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What's Inside...

INSIGHTS is a monthly publication of BDB LAW to inform, update and provide perspectives to our clients and readers on significant tax-related court decisions and regulatory issuances (*includes BIR, SEC, BSP and various government agencies*).

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HIGHLIGHTS for JANUARY 2023

HIGHLIGHTS

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- The input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VATable sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety. ***(Chevron Holdings, Inc. v. Commissioner of Internal Revenue, G.R. No. 215159, July 5, 2022)***

- Section 112 of the Tax Code does not require direct attributability of input taxes to zero-rated sales. ***(Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Taganito HPAL Nickel Corporation, GR No. 259024, September 28,2022.)***

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- The date of delivery of pleadings to a private-letter forwarding agency is not to be considered as the date of filing in court. ***(Ritegroup Incorporated vs Commissioner of Internal Revenue, CTA Case No. 9708, January 9,2023)***
- Taxpayer's income from casino gaming operations pursuant to the Junket Agreements with PAGCOR is not subject to corporate income tax. ***(Prime Investment Korea, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 2483, January 9, 2023)***
- The 180-day period referred to in Section 228 of the NIRC of 1997, as amended, and in Section 2.1.4 of RR No. 12-99, as amended by RR No. 18- 2013, is confined only to the period within which either the CIR or his/her duly authorized representative may act on the initial protest against the Final Assessment Notice/Formal Letter of Demand (FLD). ***(Commissioner of Internal Revenue vs. Ruben U. Yu, CTA EB No. 2354 (CTA Case No. 9595), January 9, 2023)***
- The filing of a motion for reconsideration of the undated FDDA with the CIR did not toll the 30-day period within which to appeal the undated FDDA to the CTA. ***(Elta Industries, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9922, January 23, 2023)***
- CMO 29-2014 provides that a certified true copy of the Importer's Sworn Statement duly filed with the BIR must be submitted to the BOC upon filing of the Import Entry and Internal Revenue Declaration (IEIRD). ***(Gamma Gray Marketing vs . Bureau of Customs. CTA Case No. 9855. January 26,2023)***

HIGHLIGHTS for JANUARY 2023

BIR ISSUANCES

- ***Revenue Regulations No. 1-2023*** – This implements the Ten Percent (10%) Discount and the VAT Exemption under RA No. 11861 (Expanded Solo Parents Welfare Act).
- ***Revenue Memorandum Order No. 1-2023*** – This is about the creation of Alphanumeric Tax Code (ATC) for Excise Taxes and Tobacco Inspection Fees on Novel Tobacco Products.
- ***Revenue Memorandum Order No. 3-2023*** – This provides the Regular Updating of Content of the Interactive BIR Citizen's Charter.
- ***Revenue Memorandum Order No. 5-2023*** – This prescribes the guidelines and procedures on the implementation of revised customer satisfaction survey for frontline services under Client Support Service as one of the BIR's Feedback Mechanism.
- ***Revenue Memorandum Circular No. 6-2023*** – Circularizes the National Privacy Commission Advisory Opinions upholding the authority of the BIR, in its tax enforcement, assessment and collection functions, to obtain personal and sensitive information from any person.

SEC ISSUANCES

- **SEC OGC Opinion No. 22-16 dated October 28, 2022, and published on January 18, 2023 -** In the absence of a board resolution, a President of a holding corporation has no inherent authority to vote in a stockholder's meeting of its subsidiary.

IC ISSUANCES

- **Legal Opinion No. 2023-05 dated January 20, 2023 -** The fact that no P&I Club is duly authorized by the IC in the Philippines would mean that no licensed brokers can facilitate brokering activities to unlicensed foreign P&I Club

BOC ISSUANCES

- **MISTG Memo 01-2023 dated January 3, 2023** – This provides the updated Excise Tax rates for certain products under RA No. 11467 effective January 4, 2023.
- **OCOM memo 09-2023 dated January 5, 2023** – This provides the supplemental guidelines on the posting of bond of RBEs in the IT-BPM pursuant to the directive of the FIRB.

FIRB ISSUANCES

- **FIRB Advisory 002-2023, January 19, 2023 -** This provides the updates on the templates for the Certificate of Entitlement to Tax Incentives.
- **FIRB Advisory 003-2023, January 27, 2023 –** This provides the basis of the penalty due to non-compliance by RBEs in the IT-BPM sector of the work-from-home threshold.

SUPREME COURT

DECISION HIGHLIGHT

The input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VATable sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety.

In the taxpayer's claim for refund of excess or unutilized input VAT attributable to zero-rated sales, the CTA charged the substantiated and validated input taxes against the output taxes, and only after finding that there existed excess input taxes from the output taxes did the CTA conclude that the taxpayer might be entitled to a refund.

The Supreme Court partially granted the refund. The input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VATable sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety. It must be stressed that the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative.

The law and rules are clear and need no interpretation. The taxpayer only needs to prove non-application or non-charging of the input VAT subject of the claim. There is nothing in the law and rules that mandate the taxpayer to deduct the input tax attributable to zero-rated sales from the output tax from regular twelve percent (12%) VAT-able sales first and only the "excess" may be refunded or issued a tax credit certificate. *(Chevron Holdings, Inc. v. Commissioner of Internal Revenue, G.R. No. 215159, July 5, 2022)*

Section 112 of the Tax Code does not require direct attributability of input taxes to zero-rated sales.

The taxpayer is a VAT-registered taxpayer who filed its claim for a tax refund. It had sufficiently established that its entire zero-rated sales in 2013 qualified for VAT-zero rating under Section 106(A)(2)(a)(1) and that it incurred input taxes attributable to zero-rated sales which were not applied against any output VAT liability.

In cases involving claims for input tax refund or issuance of tax credit certificate, the Court of Tax Appeal (CTA) ruled that Section 112 of the Tax Code does not require direct attributability of input taxes to zero-rated sales. As such, the Petition for Review filed by the Commissioner of Internal Revenue is hereby denied. *(Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Taganito HPAL Nickel Corporation, GR No. 259024, September 28, 2022.)*

Only the revenue officers actually named under the LOA are authorized to examine the taxpayer.

The taxpayer argues that the assessment of the BIR was invalid as the Revenue Officer (RO) who actually examined the taxpayer's books of accounts and other accounting records is not among the ROs authorized under the LOA. The BIR argues that the RO is authorized under an alleged MOA to continue the assessment.

The Court ruled and as held by the SC held in *CIR v. Opulent Landowners, Inc.*, only the revenue officers actually named under the LOA are authorized to examine the taxpayer. In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against the respondent, the resulting assessments are void.

As things so stand, considering that the RO is not named in the LOA and is thus not authorized to conduct such investigation, the resulting assessment against the taxpayer is inescapably void. Well-entrenched are the principles that in the absence of such an authority, the assessment or examination is a nullity and a void assessment bears no fruit. *(Ma. Erlinda T. Ong v. Commissioner of Internal Revenue, CTA Case No. 10100, January 16, 2023)*

The pieces of evidence presented entitling a taxpayer to an exemption is strictissimi scrutinized and must be duly proven.

In its MR for its TY2014 refund claim, the taxpayer argues that it had always presented pieces of evidence of the same kind and nature, only differing in the periods covered. In its TY2017 refund claim case, the SC and CTA declared that the evidence presented by the taxpayer was sufficient. Hence, the taxpayer argues that the Court should have ruled in favor of the sufficiency of its evidence for its TY2014 claim.

The Court denied the MR. It ruled that the taxpayer's reliance in its TY2017 case could not change the outcome of this case. The evidence presented in the TY2017 case pertains to 2017 events and transactions, while the evidence presented for this TY2014 case was for 2013 events and transactions. Actions for tax refund or credit are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. *(Philippine Airlines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9979, January 12, 2023)*

Failure to strictly comply with the notice requirements prescribed under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 is tantamount to denial of due process.

On January 10, 2013, the taxpayer received the PAN dated December 28, 2012. On January 15, 2013, the taxpayer received the FAN and FLD issued on the same date. On January 25, 2013, the taxpayer filed its Reply to the PAN. Hence, the taxpayer argues that it is a violation of due process when the FAN and FLD were issued prior to the lapse of 15 days from its receipt of the PAN. The CIR argues that the 15-day period is reckoned from the date of issuance of the PAN and not the receipt of the taxpayer.

The Court ruled in favor of the taxpayer and found that the FAN and FLD were prematurely issued and received by the taxpayer on January 15, 2013, or five days after the taxpayer received the PAN. The CIR, in failing to await the lapse of the 15-day period, correspondingly disregarded the mandatory due process requirement laid down under RR No. 12-99. It is well-settled that failure to strictly comply with the notice requirements prescribed under Section 228 of the NIRC of 1997, as amended, and RR No. 12-99 is tantamount to the denial of due process. As a result, the assessments issued in this case are void, and all the proceedings and orders emanating from there are likewise void. As a rule, a void assessment bears no valid fruit. *[Commissioner of Internal Revenue v. Jollibee Worldwide Pte., Ltd., CTA EB No. 2447 (CTA Case No. 9005), January 10, 2023)*

As long as there is an actual shipment of goods from the Philippines to a foreign country, regardless of the incentive the exporter is enjoying, it must be supported with a certificate of inward remittance or a bank-certified credit memo.

In its claim for input VAT refund, the taxpayer argues that its direct export sales are zero-rated based on par. (5) of Sec. 106(A)(2)(a) of the 1997 NIRC, as amended, instead of par. (1) of the same section. Thus, the taxpayer argues that the required proof that the sales be paid in foreign currency duly accounted for under the rules and regulations of the BSP is not applicable to BOI-registered enterprises, which only need to prove the fact of actual exportation of goods.

The Court denied the taxpayer's claim and ruled that EO 226 neither provides that proof of actual exportation is the only requirement nor does it provide that payment in foreign currency is not necessary in order for a sale to be considered an export sale. Additionally, there is nothing in the NIRC that indicates that par. (1) of Section 106(A)(2)(a) does not cover actual export sales made by BOI-registered entities.

In harmonizing paragraphs (1) and (5) of Section 106(A)(2)(a)(1), the Court ruled that as long as there is an actual shipment of goods from the Philippines to a foreign country, regardless of the incentive the exporter is enjoying, it must be supported with a certificate of

	inward remittance or a bank-certified credit memo to show that it was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP. *[Commissioner of Internal Revenue v. Carmen Copper Corporation, CTA EB No. 2480 (CTA Case No. 10016), January 10, 2023)*
The date of delivery of pleadings to a private-letter forwarding agency is not to be considered as the date of filing in court.	This is a Motion for Reconsideration (MR) filed by the BIR assailing the Decision of the CTA which ruled in favor of the taxpayer. The BIR received the assailed Decision on September 30, 2022. Counting fifteen (15) days therefrom, he had until October 17,2022 to file his MR thereto. However, the BIR sent his MR through private courier on October 17, 2022. Said private courier delivered and the CTA received such motion on October18, 20222. In denying the MR, the Court ruled that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court. In such cases, the date of actual receipt by the court, and not the date of delivery to the private courier, is deemed the date of filing of that pleading. As such, the BIR belatedly filed such MR on October 118, 2022 leading to the finality of the assailed Decision. (Ritegroup Incorporated *vs Commissioner of Internal Revenue, CTA Case No. 9708, January 9,2023*)
Section 108(8)(2) of the Tax Code, as amended, provides that for sales to qualify as subject to zero percent (0%) VAT, the recipient is a foreign corporation, and doing business outside the Philippines or is a non-resident person not engaged in business.	Taxpayer-generated gross receipts which were subjected to VAT at zero percent (0%) because allegedly, taxpayer's services were rendered in the Philippines to its non-resident foreign affiliates (foreign clients) and were billed and paid for in acceptable foreign currencies. Section 108(8)(2) of the Tax Code, as amended, provides that for sales to qualify as subject to zero percent (0%) VAT, the recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines or is a non-resident person not engaged in business who is outside the Philippines when the services were performed. Here, the court ruled that it was never established that the place of performance of the subject services was in the Philippines, nor taxpayer's services rendered to its foreign clients, who are classified as non-resident foreign corporations not engaged in business in the Philippines. As such, the taxpayer cannot qualify as subject to zero percent (0%) VAT under Section 108(8)(2) of the NIRC of 1997, as amended. *(Avaloq Philippines Operating Headquarters vs. Commissioner of Internal Revenue, CTA Case No. 10119, January 9, 2023)*

COURT OF TAX APPEALS
DECISION HIGHLIGHTS

UPDATES

As regards the sale to PEZA registered entities, it is also required that the Sales Invoice and Official Receipts must be duly registered pursuant to Section 237 and 238 of the Tax Code.

The lone issue, in this case, is whether the taxpayer is entitled to its claim for refund or issuance of a Tax Credit Certificate (TCC) for the total amount of Ten Million Two Hundred Eighty-Two Thousand Five and 99/100 Pesos (₱10,282,005.99), representing taxpayer's excess and unutilized input VAT on its local purchases of goods and services and importations attributable to its zero-rated sales.

The Court ruled that in filing a claim for the refund or issuance of a tax credit certificate for input taxes, a taxpayer is required to prove its compliance with Section 112(A) and (C) of the Tax Code, as amended. As regards the sale to PEZA registered entities, it is also required that the Sales Invoice and Official Receipts must be duly registered pursuant to Sections 237 and 238 of the Tax Code. **Here**, the sales to PEZA-registered entities were partially granted as zero-rated sales because of violation of Invoicing Requirements and the lack of supporting documents as required under Sections 237 and 238 of the Tax Code. *(Schaeffler Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 10197, January 9, 2023)*

It is not required that the claimed input tax be directly attributable to zero-rated sales in order to be creditable.

The Commissioner of Internal Revenue (CIR) maintains that only "creditable input taxes" that are "directly attributable" may be refunded. Allegedly, no attributability was established between the input tax on purchases vis-a-vis the zero-rated sales of the taxpayer. As a claim for refund, the taxpayer must establish his/her claim by a quantum of evidence and not by assumption.

The court ruled that Section 112 of the National Internal Revenue Code, as amended by Republic Act No. 9337 **allows the allocation of creditable input taxes which cannot be directly or entirely attributable to zero-rated sales.**

Creditable input taxes which cannot be directly or entirely attributable to any sale transaction (i.e. zero-rated or effectively zero-rated sale and taxable or exempt sale of goods of properties or services), shall be allocated proportionately on the basis of the volume of sales. Evidently, contrary to the CIR's allegation, **the attribution of the input VAT to the zero-rated sales need not always be direct.** Hence, it is not required that the claimed input tax be directly attributable to zero-rated sales in order to be creditable. *(Philippine Geothermal Production Company, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 2455, January 9, 2023.)*

Taxpayer's income from casino gaming operations pursuant to the Junket Agreements with PAGCOR is not subject to corporate income tax.

The taxpayer argues that the income from junket gaming operations is properly classified as income from casino operations which falls under Section 13(2) of P.D. No. 1869, as amended, and is exempt from corporate income tax. It insists that it is a PAGCOR licensee/contractee by virtue of the Junket Agreement where it was granted authority to conduct junket and e-junket gaming operations at PAGCOR's Casino Filipino-Midas. As such, it claims that it is entitled to a refund or issuance of a tax credit certificate representing erroneously, wrongfully, illegally, or excessively paid corporate income tax on e-junket gaming revenues for the taxable year 2015.

In ruling in favor of the taxpayer, the Court ruled that its income from casino gaming operations pursuant to the Junket Agreements with PAGCOR is not subject to corporate income tax as it is classified as "income derived from gaming operations" pursuant to Section 13(2) of the PAGCOR Charter. *(Prime Investment Korea, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 2483, January 9, 2023)*

The CTA adhered to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable. This principle is animated by the constitutional prohibition on double jeopardy enshrined in Section 21, Article III of the 1987 Constitution.

People of the Philippines (People) filed a Motion for Reconsideration in a bid to reconsider the Court of Tax Appeal's (CTA) decision acquitting a taxpayer for a criminal charge.

People's Motion for Reconsideration was denied by the CTA. The CTA adhered to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and **un**appealable. This principle is animated by the constitutional prohibition on double jeopardy enshrined in Section 21, Article III of the 1987 Constitution. As it stands, the proscription against double jeopardy presupposes that an accused has been previously charged with an offense, and the case against him is terminated either by his acquittal or conviction, or dismissal in any other manner without his consent.

Here, the accused was prosecuted under valid information for violation of Section 255 in relation to Sections 253(d) and 256 of the 1997 National Internal Revenue Code **(accused deliberately failed to pay income tax liability for TY 2008)**, as amended, over which the Court has jurisd**i**ction, and to which the taxpayer entered a plea of not guilty. After trial, the Court rendered a judgment of acquittal in favor of the taxpayer. Clearly, all the requisites for the application of the constitutional prohibition of double jeopardy are present. Therefore, any attempt by the prosecution to reconsider such judgment must fail. *(People of the Philippines vs. Cosco Petroleum Company, Inc. Michael C. Cosay, Santiao, Pili, Camarines Sur, CTA Crim. Case No. O-804, January 10, 2023)*

COURT OF TAX APPEALS
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A corporation that has excess income tax payments in a given taxable year has two (2) options: (1) to carry over the excess amount to the succeeding taxable quarters/years until fully utilized; or (2) to file a claim for a tax refund in the form of cash or tax credit certificate.

A taxpayer opted to refund its income tax overpayment by marking the box corresponding to the said choice in the Annual Income Tax Return. Thereafter, the taxpayer filed with BIR a Letter requesting the refund or issuance of a tax credit certificate for its alleged excess and unutilized creditable taxes withheld. Alleging inaction, the taxpayer then elevated its claim before the Court of Tax Appeals (CTA) via a Petition for Review (Petition).

The CTA ruled that the taxpayer is entitled to its claim for refund. Citing Section 76 of the NIRC of 1997, as amended, the CTA laid down that a corporation that has excess income tax payments in a given taxable year has two (2) options: (1) to carry over the excess amount to the succeeding taxable quarters/years until fully utilized; or (2) to file a claim for a tax refund in the form of cash or tax credit certificate. However, once the carry-over option is taken actually or constructively, it becomes irrevocable for that taxable period. The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer. Here, the taxpayer marked the box corresponding to the option "To be refunded," clearly manifesting its intention to claim a refund of its excess CWTs for the period. *(Service Resources Inc. vs. Commissioner of Internal Revenue, CTA Case No. 10158, January 9, 2023)*

The one hundred eighty (180)-day period is counted from the date of the filing of the protest, and not from the filing of the administrative appeal.

In a Motion for Reconsideration (MR), a taxpayer stresses that the counting of the one hundred eighty (180)-day period provided for in Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, is reckoned from the time the request for reconsideration was sent to the Commissioner of Internal Revenue (CIR).

The CTA En Banc found the MR to be without merit. It reiterated its ruling that the one hundred eighty (180)-day period referred to in Section 228 of the NIRC of 1997, as amended, and in Section 2.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18- 2013, is confined only to the period within which either the Commissioner of Internal Revenue (CIR) or his/her duly authorized representative may act on the *initial protest* against the Final Assessment Notice/Formal Letter of Demand (FLD). The pertinent portion of the above regulations is clear that the one hundred eighty (180)-day period is counted from the date of the filing of the protest, and not from the filing of the administrative appeal.

Here, the respondent filed a protest on December 3, 2022, disputing the correctness and validity of the FLD and requesting for a reinvestigation. Thus, the respondent had sixty (60) days from December 3, 2015, or until February 1, 2016 to submit the required documents. Meanwhile, Regional Director (RD) had one hundred eighty (180) days counted from February 1, 2016, or until July 30, 2016 to act on respondent's protest. However, RD Olasiman issued the revised FLO only on August 22, 2016, or 23 days after the lapse of the one hundred eighty (180)- day period. It is apparent that instead of

appealing the case to the Court in Division within thirty (30) days after the expiration of the one hundred eighty (180) day period for the protest to be acted upon by RD Olasiman, respondent opted to wait for RD Olasiman's final decision.

When taxpayer filed a request for reconsideration with petitioner on September 20, 2016, the one hundred eighty (180)- day period, counted from the date of the filing of the protest, for CIR to act on the request for reconsideration/administrative appeal, had already lapsed on July 30, 2016. CIR is not given a fresh one hundred eighty (180)-day period to act on the administrative appeal.
(Commissioner of Internal Revenue vs. Ruben U. Yu, CTA EB No. 2354 (CTA Case No. 9595), January 9, 2023)

A taxpayer need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of a Petition for Review if the judicial claim was filed within the period December 10, 2003 up to October 6, 2010.

A taxpayer filed an administrative claim for refund on its input value-added taxes attributable to its zero-rated sales with the Bureau of Internal Revenue (BIR). Nine (9) days after filing the administrative claim for refund, a taxpayer filed its Petition for Review before the Court of Tax Appeals (CTA). In the CIR's Motion for Reconsideration, among the issues raised was that the taxpayer's judicial claim was prematurely filed considering that the taxpayer had only given the CIR nine (9) days to evaluate its administrative claim and it did not observe the 120-day plus 30-day mandatory period as provided under Section 112(D) of the NIRC of 1997, as amended.

The CTA upheld its Decision and ruled that the taxpayer need not observe that 120-day mandatory period before it could file a judicial appeal with the CTA. In *Kepco Ilijan Corporation v. Commissioner of Internal Revenue* (2018 KEILCO case), the Supreme Court allowed the premature filing of KEILCO's judicial claim. The Supreme Court clarified that KEILCO need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of a Petition for Review because the judicial claim was filed within the period December 10, 2003 up to October 6, 2010.

During this period, the existing interpretation laid down in BIR Ruling No. DA-489-03 is that a taxpayer need not wait for the expiration of the 120-day period before it could seek judicial relief with the CTA. It was only on December 6, 2010, when the Supreme Court ruled in Aichi that the 120+30-day period under Section 112(D) of the NIRC of 1997, as amended is mandatory and jurisdictional.

Here, this case is just a continuation of the 2018 KEILCO case. Specifically, the Supreme Court remanded the case to this Court for further proceedings on KEILCO' s claim for refund of its excess and unutilized input VAT for the second, third, and fourth quarters of TY 2002 *(Commissioner of Internal Revenue vs. Kepco Corporation, CTA EB No. 2475 (CTA Case No. 6966), January 9, 2023)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

Philippine Depositary Receipts are not statements nor are they certificates of ownership of a corporation

The prosecution argues that the taxpayer is a dealer in securities under Sec. 22(U) of the NIRC as it continually purchased common shares of its subsidiary and resold them to customers through the issuance of Philippine Depositary Receipts (PDRs). These transactions, according to the prosecution, resulted in the PDR holders having economic rights derived from the equity of the subsidiary similar to that a shareholder might receive from the subsidiary and the same is considered as a taxable transaction that the taxpayer did not declare in its returns. As a dealer in securities, the Prosecution holds the accused liable for VAT, under Section 108 (A) of the 1997 NIRC, as amended, by Republic Act (RA) No. 9337.

The Court ruled that the taxpayer is not a dealer in securities but a holding company. The evidence on record shows that the taxpayer was not habitually or regularly engaged in the purchase and resale of securities. The issuance of the PDRs by the taxpayer was done pursuant to a legitimate business purpose, i.e, to raise capital for its subsidiary. A PDR is classified as a security that grants the holder thereof the right to the delivery of sale of the underlying share. PDRs are not statements nor are they certificates of ownership of a corporation.

In the Philippine Stock Exchange (PSE) Circular for Brokers No. 2375-99 dated September 22, 1999, it was pointed out that for as long as the PDR remains unexercised by its holder, the PDR holder has no right of ownership over the underlying shares and all such ownership rights pertain to and belong to the issuer. However, if the PDR holder exercises the option to have the underlying shares be delivered to him, he then becomes a shareholder but only up to the extent that he is qualified to own the underlying shares. *(People of the Philippines v. Rappler Holdings Corporation, CTA Crim. Case Nos. O-679 to O-682, January 18, 2023)*

All criminal actions before the CTA in Division in the exercise of its original jurisdiction shall be instituted by the filing of an Information.

On January 25, 2017, the taxpayers received the FLD dated January 23, 2017. No Protest was filed by the taxpayers. Hence, a Joint Complaint Affidavit was filed on December 18, 2019 with the DOJ. Thereafter, an Information was filed on December 2, 2022 with the CTA.

The Court dismissed the case on the ground of prescription. Section 2, Rule 9 of the RRCTA provides that all criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information and further states that the institution of the criminal action shall interrupt the running of the period of prescription.

Here, as claimed by the BIR in its Joint Complaint Affidavit, the Formal Letter of Demand (FLD) dated January 23, 2017 covering the taxable year 2013 was served to accused through registered mail on January 25, 2017 as evidenced by Registry Return Receipt of the Philippine Postal Corporation. There being no administrative protest filed within thirty (30) days from receipt thereof, said

assessment attained finality on February 25, 2017. Sans payment thereof by accused, the tax offense, in this case, was committed on February 25, 2017.

Counting from February 25, 2017, the 5-year prescriptive period to indict the taxpayer for failure to pay tax lapsed on February 25, 2022. Thus, the right of the government to institute the case against accused had already prescribed when the Information was filed before this Court on December 2, 2022. The failure of the prosecution to timely file the Information in Court, within the 5-year prescriptive period renders the present case dismissible on the ground of prescription. *(People of the Philippines v. Emmanuel Delos Santos, et al., CTA Crim. Case. 0-970, January 25, 2023)*

The institution of the criminal action shall interrupt the running of the period of prescription.

On October 1, 2014, the taxpayers received the FLD dated September 29, 2014. No Protest was filed by the taxpayers. A Joint Complaint Affidavit (JCA) was filed on November 29, 2018 with the DOJ. Thereafter, an Information was filed on December 1, 2022 with the CTA.

The Court dismissed the case on the ground of prescription. Section 2, Rule 9 of the RRCTA provides that all criminal actions before the Court in Division in the exercise of its original jurisdiction shall be instituted by the filing of an information and further states that the institution of the criminal action shall interrupt the running of the period of prescription. Counting from November 29, 2014, the 5-year prescriptive period to indict taxpayer for failure to pay tax lapsed on November 29, 2019. Thus, the right of the government to institute the case against accused had already prescribed when the Information was filed before this Court on December 1, 2022. The failure of the prosecution to timely file the Information in Court, within the 5-year prescriptive period renders the present case dismissible on the ground of prescription. *(People of the Philippines v. Onemega Builders Construction Corporation, et al., CTA Crim. Case. 0-962, January 25, 2023)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

The filing of a motion for reconsideration of the undated FDDA with the CIR did not toll the 30-day period within which to appeal the undated FDDA to the CTA.

On June 30, 2016, the taxpayer received an undated FDDA signed by the CIR. On July 28, 2016, the taxpayer filed with the CIR a Request for Reconsideration (to the FDDA). The taxpayer received on August 7, 2018, an undated letter from the CIR denying the Request for Reinvestigation. On September 5, 2018, the taxpayer filed a Petition for Review with the CTA, appealing the undated letter it received on August 7, 2018.

The Court dismissed the case for lack of jurisdiction. Considering that the taxpayer received the undated FDDA on June 30, 2016, the taxpayer should have filed its appeal with the CTA within 30 days from its receipt or on or before July 30, 2016. The petition was filed only on September 5, 2018; thus, the same was clearly filed beyond the 30-day reglementary period. The filing of a motion for reconsideration of the undated FDDA on July 28, 2016, with the CIR did not toll the 30-day period within which to appeal the undated FDDA to the CTA. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. *(Elta Industries, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9922, January 23, 2023)*

As part of the due process requirement in the issuance of tax assessments, the BIR must give reason(s) for rejecting the taxpayer's explanations, and must give particular facts upon which the conclusions for assessing the taxpayer are based.

The taxpayer filed its Reply to the PAN, assailing the assessment and raising several arguments. However, the FAN did not address any such arguments. Moreover, the contents of the Details of Discrepancies of the PAN were reiterated *verbatim* in the Details of Discrepancies of the FAN. Hence, the taxpayer argues that the assessment is void for violation of its right to due process.

The Court ruled that the assessment is void. Pursuant to the CIR v. Avon case, the taxpayer must be fully apprised of the factual and legal bases of the assessments, and must not be left unaware of how the CIR or his authorized representatives appreciated the explanations or defenses raised by the taxpayer in connection with the assessments. Correspondingly, as part of the due process requirement in the issuance of tax assessments, the BIR must give reason(s) for rejecting the taxpayer's explanations, and must give particular facts upon which the conclusions for assessing the taxpayer are based. The BIR has obviously not observed such requirement in the issuance of the FAN and the subject FDDA. *(Ajanta Pharma Philippines Inc. ("APPI") v. Commissioner of Internal Revenue, CTA Case No. 10057, January 23, 2023)*

The remedy of filing a separate appeal before the Commissioner of Customs also gives the Commissioner of Customs the opportunity to review the facts of the case anew and examine the supporting documents directly filed to him, as opposed to merely reviewing the District Collector's Decision.

The taxpayer, through its customs brokers, filed a Letter-Appeal with the District Collector requesting to lift the Decrees of Abandonment. The District Collector denied the Letter-Appeal, which was affirmed by the Commissioner of Customs (COC) in a Consolidated Order. On May 2, 2019, the taxpayer received the Consolidated Order. On May 21, 2019, the taxpayer filed a Petition for Review with the CTA.

The Court dismissed the petition for lack of jurisdiction. Instead of filing an appeal before the COC on or before May 17, 2019, the taxpayer opted to file an appeal directly to the CTA. The remedy of filing a separate appeal before the Commissioner of Customs is not only meant to afford the taxpayer-importer another opportunity to ventilate its causes and defenses in the abandonment proceedings (by setting forth new/specific arguments/grounds not raised in and arguments that were simply glossed over, overlooked and/or not treated at all in the appealed decision) but also to give the Commissioner of Customs the opportunity to review the facts of the case anew and examine the supporting documents directly filed to him, as opposed to merely reviewing the District Collector's Decision. *(Victor R. Del Rosario Rice Mill Corporation v. Commissioner of Customs, CTA Case No. 10082, January 20, 2023)*

CMO 29-2014 provides that a certified true copy of the Importer's Sworn Statement duly filed with the BIR must be submitted to the BOC upon filing of the Import Entry and Internal Revenue Declaration (IEIRD).

The taxpayer insists that the non-submission of the Importer's Sworn Statement (ISS) does not render an importation illegal or contrary to law per se once the importation has arrived at the port of entry. The taxpayer asserts that the ISS is a mere supporting document for the issuance of the Authority to Release Imported Goods (ATRIG) which, as held in the assailed Decision, can be secured by an importer prior to the release of the importation from customs custody.

The Court ruled that contrary to the petitioner's contention and as explained in the assailed Decision, CMO No. 29-2014 clearly provides that a certified true copy of the ISS duly filed with the BIR must be submitted to the BOC upon the filing of the Import Entry and Internal Revenue Declaration (IEIRD) (now, Single Administrative Document [SAD]) as said ISS forms an integral part of the import /shipping documents submitted at the port entry. Failure to submit would serve as a basis to declare that the subject imported motor vehicles were imported illegally or contrary to law. *(Gamma Gray Marketing vs . Bureau of Customs. CTA Case No. 9855. January 26, 2023)*

Section 7(a)(2) of RA 9282 also covers "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal." CTA has jurisdiction to rule on the validity of the subject Warrant of Garnishments (WOGs)

There are two issues in this case, first is whether the Court has jurisdiction to rule on the validity of the subject Warrant of Garnishments (WOGs); and second, if the answer to the first issue is in the affirmative, whether the instant Petition for Review was timely filed.

The Court ruled that the Court of Tax Appeal's (CTA's) appellate jurisdiction is not limited to cases involving decisions of the Commissioner of Internal Revenue (CIR) on matters relating to assessments or refunds. Section 7(a)(2) of RA 9282 also covers "other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue".
As such, the Court has jurisdiction to rule on the validity of the subject Warrant of Garnishments (WOGs). *(Country Bank, Rural Bank of Bongabong, Inc. vs. Bureau of Internal Revenue, CTA Case No. 10864, January 31, 2023)*

Section 3, Rule 13 of the Rules of Court of Tax Appeals (RRCTA) states that the Court is not bound by the ICPA Report. ICPA's findings are not conclusive upon the Court as the same are subject to its verification to determine its accuracy, veracity, and merit.

In this case, the taxpayer recognizes that the Court has the discretion on whether to adopt the Independent Certified Public Accountants' (CPA's) findings. However, the taxpayer argues that while the Court may otherwise substitute its own findings as gathered from the records, it may only do so for valid reasons, that is, where the ICPA has applied illegal principles to the evidence submitted thereby disregarding a clear preponderance of the evidence.

The Commissioner of Internal Revenue (CIR) counter-argues that the findings and conclusions of the ICPA are not conclusive upon the Court.

Section 3, Rule 13 of the Rules of Court of Tax Appeals (RRCTA) states that the Court is not bound by the ICPA Report. The ICPA's findings are not conclusive upon the Court as the same are subject to its verification to determine its accuracy, veracity, and merit." The Court may either adopt or reject the ICPA Report, wholly or partially, depending on the outcome of its own verification. Thus, the taxpayer cannot insist that the ICPA's findings are sufficient to support its refund claim. *(Macquarie Services Pty. Philippine Branch vs Commissioner of Internal Revenue. CTA EB No. 2431. January 25, 2023.)*

BIR ISSUANCES
HIGHLIGHTS

UPDATES

Revenue Regulations No. 1-2023

Implements the Ten Percent (10%) Discount and the VAT Exemption under RA No. 11861 (Expanded Solo Parents Welfare Act).

Revenue Regulations No. 1-2023 issued on January 18, 2023 implements the ten percent (10%) discount and the Value-Added Tax (VAT) exemption under Republic Act (RA) No. 11861 (Expanded Solo Parents Welfare Act), to wit:

a. Solo parents that meet all of the following conditions shall qualify for the 10% discount and VAT exemption:
   - Solo Parent has a child/children (as defined in RA No. 11861) with the age of six (6) years or under; and
   - Solo Parent is earning less than ₱ 250,000.00 annually.

b. The 10% discount and VAT exemption shall apply to a qualified Solo Parent's purchase of the following goods identified in the Act from drug stores, pharmacies, grocery stores, and similar establishments, and subject to the guidelines that shall be issued by the Department of Health, in coordination with the Food and Drug Administration, PhilHealth, and the Department of Interior and Local Government:
   - Baby's milk;
   - Food supplements and Micronutrient supplements;
   - Sanitary diapers;
   - Medicines;
   - Vaccines; and
   - Other medical supplements.

Revenue Memorandum Order No. 1-2023

Creation of an Alphanumeric Tax Code (ATC) for Excise Taxes and Tobacco Inspection Fees on Novel Tobacco Products

To facilitate the proper identification and monitoring of payment for excise tax on novel tobacco products pursuant to the implementation of RA No. 11900, an Act regulating the importation, manufacture, sale, packaging, distribution, use and communication of vaporized nicotine and non-nicotine products, and novel tobacco products, the following ATCs are hereby created:

ATC	Description	Tax Rate	Legal Basis	BIR Form No.
XT210	Excise Taxes Novel Tobacco Products Effective August 10, 2022 Effective January 01, 2023	 P2.50/kg P2.60/kg	RA No. 11900/ RR No. 14-2022	2200-T
XT220	Tobacco Inspection Fees Novel Tobacco Products	 P0.03/kg		

BIR ISSUANCES

HIGHLIGHTS

Revenue Memorandum Order No. 2-2023

CY 2023 Operational Key Performance Indicators for the Revenue Regions, Large Taxpayers Service and Revenue District Offices

Revenue Memorandum Order No. 2-2023 issued on January 10, 2023, prescribes the CY 2023 Operational Key Performance Indicators (KPIs) for the Revenue Regions (RRs), Large Taxpayers Service (LTS) and Revenue District Offices (RDOs).

The details of the eighteen (18) Operational KPIs are specified in Annex A of the Order. The Assistant Commissioner (ACIR), who is the Measure Owner of a particular KPI of his/her concerned offices, shall monitor, review, evaluate and assess the KPI accomplishments/performance of RRs, LTS and RDOs vis-à-vis the target of the said offices.

Revenue Memorandum Order No. 3-2023

Regular Updating of Content of the Interactive BIR Citizen's Charter

Since the BIR Citizen's Charter is posted as one (1) PDF file in the BIR Website, navigation through its content is difficult for taxpayers/other users since they have to scroll down on almost the entire content in order to access the information on the particular BIR service(s) they are looking for.

It is in view of the foregoing that the BIR has developed an Interactive BIR Citizen's Charter that will make navigation and access to its various contents easy on the part of the taxpayers/other users and, at the same time, make the updating of content also easier on the part of the BIR Content Owners (since 'they can directly edit and post updates in real-time, anytime; no need for consolidation by the Management Division and Public Information and Education Division).

Revenue Memorandum Order No. 4-2023

Amends RMO No. 14-2015 relative to the new composition of the Committee to Supervise the Printing of Specialized Accountable Forms in the National Office

Revenue Memorandum Order No. 4-2023 issued on January 27, 2023 amends Revenue Memorandum Order No. 14-2015, defining the new composition of the Committee to Supervise the Printing of Specialized Accountable Forms in the National Office, as follows:

- Chairperson - Assistant Commissioner Administrative Service or his/her authorized representative
- Vice-Chairperson - Chief, Accounting Division or his/her authorized representative
- Member - Chief, Accountable Forms Division or his/her authorized representative
- Member - Chief, Taxpayer Service Programs & Monitoring Division or his/her authorized representative
- Witness - Resident COA Auditor or his/her authorized representative

BIR ISSUANCES

HIGHLIGHTS

UPDATES

Revenue Memorandum Order No. 5-2023
Prescribes the guidelines and procedures on the implementation of revised customer satisfaction survey for frontline services under Client Support Service as one of the BIR's Feedback Mechanism

Revenue Memorandum Order No. 5-2023 issued on January 30, 2023, prescribes the guidelines and procedures on the implementation of the revised Customer Satisfaction Survey for Frontline Services under Client Support Service (CSS) as one of the BIR's Feedback Mechanism.

BIR frontliners/officers shall encourage taxpayers to answer the online survey form either by directing them to use the eLounge or by asking them to scan the Quick Response (QR) code using their smartphones found on the counter. Manual survey forms shall still be provided in cases where taxpayers opted to use such.

Revenue Memorandum Circular No. 1-2023
Announces the availability of the Interactive BIR Citizen's Charter

Revenue Memorandum Circular No. 1-2023 issued on January 3, 2023, announces the availability of the Interactive BIR Citizen's Charter in the BIR Website (www.bir.gov.ph), which can be accessed under the Quick Links and BIR Transparency Seal sections.

By making the BIR Citizen's Charter interactive, navigation and access to its contents are made easier on the part of the taxpayers/other users and, at the same time, updating of its contents is also made easier on the part of the BIR Content Owners.

A Revenue Memorandum Order shall be issued to prescribe the policies and responsibilities of identified BIR offices (Content Owners) to implement the regular updating of information posted in the Interactive BIR Citizen's Charter.

Revenue Memorandum Circular No. 2-2023
Publishes the Updated List of FOI Receiving Officers

Revenue Memorandum Circular No. 2-2023 issued on January 6, 2023, publishes the updated List of Freedom of Information (FOI) Receiving Offices and their respective FOI Receiving Officers.

Revenue Memorandum Circular No. 3-2023
Prescribes the policies and guidelines on the Online Registration of Books of Accounts

All books of accounts shall be registered online with the Bureau's Online Registration and Update System (ORUS). Instead of the manual stamping of books of accounts, a Quick Response (QR) Code shall be generated, which can be validated online.

The manners of bookkeeping or maintaining of books of accounts are summarized as follows:

For New Business Registrants

Type of Books of Accounts	Deadline for Registration	Frequency
Manual Books of Accounts	Before the deadline for filing of the initial quarterly Income Tax return or the annual Income Tax return, whichever comes earlier	Before the full consumption of the pages of the previously registered books

For Existing Business Taxpayers or Subsequent Registration

Type of Books of Accounts	Deadline for Registration	Frequency
Manual Books of Accounts	Before use of the books	Before the full consumption of the pages of the previously registered books
Permanently Bound Loose leaf Books of Accounts	Within fifteen (15) days after the end of each taxable year or within 15 days from the closure of business operations, whichever comes earlier, unless extended by the Commissioner or his duly authorized representative, upon request of the taxpayer before the lapse of the said period.	Annually

Computerized Books of Accounts	Within thirty (30) days from the close of each taxable year or within 30 days from the closure of operations, whichever comes earlier, unless extended by the Commissioner or his duly authorized representative, upon request of the taxpayer before the lapse of the said period.	Annually

New sets of manual books of accounts (BAs) are not required to be registered every year. However, taxpayers may opt to use new set of books of accounts yearly. Hence, new sets of manual BAs shall be registered before its use.

Revenue Memorandum Circular No. 4-2023

Clarifies the base amount for the imposition of the 20% penalty relative to the early withdrawal of Personal Equity and Retirement Account (PERA) for assets, accounts and sub-accounts classified as unqualified

Revenue Memorandum Circular No. 4-2023 issued on January 10, 2023 clarifies the base amount for the imposition of the twenty percent (20%) penalty relative to the early withdrawal of Personal Equity and Retirement Account (PERA) for assets, accounts and sub-accounts classified as unqualified.

Pursuant to Section 10(C) of Revenue Regulations (RR) No. 17-2011, the early withdrawal penalty, composed of the 20% of the gross income earned by the PERA for the entire duration and the 5% tax credit availed, shall be imposed on any early withdrawal not within the circumstances enumerated under Section 10 (B) of the aforesaid regulations. Any loss incurred on PERA sub-accounts shall not be deducted from the gross income earned.

Under "unqualified early withdrawal", the withdrawal of a sub-account will result in the automatic termination of all other sub-accounts. An illustration on the computation of the Early Withdrawal Penalty (EWP) and PERA proceeds upon the termination of the account is provided in the Circular.

For the purpose of the Regulation, it is reiterated that the PERA Administrator shall be responsible for administering, overseeing, and maintaining accounts/sub-accounts of the contributor's PERA; and shall compute and withhold the EWP from the proceeds due to the contributor, consistent with the above provisions, for reporting and remittance to the BIR pursuant to RR No. 2-2022 and Revenue Memorandum Circular No. 45-2022.

BIR ISSUANCES

HIGHLIGHTS

Revenue Memorandum Circular No. 5-2023 *Provides transitory provisions for the implementation of the Quarterly filing of VAT Returns starting January 1, 20,2,3 pursuant to Section 114(A) of the Tax Code of 1997, as amended by RA No. 10963 (TRAIN Law)*

Revenue Memorandum Circular No. 5-2023 issued on January 13, 2023, provides the Transitory Provisions for the implementation of the quarterly filing of VAT Returns starting January 1, 2023, pursuant to Section 114(A) of the National Internal Revenue Code of 1997, as amended by Republic Act No. 10963 (TRAIN Law).

VAT-registered taxpayers are no longer required to file the Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for transactions starting January 1, 2023 but will instead file the corresponding Quarterly Value-Added Tax Return (BIR Form No. 2550Q) within twenty-five (25) days following the close of each taxable quarter when the transaction transpired.

In order to avoid confusion during the initial implementation, particularly for taxpayers that are under the fiscal period of accounting, the following Transitory Provisions are provided:

Quarter Ending	Transactions Covering the Month of			Filing of 2550Q for the Quarter Ending		
	December 2022	January 2023	February 2023	December 2022	January 2023	February 2023
January 31, 2023	Required to file 2550M not later than January 20, 2023	Not applicable	Not Required to File 2550M	Not applicable	Required to file 2550Q not later than February 27, 2023*	Not applicable
February 28, 2023	Required to file 2550M not later than January 20, 2023	Not Required to File 2550M	Not applicable	Not applicable	Not applicable	Required to file 2550Q not later than March 27, 2023*
March 31, 2023	Not applicable	Not Required to File 2550M	Not Required to File 2550M	Required to file 2550Q not later than January 25, 2023	Not applicable	Not applicable

BIR ISSUANCES
HIGHLIGHTS

UPDATES

Revenue Memorandum Circular No. 6-2023
Circularizes the National Privacy Commission Advisory Opinions upholding the authority of the BIR, in its tax enforcement, assessment and collection functions, to obtain personal and sensitive information from any person.

Revenue Memorandum Circular No. 6-2023 issued on January 17, 2023, circularizes the National Privacy Commission (NPC) Advisory Opinions upholding the authority of the BIR, in the performance of its tax enforcement, assessment and collection functions, to obtain personal and sensitive personal information from any person, including from any office or officer of the national and local governments, government agencies and instrumentalities and Government-Owned or -Controlled Corporations, pursuant to Section 4(e) of Republic Act (RA) No. 10173, or the Data Privacy Act (DPA) of 2012, in relation to Section 5(B) of the National Internal Revenue Code (NIRC) of 1997, as amended. They are as follows:

a. NPC Advisory Opinion No. 2021-045 dated 29 December 2021 re: Access to Subscriber Records for Internal Revenue Tax Purposes;
b. NPC Advisory Opinion No. 2021-028 dated 16 July 2021 re: Disclosure of Personal Information of Tenants by a Condominium Corporation to the BIR; and
c. NPC Advisory Opinion No. 2021-015 dated 24 February 2020 re: Collection of Personal Data by the BIR for Tax Compliance Purposes.

Henceforth, in preparing an "access to records letter" to taxpayers and/or third parties involving personal and sensitive personal information, all internal revenue officials/employees concerned are directed to include as legal bases thereof.

Revenue Memorandum Circular No. 7-2023
Provides clarifiation on the Return Processing System (RPS) Assessment being issued by the BIR

Revenue Memorandum Circular No. 7-2023 issued on January 17, 2023 clarifies the Return Processing System (RPS) Assessment being issued by the BIR.

The "RPS Assessment" is a Collection Letter and sending of which is part of the civil/administrative remedies of the BIR. Its contents are not tax assessments arising from the conduct of audit/investigation of taxpayer's books of accounts and other relevant records. These are tax payables based on taxpayer's own tax declaration as reflected in the tax returns filed.

The moment the taxpayer failed to pay the declared tax payable in the tax return within the prescribed due date, the BIR considers it already as "delinquent account" pursuant to Revenue Memorandum Order No. 11-2014. To effect collection thereof, the Bureau can both enforce civil and criminal actions as provided under Section 205 of the Tax Code, as amended.

The sending of "RPS Assessment" should not be likened to and is not an Assessment Notice arising from audit where taxpayer has the chance to contest or protest. Considering that no books of accounts and accounting records of taxpayer are to be examined or subjected to audit, the issuance of Letter of Authority shall not be required.

BIR ISSUANCES

HIGHLIGHTS

Revenue Memorandum Circular No. 8-2023

Circularizes the revised provision on the submission of Inventory List and other reporting requirements pursuant to Revenue Memorandum Circular No. 57-2015

Revenue Memorandum Circular No. 8-2023 issued on January 20, 2023 revises the provision on the submission of Inventory List and other reporting requirements pursuant to Revenue Memorandum Circular No. 57-2015.

All taxpayers with tangible asset-rich balance sheets, often with at least half of their total assets in working capital assets, e.g., accounts receivable and inventory, shall submit, in addition to the annual inventory list, schedules/lists prescribed, in soft copies, using the format shown in the annexes attached in this RMC.

In addition, the soft copies of the inventory list including other applicable schedules shall be stored/saved in Digital Versatile Disk-Recordable (DVD-R) or Universal Storage Bus (USB) Flash drive properly labelled and submitted.

Revenue Memorandum Circular No. 9-2023

Announces the availability of revised BIR Form Nos. 1606 and 1706 version January 2018

Revenue Memorandum Circular No. 9-2023 issued on January 26, 2023 announces the availability of the following BIR Forms, which were revised due to the implementation of the Tax Reform for Acceleration and Inclusion Law:

Form No.	Description
1606	Withholding Tax Remittance Return [For Onerous Transfer of Real Property Other Than Capital Asset (Including Taxable and Exempt)]
1706	Capital Gains Tax Return (For Onerous Transfer of Real Property Classified as Capital Asset-both Taxable and Exempt)

The revised manual returns are already available in the BIR website (www.bir.gov.ph) under the following section:

Form No.	Description
1606	BIR Forms-Payment/Remittance Forms
1706	BIR Forms-Income Tax Return

However, the forms are not yet available in the Electronic Bureau of Internal Revenue Forms (eBIRForms); thus, manual and eBIRForms filers shall download and print the PDF version of the forms and fill-out completely all the applicable fields, otherwise, said filers shall be subjected to penalties under Section 250 of the Tax Code, as amended.

BIR ISSUANCES

HIGHLIGHTS

Revenue Memorandum Circular No. 10-2023
Encourages the use of the Electronic One-Time Transaction (eONETT) System by sellers habitually engaged in the sale of real properties

Revenue Memorandum Circular No. 10-2023 issued on January 26, 2023 encourages the use of the Electronic One-Time Transaction (eONETT) System by sellers habitually engaged in the sale of real properties.

Sellers habitually engaged in the sale of real estate properties, like real estate developers with voluminous ONETT transactions, are urged to use the eONETT System in securing ONETT Computation Sheet/Electronic Certificate Authorizing Registration relative to sale/transfer of real properties. Likewise, they are also encouraged to pay electronically thru the available ePayment channels of the BIR.

Revenue Memorandum Circular No. 11-2023
Enjoins all BIR officials and employees to participate in the celebration of the BIR Data Privacy Month

Revenue Memorandum Circular No. 11-2023 issued on January 27, 2023 enjoins all BIR officials and employees to participate in the celebration of the BIR Data Privacy Month, with the theme "Collect What We Need, Protect What We Collect".

BIR ISSUANCES

HIGHLIGHTS

Revenue Memorandum Circular No. 12-2023
Announces the availability of online application for registration information updates and other online facilities for registration-related transactions through Online Registration and Update System (ORUS)

Revenue Memorandum Circular No. 12-2023 issued on January 27, 2023 announces the availability of online application for registration information updates and other online facilities for registration-related transactions through Online Registration and Update System (ORUS) starting January 23, 2023.

Taxpayers who already have an existing ORUS account may access and avail the online registration updates and other functionalities by logging-in to the system. Taxpayers who do not have an ORUS account and opted to use the said online registration-related facilities are required to enroll or create an account in ORUS following the guidelines prescribed under Revenue Memorandum Circular No. 122-2022.

Revenue Memorandum Circular No. 13-2023
Circularizes GSIS Policy and Procedural Guidelines No. 317-17, titled "Prescriptive Period for Social Insurance Benefits"

Revenue Memorandum Circular No. 13-2023 issued on January 31, 2023 circularizes Government Service Insurance System (GSIS) Policy and Procedural Guidelines No. 317-17, titled “Prescriptive Period for Social Insurance Benefits”.

In the said Guidelines, the GSIS stipulated the policies and procedures for the uniform implementation of the prescriptive period of different types of claims administered by them.

SEC OGC Opinion No. 22-16 dated October 28, 2022, and published on January 18, 2023

In the absence of a board resolution, a President of a holding corporation has no inherent authority to vote in a stockholder's meeting of its subsidiary.

This addresses the following matters:

1. Whether or not the President has an inherent authority to vote the shares of the holding corporation in a stockholder's meeting of the subsidiary corporation:
2. Whether or not a special power of authority or a written proxy, in the form of a certified board resolution, is mandatory before the President can vote the shares in the name of the holding corporation in a stockholder's meeting of the subsidiary corporation; and
3. Whether the doctrine of apparent authority can be used as a legal basis to support the President's action of voting the shares of the holding corporation in the subsidiary corporation.

As to the first issue, a corporate President has no inherent authority to vote the shares of the holding corporation in a stockholder's meeting of the subsidiary corporation. It is emphasized that a holding corporation has a separate corporate existence and is to be treated as a separate entity which holds stocks in other companies for purposes of control rather than for mere investment. Pursuant to the Revised Corporation Code of the Philippines (RCCP), a corporation exercises its powers and transacts its business through the board of directors or trustees. Hence, the corporate officer and other agents of the corporation cannot act for the corporation unless authorized by the Board through board resolution expressly authorizing the agents or by the By-Laws. Further, while the RCCP provides for several powers vested in the President, these powers do not include the power to vote which is an act of strict dominion that should be exercised by the share owner. Hence, the President has no inherent authority.

With regard to the second issue, as discussed above, the corporate President can vote the shares in the name of the holding corporation in a stockholder's meeting of the subsidiary corporation when he or she is authorized by the board of directors through a board resolution.

Lastly, the doctrine of apparent authority can be used as legal basis. It is a rule that the authority of the board of directors to delegate corporate powers may either be actual or apparent. Where similar acts have been approved by the board of directors as a matter of general practice, custom, and policy, a corporate officer may bind the company without formal authorization of the board of directors. The existence of such authority is established, by proof the course of business, by the usages and practices of the company and by the knowledge which the board of directors has, or must be presumed to have, of acts and doings of its subordinates in and about the affairs of the corporation.

IC ISSUANCES

HIGHLIGHTS

Legal Opinion No. 2023-05 dated January 20, 2023
The fact that no P&I Club is duly authorized by the IC would mean that no licensed brokers can facilitate brokering activities to unlicensed foreign P&I Club

The pivotal issue in the instant case is whether or not BDO Insure can act as Protection and Indemnity (P&I) broker in the absence of a duly authorized P&I Club in the Philippines.

The Insurance Commission (IC) ruled in the negative. The IC emphasized the following: (1) that P&I club is "doing insurance business" which must be duly licensed by the IC and (2) licensed Insurance brokers must facilitate brokering activities only with insurance companies duly authorized by the IC.

P&I Club is considered doing insurance business. It is a form of insurance against third party liability, where the third party is anyone other than the P&I Club and the members. Further, it is descrived as a cooperative enterprise where members are both the insurer and insured. While the Amended Insurance Code does not specifically mention "P&I Club", the Supreme Court is replete with decisions which categorically provide that a P&I Club is doing insurance business, and thus, a Certificate of Authority issued by the IC is required pursuant to Section 193 of the Amended Insurance Code.

The IC stressed that pursuant to Section 318 of the Amended Insurance Code, it is unlawful for any person, partnership, association or corporation in the Philippines either to procure, receive or forward applications of insurance in, or to issue or to deliver or accept policies or contracts of insurance of or for, any insurance company not authorized to transact business in the Philippines. Accordingly insurance brokers are mandated by law to facilitate brokering activities only with insurance companies duly authorized by th IC to do insurance business in the Philippines.

Based on the foregoing, BDO Insure is advised to engaged only with P&I Clubs duly authorized by the IC to do insurance business in the Philippines. The fact that no P&I Club duly authorized by the IC would mean that BDO Insure cannot facilitate brokering activites to unlicensed foreign P&I Club.

BOC ISSUANCES

HIGHLIGHTS

MISTG Memo 01-2023 dated January 3, 2023 – This provides the updated Excise Tax rates for certain products under RA No. 11467 effective January 4, 2023.

This provides the updated Excise Tax rates for certain products under RA No. 11467 effective January 4, 2023.

- ***Alcohol, Heated Tobacco and Vapor Products***

Description	Classification	2023
Fermented Liquors Specific Tax	All HS codes under heading 2203; 2206.00.10, 2206.00.20, 2206.00.41, 2206.00.49, 2206.00.91, 2206.00.99, 2206.00.31 and 2206.00.39	Php 41.00/liter
Distilled Spirits Ad Valorem Tax Specific Tax	All HS codes under heading 2208	22% of NRP Php 50.00/PL (Proof Liter)
Wine Specific Tax	All HS codes under heading 2204 and 2205	Php 59.55/liter
Heated Tobacco Products	2403.99.90	Php 32.5/pack of twenty (20) units ir packaging combinations of not more than twenty (20) units
Nicotine Salt or Salt Nicotine (Salt Nicotine Vape)	*3824.99.99 (AICODE - 1002)	Php 52.00/ml
Conventional "Freebase" or "Classic" Nicotines	*3824.99.99	Php 60.00/10 ml or a fraction thereof

BOC ISSUANCES

HIGHLIGHTS

UPDATES

MISTG Memo 02-2023 dated January 3, 2023 – This provides the updated Excise Tax rates on Cigar and Cigarette products pursuant to RA No. 11346 effective January 4, 2023.

This provides the updated Excise Tax rates on Cigar and Cigarette products pursuant to RA No. 11346 effective January 4, 2023.

Description	Classification	Tax Rate
Cigarettes packed by hand	2402.20.10 2402.20.20	Php 60.00 per pack
Cigarettes packed by machine	2402.20.90 2402.90.20	Php 60.00 per pack
Cigar Ad Valorem Tax Specific Tax	2402.10.00 2402.90.10	20% of NRP Php 7.38
Unmanufactured Tobacco	240110 240120 240130	Php 2.60
Chewing Tobacco	240319 240399	Php 2.22

OCOM memo 09-2023 dated January 5, 2023 – This provides the supplemental guidelines on the posting of bond of RBEs in the IT-BPM pursuant to the directive of the FIRB.

This provides the supplemental guidelines on the posting of bond of Registered Business Enterprises (RBEs) in the Information Technology-Business Process Management (IT-BPM) pursuant to the directive of the Fiscal Incentives Review Board (FIRB).

a. The bond posted by the RBEs continuing to adopt the Work-From-Home (WFH) arrangement pursuant to various FIRB issuances shall remain effective for the duration of the WFH arrangement; and

In case the amount of the bond posted for the continued implementation of the WFH arrangement is insufficient to cover the required value of the bond (150% of the taxes and duties on equipment brought home) as stated in the relevant FIRB issuances, the RBE shall post an additional bond to make up for such deficiency within (15) days from the issuance of the demand letter by the Bureau of Customs (BOC). Upon failure to settle the bonded obligations within the period, the BOC shall recommend the issuance of an Order of Forfeiture of the Bond.

FIRB ISSUANCES

HIGHLIGHTS

FIRB Advisory 002-2023, January 19, 2023

This provides the updates on the templates for the Certificate of Entitlement to Tax Incentives.

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Classification of Projects	Annex	Updates
1. Projects registered under Republic Act (RA) No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act ("CREATE Projects")	Annex "A"	No change.
2. Projects registered prior to the effectivity of the CREATE Act ("Pre-CREATE Projects")	Annex "B"	Minor changes
3. Projects registered under RA No. 9513 or the Renewable Energy Act of 2008	Annex "C"	Minor changes

FIRB Advisory 003-2023, January 27, 2023 – This provides the basis of the penalty due to non-compliance by RBEs in the IT-BPM sector of the work-from-home threshold.

This provides the basis of the penalty due to non-compliance by RBEs in the IT-BPM sector of the work-from-home threshold.

The Board members of FIRB agreed that Philippine Economic Zone Authority (PEZA) Memorandum Circular No. 2022-074, insofar as it states that non-compliance with the allowable WFH threshold would result in the concerned registered business enterprises paying, as a penalty, the regular corporate income tax (RCIT) and local business tax only (LBT) on the excess of the 30% WFH threshold, is not consistent with the FIRB's WFH policies as specified in FIRB Resolution Nos. 017- 22 and 026-22, and implemented in a number of BIR revenue memorandum circulars.

Any such penalty should be based on 100% or the entirety of the RCIT for the month/s of non-compliance, and not merely based on the excess of the 30% WFH threshold.

RBEs that fail to comply with the WFH threshold shall continue to file and pay their income tax due, while the penalty shall be determined by computing the difference between the RCIT and the 5% Basis of the penalty for non-compliant RBEs in the IT-BPM sector of the WFH threshold Page 2 of 2 tax on GIE or the 5% SCIT, and to be paid using BIR Form No. 0605. Thus, LBT is deemed to have been paid therewith.

YOUR RIGHT TO PRIVACY AND BIR'S SUBPOENA POWERS

By

Irwin C. Nidea, Jr.

Once upon a time, the BIR issued a revenue regulation (RR) that requires broker dealers to divulge personal information of their clients such as TIN, birthdate, and address. It anchored its directive from the Tax Code where the Commissioner may mandate anyone to reveal information necessary in the performance of his functions. The said RR is a test on how far the Commissioner can stretch this power. If upheld, the floodgates will be open, and everyone's personal information will be out in the cold.

But the BIR failed the test. Recently, the Supreme Court (GR No. 213860) held that the questioned regulations violate taxpayer's right to privacy. According to the SC, the information, particularly the TINs of the investors, sought to be collected and provided to the listed companies and eventually the BIR, are sensitive personal information. The SC stated that sensitive personal information includes personal information issued by government agencies peculiar to an individual which includes, but is not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns. It added that TINs are issued by the BIR for the facilitation of filing of tax returns and payment of taxes. Thus, in processing the TINs of investors, the regulatory enactments must guarantee the protection of the sensitive personal information and the privileged information.

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The SC ruled that the questioned regulations failed to include guarantees to protect the sensitive information to be collected. The BIR cannot simply rely on other laws and regulations such as the Tax Code regarding this requirement. The SC added that the Data Privacy Act is clear that it must be the subject issuance itself-not the other laws or regulations-that should provide the guarantee.

According to the SC, the right to privacy does not bar all incursions into individual privacy. The right is not intended to stifle scientific and technological advancements that enhance public service and the common good. It merely requires that the law be narrowly focused, and a compelling interest justify such intrusions. Intrusions into the right must be accompanied by proper safeguards and well-defined standards to prevent unconstitutional invasions. In this case, the BIR did not show that safeguards were in place.

The SC added that government bears the burden to show and prove that its action serves a compelling state interest and is narrowly drawn to prevent abuses. The BIR failed to show and prove that the questioned regulations were narrowly drawn as the least restrictive means for effecting the invoked interest. The SC is concerned and according to it here may be abuses because of the enforcement of the questioned regulations. There is no assurance that the information gathered and submitted to the listed companies will be protected, and not be used for any other purposes outside the stated purpose. The SC also observed that the investors provided their information to the brokers presumably without the intention of sharing such with any other entity, including the investee companies and the BIR.

This SC decision is a welcome development since some taxpayers are being forced by the BIR to reveal sensitive information of their clients. There are instances when the BIR requests the financial information of taxpayers from financial institutions. These companies in quandary because their officers are threatened that subpoena will follow if they do not accede to the requests.

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By

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Failure to obey a subpoena is a criminal offense. But does it mean that taxpayers have no choice but to crumble into submission every time they receive one? The answer is no. Taxpayers must only obey a valid subpoena. Is there such a thing as an invalid subpoena that taxpayers must not obey? Absolutely, yes. In a recent case for example, the Court of Tax Appeals (CTA) ruled that a subpoena is not valid because the taxpayer had already been investigated on the taxable year in question. The CTA ruled that taxpayers can only be investigated once in a taxable year. A subpoena is also invalid if it violates a law, like the Data Privacy Act.

It is clear that taxpayers' right to privacy must be protected. If the BIR issue a subpoena to secure sensitive information, do not give in. Keep in mind that it can be quashed.

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