SUMMARY OF SIGNIFICANT CTA DECISIONS (JANUARY 2018)

1. **The list of allowable deductions in RR No. 11-2005 and the IRR of the PEZA Law is not exclusive**

   The taxpayer, a duly-registered PEZA enterprise, was assessed with deficiency income tax. The said assessment stems from the disallowance of deductions. The BIR argued that the list of allowable deductions in RR No. 11-2005 and the IRR of the PEZA Law is exclusive. However, the CTA reversed the assessment. Analyzing the wording of the rules, the CTA found that the phrase "the following direct costs are included in the allowable deductions…" infer that the list is merely recommendatory and not exclusive. *(Moog Controls Corporation – Philippine Branch v. Commissioner of Internal Revenue, CTA Case No. 9077, January 3, 2018)*

2. **Microfinancing activities are subject to VAT**

   The taxpayer, a non-stock, non-profit corporation, is engaged in microfinancing activities. It was assessed by the BIR with deficiency VAT. The taxpayer argues that microfinancing is not covered by VAT as it is not an activity aimed at turning a profit. In other words, the taxpayer argues that microfinancing is not in the course of trade or business. However, the CTA upheld the assessment. In quoting previous Supreme Court decisions, the CTA held that pursuit of profit is not necessary for an activity to be subject to VAT. The sole requirement is that the good or service exchanged is for remuneration. Thus, in charging interest from its borrowers, the transaction is already subject to VAT. *(Kabalikat Para sa Maunlad na Buhay, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9003, January 3, 2018)*

3. **An item of assessment appearing only in the Final Decision on Disputed Assessment (FDDA), without previously appearing in the Formal Letter of Demand (FLD) and Preliminary Assessment Notice (PAN) is a violation of the taxpayer's right to due process.**

   The taxpayer, among others, was assessed with deficiency income tax from alleged unreported Foreign Exchange gain. The said item of assessment was only imposed by the BIR in the FDDA. The PAN and the FLD/FAN issued prior to the FDDA did not contain the said item. The CTA struck the deficiency tax on ForEx gain for being a violation of the taxpayer's right to due process. The CTA ruled that the addition of the said item on the FDDA prevented the taxpayer from being able to explain and contest the item fully. The taxpayer, in this case, was not duly informed of the alleged assessment. Thus, the CTA ruled that the said finding is a violation of a taxpayer's right to due process, and is therefore void. *(First Sumiden Circuits, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8924, January 3, 2018)*

4. **In filing for VAT Refund, the taxpayer should file its judicial claim within thirty days from the expiration of 120 days from the filing of the administrative claim or the receipt of the denial.**

   The taxpayer filed its judicial claim within thirty (30) days from the receipt of the denial of its administrative claim for refund. However, the taxpayer received the denial beyond thirty (30) days from the expiration of the 120 days from filing of the administrative claim. The BIR challenged the jurisdiction of the CTA over the claim, arguing that the expiration of the 120 days should have triggered the "deemed denial" provision. In other words, the taxpayer should have filed its judicial claim within 30 days from the expiration of the 120 days. The CTA, however, observed that the denial issued by the BIR was within the 120 days it was given to process the administrative claim. The said denial, however, was sent to the taxpayer belatedly. Given that there was already a denial, and that the law allowed the taxpayer 30 days from actual receipt of the denial, then it was proper for the taxpayer to have waited for receipt of the denial before filing its claim before the CTA. *(METRO Incorporated v. Commissioner of Internal Revenue, CTA Case No. 8921, January 3, 2018)*

5. **A valid protest must indicate the nature of the protest, the date of the assessment notice, and the legal and factual basis for the protest.**

   The taxpayer was assessed with deficiency taxes by the BIR. It filed a protest on the assessment, solely stating that it intends to protest the assessment, asking for sixty (60) days to submit its supporting documents. The taxpayer subsequently received a final letter from the BIR, stating that its protest was not in accordance with the requirements of law, and that the assessment has thus attained finality. The taxpayer then filed its Petition for Review before the CTA. The CTA Division dismissed the case for lack of jurisdiction. The CTA Division found that the taxpayer failed to protest the assessment properly, and that the assessment has already attained finality. The CTA En Banc Affirmed the same, ruling that a valid protest must indicate the nature of the protest, the date of the assessment notice, and the legal and factual basis for the protest. *(Asia Renal Care Phils., Inc. v. Commissioner of Internal Revenue, CTA EB No. 1502, January 4, 2018)*

6. **The Revenue Officer (RO) assigned to replace a previous Revenue Officer (RO) in the audit of a taxpayer must be issued a new Letter of Authority (LOA) to conduct a valid examination and assessment.**

   The taxpayer was under examination by the BIR. The Revenue Officer (RO) conducting the said examination was subsequently replaced by a new RO. The new RO was not issued a separate Letter of Authority (LOA), but was issued a Memorandum of Assignment. The Taxpayer was ultimately assessed with deficiency taxes. The assessment was questioned before the CTA. The CTA Division ruled that the assessment was invalid, as the substituting RO was not duly authorized by a new LOA. The LOA is the jurisprudentially recognized document that confers authority to Revenue Officers to conduct assessments. The CTA En Banc upheld the ruling of the CTA Division, confirming that the Revenue Officer (RO) assigned to replace a previous Revenue Officer (RO) in the audit of a taxpayer must be issued a new Letter of Authority (LOA) to conduct a valid examination and assessment. *(Commissioner of Internal Revenue v. McDonald's Philippines Realty Corporation, CTA EB No. 1535, January 4, 2018)*

7. **Royalty payments made to the seller in connection with the purchase of products abroad are part of the valuation of imported items subject to customs duties.**

The taxpayer was assessed with deficiency customs duties and VAT, in connection with its importation of products to be sold. The deficiency stemmed from the under-valuation of the imported products, as the taxpayer did not include the royalties paid to the seller as part of the value of the imported goods. The taxpayer argues that the royalty payments are not necessary for its purchase of the imported goods, and that the same were incurred for purposes of being able to use the seller's brand here in the Philippines. However, the CTA ruled that the purpose for which the royalties are paid are substantially related to the purchase of the products. Further, the CTA noted that the purchase agreement between the taxpayer and the seller require the payment of royalties, and failure to do so would result to the termination of the contract. Thus, the payment of royalties should be included in the computation of the value of the imported goods. *(Colgate-Palmolive Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB No. 1471, January 4, 2018)*

8. **Third-Party Information (TPI) data should be verified by externally sourced data to support its validity.**

The taxpayer was assessed with deficiency VAT on undeclared sales, based on the comparison of the taxpayer's summary list of sales (SLS) and the BIR's Third Party Information (TPI) data. The taxpayer challenged the assessment before the CTA, arguing that the TPI used by the BIR as basis was not verified by external sources, as mandated in Revenue Memorandum Order (RMO) 04-03. The CTA ruled that the BIR should have verified the TPI data. The TPI data is an internal database, sourced from the BIR itself. The Court ruled that the BIR should have verified if the TPI data is correct. Failing to conduct such a verification, the CTA ruled that the assessment is not based on solid foundation, and cannot be given the presumption of correctness. *(Keansburg Marketing Corporation v. Commissioner of Internal Revenue, CTA Case No. 9076, January 5, 2018)*

9. **Proof of receipt of taxpayer through registered mail requires proof that the person who signs the registry receipt is a duly-authorized representative of the taxpayer.**

The taxpayer was assessed with various deficiency taxes, and was eventually subjected to collection by the BIR. The taxpayer brought the matter to the CTA, challenging the validity of the collection and assessment, as it claims that it was not duly served a Preliminary

Assessment Notice (PAN) and Formal Letter of Demand/Final Assessment Notice (FLD/FAN). Respondent, on the other hand, presented the PAN, FLD/FAN, as well as the registry receipts of the said documents. However, during the trial, the witness who identified the registry receipts did not have personal knowledge if whether the signature on the registry receipts belong to the taxpayer's authorized representative. Further, the Court also found that the certificate issued by the Post Office merely confirms the fact of sending documents to the taxpayer without identifying what those documents are. Therefore, the CTA ruled that the assessment, as well as the succeeding collection, are void. *(Drugmaker's Biotech Research Laboratories, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8664, January 5, 2018)*

10. Bad Debts written-off in previous year should not be added back to the accounts receivable in the succeeding year

The taxpayer was assessed with deficiency income tax due to undeclared receipts. In its protest, the taxpayer contends that the alleged undeclared receipts are actually receivables from the previous taxable year that were written off. The BIR argues that its computation of taxpayer's cash flow is similar to that of the taxpayer, thus the finding that there were undeclared receipts is correct. The CTA ruled that unless the BIR found that the previous year's bad debts were actually collected on the current taxable year, then the same cannot be added back to the taxpayer's receivables for the year. *(Surigao Micro Credit Corporation v. Commissioner of Internal Revenue, CTA Case No. 9108, January 9, 2018)*

11. Formal Letter of Demand/Final Assessment Notice (FLD/FAN) sent to the wrong address of the taxpayer is a violation of a taxpayer's right to be informed.

The taxpayer challenged the BIR's assessment for several deficiency taxes. The taxpayer points out that the BIR sent the FLD/FAN to its old business address. The BIR contends that the taxpayer failed to formally notify the BIR of its change of address. The CTA Division found for the taxpayer. The records show that the Preliminary Assessment Notice (PAN) was also sent to the wrong address. However, the same was mailed back to the BIR with the stamp RETURN TO SENDER. This should have alerted the BIR of the change of address of the taxpayer. However, the BIR sent the subsequent FLD/FAN to the same incorrect address. The findings of the CTA Division was upheld by the CTA En Banc. *(Commissioner of Internal Revenue v. Asian Navigation and Tracking System, CTA EB No. 1490, Jan. 11, 2018)*

12. Cancelled insurance contracts are subject to DST.

The taxpayer, an insurance company, was assessed with alleged deficiency DST. The taxpayer argued that the alleged deficiency stemmed from its cancelled contracts and reinstated contracts. It claims that the cancelled contracts should not be subject to DST as the same were not issued. As to the reinstated contracts, the taxpayer argues that the DST for the said contracts were already paid for during the previous taxable year, and were merely reissued the year thereafter. The CTA found the arguments partly meritorious. As to the cancelled contracts, the CTA applied the Supreme Court decision stating that void insurance contracts are also subject to DST. As to the reinstated contracts, the CTA found that the same were initially issued during the year prior to the taxable year under investigation, and are outside of the scope of audit. Thus, the amount corresponding to the reinstated contracts were excluded. *(Oriental Assurance Corporation v. Commissioner of Internal Revenue, CTA Case No. 9169, January 12, 2018)*

13. Rescinded contract of assignment has the effect of removing the gain of the taxpayer, and thus removes liability for Capital Gains Tax (CGT)

The taxpayer filed for a refund of erroneously paid taxes. These taxes were paid in connection to transfer of properties in exchange for shares of stock. The taxpayer paid the ensuing Capital Gains Tax due therein. The taxpayer eventually rescinded the transfer of property, and claimed a refund of the CGT paid in connection to the rescinded exchange. The BIR argued that the rescission was done in bad faith, and that the CGT Return may no longer be withdrawn. The CTA Division ruled that absent proof of bad faith, then the court may not impute the same on a party. Having failed to introduce proof, the taxpayer cannot be considered to have been in bad faith. Further, the Court ruled that the CGT Returns were not being withdrawn, but the tax paid was being refunded. Furthermore, the CTA ruled that since the rescission of the contract effectively restored the parties to their status quo prior to the exchange, then it follows that the taxpayer had no gain to speak of which should be subject to CGT. *(Commissioner of Internal Revenue v. Spouses Genato, et al., CTA EB No. 1695, January 12, 2018)*

14. Intent is a component of the crimes of tax evasion and failure to file tax return

The taxpayer was accused of attempt to evade tax and failure to file tax returns. Upon trial, it was established that the taxpayer operated a small business and is not well-informed of government requirements in the conduct of business. As such, the taxpayer indeed failed to file tax returns, and did not pay the requisite taxes. However, it was also established that the taxpayer was unaware of the tax consequences of her business, and that she supposed that the withholding taxes withheld by PAGCOR were sufficient. As such, the CTA acquitted the taxpayer of the crimes charged, stating that she lacked the final requisite of willfulness or intent to be found guilty of the crimes. *(People of the Philippines v. Maila Laxamana, CTA Criminal Case Nos. O-445, O-446, & O-447)*

15. Subsequent issuance of Final Decision on Disputed Assessment (FDDA) does not validate a Protest to the Formal Letter of Demand/Final Assessment Notice(FLD/FAN) filed beyond the 30-day period.

The taxpayer was assessed with various deficiency taxes. The said findings of deficiency were questioned before the CTA. The BIR argued that the CTA had no jurisdiction over the case, as the FLD/FAN has already attained finality due to the taxpayer's failure to protest the same within thirty (30) days of receipt of the FLD/FAN. The taxpayer argues that since the BIR subsequently issued an FDDA, then the proper period to compute the filing period would be from receipt of the FDDA. The CTA, however, ruled that the FLD/FAN has indeed attained finality since the taxpayer failed to protest the same within 30 days from receipt. The subsequent issuance of the FDDA does not cure the lapse of the opportunity to file a protest. *(Light Rail Transit Authority v. Commissioner of Internal Revenue, CTA Case No. 8746, January 17, 2018)*

16. **The taxpayer should be given the full fifteen (15) days from receipt of the Preliminary Assessment Notice (PAN) to file its reply. Failure to allow the said period to the taxpayer is a violation of the right to due process.**

The taxpayer was assessed with several deficiency taxes. The taxpayer argued that the BIR's right to assess has already prescribed, and that the waivers are invalid. Further, the taxpayer also raised the fact that its right to due process has been violated, as the FLD/FAN was issued only two days after the taxpayer received the PAN. The CTA upheld the arguments of the taxpayer, reasoning that the 15 days given to taxpayers to reply to the PAN is part of a taxpayer's right to due process. *(Commissioner of Internal Revenue v. Tektite Insurance Brokers, Inc., CTA EB No. 1544, January 17, 2018)*

17. **The deficiency interest on any deficiency tax is assessed "from the date prescribed for its payment until the full payment thereof". The delinquency interest, which is imposed for failure to pay a deficiency tax or any surcharge or interest thereon, is assessed commencing "on the due date appearing in the notice and demand of the Commissioner ... until the amount is fully paid." Thus, the Court in Division correctly computed the deficiency income tax and interest.**

This was a case involving the cancellation of the assessment issued against Iconic Beverages (IBI) for alleged deficiency income tax. IBI maintains that it is not liable to pay the 70M deficiency income tax, PLUS 20% delinquency and deficiency interest. Specifically, the 20% interest under Section 249{A) of the NIRC of 1997, as amended, can either be deficiency interest under Section 249(B) or delinquency interest under Section 249(C) of the same Code. IBI's contends that only one kind of interest is applicable for each period. Such contention is INCORRECT. A comparison of Section 249(B) and 249(C)(3) of the NIRC of 1997reveals that the deficiency interest on any deficiency tax is assessed "from the date prescribed for its payment until the full payment thereof". The delinquency interest, which is imposed for failure to pay a deficiency tax or any surcharge or interest thereon, is assessed commencing "on the due date appearing in the notice and demand of the Commissioner ... until the amount is fully paid" Thus, the CTA in Division was correct in computing the deficiency income and interest. *(Commissioner of Internal Revenue v. Iconic Beverages Inc., CTA EB 1412)*

18. **Failure to file a Motion for Reconsideration is ground to dismiss the case, pursuant to Section 1, Rule 8 of the 2005 RRCTA, and the Asiatrust Case. // CIR's failure to comply with the requirements laid down by the law is a ground to deny the assessment**

This was a Petition for Review filed by the CIR as it was aggrieved by the decision of the Court in Division. The Court in Division cancelled the assessment for having a void FAN. The

Court *En Banc* notes that, on the onset, the CIR's failure to file a Motion for Reconsideration is ground to dismiss the case, pursuant to Section 1, Rule 8 of the 2005 RRCTA, and the Asiatrust Case. Furthermore, it is undisputed that respondent received the PAN on January 14, 2013, and seven (7) days thereafter, respondent received the FAN. This is a clear violation of Respondent's right to due process. *(Commissioner of Internal Revenue v. Missouri Square Inc., CTA EB 1521)*

19. Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.

This is a Petition for Review for an Urgent Motion to suspend the collection of tax filed by Lapanday Holdings. The issue is the lack of a valid letter of authority – records show that no LOA was issued against Lapanday. The only basis for the Assessment was an undated Letter Notice LN No. 048-TRS-08-00-00027 for discrepancy on gross sales/revenue/receipts, issued by Commissioner Joel L. Tan-Torres. Should such LN suffice? CTA answered in the negative. Since no LOA was issued against petitioner but only an undated LN No. 048-TRS-08-00-00027, there is no competent proof that the revenue examiners who conducted the audit and investigation of respondents' books of accounts and other accounting records for the taxable year 2008 were duly authorized. Thus, the deficiency tax assessment issued against petitioner, arising from the audit they conducted, is void ab initio. *(Lapanday Holdings v. Commissioner of Internal Revenue, CTA 8932)*

20. In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.

This is a Petition for Review filed by Mitsuba for the issuance of a TCC or a refund in the amount of 4M representing its excess and unapplied input valued-added tax (VAT) payments attributable to its zero-rated sales for taxable year 2010. CIR filed a Motion to Dismiss, raising lack of jurisdiction, as Mitsuba waited for the denial during the 120+30 day period. The CTA agreed with the contention of the CIR. The 120-day period begins to run from the date of submission of complete documents in support of the administrative claim. The records show that on April 27, 2012, petitioner received a Letter of Authority (LOA) No. LOA-047-2012-0000008145 dated March 30, 2012 together with a Checklist of Requirements. The said checklist enumerated the additional documents requested by the BIR from petitioner for the complete determination of its claim for refund. **However, there is no evidence on record which shows that petitioner complied with the above request for supporting documents in the Checklist.** The CTA ruled that the **120 -day period should be counted 30 days from April 27, 2012 when the petitioner received the LOA with the Checklist of Requirements, or from May 27, 2012, pursuant to the aforequoted ruling laid down in the Pilipinas Total case in relation to RMC No. 49-2003**. The reason for this is that records do not show that the petitioner submitted any documents within the thirty-day period from April 27, 2012 (the date it received the Checklist of Requirements), **hence the 120-day**

period should be counted from the lapse of the thirty-day period or on May 27, 2012. *(Mitsuba Philippines Technical Center Corp. v. Commissioner of Internal Revenue, CTA 9032)*

21. **The three (3)-year period rule to assess internal revenue taxes is explicitly provided in Section 203 of the NIRC of 1997, as amended. Hence, an assessment notice issued after the three-year prescriptive period is no longer valid and effective**.

    This is a Petition for Review wherein Petitioner Meinan questions the assessment and FDDA making it liable for alleged deficiency income tax and fringe benefits tax for 2007. However, the CTA ruled that the period for which to assess Petitioner had already lapsed. Based on Sec. 203 of the NIRC, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of return, or the actual filing thereof, whichever comes later. Hence, an assessment notice issued after the said three-year prescriptive period is no longer valid and effective. In determining the last day for respondent to assess petitioner of deficiency income tax and FBT, the Court shall apply Section 77(B) of the NIRC of 1997, as amended, and Section 5 of Revenue Regulations (RR) No. 4-2002. The three (3)-year period rule to assess internal revenue taxes is explicitly provided in Section 203 of the NIRC of 1997, as amended. Hence, an assessment notice issued after the three-year prescriptive period is no longer valid and effective. (**There was also the issue of the waiver, but the CTA noted that not all the procedures for compliance were met – and the rules for waiver require that all requirements MUST BE STRICTLY COMPLIED WITH - hence, the waiver was invalid and struck down)** *(Meinan Philippines Inc. v. Commissioner of Internal Revenue, CTA 8839)*