Upon perusal of the service agreements, the CTA held that the "agency" between the B Corp. and its customers is limited to the following purposes: (1) recruitment of Filipino seamen; and (2) providing IT and purchasing support services for the clients' vessels. B Corp. did not undertake the substance of its clients' shipping activities. Hence, the foreign clients cannot be considered as doing business in the Philippines.

B Corp. is entitled to a refund of its unutilized input VAT but at a lower amount than claimed. There was a partial disallowance on the basis of its failure to comply with the invoicing requirements and to meet some of the substantiation requirements.

DST on related party transactions

San Miguel Paper Packaging Corp. vs. Commissioner of Internal Revenue
CTA (*En Banc*) Case 2099 promulgated 7 October 2020

DST may be imposed even without a formal agreement or promissory note executed to cover the credit or loan extended to another party. Even if the assessment is based on a mere Note to the AFS, the fact a corporation entered into a loan transaction with its related parties is sufficient to be liable to DST.

Facts:

Respondent CIR assessed Petitioner S Corp. for deficiency Documentary Stamp Tax (DST) arising from advances obtained from related parties as reflected in Note 18 of its 2009 Audited Financial Statements. S Corp. paid under protest and subsequently filed an administrative claim for refund of the alleged illegally collected DST.

To toll the running of the 2-year prescriptive period, S Corp. filed a Petition for Review at the CTA, insisting that it is not subject to DST.

The CTA 3rd Division ruled that S Corp is liable for DST on its advances from related parties but ordered the refund of the interest and penalties charged since it was able to prove that it relied, in good faith, on *BIR Ruling [DA (C-0350 127-08] dated 8 August 2008*, which held that inter-office memoranda are not subject to DST. The compromise penalty was also ordered refunded as S Corp. did not agree to pay the same.

Aggrieved, both parties filed a Petition for Review at the CTA *En Banc*.

At the CTA *En Banc*, the BIR argued that in the case of *CIR vs. Filinvest Development Corp., GR Nos. 163653 and 167689 promulgated on 19 July 2011*, the Supreme Court upheld the interest and surcharge even if the taxpayer relied on a previous issued BIR Ruling in not paying DST.

Issue:

Is S Corp. entitled to the refund of the basic DST on top of the interest and surcharges?

Ruling:

No. The CTA *En Banc* sustained the CTA Division's ruling denying the refund claim for erroneously paid basic DST on advances from related parties but refunding the interest, surcharges, and penalties.

The CTA held that DST may be imposed even though no formal agreement or promissory note was executed to cover the credit or loan extended to another party. DST is levied on the exercise by persons of certain privileges through the execution of specific instruments. Hence, even assuming that the assessment is based on a mere Note to the AFS, the fact that the S Corp. entered into a loan transaction with its related parties is sufficient reason for it to be liable to DST.

Even assuming that the existence of loan documents is required before DST can be imposed, the CTA *En Banc* ruled that S Corp. is still liable to pay since there was also an admission by the company that advances from related parties are covered by vouchers and board resolution or memos.

However, the CTA ordered the refund of the interest, surcharge, and penalties collected by the BIR since it was able to prove that it relied in good faith on the BIR Ruling which ruled that inter-office memoranda are not subject to DST.

Refund / Issuance of Tax Credit

Maxima Machineries, Inc. vs. Commissioner of Internal Revenue
CTA EB No. 2145 promulgated 28 September 2020

One of the essential requisites in a refund claim is that the taxpayer must show that the input taxes were not applied against any output VAT liability pursuant to Section 112 (A) of the Tax Code.

Facts:

Company A claims that for the period covering 1 October to 31 December 2013, it has accumulated unutilized input value-added tax (VAT) from its zero-rated transactions. The said zero-rated transactions allegedly originated from its sale of goods and services to export-oriented entities registered with the Philippine Economic Zone Authority (PEZA). It also rendered services to Company B, a non-resident foreign corporation from which it received indent commission as payment.

On 29 December 2015, Company A filed with the BIR Large Taxpayers Regular Audit Division I an Application for Tax Credits/Refunds, together with a transmittal letter of supporting documents, requesting for the issuance of a Tax Credit Certificate (TCC) for its alleged unutilized input VAT for the third quarter of fiscal year ending 31 March 2014.

In the CIR's reply, it was averred that the unutilized or unapplied creditable input taxes claimed which was allocable to its VAT zero-rated sales for the period of 1 October 2013 to 31 December 2013 was not properly documented. Hence, the CIR denied the claim for refund/TCC of Company A.

Issues:

Was Company A entitled to its clam for refund?

Ruling:

No. One of the essential requisites in a refund claim is that the taxpayer must show that the input taxes were not applied against any output VAT liability pursuant to Section 112 (A) of the Tax Code. Pertinent thereto, Section 110 of the same also provides that when it comes to claiming excess or unutilized input VAT from zero-rated sales transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. Accordingly, it is crucial that the taxpayer prove that it has enough excess input VAT credits to cover its output VAT liability for the pertinent period or periods.

Unfortunately, Company A failed to satisfy one of the requisites in a claim for refund under Section 112 of the Tax Code, i.e. that the input taxes have not been applied against output taxes during and in the succeeding quarters. Company A failed to sufficiently present the existence and validity of the input tax carried over from the previous period.

The relationship of the payor-withholding agent and the BIR is akin to a contract of agency. Under the Philippine withholding tax system, the withholding agent acts as the government's agent for the collection of taxes in order to ensure its payment. Any failure on the part of the withholding agent to remit the amount withheld to the BIR is a breach on the part of the agent and not by the taxpayer. Hence, in a claim for refund of excess and unutilized CWTs, proof of actual remittance to the BIR of the withheld taxes is not required.

Commissioner of Internal Revenue vs. McKinsey & Co. (Phils).
CTA EB No. 2089 promulgated 30 September 2020

Facts:

On 8 April 2016, Company A filed an administrative claim for refund or tax credit certificate (TCC) for its unutilized Creditable Withholding Taxes (CWT) before the BIR Revenue District Officer (RDO) No. 50. On 14 April 2016, it filed a Petition for Review before the Court of Tax Appeals (CTA) where it was raffled to the Second Division. The CTA Division granted the claim for refund of Company A. The Motion for Reconsideration (MR) filed by the Commissioner of Internal Revenue (CIR) was denied.

Issue:

Was Company A entitled to its claim for refund?

Ruling:

Yes.

The invoicing requirements under Section 113(A) of the Tax Code, are under the provisions on Value-Added Tax (VAT) whereas, the subject claim are excess and unutilized CWTs. Hence, non-compliance with the invoicing requirements is not fatal to Company A's claim for tax credit. The CIR's assertion that Company should have submitted the VAT official receipts to substantiate its claim for refund is misplaced. Such requirement is specifically for claims for refund of excess or unutilized input taxes under Section 113 of the Tax Code, and not for claims for refund of excess and unutilized CWTs.

The relationship of the payor-withholding agent and the BIR is akin to a contract of agency. Under the Philippine withholding tax system, the withholding agent acts as the government's agent for the collection of taxes in order to ensure its payment. It is actually a system of advance collection of the payee's or income recipient's tax liability by the payor of any income item. The payor who has the control and custody of the funds from which income payments are sourced is constituted as the agent of the BIR to withhold a tax at the rates defined under existing law and its implementing revenue regulations whether final or creditable. Hence, the acts of the agent on behalf of the principal within the scope of the authority granted have the same legal effect and consequence as though the principal had been the one so acting in the given situation.

In the instant case, the withholding agent's receipt of the tax withheld is tantamount to the BIR's receipt thereof. Any failure on the part of the withholding agent to remit the amount withheld to the BIR is a breach on the part of the agent and not by the taxpayer. Therefore, Company A should no longer be burdened to show proof of actual remittance in case of claims for tax refund or tax credit.

Commissioner of Internal Revenue vs. Lepanto Consolidated Mining Company
CTA EB No. 2051 promulgated 30 Sep 2020

Facts:

On 18 February 2015, Company A filed its application for tax credits/ refund with the BIR for input VAT credits for the four quarters of taxable year (TY) 2013. On 20 July 2015, Company A filed its Petition for Review before the Court in Division (CTA Case No. 9101). The CTA First Division partially granted Company A's claim for refund. The CTA First Division denied Company A's Motion for Reconsideration.

Issue:

Was Company A entitled to its claim for refund?

Ruling:

Yes (partially).

One of the requisites for a successful claim for refund of input VAT under Section 112 of the Tax Code, is that the "input tax has not been applied against [the} output tax". From the foregoing, Company A should have presented the succeeding Quarterly VAT Returns to show that the subject of the claim was not carried over to succeeding

> The law merely requires that the creditable input VAT should be "attributable" to the zero-rated or effectively zero-rated sales. In other words, nowhere is it stated in Section 112 (A) of the Tax Code, that the refundable creditable input VAT should be "directly attributable" to such sales. Ubi lex non distinguit nee nos distingere debemos, thus "where the law does not distinguish, none must be made." With that said, there is no legal requirement on respondent's part to establish "direct attributability." When Section 112 (A) of the Tax Code, states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being caused by such sales.

periods. However, as the Court found, the claimed unutilized input VAT was not carried over or applied to the succeeding taxable quarters since the same was deducted as "VAT Refund/TCC claimed" in the Amended Third Quarterly VAT Returns of 2014. What the law and the implementing regulations provide is that the subject input VAT being claimed for refund must exclude the portion that has been applied against the output tax. Hence, the two succeeding Quarterly VAT Returns (that is, Third and Fourth Quarterly VAT Returns of 2014) is sufficient to prove that the input VAT being claimed was not applied to Company A's output VAT.

Further, the law merely requires that the creditable input VAT should be "attributable" to the zero-rated or effectively zero-rated sales. In other words, nowhere is it stated in Section 112 (A) of the Tax Code, that the refundable creditable input VAT should be "directly attributable" to such sales. *Ubi lex non distinguit nee nos distingere debemos*, thus "where the law does not distinguish, none must be made." With that said, there is no legal requirement on respondent's part to establish "direct attributability." The word "attribute", the adjective form of which is "attributable", is defined as "to explain as to cause or origin", or simply, to "ascribe." Thus, when Section 112 (A) of the Tax Code, states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being caused by such sales.

A careful examination of the voluminous Import Entry and Internal Revenue Declarations (IEIRDs) and Single Administrative Documents (SADs) would show that Company A's imported goods are generally materials and supplies to be used in its business of mining of gold (e.g., mining drilling rods, grinding balls, drums, transmission control valve, protection sleeves, shock mounts, abrasive powder, diesel engines, etc.). Additionally, Company A's witness testified that the importations of goods other than capital goods were intended to be used in mining gold. Based on the foregoing, the importations made by Company A, for which a claim for refund was based, were undoubtedly creditable and attributable to its zero-rated sales.

Assessment

Commissioner of Internal Revenue v. Fortune Tobacco Corporation
CTA EB No. 1971 promulgated 22 September 2020

Earnings reserved for compliance with any loan covenant or pre-existing obligation established under a legitimate business agreement constitutes an accumulation of earnings for the reasonable needs of the business.

Facts:

On 27 August 2014, Company A received a Preliminary Assessment Notice (PAN), together with the Details of Discrepancies and other attachments from the BIR, stating that after investigation, Company A is still liable for deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), final withholding tax (FWT), final withholding-VAT (FWVAT), documentary stamp tax (DST), and improperly accumulated earnings tax (IAET) for calendar year 2009.

On 30 June 2015, Company A paid the IT, VAT, EWT, and other taxes.

With regard to IAET, CIR maintains his position that Company A is not among those enumerated entities exempted from IAET. The CIR states that not being among those exempted, Company A has the burden of proving that the accumulation of earnings is for the reasonable needs of the Company.

Issue:

Was Company A liable for IAET?

Ruling:

No. Earnings reserved for compliance with any loan covenant or pre-existing obligation established under a legitimate business agreement constitutes an accumulation of earnings for the reasonable needs of the business.

Although Company A is not among the exempted corporations to pay IAET, Company A was able to substantiate fully its exemption based on other reasons, i.e., no other than RR No. 02-01 is explicit that compliance with covenants of loan agreements is considered as reasonable needs to accumulate earnings. To stress, the touchstone of the liability is the purpose behind the accumulation of the income and not the consequences of the accumulation. Thus, if the failure to pay dividends is due to some other causes, such as the use of undistributed earnings and profits for the reasonable needs of the business, particularly compliance with the covenants of the syndicated loan agreement in this case, such purpose would not generally make the accumulated or undistributed earnings subject to the tax.

Company A could not possibly distribute all its earnings as it will need all funds as required by the loan agreement's covenants.

Commissioner of Internal Revenue vs. Travellers International Hotel Group, Inc.
CTA EB No. 2141 promulgated 22 September 2020

All contractees and licensees of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.

Facts:

Company A is authorized by the Philippine Amusement and Gaming Corporation (PAGCOR) to establish and operate casinos within the latter's regulatory and licensing authority under Presidential Decree (PD) No. 1869, as amended, otherwise known as the PAGCOR Charter. In the course of its operation during the calendar year (CY) 2011, Company A earned gaming revenues (net of promotional allowances) and during the same year, Company A paid PAGCOR the five percent (5%) franchise tax on its income from casino and gaming operations.

Company A received from the BIR - Large Taxpayers Audit Division a Preliminary Assessment Notice (PAN), assessing it of deficiency income tax (IT), value-added tax (VAT), expanded withholding tax (EWT), withholding tax on compensation (WTC), final tax (FT), documentary stamp tax (DST), and compromise penalties for CY 2011.

Company A filed its Reply to the PAN controverting the IT assessment on the revenues derived from its gaming operations under its Provisional License with PAGCOR. Thereafter, Company A received a Formal Letter of Demand (FLD) finding it still liable for deficiency IT for CY 2011.

Aggrieved, Company A filed a Petition for Review with the CTA, which ruled in its favor. Aggrieved, the CIR filed a petition before the CTA *En Banc*.

Issue:

Is Company A, being a Licensee of PAGCOR exempt from Income Tax on its gaming operations?

Ruling:

Yes.

In *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*, the Supreme Court made a categorical ruling that said tax privilege of paying five percent (5%) franchise tax inures to the benefit of third parties with contractual relationship with PAGCOR, to wit:

"As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all contractees and licensees of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos."

City Assessor's Office of Valenzuela City, rep. herein by the City Assessor, Atty. Ceciliani R. Andrade vs. National Grid Corporation of the Philippines and the Central Board of Assessment Appeals
CTA EB No. 2100 promulgated 23 September 2020

It is a well-settled rule that the burden of proving exemption from local taxation is upon whom the subject real property is declared. By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, Section 206 implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. If there is failure to substantiate the claim for exemption, then necessarily, the property being taxed will remain in the assessment roll.

Facts:

Company A is a corporation granted with franchise to engage in the business of conveying electricity through its power transmission lines and facilities in several parts of the Philippines, including various barangays in Valenzuela City by virtue of the Republic Act (RA) No. 9511. It took over the operation and maintenance of the electric power transmission business of the National Transmission Corporation trough a Concession Agreement.

LGU issued a Notice of Assessment (NOA), notifying Company A of its Real Property Tax (RPT) liability for its transmission lines from the years 2002 to 2012. Company A filed a petition before the Local Board of Assessment Appeals (LBAA) praying for the nullification of the NOA and its corresponding Tax Declaration on the transmission lines, and for the subject properties to be classified as exempt from RPT in Company A's assessment roll since its franchise provides for its exemption from RPT. LBAA upheld the said assessment. Aggrieved, Company A appealed the decision to Central Board of Assessment Appeals which set aside the decision of LBAA, declaring Company A exempt from payment of RPT, hence this petition.

Issue:

1. Are the transmission lines owned by Company A unconditionally exempt from RPT, corollary, does the exemption supersedes the evidentiary requirement under Section 206 of the Local Government Code (LGC)?

2. Is the payment under protest mandated by Section 252 of the LGC a defense that may be waived?

Ruling:

1. No. Although Company A's exemption form RPT by virtue of Section 9 of RA 9511 clear and undisputable, it does not, however, exempt its compliance with the documentary requirements under the LGC. Neither is its exemption without condition or automatic. Under the mentioned provision, the exemption is premised on its payment of franchise tax in lieu of payment of "income tax and any all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by the any authority whatsoever, local or national, on its franchise, rights, privileges, receipts revenues and profits, and on properties used in connection with its franchise." Thus, unless the franchise tax is shown or proven to have been paid, the exemption is neither absolute nor automatic.

   Moreover, the Court sees no incongruity between Section 9 of RA 9511 that provides the basis for exemption of RPT and Section 206 of the LGC that requires submission of proof for the exemption to pay RPT. If there is failure to substantiate the claim for exemption, then necessarily, the property being taxed will remain in the assessment roll.

2. No. Under Section 252 of the LGC, payment under protest is an indispensable requirement before petitioner's NOA may be questioned before the LBAA and the CBAA. Hence, Company A cannot escape the requirement of payment under protest by going straight to the LBAA to appeal the NOA. Its non-compliance is fatal to its appeal. The perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional. A party's failure to comply with the procedure with the procedure regarding appeal will render the subject matter final, executory and unappealable.

Commissioner of Internal Revenue v. Unisphere International, Inc.
CTA EB No. 2121 promulgated 23 September 2020

Prior knowledge of the CIR of the taxpayer's new address requires no further notification from the latter.

Facts:

The Commissioner of Internal Revenue (CIR) issued a Warrant of Distraint and/or Levy (WDL) against Company A's properties to collect its alleged delinquent tax liabilities for CY 1994.

Company A argued that the BIR cannot commence collection proceedings because no valid assessment has been issued against Company A. Hence, Company A requested petitioner CIR to lift the WDL.

Thereafter, the BIR caused the annotation of two (2) Notices of Tax Lien on the title of Company A's property. It also issued Warrants of Garnishment (WOGs) to ten different banks seeking to enforce the collection of Company A's alleged deficiency income tax and expanded withholding tax for CY 1994. Hence, Company A filed a Petition for Review (with Urgent Motion to Suspend Collection of Taxes and to Quash/Lift Warrant of Distraint and/or Levy, Warrants of Garnishment and Notice of Tax Lien).

Issue:

Whether Company A was validly served with the assessment notice.

Ruling:

No.

The CIR argues that Company A failed to inform or notify the former of the latter's change of address.

The factual findings reveal that the CIR was already aware of Company A's new address prior to the mailing of the Formal Assessment Notice (FAN) and yet said notice was mailed at Company A's old address, which is not respondent's address at that time. Hence, there is no valid service of the FAN.

As cited in the assailed Decision, the Supreme Court ruled in the case of Commissioner of Internal Revenue v. BASF Coating +Inks Phils., Inc. dated 26 November 2014, that prior knowledge of the BIR of the taxpayer's new address requires no further notification from the latter.

Medical Center Trading Corporation v. Commissioner of Internal Revenue
CTA Case No. 9412 promulgated on 23 September 2020

A Waiver, to be valid and would have the effect of extending the three-year prescriptive period to assess, must indicate the nature and the amount of the tax due. According to the High court, these details are material as there can be no true and valid agreement between the tax and respondent absent this information.

Facts:

Company A received a LOA from the Commissioner of Internal Revenue (CIR) dated 14 May 2010 authorizing the examination of Company A's books of accounts and other accounting records for taxable year ended 31 December 2009.

During the course of audit, four Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code were executed by Company A and accepted by the CIR, through the OIC Assistant Commissioner for Large Taxpayer Service:

	Date of Execution	Stated Period of Extension
1st Waiver	17 July 2012	Until 30 June 2013
2nd Waiver	2 April 2013	Until 31 December 2013
3rd Waiver	3 September 2013	Until 30 June 2014
4th Waiver	27 March 2014	Until 31 December 2014

Thereafter, Company A received PAN from the BIR, wherein Company A was assessed deficiency income tax, value-added tax (VAT), withholding tax - expanded (EWT), withholding tax - compensation (WTC), documentary stamp tax (DST), plus interest and compromise penalties, for taxable year 2009.

Issue:

Were the four Waivers executed by Company A valid and binding?

Ruling:

No. The subject waivers are not valid, and thus, could not have extended the period to assess petitioner.

A Waiver of the Defense of Prescription is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date. However, it is likewise a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed. The Waiver must faithfully comply with the provisions of Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 in order to be valid and binding.

Based on the jurisprudential pronouncements, it is required, inter alia, that a Waiver, to be valid and would have the effect of extending the three-year prescriptive period to assess, must indicate the nature and the amount of the tax due. According to the High court, these details are material as there can be no true and valid agreement between the tax and respondent absent this information.

In this case, a cursory reading of the subject Waivers would reveal that they do not indicate the kind and exact amount of the taxes to be assessed or Waivers are invalid. Correspondingly, the same did not effectively extend the three-year prescriptive period under Section 203 of the NIRC of 1997 on account of their invalidity.

Y&R Philippines, Inc. vs. Commissioner of Internal Revenue
CTAEB No. 2019 promulgated 25 September 2020

A LOA and a LN serve two different purposes. The purpose of an LN is to notify a taxpayer that a discrepancy is found based on the RELIEF. On the other hand, the purpose of a LOA is to provide authority to a revenue officer to examine a taxpayer to determine the correct amount of taxes. Due process demands that after an LN has served its purpose, the revenue officer should properly secure a LOA before proceeding with the further examination and assessment of a taxpayer. The requirement of a LOA is not limited to physical examination of the taxpayer's books of accounts. As long as a taxpayer is subjected to an examination to determine the correct amount of taxes due from it, a LOA is necessary.

Facts:

On 8 August 2008, the Commissioner of Internal Revenue (CIR) issued a Letter of Authority (LOA) authorizing revenue officers to examine Company A's books of accounts and other accounting records for all internal revenue taxes covering the period 2007.

Pursuant to the LOA, Company A paid deficiency taxes which was confirmed by the CIR on 26 September 2011.

On 7 September 2015, the CIR issued a Preliminary Collection Letter (PCL) demanding payment from Company A for alleged deficiency income tax, VAT, and compromise penalty.

On 28 September 2015, the BIR issued the Final Notice Before Seizure (FNBS) to collect the said amount. Company A formally responded to the BIR that it has already settled all of its tax deficiency for TY 2007.

On 28 July 2016, the CIR issued a Warrant of Distraint and/or Levy (WDL) for the collection of the latter's deficiency taxes for TY 2007, which Company A received on 2 August 2016. Similarly, the CIR issued Warrants of Garnishment to Hong Kong and Shanghai Banking Corporation Limited (HSBC) and Bank of the Philippine Islands (BPI) for the garnishment of Company A's deposit accounts. HSBC then placed Company A's deposit account in a separate blocked account and informed the latter of such fact.

Issues:

1. Were the PAN and FAN void?

2. Was Company A entitled to 6% legal interest on the amount to be refunded?

Ruling:

1. Yes. As duly found by the Court in Division, a Certificate of Registration had already been issued to Company A indicating its new address. Following the disputable presumption that an official duty has been regularly performed, Company A, in the absence of contrary evidence, is presumed to have complied with Revenue Memorandum 40-04 in relation to its transfer of registration. Hence, the BIR is presumed to have been properly notified of Company A's new address.

   And even if Company A failed to comply with RMO 40-04 in relation to its transfer of registration, still, the CIR has been already shown to have had knowledge of Company A 's new address. The CIR's knowledge of Company A's new address should have prompted him to send the assessment notices to this new address.

   Further, the PAN and FAN were issued in the absence of a LOA. The requirement of a LOA is not limited to physical examination of the taxpayer's books of accounts. As long as a taxpayer is subjected to an examination to determine the correct amount of taxes due from it, a LOA is necessary. Hence, unless the examination is undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these methods to arrive at the correct amount of taxes due to a taxpayer without prior authority. Moreover, the ease by which BIR revenue officers arrive at a taxpayer's correct amount of taxes through the RELIEF as prescribed in RMO 30-03 does not authorize the dispensing of the requirement of a LOA. There is also no merit as to the CIR's contention that since the Letter Notice (LN) from which the assessment notices were based was issued by no less than the CIR himself and not by a Regional Director, a LOA is no longer needed. A LOA and an LN serve two different purposes. The purpose of an LN is to notify a taxpayer that a discrepancy is found based on the RELIEF. On the other hand, the purpose of a LOA is to provide authority to a revenue officer to examine a taxpayer to determine the correct amount of taxes. Due process demands that after an LN has serve its purpose, the revenue officer should have properly secured a LOA before proceeding with the further examination and assessment of a taxpayer.

2. No. In Atlas Fertilizer Corporation v. Commissioner of Internal Revenue (Atlas Case) dated 30 October 1980, the Supreme Court ruled that for payment of interest to accrue on the amount to be refunded to taxpayer, it must either be authorized by law or the collection of the tax was attended by arbitrariness.

   Pending the resolution of Company A's Urgent Motion for the Issuance of an Order to Suspend the Collection of Tax, the CIR is not precluded from collecting the garnished amount. As there is no order yet from the Court in Division suspending the collection of the alleged deficiency taxes against Company A when the CIR proceeded with the collection of the garnished amounts, the latter did not disobey any lawful order from the Court in Division. Hence, he was not arbitrary when he proceeded with the collection of the garnished amounts. As there is no arbitrariness that transpired in the collection of the garnished amounts, no legal interest at 6% per annum is due from the amount to be refunded to Company A.

Commissioner of Internal Revenue vs. Grand Plaza Hotel Corporation
CTA EB No. 2039 promulgated 29 September 2020

An assessment refers to the determination of amounts due from a person obligated to make payments. In the context in which it is used in the Tax Code, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.

It must be emphasized that the date certain for the payment of tax liabilities is indispensable in an assessment as it dictates the time when the penalties, surcharges and interest begin to accrue against. The uncertainty in the date of payment is a far cry from the basic requirement, viz, a definite demand to immediately pay the assessed tax liabilities within a time certain.

Facts:

A Letter of Authority (LOA) dated 1 July 2009 was issued to authorize certain Revenue Officers to examine the books of accounts of Company A for taxable year 2008. Meanwhile, Company A executed several Waivers of the Defense of Prescription under the Statute of Limitation of the National Internal Revenue Code (NIRC) to extend the period to assess.

On 18 July 2013, Company A received the Preliminary Assessment Notice (PAN) informing Company A that the Commissioner of Internal Revenue (CIR) has found a tax deficiency for taxable year (TY) 2008.

Company A subsequently received a Formal Letter of Demand (FLD) on 19 September 2013.

On 21 November 2013, Company A wrote a letter to the CIR informing the latter that, as a sign of good will, it made a partial payment based on the FLD. Company A then received a Collection Letter on 17 December 2013.

Company A wrote a letter on 20 December 2013 to the CIR stating that Company A was informed by Revenue Officer ABC to pay only those assessments that it does not raise any objection to. Company A added that it does not agree with the assessment of the BIR regarding income tax, withholding tax on compensation, and VAT. On 27 December 2013, Company A wrote another letter to the CIR reiterating that it already made a partial payment. Company A sent to the CIR on 20 January 2014 partial accounts reconciliation of the discrepancies it was being assessed against.

Company A subsequently wrote a letter to the CIR requesting for the reinvestigation of the tax deficiency assessment. Additional accounts reconciliation was thereafter submitted.

The CIR denied the request of Company A for reinvestigation.

Issue:

Was there a valid assessment issued against Company A?

Ruling:

No.

For lack of a definite and unequivocal demand for payment on a certain date, the assessment is void.

An assessment refers to the determination of amounts due from a person obligated to make payments. In the context in which it is used in the Tax Code, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.

A careful scrutiny of the records shows that for each of the enclosed Audit Result/ Assessment Notices referred to in the FLD, the due date indicated, within which Company A must pay the alleged deficiency assessment, was "January 00, 1900" which is not a valid date.

The subject FLD cannot be deemed a valid formal assessment notice absent a specific valid date or period within which the alleged tax liabilities must be settled or paid by Company A.

It must be emphasized that the date certain for the payment of tax liabilities is indispensable in an assessment as it dictates the time when the penalties, surcharges and interest begin to accrue against. The uncertainty in the date of payment is a far cry from the basic requirement, viz, a definite demand to immediately pay the assessed tax liabilities within a time certain.

First Philippine Utilities Corporation vs. Commissioner of Internal Revenue
CTA Case No. 9431 promulgated 29 September 2020

The OIC-Regional Director may issue a LOA with full authority in the same way that the same could have been signed by the Regional Director if he were then present and in the actual discharge of his functions, so as to ensure that the office continues its usual activities.

Failure of the Revenue Officer to request for revalidation of LOA, or the expiration of the revalidation period, will not automatically nullify the LOA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued.

The interests from money market placements issued by banks have been consistently subjected to a final tax of 20% and it is the withholding agent-bank who has the responsibility and liability for the payment of the tax imposed on the interest income from banks as provided in Section 2.57 (A) of RR No. 2-98.

No DST is due on the surrender and cancellation of the redeemable, preferred shares.

Compromise penalties are amounts only suggested in settlement of criminal liability and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same.

Facts:

The Commissioner of Internal Revenue (CIR) issued Letter of Authority (LOA) authorizing the conduct of an audit of Company A's taxable records for taxable year (TY) 2012.

Thereafter, the CIR issued the Preliminary Assessment Notice (PAN) informing Company A that it was found liable for deficiency income tax, VAT, and DST, inclusive of increments for TY 2012.

The CIR issued the Formal Letter of demand with Final Assessment Notice (FLD-FAN) containing deficiency tax assessments. Company A filed its Protest to the Assessment, arguing that CIR's deficiency tax assessments be cancelled for lack of factual and legal bases.

Company A argues that the assessment is void due to the lack of authority of the Officer-In-Charge Regional Director to issue the LOA; that the delegated authority of the Regional Director to issue LOA cannot be further delegated to the Officer-In-Charge; and that a valid assessment must stem from a valid LOA. Company A adds that the CIR violated its due process rights as it failed to comply with applicable rules and regulations issued by the BIR relative to the issuance of a valid assessment.

Issues:

1. May an Officer-in-Charge (OIC) Regional Directory sign and issue a LOA?
2. Will the failure to revalidate the LOA after 120 days nullify the same?
3. Was Company A's interest income subject to income tax?
4. Was the assessment of non-deductible expenses proper?
5. Was the service income earned by Company A subject to VAT?
6. Was the redemption of redeemable shares subject to DST?
7. Was Company A liable for compromise penalty?

Ruling:

1. Yes. Officials designated as Officer-in-Charge (OIC) enjoy limited powers which are confined to functions of administration and ensuring that the office continues its usual activities. The OIC may not be deemed to possess the power to appoint employees as the same involves the exercise of discretion, which is beyond the power of an OIC, unless the designation order issued by the proper appointing officer/authority expressly includes the power to issue appointments.

Accordingly, issuing LOAs is a function of administration of a Regional Director. It is only logical to conclude that the OIC-Regional Director may issue a LOA with full authority in the same way that the same could have been signed by the Regional Director if he were then present and in the actual discharge of his functions, so as to ensure that the office continues its usual activities.

Furthermore, Revenue Memorandum Order (RMO) No. 09-16, clarifies that, "for the uniform understanding of all concerned, it is hereby reiterated and clarified that all internal revenue personnel holding positions in an OIC capacity shall exercise authority and discharge duties and assume responsibilities as if they are holding the employment item for the particular office, x x x. Accordingly, the person holding an OIC-Regional Director position is equally authorized to and responsible as that of a regular Regional Director for issuing electronic Letters of Authority and assessment/ demand notices, among others."

2. No. The issue of revalidation after expiration of the 120-day period within which to conduct audit of a taxpayer's books of accounts has long been settled. There already has been a plethora of cases promulgated by this Court which provides that failure of the Revenue Officer to request for revalidation of LOA, or the expiration of the revalidation period, will not automatically nullify the LOA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued. This was discussed under Revenue Memorandum Circular (RMC) No. 23-2009, which superseded RAMO No. 01-00.

3. No. The interests from money market placements issued by banks have been consistently subjected to a final tax of 20% pursuant to various rulings. These rulings, however, were based on Section 24(cc) of the old Tax Code, which was amended and now numbered as Section 27(D)(1) of the present Tax Code of 1997. There being no subsequent law, regulation or ruling issued to modify or repeal said interpretation, the same remains to be binding up to this date. Since the interest from money market placement is subject to final tax of 20%, it is the withholding agent-bank who has the responsibility and liability for the payment of the tax imposed on the interest income from banks as provided in Section 2.57 (A) of Revenue Regulations (RR) No. 2-98. The banks are the withholding agents for the final tax imposed on the interest income from money market placements earned by Company A.

4. Yes. It appears that the CIR laid down two legal bases in disallowing Company A's Petitioner's expense: (a) Expenses should be determined on a pro-rata basis under Section 50 of the Tax Code, as implemented under RR No. 04-11; and (b) Amount was disallowed as deduction from gross income for income tax purposes pursuant to Section 34 (K) of the Tax Code.

   Company A must be subject to the allocation of income and deductions as provided under Section 50 of the Tax Code, as amended. The CIR applied the said provision by supplementing it with RR No. 04-11 ("Proper Allocation of Costs and Expenses Amongst Income Earnings of Banks and Other Financial Institutions for Income Tax Reporting Purposes." The objective thereof is to clearly set the rules on the allocation of cost and expenses between the

Regular Banking Unit ("RBU") or Foreign Currency Deposit Unit ("FCDU") / Expanded Foreign Currency Deposit Unit ("EFCDU") or Offshore Banking Unit ("OBU") operations of a depository bank considering that the RBU and FCDU / EFCDU or OBU is governed by different income taxation regime in the Tax Code, and is likewise applicable to other financial institutions which are subject to or exempt from both regular income and final taxes with reference to proper allocation of costs and expenses. RR No. 04-11 was made applicable specifically only to banking institutions or other financial institutions. The term "bank" under Section 22(V) of the Tax Code, means every banking institution, as defined in Section 2 of RA No. 337, otherwise known as the General Banking Act, as amended by RA No. 8791, otherwise known as The General Banking Law of 2000. Perforce, under Sections 3.1 and 3.2 of the RA No. 8791, "banks" shall refer to entities engaged in the lending of funds obtained in the form of deposits. RMC No. 46-11 72 clarified the definition of "Financial Institutions" as used in RR No. 04-2011, adopting the definition under RR No. 09-04, to refer to banks, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial intermediaries including finance companies, but does not, however, include insurance companies. The definition of "financial institutions" as used in RR No. 04-2011 mentions the terms non-bank financial intermediaries, quasi-banking, and finance companies. Since this definition was adopted from RR No. 09-04, the Court may rely on the same in determining the definitions of non-bank financial intermediaries, quasi-banking, and finance companies.

Thus, the CIR was justified to apply the method of allocation in Company A's case pursuant to RR No. 04-11, with reference to allocating cost and expenses among income earnings derived from active business operation which are subject to regular income tax, passive activities which are subject to final tax and other activities producing income which are exempt from income taxes as provided in Section 3 thereof.

Moreover, Section 3 of RR No. 04-11 further states that that only costs and expenses attributable to the operations of the RBU can be claimed as deduction to arrive at the taxable income of the RBU subject to regular income tax. Thus, as applied to other financial institutions, to which Company A belongs particularly as non-bank financial intermediary, only costs and expenses attributable to the operations of the financial institution can be claimed as deduction to arrive at the taxable income of the financial institution subject to regular income tax.

Only the professional fees, taxes and licenses, and transportation and travel may be presumed to be attributable to the operations of Company A as a non-bank financial intermediary. The same does not hold true for miscellaneous expenses, especially since Company A failed to explain or show the nature of these expenses so as to be able to determine whether or not the same is attributable to its operations as a non-bank financial intermediary. While as for the charitable contribution, it is far from being considered as an expense attributable to Petitioner's operations as a non-bank financial intermediary.

Since Company A did not present any proof that the proper taxes were accordingly withheld from the claimed expenses, the assessment on this ground must not be disturbed.

5. No. Pursuant to Section 4.1 08-3(g) of RR No. 16-05, lending investors shall be subject to VAT on the basis of their gross receipts. Accordingly, a "lending investor" includes all persons other than banks, non-bank financial intermediaries, finance companies and other financial intermediaries not performing quasi-banking functions who make a practice of lending money for themselves or others at interest. Company A's primary purposes is outside the scope of RR No. 16-05. It is RR No. 09-04, re-imposing gross receipts tax on banks and non-bank financial intermediaries performing quasi-banking functions and other non-bank financial intermediaries beginning January 01, 2004, which must be applied in Company A's case since banks, non-bank financial intermediaries, finance companies, and quasi-banking are defined under RR No. 09-04.

   Considering that the interest income being assessed by VAT allegedly arose from the promissory note entered into by Company A and Company B, the income was earned pursuant to Company A's primary purpose as a non-bank financial intermediary, which must not be subject to VAT but rather with gross receipts tax.

6. No. It has been consistently held by the CIR in various BIR rulings that the surrender of shares does not constitute a sale, assignment or transfer because the liquidating corporation is not taking title to the surrendered shares and the shares are retired and not retained as treasury shares. In effect, the liquidating corporation does not realize any benefit, as owner or otherwise, from its receipt of the shares. Such being the case, considering that the shares will be considered retired and no longer issuable upon redemption, no DST is due on the surrender and cancellation of the redeemable, preferred shares.

7. No. It must be stressed that a compromise penalty is imposed to avoid prosecution for violation of the provisions of the Tax Code. Under the BIR's latest issuance on the matter – RMO No. 07-15, compromise penalties are amounts only suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer. Absent a showing that Company A consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.

Others

Metro Pacific Tollways Development Corporation vs. Makati City et al.
CTA EB No. 2115 promulgated 30 September 2020

Section 196 of the LGC only applies when no notice of assessment was issued to the taxpayer. Otherwise, the reglementary period under Section 195 of the LGC is fatal to the taxpayer in claiming for administrative and judicial claim for refund.

Facts:

LGU assessed Company B for local business tax (LBT) on dividend income when it applied for the renewal of its business permit with the LGU.

Company B then filed an administrative claim for refund. Following the inaction of the LGU, Company B brought the case before the Regional Trial Court (RTC) whereby the LGU filed a Motion to Dismiss, arguing that the deficiency tax assessment had become final and executory. The RTC eventually dismissed the case on the ground of failure to file a protest against the deficiency assessment within the reglementary period of 60 days. The RTC also denied Company B's Motion for Reconsideration (MR).

Company B appealed the RTC's Decision before the Court of Tax Appeals (CTA) in Division, which the latter denied, prompting the Petitioner to appeal to the CTA *En Banc*.

Issue:

Did the tax assessment by the LGU become final and executory?

Ruling:

Yes. Section 195 of the LGC states that the taxpayer has 60 days from receipt of the notice of assessment to file a written protest while the local treasurer has 60 days from the date of filing of the protest within which to decide the same. The same provision further provides that the taxpayer has 30 days, either from the receipt of the denial of the protest or from the lapse of the 60-day period prescribed for the local treasurer to decide on the protest, within which to appeal with the court of competent jurisdiction.

Company B was issued the billing assessments in 2014 and waited until 8 January 2016 and 28 January 2016 to file its administrative and judicial claims, respectively, believing that it may avail of the remedy provided under Section 196 of the LGC. However, Section 196 of the LGC only applies when no notice of assessment was issued to the taxpayer, which is not the case of Company B.

Since the claim for refund was filed beyond the reglementary period under Section 195 of the LGC, the tax assessment by the LGU had become final and executory.

About SGV & Co.
SGV is the largest professional services firm in the Philippines. We provide assurance, tax, strategy and transactions, and consulting services. In everything we do, we nurture leaders and enable businesses for a better Philippines. This Purpose is our aspirational reason for being that ignites positive change and inclusive growth.

Our insights and quality services help empower businesses and the economy, while simultaneously nurturing our people and strengthening our communities. All this leads to building a better Philippines, and a better working world. SGV & Co. is a member firm of Ernst & Young Global Limited.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

For more information about our organization, please visit ey.com/ph.

SGV & Co. maintains offices in Makati, Clark, Cebu, Davao, Bacolod, Cagayan de Oro, Baguio, General Santos and Cavite.

For an electronic copy of the Tax Bulletin or for further information about Tax Services, please visit our website www.ey.com/ph

We welcome your comments, ideas and questions. Please contact Allenierey Allan V. Exclamador via e-mail at allenierey.v.exclamador@ph.ey.com or at telephone number (632) 8894-8398.

The deadlines and timelines mentioned in this Tax Bulletin are pursuant to our understanding of the existing administrative issuances of the BIR as of the date of writing. These may be subject to change in light of the recently passed Bayanihan 2, which also authorizes the President to move statutory deadlines and timelines for the submission and payment of taxes, fees, and other charges required by law, among others.