INSIGHTS

FEBRUARY 2019

A monthly digest of significant tax-related court decisions and regulatory issuances (includes BIR, SEC, BSP and various government agencies)

SECOND Issue, Series of 2019

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HIGHLIGHTS for FEBRUARY 2019

Court of Tax Appeals Decisions

- A Motion for Reconsideration (MR) to the denial of administrative protest by the duly authorized representative of the Commissioner of Internal Revenue (CIR), tolls the 30-day period to appeal before the Court of Tax Appeals (CTA). *(Marketing Convergence, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9301, January 4, 2019).*

- There is no prohibition for the issuance of subsequent Letter of Authority (LOA) authorizing another set of revenue officers to continue the audit. *(Marketing Convergence, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9301, January 4, 2019).*

- Chief of Large Taxpayers Regular Audit Division 1 (LTS-RAD 1) is not included among the officials who are authorized to issue and sign the LOA. *(Securities Transfer Services Inc., v. Commissioner of Internal Revenue, CTA Case No. 8961, January 8, 2019).*

- Due process requirement under Sec. 228 of the National Internal Revenue Code (NIRC) does not apply to payment made in relation to imposition of penalties. *(Wholesome Foods Inc., v. Commissioner of Internal Revenue, CTA Case No. 9362, January 4, 2019).*

- Issuance of tax deficiency assessment is not necessary before a criminal prosecution for tax evasion will prosper. *(People v. Jacinto C. Ligot and Erlinda Y. Ligot , CTA Crim. Case Nos. 0-241, 0-242, 0-243, and 0-244, January 8, 2019).*

- Certificate of Creditable Tax Withheld at Source constitutes sufficient evidence of the existence and validity of the income recipient's Creditable Withholding Tax (CWT). *(Commisioner of Internal Revenue v. Sonoma Services Inc., CTA EB NO. 1691, January 14, 2019).*

- Failure of the BIR to respect the taxpayers right to file a Reply within 15 days from receipt of the Preliminary Assessment Notice (PAN) is a denial of the taxpayer's right to due process. *(Highland Gaming Corporation v. Commissioner of Internal Revenue, CTA No. 8730, January 17, 2019).*

- The imposition of surcharge and delinquency interest is mandatory. *(Hotel Specialist (Tagaytay) v. Commissioner of Internal Revenue, CTA No. 9349, January 18, 2019)*

- An assessment merely based on "BIR data", without the breakdown of the alleged amount payable and its computation is void for lack of legal and factual basis. *(Anapi Multi-Purpose Cooperative v. Commissioner of Internal Revenue, CTA No. 9399, January 21, 2019).*

- An Assessment based on unverified and unconfirmed third-party information is void for lack of factual basis. *(Ayala Property Management Corporation v. Commissioner of Internal Revenue, CTA No. 9298, January 21, 2019).*

- The reckoning date of the 120-day period should be counted from the submission of the first transmittal and not the submission date of its last transmittal to the BIR. (*Zuellig Pharma Asia Pacific LTD. PHILS. ROHQ v. Commissioner of Internal Revenue, CTA EB No.1656 (CTA No. 8899), January 21, 2019).*

- A holding company is neither "financial intermediary" nor it belongs to the category of "bank and other financial institutions". Hence, it is not liable for Local Business Tax. (*City of Davao and Bella Linda N. Tanjili in her official capacity as the City Treasurer of Davao City v. ASC Investors, Inc, CTA EB No.1749 (CTA No. 157), January 22, 2019).*

- **Deficiency Interests applies on all taxes under the NIRC and not simply to deficiency income, estate and donor's tax.** *(E.E. Black LTD. Philippine Branch v. Commissioner of Internal Revenue, CTA EB No. 1611 (CTA No. 8719), January 22, 2019).*

- **No need to prove "Actual shipment of goods from the Philippines" for export sales under the Omnibus Investment Code and other special laws.** *(Commissioner of Internal Revenue v. Filminera Resources Corporation, CTA EB No. 1681(CTA No. 8938), January 28, 2019).*

- **Written protest is necessary within the 60-day period from receipt of notice of assessment issued by the local treasurer, to avoid the assessment to lapse into finality.** *(Metro Pacific Tollways Development Corporation v. Makati City and Nelia A. Barlis, in Her Capacity as Incumbent City Treasurer of Makati City, CTA AC No. 191, January 29, 2019).*

BIR Issuances

- **RMC 4-2019, January 10, 2019 –** This circular published the full text of the letter from the FDA containing the "List of VAT-exempt Diabetes, High Cholesterol and Hypertension Drugs" pursuant to JAO No. 2-2018 entitled "Implementing Guidelines on the Value-Added Tax (VAT) Exemption of the Sale of Drugs Prescribed for Diabetes, High-cholesterol and Hypertension under NIRC of 1997, as amended."

BIR Rulings

- **BIR Ruling No. 1398-2018, November 19, 2018 –** To determine that a corporation is a publicly-held, it is necessary to ultimately trace its shareholdings to the individual shareholders of its parent company.

- **BIR Ruling No. 1421-2018, December 7, 2018 –** Joint ventures involving foreign contractors may also be treated as a nontaxable corporation only if the member foreign contractor is covered by a special license as contractor by the PCAB of the DTI; and the construction project is certified by the appropriate Tendering Agency

- **BIR Ruling No. 1451-2018, December 21, 2018 –** All real property owned or acquired by a taxpayer engaged in the real estate business are classified as ordinary asset. The classification of a particular real property as being capital or ordinary asset does not depend upon its actual use or the purpose for its acquisition, but on the nature of the business of its registered owner.

BSP Issuances

- **BSP Circular No. 1029, January 25, 2019 –** It amends the reporting templates on Bank Loans and Deposits Interest Rates.

- **BSP Circular Letter No. 2019-002, January 14, 2019 –** It published the circular letter for Anti-Money Laundering Council (AMLC) issued guidelines relative to digitization of customer records and identification of beneficial owner.

- **BSP Memorandum No. 2019-001, January 3, 2019 – This is** published for guidance and strict compliance, that pursuant to BSP Circular No. 980 dated 06 November 2017, BSP-supervised financial institutions (BSFIs) shall meet the listed requirements not later than 31 March 2019.

- **BSP Memorandum No. 2019-002, January 23, 2019** – This is published to inform and guide the financial community as to the local and global developments in the adoption of the international standards on messaging and communication of retail and large-value payments and settlements systems.

SEC Issuances

- **SEC Memorandum Circular No. 1 series of 2019, January 10, 2019 –** This adopted measures in the filing of annual reports such as the Audited Financial Statements (AFS) and the General Information Sheet (GIS).

- **SEC-OGC Opinion No.18-24, December 20, 2018 -** This opinion pertains to the compliance by the participating corporations as regards to the terms of its proposed ownership structure under its Bidding Agreement, in connection with Section 10.1(b) of NTC Memorandum Circular 09-09-2018 or the Rules and Regulations on the Selection Process for a New Major Player (NMP) in the Philippine Telecommunications Market (NTC Bidding Rules).

- **SEC Admin. Case No. 05-17-426, December 20, 2018 –** This pertains to a denial by the Commission's Company Registration and Monitoring Department (CRMD) of Company's reservation of the corporate name for being identical or confusingly similar to corporate name, which has since been revoked for non-compliance with reportorial requirements.

- **SEC Admin. Case No. 06-15-176, January 24, 2019 -** This decision pertains to a Petition for Revocation of the COI filed by the Enforcement and Investor Protection Department against a Corporation. It was raised that there was fraud in the procurement of Corporation's COI and is thus revocable, since two incorporators were not present at the time the document was acknowledged by the notary public.

- **SEC Admin. Case No. 05-13-290, January 24, 2019 -** This En Banc decision pertains to the Order of the Commission's Office of the General Counsel (OGC) directing a corporation to change its corporate name for being confusingly similar to that of another corporation, which has a prior right to use such name.

Articles Written

- **"Tax Amnesty of 2019" Business Mirror: Tax Law for Business, February 19, 2019.** This discusses the Tax Amnesty Act of 2019 and dissects what remains of the law after the partial veto of the President.

COURT DECISIONS

I
Significant Court of Tax Appeals Decisions

MR to the denial of administrative protest by the duly authorized representative of the CIR, toll the 30-day period to appeal before the CTA.

In this case, the taxpayer, upon receipt of the FDDA issued by the OIC-ACIR, denying, in part, its protest, filed its Motion for Reconsideration with the Office of the CIR. Subsequently, the same was denied, which resorted the taxpayer to file an appeal before the CTA. CIR on the other hand, questioned the jurisdiction of the Court, stating that a motion for reconsideration does not toll the 30-day period to appeal to the CTA. Hence, the appeal filed by the taxpayer was already beyond the period provided by law.

The Court ruled that a motion for reconsideration that does not toll the 30-day period to appeal refers to the motion for reconsideration of denial of the administrative protest. It does not, in any way, pertain to the denial of the administrative protest by the duly authorized representative of CIR. The 30-day mandatory period to appeal is from CIR's decision, ruling, or inaction. It is nowhere indicated that such 30-day period should be reckoned from the decision, ruling or inaction of CIR's duly authorized representative. Thus, the appeal filed by the taxpayer was made within the period prescribed by law and thus, the court has jurisdiction to entertain the present appeal. *(Marketing Convergence, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9301, January 4, 2019)*

LOA is mandatory to make an assessment valid. There is no prohibition for the issuance of subsequent LOA authorizing another set of revenue officers to continue the audit.

The taxpayer questioned the authority of the revenue officers who recommended the issuance of the tax assessments. It can be gleaned from the facts that the revenue officers who were authorized to examine the books of accounts and other accounting records of the taxpayer were different from the ones who recommended the issuance of the tax assessments against the petitioner.

The Court recognizes that here can be instances where a revenue officer, previously authorized through an LOA, may not be able to complete the examination of the concerned taxpayer, by reason of retirement, reassignment, illness, or death, of the said revenue officer. But what is not acceptable to this Court is CIR's proposition that because of such instances, there can already be an excuse not to issue an LOA. There is nothing in the law which prohibits the issuance of a subsequent LOA authorizing another revenue officer, or new set of revenue officers, to continue the examination of books of accounts and other accounting records of the concerned taxpayer. Hence, since the said revenue officers who completed the audit and who recommended the issuance of the subject tax assessments, were not authorized via an LOA, the said tax assessments are void. *(Marketing Convergence, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9301, January 4, 2019).*

Chief of Large Taxpayers Regular Audit Division 1 (LTS-RAD 1) is not included among the officials who are authorized to issue and sign the LOA.

The taxpayer received Letter of Authority authorizing certain revenue officers to examine its books of accounts and other accounting records for all internal revenue taxes for taxable year 2009. However, it was later found that the revenue officers named under LOA were different from those who actually conducted the audit. The revenue officers who actually examined the books of the taxpayer were only vested with authority through a Memorandum of Assignment issued by an OIC-Chief of LTS-RAD 1, reassigning to them the conduct of audit. On the other hand, the same was continued by another set of revenue officers on the basis of a Memorandum of Assignment

issued by the then Chief of LTS-RAD 1. Now, the taxpayer questioned the authority of the revenue officers who conducted, since the officer who issued the Memorandum of Assignment have no authority to do so.

The Court ruled that the deficiency tax assessments issued by Commissioner of Internal Revenue against the petitioner is intrinsically void and thus, shall be cancelled and set aside. The invalidity of such deficiency tax assessments springs from the absence of authority on the part of the revenue officers who conducted the examination of petitioner's books of accounts and other accounting records. *(Securities Transfer Services Inc., v. Commissioner of Internal Revenue, CTA Case No. 8961, January 8, 2019).*

Note: In this case, the issue of lack of authority of the revenue officers to conduct the audit was not specifically raised as an issue. Nevertheless, the Court is not precluded from considering the same given that a void assessment bears no fruit. In *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, the Supreme Court also emphatically ruled that the Court of Tax Appeals can resolve an issue which was not raised by the parties. The Supreme Court said: Under Section 1, Rule 14 of A.M. No. 05-11-07- CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

If the transaction is subject to a final withholding VAT, it is the purchaser/payor, in this case, the government, who shall be responsible in remitting the final VAT due, not the seller. Also, the CIR cannot include a new assessment in the FDDA that is not included in the FAN.

Petitioner claims that the imposition of deficiency interest and compromise penalty is void for lack of legal basis. Petitioner argues that it is indisputable that it is not liable for the 12°/o VAT because the DOTr, the sole purchaser of petitioner's services, is a government agency. As such, the DOTr is required by law to deduct and withhold a 5% final withholding VAT on all its purchases of goods and services. Petitioner posits that the DOTr is the statutory withholding agent of its income payments to its supplier of goods and services. As such, it is responsible for filing the VAT returns and remittance of withholding taxes to the BIR.

The Court ruled that according to Section 114(C) of the NIRC of 1997 and Section 4.114-2 of RR No. 16-2005 the Government, the DOTr in this case, shall deduct and withhold a final VAT due at the rate of 5% on gross payment on purchases of goods and services which are subject to VAT imposed in Sections 106 and 108 of the NIRC of 1997. This makes the DOTr liable for the tax it is duty bound to withhold. Accordingly, petitioner cannot be faulted for the lapses of the DOTr in remitting on time the VAT it withheld from petitioner. Thus, the deficiency VAT assessment pertaining to the increments due to late payment of the 5% withholding VAT is void and shall be cancelled.

Good also to note that, the FDDA of the CIR or his duly authorized representative shall only delve on the disputed items in the FLD/FAN. CIR is precluded from incorporating a new assessment in the FDDA which was not part of the disputed items in the protest letter of the taxpayer, nor in the FLD/FAN. To allow CIR to incorporate new assessments in the FDDA would deprive the taxpayer of its right to due process. *(Metro Rail Transit Corporation v. Commissioner of Internal; Revenue, CTA Case No. 9016, January 8, 2019).*

Note: Also, discussed in this case is who shall be the one responsible for payment of its deficiency taxes, interest and penalties assessed with respect to its corporate income taxes on the profit arising from its rail operations when there is an existing Built-Lease-Transfer (BLT) Agreement. The Court stressed, that Income tax is imposed on an individual or entity as a form of excise tax or a tax on the privilege of earning income. Income tax should be borne by the taxpayer alone as it constitutes payment made in exchange for benefits received by the taxpayer from the State. Thus, the payment of income tax remains the liability of petitioner which earned its profits arising from its rail operations.

Due process requirement under Section 228 of the Tax Code does not apply to payment made in relation to imposition of penalties.

CIR issued BIR Form No. 0605, stating that the taxpayer is liable for the following alleged violations: (1) no books; (2) no official receipts; (3) no backend report; and (4) unaccounted POS. The taxpayer paid the alleged penalties.

Thereafter, petitioner filed with the BIR a letter request for refund of the amount paid as penalties. It also filed a similar application for refund or tax credit with BIR Revenue Region on the same date. Furthermore, the taxpayer invokes deprivation of due process to invalidate the collection of the amount paid since it was not allegedly sufficiently informed in writing of the basis of the penalties imposed against it pursuant to Section 228 of the NIRC.

The Court ruled that the payment made in this case was not for internal revenue taxes but for the imposition of penalties, the latter not being the result of the usual audit and examination of the taxpayer's books and financial record for determination of internal revenue taxes due, hence, Section 228 of the Tax Code does not apply. Thus, due process through the issuance of a formal assessment notice informing the taxpayer of the law and the facts upon which the assessment is based, as provided under Section 228 of the NIRC, as amended, applies only when internal revenue taxes are the ones being collected, to wit, income tax, VAT, estate tax, excise tax, donor's tax, documentary stamp tax, capital gains tax, and other percentage taxes. In other words, if what is being collected is not in the enumeration, then such is not an internal revenue tax, which requires strict compliance with the due process requirement of issuance of formal assessment notices. *(Wholesome Foods Inc., v. Commissioner of Internal Revenue, CTA Case No. 9362, January 4, 2019).*

Issuance of tax deficiency assessment is not necessary before a criminal prosecution for tax evasion will prosper.

Accused Spouses are charged for violations of Sections 254 and 255 of the NIRC, as amended, for failure to supply correct and accurate information in their joint Income Tax Return (ITR) for taxable year 2001 and for failure to report in their income tax returns for taxable years 2002, 2003, and 2004, other income for those respective taxable years.

The Court acquitted the accused spouses for finding reasonable doubt based on the evidence presented. However, the court ruled that the taxpayer's obligation to pay tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.

The government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the tax code or the payment thereof. The crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. It is therefore not required that a tax deficiency assessment must first be issued for a criminal prosecution for tax evasion to prosper. *(People v. Jacinto C. Ligot and Erlinda Y. Ligot , CTA Crim. Case Nos. 0-241, 0-242, 0-243, and 0-244, January 8, 2019).*

Note: In the Lim Gaw case, the Supreme Court clarified that while the tax evasion case is pending, the BIR is not precluded from issuing an FDDA. It is to prevent the assessment from becoming final, executory and demandable, that Section 9 of R.A. No. 9282 gives the taxpayer the remedy of filing a case with the CTA, a Petition for Review, within 30 days from receipt of the decision or the inaction of the respondent. However, the records of this case do not show that the FAN /FLD was even protested by the accused Spouses Ligot despite actual knowledge thereof. If that is the case, then as regards the civil liability of the accused Spouses Ligot, the FAN /FLD would have been rendered final and executory.

Certificate of Creditable Tax Withheld at Source constitutes sufficient evidence of the existence and validity of the income recipient's CWT.

The CTA ruled that the Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment by herein respondent-payee to the government itself through said agents. The Court stressed that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to prove actual remittance by the withholding agent (payor) to the BIR. *(Commisioner of Internal Revenue v. Sonoma Services Inc., CTA EB NO. 1691, January 14, 2019)*

Certificate of Authentication issued by the Philippine Consul in the USA is sufficient proof that the investment income derived from the country is tax exempt.

Taxpayer in this case is engaged in the business of making investments in the private sector banks, it is owned and controlled by financing institutions that are in turn owned, controlled, or enjoying refinancing from foreign governments or international or regional financial institutions established by foreign governments. Taxpayer requested for the refund of erroneously withheld Stock Transaction Tax (STT) on the ground that it is exempt from said tax. CIR alleged to the contrary claiming that taxpayer failed to prove the tax exemption.

The Court held that the Certificate of Authentication issued by the Philippine Consul in the USA is sufficient evidence and petitioner was able to prove that the subject income falls within Section 32(B)(7)(a) of the NIRC of 1997, hence not a subject of STT. Such being the case, the income derived by petitioner from the sale is exempt from income tax and consequently, STT. (*IFC Capitalization (Equity) Fund, LP v. Commissioner of Internal Revenue, CTA No. 9148, January 17, 2010)*

Note: Section 32(B)(7)(a) of the NIRC of 1997 refers to Income derived by Foreign Government as an item of Exclusion from Gross Income

Failure of the BIR to respect the taxpayers right to file a Reply within 15 days from receipt of the PAN is a denial of the taxpayer's right to due process.

Petitioner maintains that the Final Assessment Notice issued against petitioner for alleged deficiency income tax is void. Under the law, petitioner had fifteen (15) days from the receipt of the PAN, within which to file its protest thereto. However, respondent issued the FAN, merely two days after the PAN was issued, before the period for filing the protest has lapsed. By prematurely issuing the FAN without awaiting the lapse of fifteen (15) days from the date of the receipt of the PAN by petitioner, respondent acted with grave abuse of discretion by clearly violating petitioner's right to due process, thereby rendering the FAN void.

The Court ruled that the failure of the BIR Commissioner to strictly comply with the requirements laid down by Section 228 of the NIRC of 1997 and its implementing law Section 3.1.2 of RR No. 12-99 is a denial of a taxpayer's right to due process. Correspondingly, the subject FAN and the FLO are void and a void assessment bears no valid fruit. *(Highland Gaming Corporation v. Commissioner of Internal Revenue, CTA No. 8730, January 17, 2019)*

The imposition of surcharge and delinquency interest is mandatory.

Petitioner filed its Protest on the FLD/FAN and contested the imposition of surcharge and the delinquency interest.

The CTA ruled that the imposition of surcharge is mandatory, the intention being to discourage delay in the payment of taxes due to the State. The imposition of delinquency interest is also legally sound. The Tax Code mandates the imposition of such interest in the event that the taxpayer is held liable for deficiency taxes. These charges incident to delinquency are compensatory in nature and are imposed for the taxpayer's use of the funds at the time when the State should have control of said funds. Collecting such charges is mandatory. *(Hotel Specialist (Tagaytay) v. Commissioner of Internal Revenue, CTA No. 9349, January 18, 2019)*

There is no valid service of FAN if the mail matter is improperly addressed. It is a requirement of due process that the taxpayer must actually receive the assessment.

Respondent issued a Warrant of Distraint and/ or Levy against petitioner's properties and a Warrant of Garnishment to collect petitioner's alleged delinquent tax liabilities despite the lack of valid FAN. BIR claimed that it mailed a copy of its FAN to the old office address of the petitioner.

The Court held that there was no valid service of the FAN to petitioner since the respondent failed to prove that the said transmittal letter was properly addressed to petitioner. The BIR already knew that petitioner moved to a new address and yet they chose to mail the FAN to the old address. It is a requirement of due process that the taxpayer must actually receive the assessment. Hence, respondent violated petitioner's right to due process because

no valid notice of assessment was sent to petitioner and the same was not actually received by the taxpayer. *(Unisphere International, Inc. v. Commissioner of Internal Revenue, CTA No. 8782, January 21, 2019)*

An assessment merely based on "BIR data", without the breakdown of the alleged amount payable and its computation is void for lack of legal and factual basis.

ANAPI filed a letter of protest assailing the assessment notice and letter of demand on the ground that the assessment lacks legal and factual basis due to respondent's failure to provide a breakdown of the amount payable and its computation.

The Court ruled that the assessments should be cancelled for lack of legal and factual basis. The assessments against ANAPI is bereft of factual basis because it was merely based on "BIR data" but BIR did not attach nor show the breakdown of the alleged amount payable and how it computed this total amount. Absent sufficient evidence to support the assessment, the presumption of correctness no longer applies, making the assessment arbitrary and capricious. Thus, the assessments have no factual basis nor sufficient supporting evidence, and must therefore be cancelled. *(Anapi Multi-Purpose Cooperative v. Commissioner of Internal Revenue, CTA No. 9399, January 21, 2019)*

An Assessment based on unverified and unconfirmed third-party information is void for lack of factual basis.

Taxpayer filed its Protest questioning the validity of the assessment. The said assessment was based on third-party information which the BIR allegedly failed to verify and confirm. Hence, respondent merely presumed the discrepancy as unaccounted income giving rise to alleged taxable income subject to income tax and VAT.

The Court ruled that the third-party information was not verified with externally sourced data to check its correctness. Without the confirmation from third parties, the finding casts doubts as to the reliability and correctness of the assessment on the alleged unaccounted income. Assessments should not be based on mere presumptions no matter how reasonable or logical the presumption might be. Accordingly, the assessment cannot be sustained since it was based merely on unverified amounts extracted from respondent's own database. *(Ayala Property Management Corporation v. Commissioner of Internal Revenue, CTA No. 9298, January 21, 2019)*

Note: Revenue Memorandum Order (RMO) No. 04-03 requires the verification of the amounts reflected in the system.

The reckoning date of the 120-day period should be counted from the submission of the first transmittal and not the submission date of its last transmittal to the BIR.

Petitioner filed a claim for refund with the respondent. On June 29, 2011, respondent requested for the presentation and submission of the documents supporting its claim for refund. On July 5, 2011, petitioner submitted the documents and subsequently submitted additional proof supporting its claim in later dates. It submitted its last transmittal on April 29, 2014.

The issue here is whether the judicial claim for refund was timely filed and what is the reckoning date for the running of the 120-day period. Petitioner insists that the 120-day period did not start on July 5, 2011 for there were additional documents submitted on various succeeding dates in compliance to the BIR's continued requests. Hence, the reckoning date of the 120-day period should be counted from April 29, 2014 when it submitted its last transmittal to the BIR.

The Court ruled that the 120-day period shall be reckoned from July 05, 2011, when Petitioner submitted additional documents in response to Respondent's request dated June 29, 2011. Hence, the Petition for Review filed on September 25, 2014 is beyond the prescribed period and the Court did not acquire jurisdiction over the case. (*Zuellig Pharma Asia Pacific LTD. PHILS. ROHQ v. Commissioner of Internal Revenue, CTA EB No.1656 (CTA No. 8899), January 21, 2019)*

Note: This claim is for the taxable year 2010. Under the amendment introduced by TRAIN Law, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipt or invoices and other documents in support of the application filed. Under RMC 17-2018, the 90-day period shall start from the actual date of filing of the application with complete documents duly received by the processing office. Any revenue officer or official who fails to act on the application within the 90-day period shall be punishable under Section 269 of the Tax Code, as amended.

A holding company is neither "financial intermediary" nor it belongs to the category of "bank and other financial institutions". Hence, it is not liable for Local Business Tax.

Taxpayer is the registered owner of preferred shares of stock in San Miguel Corporation (SMC) that were deposited in a trust account that earned interest from money market placements. City of Davao collected from taxpayer local business taxes on the dividends arising from its SMC preferred shares and interests on money market placements received by petitioner alleging substantial similarity between the definition of a financial intermediary and petitioner's primary purpose of business leading to a conclusion that petitioner is a financial intermediary. Taxpayer then filed an administrative claim for refund or credit of erroneously and illegally collected local business taxes.

The Court En Banc ruled that holding companies are neither "financial intermediary" nor does it belong to the category as "bank and other financial institutions". A holding company is not included by the Local Government Code, specifically Section 131(e) in the definition of banks and other financial institutions. Thus, it is not liable for the payment of local business tax. (*City of Davao and Bella Linda N. Tanjili in her official capacity as the City Treasurer of Davao City v. ASC Investors, Inc, CTA EB No.1749 (CTA No. 157), January 22, 2019)*

Note: Respondent is one of the Coconut Industry Investment Fund holding companies. Therefore, respondent, including its SMC shares, are government-owned and excluded from petitioner's taxing powers.

Deficiency Interests applies on all taxes under the NIRC and not simply to deficiency income, estate and donor's tax.

Petitioner claims that deficiency interest under Section 249(B) of the Tax Code applies only whenever there are deficiency income tax, deficiency estate tax, and/or deficiency donor's tax. The imposition is limited only to those 3 types of taxes.

The Court held that Section 247(a) in relation to Section 249(B) of the 1997 NIRC authorizes the imposition of deficiency interest on all taxes under the NIRC. The law is clear. There is no room left for interpretation, the law does not limit these additions only to the three (3) types of internal revenue taxes, namely, income, estate and donor's tax. Their imposition applies with equal force and effect to the other taxes under the 1997 NIRC such as the value-added tax, other percentage taxes, excise tax and documentary stamp tax. *(E.E. Black LTD. Philippine Branch v. Commissioner of Internal Revenue, CTA EB No. 1611 (CTA No. 8719), January 22, 2019)*

A taxpayer must establish that it supplies services to foreign corporation in order to prove that its transactions are subject to zero-rated VAT.

Petitioner filed with respondent an application for refund/tax credit of its excess and unutilized input VAT. According to Petitioner, as a duly registered ROHQ, it performs qualifying services to its non-resident foreign affiliates, subsidiaries and branches in the Asia Pacific Region and in other foreign markets making its transaction Zero-rated. A taxpayer must establish that it supplies services to foreign corporation in order to prove that its transactions are subject to zero-rated VAT.

The Court ruled that each entity must be supported, at the very least, by both SEC certificate of non-registration of corporation/ partnership and proof of incorporation, association or registration in a foreign country *(e.g.,* Certificate or Articles of Foreign Incorporation, Certificate of Registration of a Foreign Company and a printed screenshots of United States Securities and Exchange Commission (or the official regulatory body of a particular jurisdiction) website showing the state/province/ country where the entity was organized or any other equivalent document) to be considered as a non-resident foreign corporation doing business outside the Philippines. *(AIG*

Shared Services Corporation (Philippines) v. Commissioner of Internal Revenue, CTA No. 9100, January 24, 2019)

Note: The Court ruled that aside from an SEC Certificate issued by the government agency of the foreign country, a printed screenshot of the website of the foreign official regulatory body is sufficient to establish that the client is a foreign corporation.

CTA has jurisdiction over a petition to invalidate and annul the distraint or garnishment orders issued by the CIR.

Petitioner received a Letter from UCPB informing it that its deposit with the said bank in has been garnished by respondent. The Warrant of Garnishment was issued pursuant to an Assessment. Petitioner filed a Petition for Review and respondent filed a Motion to Dismiss claiming that the Court has no jurisdiction on the ground that the Warrant of Garnishment is not a decision contemplated under Section 7 of Republic Act (RA) No. 1125, as amended by RA No. 9282.

The Court held that CTA has jurisdiction over the case because it falls within the CTA's jurisdiction over "other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue", which includes acting on a petition to invalidate and annul the distraint or garnishment orders of respondent CIR. Petitioner raised as an issue the validity of the assessment of alleged deficiency taxes which falls under the category of "other matters." Hence, CTA has jurisdiction over this case. *(First Balfour, Inc. v. Commissioner of Internal Revenue, CTA No. 8984, January 25, 2019)*

Note: The case also discussed the failure of the respondent to prove receipt of the assessment by the Petitioner. Such failure leads to the conclusion that no assessment was issued and that the right to due process of petitioner was violated when respondent issued a Warrant of Garnishment without prior notice to the respondent.

No need to prove "Actual shipment of goods from the Philippines" for export sales under the Omnibus Investment Code and other special laws.

Taxpayer filed an application for Tax Credits with the BIR representing unutilized or unapplied creditable input VAT arising from their transaction with PGRC (a BOI-registered producer of gold and silver ore). It alleged that since PGPRC is a BOI-registered producer of gold and silver ore, the transactions are considered export sales. BIR alleged that BOI's certification is insufficient to prove that there was actual shipment of FRC's goods from the Philippines to a foreign country.

The Court ruled that Section 106(A)(2)(a)(5) or those considered export sales under the Omnibus Investment Code and other special laws does not require that there be an *"actual shipment of goods from the Philippines."* The implementing Rules also does not provide the requirement of "actual shipment". The texts of *both* the law and the implementing regulations clearly do not provide for this requirement. Hence, the transaction in this case is considered export sales subject to zero-rated VAT. *(Commissioner of Internal Revenue v. Filminera Resources Corporation, CTA EB No. 1681(CTA No. 8938), January 28, 2019)*

Written protest is necessary within the 60-day period from receipt of notice of assessment issued by the local treasurer, to avoid the assessment lapse into finality.

Petitioner was assessed by Makati City for deficiency Local Business Tax. Without filing a Protest, petitioner paid the tax and subsequently filed an administrative claim for refund. The City of Makati filed a Motion to Dismiss, arguing that the subject assessments have become final, executory, conclusive, and unappealable for failure of the petitioner to file a protest of the assessment issued.

The Court ruled that in case there is a notice of assessment issued by the local treasurer against a taxpayer, and even when the latter disagrees therewith, still opts to pay the assessed tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties, such taxpayer must still file a written protest within the 60-day period, and then bring the case to court within 30 days, pursuant to Section 195 of the LGC of 1991. There being two (2) notices of assessment issued by respondents, and since petitioner opted to pay the amounts assessed, petitioner should have observed the provisions of Section 195 of the LGC of 1991. Taxpayer failed to protest the subject

tax assessments so they have become final and unappealable and its validity or correctness may no longer be questioned. *(Metro Pacific Tollways Development Corporation v. Makati City and Nelia A. Barlis, in Her Capacity as Incumbent City Treasurer of Makati City, CTA AC No. 191, January 29, 2019)*

The presumption of regularity in the ordinary course of mail is merely disputable.

Petitioner filed a Protest on the ground that BIR did not issue a Final Assessment Notice (FAN) violating its right to due process. Accordingly, the FAN is invalid against Petitioner and should not be enforced.

The Court ruled that the taxpayer should actually receive, even beyond the prescriptive period, the assessment notice, which was timely released, mailed and sent. Thus, the presumption of regularity in the ordinary course of mail is merely disputable, and when the taxpayer-addressee denies the receipt of the disputed assessment, the burden of proof is now shifted to Respondent to present and offer evidence to prove that the same was duly delivered and indeed received by the taxpayer-addressee.

Here, the receipts for registered letters and return receipts presented do not prove themselves so they must be properly authenticated in order to serve as proof of receipt of the letters. Respondent failed to authenticate the identity and authority of the person whose signature appears on the registry return receipt. Clearly, Respondent failed to prove that Assessment Notice had been actually served and received by Petitioner or its duly authorized agent rendering the assessment void. *(Xylem Water Systems International, Inc. (former Gould Pumps [N.Y] Inc.) v. Commissioner of Internal Revenue, CTA No. 8901, January 31, 2019)*

BIR Issuances

RMC 4-2019, January 10, 2019. This circular published the full text of the letter from the FDA containing the "List of VAT-exempt Diabetes, High Cholesterol and Hypertension Drugs" pursuant to JAO No. 2-2018.

This published the full text of the letter from the Food and Drug Administration (FDA) containing the "List of VAT-exempt Diabetes, High Cholesterol and Hypertension Drugs" pursuant to Joint Administrative Order (JAO) No. 2-2018 entitled "Implementing Guidelines on the Value-Added Tax (VAT) Exemption of the Sale of Drugs Prescribed for Diabetes, High-cholesterol and Hypertension under NIRC of 1997, as amended by RA 10963."

RMC 6-2019, January 10, 2019. This Circular clarified the provisions of Sec. 3 of RMC No. 105-2018, more particularly on the filing by the Coal Producers of Excise Tax Declaration.

The producer or collecting agent (in case the producer is exempt) is required to file, via Electronic Filing and Payment System (eFPS), and remit the excise taxes collected from the first buyers or possessors using BIR Form 2200M as prescribed under Revenue Regulations No. L-2002, on or before the 10th day following the close of the month when the sale, transfer or disposition of coal was made. If the producer is exempt from excise tax, it shall act as the collecting agent of the excise tax, which tax is shifted to the first non-exempt buyer of the coal.

The circular further provides that any violation of its provisions shall be subject to the corresponding penalties under Sections 250 and 255 of the NIRC of 1997, as amended, in relation to Revenue Memorandum Order No. 7-2015.

RMC 16-2019, December 6, 2019. This revenue memorandum circular clarified the validity of the certifications of the existence of outstanding tax liabilities and the certification on the status of cases pending legal or judicial resolution of taxpayers claiming VAT refund.

In particular, the specific purpose of satisfying the requirements of claims for VAT refund pursuant to Revenue Memorandum Order (RMO) No. 29-2014, as amended by RMO No. 42-2018, shall be valid for a period of six (6) months. All concerned revenue offices are enjoined to indicate clearly in the Certification to be issued that the

validity of which is six (6) months from the date of issuance. RMO No. 29-2014 which shows validity of one (1) month, must be adjusted every time a request for Certification shall be issued for VAT refund purpose.

RMC 17-2019, January 23, 2019. This revenue memorandum circular prescribed the new BIR Form No. 1701A, in relation to the implementation of the TRAIN Law.

In filing and paying the annual income tax due starting the year 2018, the new return shall be used by individuals earning income purely from business or profession, who are under the graduated income tax rates with Optional Standard Deduction (OSD) as mode of deductions or those who opted to avail of the 8% flat income tax rate.

The taxpayer may file and/or pay through several modes, such as through a Manual Return, Electronic Bureau of Internal Revenue Forms (eBIRForms), or Electronic Filing and Payment System (eFPS). In case the taxpayer has already filed and paid via eFPS for the year 2018 using the old return, he is still required to file the annual income tax return using the new BIR Form No. 1701A and mark the return as an amended return. The taxpayer shall indicate the amount paid and if the computation resulted to a payable, he shall pay the tax due.

RMC 19-2019, January 29, 2019. This revenue memorandum circular prescribes the revised BIR Forms.

The revised BIR Forms are as follows:

BIR Form No.	Form Name
1700 (Annex "A")	Annual Income Tax Return - Individuals Earning Purely Compensation Income (Including Non-Business/Non-Profession Income)
1702-EX (Annex "B")	Annual Income Tax Return - Corporation, Partnership and Other Non-Individual Taxpayer exempt under the Tax Code, as amended [Section 30 and those exempted in Sec. 27 (C), and other special laws, with no other taxable income.
1702-RT (Annex "C")	Annual Income Tax Return - Corporation, Partnership and Other Non-Individual Taxpayer subject only to regular Income Tax Rate
1707 (Annex "D")	Capital Gains Tax Return for Onerous Transfer of Shares of Stock Not Traded Through the Local Stock Exchange

The revised manual returns are already available in the BIR website but the forms are not yet available in the Electronic Filing and Payment System (eFPS) and Electronic Bureau of Internal Revenue Forms (eBIRForms).

The taxpayers who filed using the eFPS or eBIRForms shall use the existing old version available in eFPS and in the Offline eBIRForms Package in filing the said returns, except for BIR Form No. 1700 wherein the manual return shall be used in filing and paying the income tax due thereon.

RMO 3-2019, November 5, 2018. This revenue memorandum created and dropped the ATC on Microfinance NGOs and DST under the TRAIN Law.

This revenue memorandum order created and dropped Alphanumeric Tax Code (ATC) on Microfinance Non-government Organizations (NGOs) and Documentary Stamp tax (DST) in BIR Form 2000-OT under RA 10962, otherwise known as Tax Reform Acceleration and Inclusion (TRAIN) Law.

More particularly, the ATCs created are IC210, DO102, DO125 and DO122. And the ATCs dropped are PT118, DS102, DS125 and DS122.

RMO 4-2019, November 12, 2018. This revenue memorandum order created the Alphanumeric Tax Code (ATC) for selected excise taxes on exports.

It created the Alphanumeric Tax Code (ATC) for selected excise taxes on exports paid through payment form – BIR Form No. 0605, as follows:

ATC	Description	Tax Rate	BIR Form No.
EXA10	Excise Tax on Export of Alcohol	RR No. 3-2008	0605
EXT10	Excise Tax on Export of Tobacco Products		
EXP10	Excise Tax on Export of Petroleum		
EXM10	Excise Tax on Export of Coal and Coke		
EXG10	Excise Tax on Export of Automobiles and Non-Essentials		

RMO 5-2019, December 19, 2019. This revenue memorandum order modified the Alphanumeric Tax Code (ATC) for Compensation Income and for Withholding Tax.

This modified the Alphanumeric Tax Code (ATC) for Compensation Income and for Withholding Taxes under RA 10963, otherwise known as Tax Reform Acceleration and Inclusion (TRAIN) Law. More particularly, it modified BIR Form Nos. 1700, 1701 and 1701Q pursuant to the TRAIN Law, and from withholding taxes and for Integrated Systems (ITS) purposes.

BIR Rulings

BIR Ruling No. 1398-2018, November 19, 2018. To determine that a corporation is a publicly-held, it is necessary to ultimately trace its shareholdings to the individual shareholders of its parent company.

The BIR Ruled that pursuant to BIR Ruling No. 094-2013 dated March 18, 2013, to determine that a corporation is a publicly-held, it is necessary to ultimately trace its shareholdings to the individual shareholders of its parent company. The BIR holds that UPSSC is exempt from the imposition of IAET even if not directly owned by Unisys Corporation. Considering that UHC owns 100% of the shares of UPSSC, and that since ownership of UHC is ultimately traced to Unisys Corporation, a corporation where at least 50% of the outstanding capital stock or total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by more than twenty (20) individuals the corporation is considered publicly-held corporation.

BIR Ruling No. 1421-2018, December 7, 2018. Joint ventures involving foreign contractors may also be treated as a nontaxable corporation only if the member foreign contractor is covered by a special license as contractor by the PCAB of the DTI; and the construction project is certified by the appropriate Tendering Agency.

Joint ventures involving foreign contractors may also be treated as a nontaxable corporation only if the member foreign contractor is covered by a special license as contractor by the Philippine Contractors Accreditation Board (PCAB) of the DTI; and the construction project is certified by the appropriate Tendering Agency (government office) that the project is a foreign financed/internationally-funded project and that international bidding is allowed under the Bilateral Agreement entered into by and between the Philippine Government and the foreign/international financing institution pursuant to the implementing rules and regulations of Republic Act No. 4566 otherwise known as Contractor's License Law".

BIR Ruling No. 1451-2018, December 21, 2018. All real property owned or acquired by a taxpayer engaged in the real estate business are classified as ordinary asset. The classification of a particular real property as being capital or ordinary asset does not depend upon its actual use or the purpose for its acquisition, but on the nature of the business of its registered owner.

The Articles of Incorporation and Audited Financial Statement as of December 31, 2017 of Spencers Landholdings, Inc. reveal that it is engaged in the real estate business. In as much as the subject property is owned by a corporation engaged in the real estate business, the same must be classified as ordinary asset. Therefore, its sale shall be subject to the 12% VAT and corresponding CWT.

BSP Issuances

BSP Circular No. 1029, January 25, 2019. This circular amends the reporting templates on Bank Loans and Deposits Interest Rates.

The Monetary Board, in its Resolution No. 50 dated 10 January 2019, approved the revised reporting templates on interest rates of deposits and loans covering Universal Banks and Commercial Banks (UBs/KBs). The enhanced and simplified reporting templates seek to capture relevant granularity for effective monitoring and transparency requirement.

The following should be noted:

1. Subsection 1192.13 (a) of the Manual of Regulations for Banks (MORB) is amended to reflect the enhancement of the reporting template on bank interest rates on loans and deposits.

2. Appendix 6 of the MORB is amended to reflect the simplified reporting framework, including the revised frequency of submission of reports on bank interest rates on loans and deposits. The equivalent reports for Thrift Banks in Appendix 6 of the MORB are deleted.

3. The revised reporting templates covering amendments to the reporting templates on bank loans and deposit interest rates were also provided.

4. The transitory period will be from 01-28 February 2019 and the actual implementation shall commence on 01 March 2019.

BSP Circular Letter No. 2019-002, January 14, 2019. This circular published the circular letter for AMLC issued guidelines relative to digitization of customer records and identification of beneficial owner.

The Bangko Sentral ng Pilipinas (BSP) published this circular letter for information and compliance that the AMLC issued guidelines relative to digitization of customer records and identification of beneficial owner.

Section 3 of the AMLC Resolution No. 149 (Guidelines of Customers Records) provides the specific duties of covered persons which BSFIs should observe in digitizing its customer records and ensuring the security and integrity of the customers' record database. It also provided timelines for updating the Money Laundering and Terrorist Financing Prevention Program (MTPP) of covered persons, digitizing of customer records that the covered person will receive, create or open, and completely digitizing all existing customer records and establish the required database. Non-compliance with the Guidelines shall be considered grave violation under the AMLC's Rules on Imposition of Administrative Sanctions (RIAS).

BSP Memorandum No. 2019-001, January 3, 2019. This memorandum published for guidance and strict compliance, that pursuant to BSP Circular No. 980, BSP-supervised financial institutions (BSFIs) shall meet the listed requirements not later than 31 March 2019.

The Bangko Sentral ng Pilipinas (BSP) published this memorandum for guidance and strict compliance that pursuant to BSP Circular No. 980 dated 06 November 2017, BSP-supervised financial institutions (BSFIs) shall meet the following requirements not later than 31 March 2019:

Establish effective mechanisms to ensure that all frontline personnel at the BSFI's offices (e.g. head office, branches, OBOs) possess adequate information about PESONet and InstaPayto properly apprise the BSFI's customers and pubic regarding these fund transfer facilities and services;

Post materials containing pertinent information about PESONet and InstaPay in the premises of its offices and on the BSFI's website to enable its customers to have sufficient knowledge about these fund transfer facilities; and

Provide with prominent visibility in the BSFI's website the links to the PESONet and InstaPay websites that will be maintained or directed by the Philippine Payments Management, Inc. (PPMI)

BSFIs shall submit to the PPMI not later than 31 January 2019 the action/s they have taken or to be taken to comply with the foregoing requirements.

BSP Memorandum No. 2019-002, January 23, 2019. This memorandum is published to inform and guide the financial community as to the local and global developments in the adoption of the international standards on messaging and communication of retail and large-value payments and settlements systems.

The BSP highly encourages the financial community to move towards the adoption of ISO 20022 in their infrastructure connecting to various retail payment systems and PhilPaSS, to increase efficiency and interoperability among domestic as well as global payments and settlement system. The BSP encourages early action on or before the target soft launch of the new PhilPaSS in the 4th quarter of year 2020.

SEC Issuances

SEC Memorandum Circular No. 1 series of 2019, January 10, 2019. This memorandum circular adopted measures in the filing of annual reports such as the Audited Financial Statements (AFS) and the General Information Sheet (GIS).

All corporations, including branch offices, representative offices, regional headquarters and regional operating headquarters of foreign corporations, shall file their AFS depending on the last numerical digit of their SEC registration or license number in accordance with the following schedule:

April 22-26	1 and 2
April 29-30, May 2-3	3 and 4
May 6-10	5 and 6
May 20-24	7 and 8
May 27-31	9 and 0

All corporations may file their AFS regardless of the last numerical digit of their registration or license number on or before the first day stated in the above coding schedule. Late filings or filing after respective due dates shall be accepted starting June 3, 2019 and shall be subject to the prescribed penalties which shall be computed from the date of the last filing stated above.

The above filing schedule shall not apply to the following corporations:

a. Those whose fiscal year ends on a date other than December 31, 2018 shall file their AFS within 120 calendar days from the end of their fiscal years.

b. Those whose securities are listed on the PSE and those whose securities are registered but not listed in PSE, and public companies covered under Sec. 17.2 of the SRC.

c. Those whose AFS are being audited by the COA

SEC-OGC Opinion No.18-24, December 20, 2018. This opinion pertains to the compliance by the participating corporations as regards to the terms of its proposed ownership structure under its Bidding Agreement, in connection with Section 10.1(b) of NTC Memorandum Circular 09-09-2018 or the Rules and Regulations on the Selection Process for a New Major Player (NMP) in the Philippine Telecommunications Market (NTC Bidding Rules).

To determine the nationality of a corporation, the Control Test and the Grandfather Rule may be used. The Control Test states that shares belonging to corporations at least 60% of the capital of which is owned by Filipino Citizens shall be considered as of Philippine Nationality. There is no need to further trace the ownership of 60% (or more) Filipino stockholdings of an investing corporation since a corporation which is at least 60% Filipino-owned is already considered as Filipino. The Grandfather Rule is a method by which the Filipino ownership of the investing corporation and the investee corporation is combined to determine the percentage of Filipino ownership; it attributes the nationality of the second or subsequent tier of ownership to determine the nationality of the corporate shareholder. It is applicable only when the 60-40 Filipino-foreign equity ownership is in doubt.

Udenna was declared as compliant with the requirement as it is considered as a Philippine National since all of its stockholders are Filipino citizens, and its 70% shareholding in Chelsea should be considered as Filipino. Chelsea, using the Control Test, was determined to be in compliance with the Nationality Requirement and its 24.88% shareholding in Mislatel should be considered as Filipino. The other shareholders of Mislatel, which refers to its current stockholders, collectively, were declared as of Philippine Nationality. Finally, Mislatel, using both the Control Test and the Grandfather Rule, was held as Philippine National. Consequently, the proposed ownership structure in the Bidding Agreement is compliant with the foreign ownership limitation for NMPs.

SEC Admin. Case No. 05-17-426, December 20, 2018. This pertains to a denial by the Commission's Company Registration and Monitoring Department (CRMD) of Company's reservation of the corporate name for being identical or confusingly similar to corporate name, which has since been revoked for non-compliance with reportorial requirements.

This decision pertains to a denial by the Commission's Company Registration and Monitoring Department (CRMD) of TH COFFEE'S reservation of the corporate name "TIM HORTONS PHILIPPINES, INC." for being identical or confusingly similar to TIM HORTONS, INC. (THI), a name which has since been revoked for non-compliance with reportorial requirements.

To establish a right over a corporate name such that the CRMD may validly deny reservation and/or registration, two requisites must be satisfied. First, the complainant corporation acquired a prior right over the use of such corporate name. Second, the proposed name is either identical, deceptively or confusingly similar to that if any existing corporation or to any other name already protected by law, or patently deceptive, confusing or contrary to existing law.

The SEC, in accordance with the Consolidated Guidelines and Procedures on the Use of Corporate and Partnership Names, allowed TH COFFEE's reservation and/or registration of the proposed name "TIM HORTONS PHILIPPINES, INC." as its new corporate name since it was noted that THI has been revoked for more than six years and before that, it was in continuous non-operation for several years. On the other hand, TH COFFEE is still operating and has shown that it has a right over the trademark TIM HORTONS as sole franchisee of THISA. In other words, there is only one TIM HORTONS operating today.

SEC Admin. Case No. 06-15-176, January 24, 2019. This decision pertains to a Petition for Revocation of the Certificate of Incorporation (COI) filed by the Enforcement and Investor Protection Department (EIPD) against Singfil Hydro Builders Corporation (Singfil). It was raised that there was fraud in the procurement of Singfil's COI and is thus revocable, since two incorporators were not present at the time the document was acknowledged by the notary public.

The notarization of the Articles of Incorporation is a formal requirement. In order that the Certificate of Registration be revoked, the fraud employed in procuring the same must be contained in or in connection with the documents and/or papers submitted to the Commission. Aside from the fact of absence of two incorporators during the notarization, EIPD failed to adduce any evidence to indicate that Singfil made any untrue or falsified

any information in the AOI, or has misled the Commission to believe a fact to be true which had the Commission known would result to the denial of the issuance of a COI. Such absence during the notarization is a mere formal defect. The remedy is to order the amendment of the document to comply with the prescribed form. Only when the corporation has failed to do so within a reasonable time may the Commission reject or disapprove the AOI.

SEC Admin. Case No. 05-13-290, January 24, 2019. This En Banc decision pertains to the Order of the Commission's Office of the General Counsel (OGC) directing Microtel Global Solutions, Inc. (MICROTEL GLOBAL) to change its corporate name for being confusingly similar to that of Microtel Inns and Suites (Pilipinas), Inc. (MICROTEL INNS) which has a prior right to use such name.

It was held that MICROTEL INNS had prior right to use the corporate name over MIICROTEL GLOBAL and that there was a likelihood of confusion between the two businesses since it is possible that the public may be misled into thinking that MICROTEL INNS, being engaged in the hotel and tourism-related businesses and having an international brand, has expanded its business in the same field as MICROTEL GLOBAL, considering the services that the latter provides are necessary in the former. Finally, MICROTEL GLOBAL was not allowed to use the word "MICROTEL" in its corporate name since MICROTEL INNS did not give its consent to use the unique word "Microtel" was not given by the latter to the former, in relation to the SEC Memorandum Circular No. 17-2017 which requires the consent of the prior registrant to use a unique name.

Articles Written

Business Mirror: Tax Law for Business

Tax Amnesty of 2019

By: Irwin C. Nidea Jr.

Amnesty is here. It has been a long wait by many who are hoping that by availing themselves of it, they will have a fresh start. Unfortunately, not everyone will have an opportunity to have a clean slate on their tax liabilities from 2017 and prior years, since some provisions of the amnesty law has been vetoed by the President. As a consequence, only the following persons will have the privilege to be forgiven for their tax sins:

Delinquent taxpayer who must pay 40 percent or 50 percent of the basic tax due—A delinquent taxpayer has a final and executory tax assessment that is due. He should pay 40 percent of the tax due to avail himself of the amnesty. What about those that are pending at the Court of Tax Appeals where the assessment is final but the right of the Bureau of Internal Revenue (BIR) to collect is being questioned? It is final but is not yet executory. Thus, he cannot avail himself of the tax amnesty as a delinquent taxpayer. But on tax cases that have become final and executory, by judgment of the court, the taxpayer must pay 50 percent of the basic tax due.

Taxpayers with pending criminal cases who must pay 60 percent of the basic tax due—This includes cases that are pending before the Department of Justice and the courts. Possible criminal liabilities will be extinguished upon payment of the amnesty tax.

Withholding Agents who withheld taxes but failed to remit the same must pay 100 percent of the basic tax assessed.

Estate Tax—A one-time declaration and settlement of estate taxes and properties that are in the name of prior decedents or donors whose estates remain unsettled has been vetoed by the President. Thus, a 6-percent estate amnesty tax must be paid in every succession transfer. For
example, the taxpayer has to pay 6-percent estate amnesty tax to transfer his great grandfather's estate to his grandfather. The taxpayer has to pay another 6-percent estate amnesty tax to transfer his grandfather's estate to his father.

The President also vetoed the presumption of correctness of the estate tax amnesty returns. According to the President, the valuation of properties that will be transferred is a technical aspect that cannot be left to mere self-declaration. He also said that an erroneous valuation not only impacts the revenue for the current estate but will also carry over to the subsequent transfer of the property regardless if it will be through sale, donation or succession.

All others who are not enumerated above will have to wait for another amnesty law to pass. Why did the President veto the general amnesty law where taxpayers who are not delinquent or who do not have criminal cases will have the opportunity to have a clean slate with the BIR? Under the proposed law, a taxpayer will be granted a general amnesty for all his tax liabilities from year 2017 and prior years by paying 2 percent of his total assets or 5 percent of his total net worth. The President explained that the original objective of the general tax amnesty will not be achieved under the proposed law. He took exception to the failure of Congress to pass the waiver of bank secrecy law when a taxpayer avails himself of general tax amnesty. He said that this must be passed so that the country can comply with the international standards on exchange of information for tax purposes. Waiver of bank secrecy is a safeguard against those who abuse the amnesty by declaring an untruthful asset or net worth. He also cited the government's experience with the 2006 tax amnesty where it was proven that without the safeguard of the waiver of bank deposit, the objective of a general tax amnesty will not be achieved.

The President is not close to the idea that a general amnesty is passed as long as the waiver of bank secrecy for fraud is passed with it. It will be a long shot since the waiver of bank secrecy was already in the original proposal. It has been struck down by Congress.

Many have been disheartened with the veto of the general amnesty because it means that their sleepless nights in dealing with the BIR are not yet over. Taxpayers will have to dig into their files to defend themselves against tax assessments that may cover year 2017 and prior years.

Amnesty is not here for all.

BDB Law's "Tax Law for Business" appears in the opinion section of Business Mirror every Thursday.

Our Experts

If you have any comments or questions concerning the contents of this issue of Insights, you may contact any of our experts

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