# TAX Insights

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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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# COURT OF TAX APPEALS

## DECISION HIGHLIGHTS

# UPDATES

- **The TRAIN Law introduced the following amendments: (1) the rate of interest for deficiency and/ or delinquency was reduced to 12%; (2) the running of the period for the computation of deficiency interest starts from the date prescribed for its payment until either full payment thereof or upon issuance of notice or demand by the CIR, whichever comes earlier; (3) the simultaneous imposition of deficiency and delinquency interests is effectively eliminated.** *(Solid Video Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9051, May 2, 2019)*

- **The use of the word "or" in the third requisite that "the articles, materials or supplies should not be locally available in reasonable quantity, quality or price" connotes alternative, not cumulative qualification for the determination whether there is locally available Jet A-1 fuel.** *(Commissioner of Customs and Commissioner of Internal Revenue vs. Air Philippines Corporation, CTA EB No 1704 and 1707 (CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521, & 7566), May 2, 2019)*

- **Belated filing of a Petition for Review to question the implied denial of a claim for refund or issuance of TCC within the 120/30-day prescriptive period is fatal to a judicial claim for refund.** *(Lapanday Foods Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9938, May 2, 2019)*

- **DST may be imposed on advances to related parties based on Notes to the Audited Financial Statements because DST is a tax on the transaction rather than a document.** *(San Miguel Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9374, May 3, 2019)*

- **There is no obligation on the part of the buyer to withhold taxes in cases of sale of foreclosed property from the local government unit which foreclosed the same for non-payment of real property taxes.** *(Commissioner of Internal Revenue vs. Conal Holdings Corporation, CTA EB No. 1732 (CTA Case No. 9099) May 3, 2019)*

- **The BIR's power to abate tax liability is discretionary in nature and is limited to the instances specified under the law. Continuous heavy losses cannot be treated as falling under the category of a tax being "unjustly" assessed.** *(Lepanto Consolidated Mining Company vs. Commissioner of Internal Revenue, CTA EB Case No. 1720 (CTA Case No. 8889), May 3, 2019)*

- **Sending of PAN to a Taxpayer to inform it of the assessment made is part of the due process requirement in the issuance of a deficiency tax assessment, the absence of which renders nugatory any assessment by the BIR.** *(Mindanao Sanitarium & Hospital College Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8673, May 6, 2019)*

- **An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.** *(People of the Philippines vs. Bernardo Anacta y Basada, CTA Crim. Case No. O-415, May 6, 2019)*

- **In order that a shipment be held liable to forfeiture, it must be proven that fraud has been committed by the importer/consignee to evade payment of the duties due.** *(National Grid Corporation of the Philippines vs. Commissioner of Customs and the District Collector, NAIA Customs Collection District, CTA EB No. 1574 (CTA Case No. 8663), May 7, 2019)*

- **Without a validly issued LOA, a revenue officer has no authority to conduct a tax investigation and any assessment issued on the basis thereof is null and void.** *(Commissioner of Internal Revenue vs. Sugar Crafts, Inc., CTA EB No. 1757 (CTA Case No. 8738), May 7, 2019)*

- **All violations of any provision of the Tax Code shall prescribe after five (5) years counted from the day of the commission of the violation of the law, and if the same is not known at the time, from the discovery thereof and the institution of judicial proceedings for investigation and punishment** *(People of the Philippines vs. Ulysses Palconet Consebido CTA Crim. Cases Nos. O-699 and O-701, May 7, 2019)*

- **For purposes of computing the deficiency and delinquency interest, it is the Final Decision on Disputed Assessment (FDDA), and not the Final Letter of Demand (FLD), which should be considered as the "notice and demand by the CIR."** *(Commissioner of Internal Revenue vs. Total (Philippines) Corporation, CTA EB Case No. 1616 (CTA Case No. 8479) and Total (Philippines) Corporation v. Commissioner of Internal Revenue, CTA EB Case No. 1621 (CTA Case No. 8479), May 10, 2019)*

- **The filing of the taxpayer's administrative claim for refund with the CIR after the COC failed to act on the protests is procedurally appropriate considering that it is within the CIR's power to refund internal revenue taxes.** *(Commissioner of Internal Revenue vs. Philippine Airlines, Inc., CTA EB Case No. 1752 (CTA Case No. 8143) and Commissioner of Customs vs. Philippine Airlines, Inc., CTA EB Case No. 1756 (CTA Case No. 8143), May 10, 2019)*

- **Any input tax evidenced by a VAT invoice or official receipt shall be creditable against the output tax on the purchase of services on which a value-added tax has been actually paid. The law includes purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed, and is not limited to those intended to form part of a finished product for sale or to be used in the chain of production. So long as the input VAT being claimed are evidenced by the pertinent documents, the same input VAT is creditable against the output VAT.** *(Commissioner of Internal Revenue vs. CBK Power Company, Limited, CTA EB Case No. 1791 (CTA Case No. 7887), May 14, 2019)*

- **Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case.** *(Department of Energy vs. Commissioner of Internal Revenue, CTA Case No. 9596, May 16, 2019)*

- **Any reassignment or transfer of cases to another Revenue Officer or revalidation of an expired Letter of Authority (LOA) shall require the issuance of a new LOA.** *(Commissioner of Internal Revenue vs. Ryan Neil Erasmo Valdez, CTA OC No. 020, May 17, 2019)*

- **The recourse of a taxpayer who paid input VAT, notwithstanding that it is subject to VAT at zero percent rate, is against the seller who shifted to it the output VAT and not against the government.** *(Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA EB Case No. 1711 (CTA Case No. 8680) and Commissioner of Internal Revenue vs. Taganito Mining Corporation, CTA EB Case No. 1719 (CTA Case No. 8680), May 20, 2019)*

- **The requirements of the law and the rules on waivers and final assessment notices must be complied with, otherwise, the waiver or the FAN, as the case may be, shall be invalid and without any legal consequence.** *(Commissioner of Internal Revenue vs. 2100 Customs Brokers, Inc., CTA EB No. 1729 (CTA Case No. 8972), May 20, 2019)*

- **Good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax laws are sufficient justification to delete the imposition of surcharges and interest.** *(E.E. Black Ltd. – Philippine Branch vs. Commissioner of Internal Revenue, CTA EB Case No. 1611 (CTA Case No. 8719), May 20, 2019)*

- **Property owned by the Philippine government and the fruits thereof, i.e. the dividends and interest earned from respondent's money placements are beyond the ambit of the City's taxing power on the strength of Section 133(o) of the LGC.** *(City of Davao vs. Arc Investors, Inc. (CTA EB No. 1705 (CTA AC No. 153), May 21, 2019)*

- **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.** *(Builders Steel Corporation CTA Case No. 9050, May 27, 2019)*

- **Proof of actual remittance is not needed in order to prove withholding and remittance of taxes. Proof of remittance is the responsibility of the withholding agent and not the taxpayer-refund claimant.** *(McKinsey Co. vs. Commissioner of Internal Revenue, CTA Case No. 9332, May 28, 2019)*

- **Submission of Confirmation Letter issued by PEZA itself is sufficient to prove the entitlement of taxpayer's clients to VAT zero-rating.** *(Colt Commercial Inc. v. Commissioner of Internal Revenue, CTA Case No. 9539, May 28, 2019)*

- **A valid Letter of Authority must be issued to legally examine or audit a taxpayer's books of account or other accounting record.** *(Commissioner of Internal Revenue v. Admorlina L. Fontejon CTA EB Case No. 1813 (CTA Case No. 9314), May 28, 2019)*

- **Tax assessments, which came about as a result of the examination of the taxpayer's books of accounts and accounting records by a revenue officer who is not authorized through a Letter of Authority, are void.** *(Commissioner of Internal Revenue v. Capitol Steel Corporation CTA EB Case No. 1796 (CTA Case No. 9240), May 28, 2019)*

- **A certification that a taxpayer did not file her ITR by herself is not enough to prove that the failure to file the ITR is willful warranting conviction for Tax Evasion.** *(People of the Philippines v. David, CTA Crim Case No. 0-656, May 29, 2019)*

- **All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, shall be administratively settled or adjudicated, by the Secretary of Justice or the Solicitor General, depending on the question involved therein, and whether the latter officer is the principal law officer or general counsel of the government offices involved, as the case may be.** *(Duty Free Philippines Corp. v. BIR, CTA Case No. 9548, May 30, 2019)*

- **The imposition of deficiency interest applies to all internal revenue taxes imposed by the present Tax Code.** *(Hotel Specialist, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9349, May 30, 2019)*

- **A certificate of compliance is not a mere procedural requirement under EPIRA Law. It is determinative whether the taxpayer is entitled to its claim for tax refund.** *(Hector Sabangan Inc. v. Commissioner of Internal Revenue, CTA Case No. 9276, May 30, 2019)*

- **When one of the parties in a loan transaction is a bank, the presumption is that the bank is the one directly liable for the payment and remittance of the DST.** *(Bank of the Philippine Islands v. CIR, CTA Case No. 9692, May 31, 2019)*

- **Income from PAGCOR's related services, which include junket operations, is not subject to the provisions of Section 13(2)(b) of PD 1869 but Section 14(5) of the same law, hence subject to corporate income tax.** *(Prime Investments Korea, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9573, May 31, 2019)*

***The TRAIN Law introduced the following amendments: (1) the rate of interest for deficiency and/ or delinquency was reduced to 12%; (2) the running of the period for the computation of deficiency interest starts from the date prescribed for its payment until either full payment thereof or upon issuance of notice or demand by the CIR, whichever comes earlier; (3) the simultaneous imposition of deficiency and delinquency interests is effectively eliminated.***

The taxpayer alleged that the court erred in its computation of the applicable interest and surcharge. The taxpayer posits that the 40% interest rate on the deficiency taxes partake of the nature of an imposition that is penal, rather than compensatory and is clearly excessive and unconscionable. The taxpayer further believes that the provisions of the TRAIN Law should be applied as to the interest rate since the TRAIN Law was already in effect when the decision was promulgated.

The CTA held that the interest rate used in the decision, i.e, (a) 20% deficiency interest rate from the date prescribed for its payment until December 31, 2017; (b) 20% delinquency interest from May 16, 2015 until December 31, 2017; and (c) 12% delinquency interest from January 1, 2018 until full payment thereof, was correct and is in consonance with the Tax Code, as amended by the TRAIN Law.

The CTA ruled that it is clear from the transitory provision of the TRAIN Law that, in cases where the deficiency taxes became due before the effectivity of the TRAIN Law on January 1, 2018 and the full payment thereof will only be accomplished after the said effectivity date, the interest rate of 20% shall be applied for the period up to December 31, 2017 while the interest rate of 12% shall be applied for the period January 1, 2018 until full payment thereof. The simultaneous imposition of deficiency and delinquency interest under Section 249 prior to its amendment will still apply in so far as the period between the date prescribed for payment until December 31, 2017. ***(Solid Video Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9051, May 2, 2019)***

***The use of the word "or" in the third requisite that "the articles, materials or supplies should not be locally available in reasonable quantity, quality or price" connotes alternative, not cumulative qualification for the determination whether there is locally available Jet A-1 fuel.***

The taxpayer's franchise under RA 8339 provides that in the event that any competing person enjoys tax privileges which tend to place the grantee at any disadvantage, then such provision shall be deemed ipso facto part hereof and shall operate equally in favour of the grantee. Thus, just like Philippine Airlines, the taxpayer may be exempted from excise taxes on importation of Jet A-1 fuel subject to the following conditions: (1) The basic corporate income tax or franchise/ tax, whichever is lower, must be paid, under the conditions set forth in [Section 13 of PD No. 1590]; (2) The articles, materials or supplies imported should be for its use in its transport and non-transport operations and other activities incidental thereto; and (3) The articles, materials or supplies should not be locally available in reasonable quantity, quality or price.

The importations of the taxpayer were supported by the Air Transport Office ("ATO") to the effect that the imported Jet A-1 fuel were not locally available in reasonable quantity, quality and price and it was necessary/incidental for the business operation of the taxpayer. Under RA 9497, the ATO has competence to issue certifications pertaining to the availability of supply of aviation fuel.

The use of the word "or" in the third requisite connotes alternative, not cumulative qualification for the determination whether there is locally available Jet A-1 fuel. Thus, it was sufficient that the taxpayer to prove one qualification to avail of the exemption, i.e., that at the time of the subject importations there was no locally available Jet A-1 fuel in reasonable quantity. ***(Commissioner of Customs and Commissioner of Internal Revenue vs. Air Philippines Corporation, CTA EB No 1704 and 1707 (CTA Case Nos. 7252, 7362, 7383, 7445, 7494, 7517, 7521, & 7566), May 2, 2019)***

***Belated filing of a Petition for Review to question the implied denial of a claim for refund or issuance of TCC within the 120/30-day prescriptive period is fatal to a judicial claim for refund.***

The BIR alleged that the taxpayer filed the administrative claim for refund on September 23, 2008. Counting 120 days after filling of the administrative claim with the respondent and 30 days after the respondent's denial by inaction, the last day for filling of the judicial claim with the CTA, is on February 20, 2009. Respondent further argues that Petitioner filed the judicial claim only on September 28, 2018, thus, the CTA can no longer exercise jurisdiction on the Petition as this was allegedly filed out of time.

The taxpayer opposed the motion on the ground that it was entitled to a refund or tax credit of its excess input tax credit and the judicial claim was timely filed and has not prescribed. The taxpayer alleged that it filed the application for issuance of tax credit certificate on September 23, 2008 but it received a letter denying said application only on August 31, 2018. Hence the petition filed on September 28, 2018, according to the taxpayer, was timely filed.

The CTA ruled in favour of the BIR and held that the 120/30 day prescriptive periods are mandatory and are not mere technical requirements. Under the Tax Code, the failure on the part of the BIR to act on the application is deemed a denial and the taxpayer has 30 days to appeal therefrom. Thus, the filing of the Petition for Review more than 9 years after the prescribed period did not confer jurisdiction before the CTA. ***(Lapanday Foods Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9938, May 2, 2019)***

***DST may be imposed on advances to related parties based on Notes to the Audited Financial Statements because DST is a tax on the transaction rather than a document.***

The BIR assessed the taxpayer with deficiency DST, among others, stating that it did not pay the DST on the loan transactions with related parties. In 2014, the taxpayer paid the assessed deficiency DST and later on filed a claim for refund before the BIR and the CTA.

The taxpayer alleged that the ruling in the Filinvest case stating that documents were not necessary for the imposition of the DST should not be given retroactive effect to the prejudice of the taxpayer which merely relied on previous rules and rulings. The BIR insisted that the Filinvest case was merely an affirmation of its view that intercompany loans and advances covered by mere office memo and vouchers qualify as loan agreements that are subject to DST.

The CTA ruled in favour of the BIR and denied the application for refund stating that the Filinvest case was not a reversal of an old doctrine and the adoption of a new one but merely an interpretation made by the Supreme Court which attaches to the law from the time of its enactment, thus may be given retroactive effect. Furthermore, the Court ruled that the taxpayer has admitted the existence of the loan when it stated in its Reply to the PAN that these were evidenced by board resolutions and cash vouchers. ***(San Miguel Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9374, May 3, 2019)***

***There is no obligation on the part of the buyer to withhold taxes in cases of sale of foreclosed property from the local government unit which foreclosed the same for non-payment of real property taxes.***

In 2014, the taxpayer received a PAN which alleged that it was liable for deficiency CGT and DST in connection with the purchase of buildings, machineries, and equipment collectively known as the "Iligan Power Plants" from the City of Iligan which foreclosed said property for non-payment of real property taxes. Later, the taxpayer would receive an amended PAN which cancelled the assessment for deficiency CGT and DST but assessed the taxpayer with deficiency EWT.

The CTA Division ruled in favour of the taxpayer and the CTA En Banc affirmed the same. The CTA En Banc held that the City Government of Iligan was simply exercising its governmental functions when it sold the power plants to the taxpayer because it was for the purpose of recovering the real property taxes due to it and to increase the supply of electricity to the area, in addition to the obvious reason that the city was not habitually engaged in the business of operating power plants.

Section 2.57.5(A) of RR No. 2-98 clearly states that income payments made to the national government and its instrumentalities including provincial, city, or municipal governments and barangays are not subject to the withholding of creditable withholding tax. ***(Commissioner of Internal Revenue vs. Conal Holdings Corporation, CTA EB No. 1732 (CTA Case No. 9099) May 3, 2019)***

***The BIR's power to abate tax liability is discretionary in nature and is limited to the instances specified under the law. Continuous heavy losses cannot be treated as falling under the category of a tax being "unjustly" assessed.***

The taxpayer filed its Quarterly Excise Tax Returns for the 3rd and 4th quarters of both 2008 and 2009 as well as the 1st quarter of 2010 but failed to remit the taxes due thereon due to financial losses. The taxpayer therefore requested that it be allowed to pay the corresponding excise taxes through a proposed program, which it did. Subsequently it filed an application for abatement of surcharge and compromise penalties on the ground of "continuous heavy losses for the last 3 years."

In 2014, the BIR denied the applications for abatement for lack of legal basis and demanded the payment of the penalties within 10 days from notice. Rather than paying the penalties, the taxpayer filed a protest. Thereafter, the taxpayer

filed a Petition for Review before the CTA in order to compel the BIR to abate the said penalties. However, the CTA denied the same.

The CTA En Banc affirmed the decision of the CTA Division. The CTA En Banc stated that the power to abate tax liability is discretionary on the part of the BIR since the Tax Code used the word "may". In addition, "continuous heavy losses" is not one of the instances under the Tax Code when the BIR may exercise its power to abate tax liability. The provision of RR No. 13-2001 which provides that "continuous heavy losses incurred by the taxpayer for the last two (2) years" is an instance where penalties on the taxpayer may be abated or cancelled is void because it is inconsistent with the law it seeks to implement. ***(Lepanto Consolidated Mining Company vs. Commissioner of Internal Revenue, CTA EB Case No. 1720 (CTA Case No. 8889), May 3, 2019)***

***Sending of PAN to a Taxpayer to inform it of the assessment made is part of the due process requirement in the issuance of a deficiency tax assessment, the absence of which renders nugatory any assessment by BIR.***

Taxpayer was assessed by the BIR of all of its internal revenue taxes. However, the taxpayer contended that it did not receive a PAN from the BIR, hence, the assessment was void.

The CTA has held that the issuance of PAN must be made in order for the taxpayer to be informed that it is liable for deficiency taxes. It is a substantive, not merely a formal, requirement because the taxpayer should be able to present its case and adduce supporting documents observing its right to due process. Hence, failure to send the PAN stating the facts and the law on which the assessment was made renders the assessment made by BIR void.

In this case, instead of sending the PAN to the taxpayer, BIR sent the PAN to a different entity. Taxpayer was not able to present its case and adduce sufficient evidence to rebut the assessment against it. Hence, the taxpayer was not afforded its right to due process. ***(Mindanao Sanitarium & Hospital College Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8673, May 6, 2019)***

***An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.***

Taxpayer-Accused is criminally prosecuted for tax evasion. Allegedly, he substantially understated his reported income by 552%. In his defense, the accused stated that the difference in income represents the percentage paid to his talents.

The CTA has held that to sustain a conviction for failure to supply correct and accurate information in the return, the following elements must be established by the prosecution beyond reasonable doubt: (1) Accused is required under the Tax Code or its rules and regulations to supply correct and accurate information in the return; (2) accused failed to supply correct and accurate information at

the time required by law, rules or regulations; and (3) That such failure to supply correct and accurate information is done willfully.

Here, the Prosecution failed to prove the elements beyond reasonable doubt because the evidence presented in this case raises doubt and confusion as to whether the accused supplied incorrect and inaccurate information in his ITR. It appears that both Taxpayer-Accused and its talents record the same transaction in a different manner and it is not clear whether the accused incorrectly recorded these transactions. Hence, the Court finds that the prosecution was not able to prove beyond reasonable doubt that the accused failed to supply the correct and accurate information in his ITR filed for taxable year 2009.

Also, the Taxpayer-Accused was acquitted without civil liability because the BIR failed to issue a valid assessment. The FAN it issued does not indicate the definite date and actual demand to pay. ***(People of the Philippines vs. Bernardo Anacta y Basada, CTA Crim. Case No. O-415, May 6, 2019)***

***In order that a shipment be held liable to forfeiture, it must be proven that fraud has been committed by the importer/consignee to evade payment of the duties due.***

The District Collector (DC) issued a warrant of seizure and detention regarding the shipment of the Importer-Consignee due to the fact that the shipment contained shipping labels and documents with a different named consignee. During the ocular and physical inspection, the shipping labels attached to the shipment appeared to have been tampered as they contained an additional label which was not existing before when the said shipment arrived at the Customhouse apparently to make it appear that the same belongs to the Importer-Consignee. Subsequently, the Commissioner of Customs (COC) forfeited the shipment due to fraud. Hence, the Importer-Consignee contends before the CTA that the difference in consignee in the shipment was only an inadvertent error in labelling the subject shipments and not an intentional wrongful declaration by the shipper for purposes of evading payment of any tax due.

The CTA has held that in order that a shipment be held liable to forfeiture, it must be proven that fraud has been committed by the importer/consignee to evade payment of the duties due. The burden of proof is on the part of COC who ordered the forfeiture of the subject shipments.

Here, COC has proven that there were circumstantial evidence that concludes that the shipments were not really consigned to the Importer-Consignee, to wit: First, the contract between the supplier and the Importer-Consignee was executed and signed subsequent to the shipment date; and second, the Importer-Consignee intended to use its tax and duty exempt privilege endorsement made exclusively in its favor to another entity that would only lead to the conclusion that it intended to use such privilege over the shipment.

In effect, the supplier would clearly benefit from such tax-exempt privilege which is exclusive to the Importer-Consignee over articles that are not really consigned to, nor really intended in its favor, thereby evading the taxes and duties legally due to the government. Therefore, the shipment should be forfeited. ***(National Grid Corporation of the Philippines vs. Commissioner of Customs and the District Collector, NAIA Customs Collection District, CTA EB No. 1574 (CTA Case No. 8663), May 7, 2019)***

***Without a validly issued LOA, a revenue officer has no authority to conduct a tax investigation and any assessment issued on the basis thereof is null and void.***

On August 3, 2010, taxpayer received LOA No. 32527 signed by the Assistant Regional Director authorizing RO Cruz and GS Amatorio to examine taxpayer's books of accounts and other records for all internal revenue taxes for year 2009. In November 2010, taxpayer received another LOA stating that the previously issued LOA was converted to an electronic LOA. Thereafter, a Memorandum of Assignment signed by the RDO authorized RO Sunga and GS Cabel to continue the audit and investigation of the taxpayer pursuant to LOA No. 32527 and to replace the previously assigned officers who were reassigned. On the basis of the MOA, RO Sunga conducted his audit and thereafter, recommended the issuance of the PAN and Assessment Notice with FLD.

The taxpayer elevated the case to the CTA alleging that the assessment was void because RO Sunga and GO Cabel was not authorized by a valid LOA. The Court in Division ruled for the taxpayer and cancelled the FAN with FLD. The BIR appealed to the CTA En Banc.

The CTA En Banc affirmed the decision of the CTA in Division and held that the MOA issued by RDO cannot be construed as an LOA as required by law. RMO No 43-90 enumerated the persons authorized to issue an LOA which are the Commissioner, Deputy Commissioners, and Regional Directors. While the RMO did not prohibit the modification of the LOA, and assuming that the MOA is such a modification, it still cannot be given any legal effect since the RDO is not empowered by law to modify a LOA. ***(Commissioner of Internal Revenue vs. Sugar Crafts, Inc., CTA EB No. 1757 (CTA Case No. 8738), May 7, 2019)***

***All violations of any provision of the Tax Code shall prescribe after five (5) years counted from the day of the commission of the violation of the law, and if the same is not known at the time, from the discovery thereof and the institution***

The taxpayer was criminally charged for willful failure to file a quarterly VAT return for the second quarter of taxable year 2008. The discovery of the offense together with the institution of judicial proceedings for preliminary investigation was on January 30, 2014. On March 18, 2019, the Information against the taxpayer was filed with the CTA.

The CTA dismissed the criminal action on the ground of prescription. In arriving at its decision, the CTA made reference to Section 281 of the Tax Code, as amended, which provides that all violations of any provision of the Tax Code shall prescribe after five (5) years counted from the day of the commission of

***of judicial proceedings for investigation and punishment***

the violation of the law, and if the same is not known at the time, from the discovery thereof and the institution of judicial proceedings for investigation and punishment.

Since the period from the institution of judicial proceedings for investigation, which was on January 30, 2014 in this case, up to the filing of the information in court, which was on March 18, 2019 in this case, exceeds five (5) years, then the Government's right to file an action has prescribed**.** ***(People of the Philippines vs. Ulysses Palconet Consebido CTA Crim. Cases Nos. O-699 and O-701, May 7, 2019)***

***For purposes of computing the deficiency and delinquency interest, it is the Final Decision on Disputed Assessment (FDDA), and not the Final Letter of Demand (FLD), which should be considered as the "notice and demand by the CIR."***

The Court ruled that, for purposes of computing the deficiency and delinquency interest, it is the FDDA, and not the FLD, which should be considered as the "notice and demand by the CIR" since it contains the CIR's final decision in the subject assessment and resolves the taxpayer's tax liability with finality in the administrative level. Moreover, it fixes a new due date for the payment of the tax liabilities and surcharge of the taxpayer, which in itself suggests that the due date indicated in the FLD had already become irrelevant. *(Commissioner of Internal Revenue vs. Total (Philippines) Corporation, CTA EB Case No. 1616* ***(CTA Case No. 8479) and Total (Philippines) Corporation v. Commissioner of Internal Revenue, CTA EB Case No. 1621 (CTA Case No. 8479), May 10, 2019)***

***The filing of the taxpayer's administrative claim for refund with the CIR after the COC failed to act on the protests is procedurally appropriate considering that it is within the CIR's power to refund internal revenue taxes.***

The taxpayer filed a claim for refund for the excise tax it paid on its importations of Jet A-1 fuel used for its domestic operations. The COC submits, among others, that the case is not within the Court's jurisdiction and that the taxpayer is guilty of forum shopping when it filed a claim for refund with the BIR after COC's inaction on its protests.

The CTA En Banc held that the filing of the taxpayer's administrative claim for refund with the CIR after the COC failed to act on the protests is procedurally appropriate considering that it is within the CIR's power to refund internal revenue taxes. Moreover, the taxpayer is correct in invoking the jurisdiction of the Court in Division since it is vested with authority to review on appeal inaction of the CIR on claims for refund, as provided in the Tax Code, as amended.

Finally, the Court also ruled that the taxpayer is entitled a refund or issuance of a tax credit certificate representing its payment of excise taxes. The law provides the following requisites to be exempt from excise tax on importations of Jet A-1 fuel: (i) the taxpayer paid its corporate income tax and VAT liabilities for the subject period of importation; (ii) the imported Jet A-1 fuel was actually used for its transport operations; and (iii) the imported Jet A-1 fuel was not locally available in reasonable quantity and price at the time of the

importations. The Court held that the taxpayer sufficiently proved that it used the imported Jet A-1 fuel in its transport and non-transport operations with its presentation of ATRIGs, pieces of evidence, and testimonies of witnesses. As to the other requisites, the Court reiterated a prior ruling when it affirmed that ATRIGs and the testimonies of witnesses are sufficient in granting the refund *sans* specific EVIDENCE on the actual use of imported fuel in the taxpayer's domestic operations when the matter was not raised as an issue in the pleadings, as in this case when the issue was raised only in the Motion for Reconsideration. ***(Commissioner of Internal Revenue vs. Philippine Airlines, Inc., CTA EB Case No. 1752 (CTA Case No. 8143) and Commissioner of Customs vs. Philippine Airlines, Inc., CTA EB Case No. 1756 (CTA Case No. 8143), May 10, 2019)***

***Any input tax evidenced by a VAT invoice or official receipt shall be creditable against the output tax on the purchase of services on which a value-added tax has been actually paid. The law includes purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed, and is not limited to those intended to form part of a finished product for sale or to be used in the chain of production. So long as the input VAT being claimed are evidenced by the pertinent documents, the same input VAT is creditable against the output VAT.***

The taxpayer, a VAT-registered entity, filed a claim for the issuance of a tax credit certificate representing its unutilized input taxes on its purchases and importation of goods and services attributable to zero-rated sales. The BIR opposed and posited that the taxpayer failed to prove that the subject input tax was not utilized and that such is creditable and directly attributable to its zero-rated sales. The taxpayer refuted this and claimed that its input VAT is entirely attributable to its reported sales since all were zero-rated, and that the same was not applied against any output tax.

The Court decided in favor of the taxpayer since it was able to present its Quarterly VAT Returns showing that the subject amount was not carried over to succeeding periods and, as ascertained by the ICPA, the taxpayer did not utilize in subsequent periods the amount of input VAT being claimed for refund.

Furthermore, the Court held that any input tax evidenced by a VAT invoice or official receipt shall be creditable against the output tax on the purchase of services on which VAT has been actually paid. The law includes purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed, and is not limited to those intended to form part of a finished product for sale or to be used in the chain of production. So long as the input VAT being claimed are evidenced by the pertinent documents, the same input VAT is creditable against the output VAT. Thus, even when the VAT official receipts show payment to hotels and resorts, the input VAT paid thereon is creditable against its output VAT. When the law provides that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being caused by such sales. ***(Commissioner of Internal Revenue vs. CBK Power Company, Limited, CTA EB Case No. 1791 (CTA Case No. 7887), May 14, 2019***

***Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case.***

The Department of Energy is being held liable for deficiency taxes on exported crude oil by the BIR. Eventually, the case matter was elevated to the CTA. The Court in its decision resolved whether or not it has jurisdiction to take cognizance of the case.

The CTA held that considering that the subject disputed assessment is between the Department of Energy and the Bureau of Internal Revenue, both government entities, the provisions of PD No. 242 shall apply. Under the said decree, all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government shall be submitted to and settled by the Solicitor General, the Government Corporate Counsel, or the Secretary of Justice, as the case may be. Thus, the CTA has no jurisdiction over the present case. ***(Department of Energy vs. Commissioner of Internal Revenue, CTA Case No. 9596, May 16, 2019)***

***Any reassignment or transfer of cases to another Revenue Officer or revalidation of an expired Letter of Authority (LOA) shall require the issuance of a new LOA.***

The taxpayer argues that the tax assessment was not valid because the Revenue Officer has no right to conduct the same because his authority emanated not from a Letter of Authority ("LOA"), but only from a Reassignment Notice signed by the RDO Officer.

The CTA held that the necessity of a valid LOA in audit investigations is not merely an administrative requirement but a statutory requirement, which is vital to the validity of an audit of a taxpayer, and consequently, to the validity of the Final Assessment Notice ("FAN"), that may be issued after said audit. The provisions of the Tax Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority issued by the Regional Director. The Reassignment Notice is not equivalent to an LOA nor does it cure RO's lack of authority. ***(Commissioner of Internal Revenue vs. Ryan Neil Erasmo Valdez, CTA OC No. 020, May 17, 2019)***

***The recourse of a taxpayer who paid input VAT, notwithstanding that it is subject to VAT at zero percent rate, is against the seller who shifted to it the output VAT and not against the government.***

The taxpayer is a BOI-registered export entity, located within the customs territory of the Philippines. It filed a claim for refund of excess input VAT which was partially granted by the Court in Division. It elevated the matter to the CTA En Banc.

The CTA held that one of the requirements for the zero-rating of sales by a VAT taxpayer to a BOI registered exporter is that the BOI-registered buyer must furnish each of its suppliers with a copy of its BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers. The taxpayer, being a BOI-registered export entity located within the customs territory, incurred expenses with a VAT component from its suppliers. It failed to claim the benefits accorded to it as

several suppliers were not furnished with the requisite BOI Certification. Consequently, the suppliers shifted the output tax to the taxpayer. Thus, the Court considered it as a waiver of the said benefit but reiterated that the taxpayer may seek reimbursement from the suppliers but not from the government. ***(Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA EB Case No. 1711 (CTA Case No. 8680) and Commissioner of Internal Revenue vs. Taganito Mining Corporation, CTA EB Case No. 1719 (CTA Case No. 8680), May 20, 2019)***

***The requirements of the law and the rules on waivers and final assessment notices must be complied with, otherwise, the waiver or the FAN, as the case may be, shall be invalid and without any legal consequence.***

The Court held that Section 222(b) of the NIRC, as amended, along with RMO No. 20-90 and RDAO 5-01 requires, inter alia, the following requisites for the validity of a waiver, to wit: first, receipt of the taxpayer of a copy of the duly executed waiver; second, the date of acceptance by the BIR; and third, the specific type and the amount of tax involved. Per jurisprudence these requirements are mandatory in nature and non-compliance thereof is fatal.

The Court found that the taxpayer's copy of the 1st waiver was received by a someone which is neither its personnel nor under its employ and that the taxpayer's date of acceptance was not convincingly established because it stated that it was accepted two days before it was even transmitted. Moreover, the 1st waiver merely contains a sweeping declaration that it covers "all internal revenue taxes". There can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated.

The CTA En Banc likewise held that even if the waivers were valid, the FAN/FLD issued to the taxpayer, in itself is not valid since it failed to indicate a fixed and definite amount of tax liability to be paid. This is because the FAN indicated that the tax liabilities were still for computation since the amount of tax due and interest thereon would vary depending on the actual date of payment. ***(Commissioner of Internal Revenue vs. 2100 Customs Brokers, Inc., CTA EB No. 1729 (CTA Case No. 8972), May 20, 2019)***

***Good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax laws are sufficient justification to delete the imposition of surcharges and interest.***

The taxpayer sought reconsideration of a decision rendered by the CTA En Banc denying its Petition for Review. The taxpayer maintained that it was entitled to rely in good faith on the prevailing judicial interpretation in 2008 which provides that intercompany advances not evidence by loan agreements are not subject to DST.

The CTA En Banc partially granted the taxpayer's motion for reconsideration and deleted the imposition of surcharge and interests. It ruled that while there was no prevailing judicial interpretation to speak of because only the decisions of the Supreme Court constitute binding precedents, nevertheless, the reliance on the decisions of the Court of Appeals and the CTA may be used as basis of

good faith sufficient to negate petitioner's liability for surcharge and interests. The Court ruled that a mistake upon a doubtful or difficult question of law may properly be the basis of good faith. ***(E.E. Black Ltd. – Philippine Branch vs. Commissioner of Internal Revenue, CTA EB Case No. 1611 (CTA Case No. 8719), May 20, 2019)***

***Property owned by the Philippine government and the fruits thereof, i.e. the dividends and interest earned from respondent's money placements are beyond the ambit of the City's taxing power on the strength of Section 133(o) of the LGC.***

The City alleges that the taxpayer is a non-bank financial intermediary (NBFI), therefore, subject to local business taxes under Sec. 143(f) of the Local Government Code. Respondent alleges that it is not a NBFI but a mere holding company engaged in direct ownership of shares of stocks.

The Court held that the taxpayer was not a NBFI because it was not shown that its principal and habitual business activity is that of a NBFI pursuant to pertinent laws, rules, and regulations. Neither was it shown that it was authorized to perform as a NBFI by the Monetary Board. Since it is not a NBFI, it cannot be imposed a local business tax for as a NBFI,

Even granting arguendo that taxpayer a NBFI as the City insinuates, the subject SMC shares, along with the dividend and interest realized therefrom are owned by the Republic of the Philippines, hence, absolved from the imposition of LBT following Section 133(o) of the same Code. ***(City of Davao vs. Arc Investors, Inc. (CTA EB No. 1705 (CTA AC No. 153), May 21, 2019)***

***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.***

The BIR sought reconsideration on the decision of the CTA in Division cancelling and setting aside the final decision of the Commissioner of Internal Revenue affirming the tax assessment notices. The BIR alleged that the court passed upon issues that were not raised by the taxpayer in its original petition but were only raised for the first time in its memorandum.

In brushing aside the contentions of the BIR, the Court held that the issues and arguments raised in the motion for reconsideration had already been sufficiently addressed in the assailed decision. Likewise, the Court held that the legal authority of the revenue officer to conduct a valid tax audit for the issuance of a valid assessment is a related issue for determination in achieving an orderly disposition of the case. ***(Builders Steel Corporation CTA Case No. 9050, May 27, 2019)***

***Proof of actual remittance is not needed in order to prove withholding and remittance of taxes. Proof of remittance is the responsibility of the withholding agent and not the taxpayer-refund claimant.***

The CTA held that withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, the taxpayer has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of BIR. As held by the Supreme Court in its decided cases, there is no need for the claimant/taxpayer to prove actual remittance by the withholding agent to the BIR. ***(McKinsey Co. vs. Commissioner of Internal Revenue, CTA Case No. 9332, May 28, 2019)***

***Submission of Confirmation Letter issued by PEZA itself is sufficient to prove the entitlement of taxpayer's clients to VAT zero-rating.***

The BIR alleges that the taxpayer failed to provide the Court with the originals or certified true copies of the Philippine Economic Zone Authority (PEZA) and Subic Bay Metropolitan Authority (SBMA) certificate of registration of taxpayer's clients/customers. It further contends that absent this PEZA Certification, the taxpayer should not be allowed zero-rating sales for the said enterprise.

The CTA held that the taxpayer's submission of Confirmation Letter issued by PEZA itself is sufficient to prove the entitlement of taxpayer's clients to VAT zero-rating. It found that the Certification dated February 16, 2016 issued by PEZA, confirming that the latter issued VAT zero-rating certifications to the PEZA-registered enterprises enumerated therein, has sufficiently evidenced the entitlement of petitioner's buyer to tax incentives. ***(Colt Commercial Inc. v. Commissioner of Internal Revenue, CTA Case No. 9539, May 28, 2019)***

***A valid Letter of Authority must be issued to legally examine or audit a taxpayer's books of account or other accounting record.***

The BIR filed an appeal, arguing that the non-issuance of a valid Letter of Authority is of no consequence to the validity of the subject assessments which were arrived at after comparing the ITR with the summary list of purchases submitted by the taxpayer's customers. The BIR stated that since the result of the process was duly reflected in the Letter Notice, the issuance of a Letter of Authority to authorize the examining revenue officers to audit respondent's books of account or other accounting records could be dispensed with. The taxpayer did not file a comment or opposition.

The CTA ruled against the BIR. The CTA noted that the BIR admitted that no Letter of Authority was issued authorizing the examination or audit of respondent's books of account and other accounting record. The CTA emphasized that under Section 13 of the NIRC, as amended, a valid Letter of Authority must be issued by the CIR or his authorized representative in favor of a revenue officer performing assessment functions to legally examine or audit a taxpayer's books of account, or other accounting record. Hence, there must be a grant of authority before any revenue officer can conduct an

examination or issue and assessment against a taxpayer, and such revenue officer must not go beyond the authority given. Absent such authority, the assessment is void.

The CTA also reiterated the Supreme Court's ruling that a Letter Notice is not a valid substitute for a Letter of Authority. A previously issued Letter Notice must be transmuted to a Letter of Authority before a revenue officer may proceed with further examination and assessment of the taxpayer. Thus, the examination and audit conducted by the BIR was invalid since the record does not show that such Letter Notice was converted into a Letter of Authority. ***(Commissioner of Internal Revenue v. Admorlina L. Fontejon CTA EB Case No. 1813 (CTA Case No. 9314), May 28, 2019)***

***Tax assessments, which came about as a result of the examination of the taxpayer's books of accounts and accounting records by a revenue officer who is not authorized through a Letter of Authority, are void.***

The BIR filed a Petition for Review, claiming that taxpayer's subsequent recourse to elevate its protest/request for reconsideration to the ACIR is not sanctioned the pertinent rules and regulations by the BIR, and that the proper remedy is to elevate its protest to the CIR or appeal to the CTA.

The CTA denied the Petition for Review for lack of merit and found it unnecessary to address the issues raised by the BIR since the records did not show that the revenue officer who made the recommendation for the issuance of a PAN and FAN against the taxpayer was named in the Letters of Authority. The revenue officer's authority can only be traced from a Memorandum Referral issued by the OIC-Chief for the LT Regular Audit Division I.

The Court ruled that since no Letter of Authority was issued in favor of the revenue officer, he cannot be considered as legally authorized to conduct an examination of the taxpayer's books of accounts and other accounting records. Correspondingly, the subject tax assessments, which came about as a result of the examination of the taxpayer's books of accounts and accounting records by a revenue officer who is not authorized through a Letter of Authority, are void. For being void, the same bears no valid fruit. ***(Commissioner of Internal Revenue v. Capitol Steel Corporation CTA EB Case No. 1796 (CTA Case No. 9240), May 28, 2019)***

***A certification that a taxpayer did not file her ITR in itself is not enough to prove that the failure to file the ITR is willful warranting for conviction for Tax Evasion.***

The taxpayer was charged with tax evasion for not declaring all her income for taxable year 2010 and by failing to file her annual income tax return and payment thereof for taxable years 2011 and 2012. Accused, in her memorandum argues that the prosecution failed to prove that there was willfulness or deliberate intent on the part of the accused to evade or defeat the payment of income taxes.

The Court held that to sustain a conviction for attempt to evade or defeat tax under Section 254 of the NIRC of 1997, as amended, the following elements must be established:

1) An attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof; and
2) Such attempt to evade or defeat tax or the payment thereof is willful.

In connection, it is essential for BIR to prove the following:

1) That accused is a registered taxpayer in the Philippines;
2) That for taxable year 2010, the accused is required to pay income tax and did not pay the tax due or paid the income tax less than that is ought to be due; and
3) that the non-payment or payment of less than that is ought to be due was willful.

As to the second element, BIR failed to establish that for taxable year 2010, the accused is required to pay income tax and did not pay the tax due or paid the income tax less than that is ought to be due. BIR contends that there was underdeclaration of purchases which resulted to the underdeclaration of sales, underdeclaration of income and finally underdeclaration of tax due. However, a finding of underdeclaration of purchases does not in itself result in the imposition of income tax and VAT.

On the other hand, to sustain a conviction for failure to make or file a Return under Section 255 of the NIRC of 1997, as amended, the following elements must be established:

1) Accused is a person required by the NIRC or rules and regulations to make or file a return;
2) Accused failed to make or file the return at the time or times required by law or rules and regulations; and
3) The failure to make or file the return was wilful.

As to the third element, it requires that the failure to make or file the return was willful. A Certification alone that the accused did not file her Income Tax Returns for taxable years 2011 and 2012 is not enough to prove that the failure to file the ITR is wilful. ***(People of the Philippines v. David, CTA Crim Case No. 0-656, May 29, 2019)***

***All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, shall be administratively settled or adjudicated, by the Secretary of Justice or the Solicitor General, depending on the question involved therein, and whether the latter officer is the principal law officer or general counsel of the government offices involved, as the case may be.***

The taxpayer argues that RA No. 10351 (TRAIN Law) did not repeal its exemption from paying "duties and taxes, including excise and VAT, relative to the importation of merchandise for sale" under Section 95 of RA No. 9593. It further argues that Section 7 of RA No. 10351 did not authorize the BIR to impose VAT on alcohol and tobacco products.

The BIR counter-argues that the exemption of petitioner under R.A. 9593 has already been repealed by the enactment of Republic Act No. 10351 or An Act Restructuring The Excise Tax On Alcohol and Tobacco Products By Amending Sections 141, 142, 143, 144, 145, 8, 131 And 288 Of Republic Act No. 8424.

The Court did not rule on the merits of the case because it lacks jurisdiction to entertain the same. It explained that all disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, shall be administratively settled or adjudicated, by the Secretary of Justice or the Solicitor General, depending on the question involved therein, and whether the latter officer is the principal law officer or general counsel of the government offices involved, as the case may be. An agency refers to any of the various units of the Government. Relative thereto, the taxpayer is attached to the Department of Tourism. Correspondingly, the taxpayer is considered as a unit of the Government, and thus, an agency thereof. On the other hand, BIR is a bureau, which is defined as "any principal subdivision or unit of any department. "

Thus, the parties herein are both public entities under the Executive Branch of the Republic of the Philippines, albeit there is no showing that their principal law officer or general counsel is the Solicitor General. Correspondingly, the subject dispute or claim is one falling under jurisdiction of the Secretary of Justice. **(*Duty Free Philippines Corp. v. BIR, CTA Case No. 9548, May 30, 2019*)**

***The imposition of deficiency interest applies to all internal revenue taxes imposed by the present Tax Code.***

The taxpayer alleges that the deficiency interest under Section 249 (B) of the Tax Code, as amended, should be applied only whenever there is a deficiency income tax, a deficiency estate tax and deficiency donor's tax.

The CTA held that the imposition of deficiency interest under Section 249 (B) of the Tax Code, as amended, applies to all internal revenue taxes imposed by the preszent Tax Code. Section 249(B) should not be read in isolation but must be read in light of the provisions of Section 247(a) and 249(a) of the same Code. ***(Hotel Specialist, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9349, May 30, 2019)***

***A certificate of compliance is not a mere procedural requirement under Epira Law. It is determinative whether the taxpayer is entitled to its claim for tax refund.***

The taxpayer argues that the Certificate of Compliance (COC) is a mere procedural requirement under RA 9136 or the "Epira Law" and that it is not a factor in determining whether it is entitled to its claim for refund based on Section 108 (B) (7) of the 1997 NIRC.

On the other hand, the BIR reiterates that the taxpayer failed to prove, by sufficient evidence, that it is engaged in the sale of power or fuel generated through renewable sources of energy. It further explains that to be considered a generation company, it should be authorized by the Energy Regulatory Commission (ERC) to operate the generation facility and this requires a COC issued by the latter agency.

The Court ruled that the date of issuance of the required COC in favor of taxpayer, is crucial in determining whether it had zero-rated sales for the taxable year being raised. Records show that the taxpayer was able to secure a COC from the ERC only on a latter date, hence during the second quarter of taxable year in question, the taxpayer was not yet authorized by the ERC to operate its generation facility, hence petitioner is not entitled to VAT zero-rating on its sales for the aforesaid period. ***(Hector Sabangan Inc. v. Commissioner of Internal Revenue, CTA Case No. 9276, May 30, 2019)***

***When one of the parties in a loan transaction is a bank, the presumption is that the bank is the one directly liable for the payment and remittance of the DST.***

Taxpayer entered into a loan agreement with borrower SNAP-BI from which the latter drew an amount of P4.34 Billion evidenced by a Promissory Note (PN). Later, taxpayer entered into a facility and security agreement with another borrower, Hedcor, from which the latter drew an amount of P1.6 Billion evidenced by a fixed rate note (FRN). It is alleged that both SNAP-BI and Hedcor paid the DST on the transaction, with SNAP-BI paying based on the amount of the PN and Hedcor paying based on the total credit commitment of P5 Billion. Despite the payments made by both SNAP-BI and Hedcor, the taxpayer still paid the DST on the two loan transactions based on the PN and the FRN.

Taxpayer thereafter filed separate administrative claim for refund representing the alleged overpayment of DST on its transactions with Hedcor and SNAP-BI. Since the BIR failed to act on the claim, the taxpayer filed the instant case, alleging overpayment or erroneous payment and unjust enrichment.

The CTA denied the claim, stating that the taxpayer did not even allege that it is exempt from the DST on the FRN issued by Hedcor as well as the PN issued by SNAP-BI and that it is tasked to remit the said tax only as a collecting agent. Under RR No. 9-2000, if one of the parties to the transaction is a bank, the remittance of the DST shall be the responsibility of such bank. The burden of refuting the presumption that the taxpayer is the one directly liable for the

payment and remittance of the DST on the FRN and the PN was not discharged by the taxpayer. ***(Bank of the Philippine Islands v. CIR, CTA Case No. 9692, May 31, 2019)***

***Income from PAGCOR's related services, which include junket operations, is not subject to the provisions of Section 13(2)(b) of PD 1869 but Section 14(5) of the same law, hence subject to corporate income tax.***

The taxpayer, a junket operator, filed a claim for refund of income taxes, alleging that by virtue of the Section 13(2)(b) of PD 1869, it is liable only to the payment of 5% franchise tax, rather than the regular income tax.

The CTA rejected the claim for refund and ruled that income from operation of other related services, including income from junket operations, is subject to corporate income tax not only pursuant to PD No. 1869, as amended, as well as RA No. 9337.

The CTA held that under the express provisions of Section 14(5) of PD 1869, any income that may be realized from related services shall not be included as part of the income of the PAGCOR for the purpose of applying the franchise tax but shall be considered as a separate income subject to income tax. The enactment of RA No. 9337, which withdrew the income tax exemption of PAGCOR under RA No. 8424, reinforced PAGCOR's tax liability on income from other related services. ***(Prime Investments Korea, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9573, May 31, 2019)***

# BIR ISSUANCES

# UPDATES

- **RR No. 6-2019, May 29, 2019 -** This revenue regulation laid down the implementing rules and regulations for the provisions of the Estate Tax Amnesty under the Tax Amnesty Act (RA No. 11218).

- **RMC No. 52-2019, May 7, 2019 -** This circularizes the updated list of accredited microfinance NGOs.

- **RMC No. 55-2019, May 21, 2019 -** This circular clarifies the meaning of "Business Style" being required in the Official Receipts and Invoices

- **RMC No. 56-2019, May 29, 2019 -** This circular clarifies the reckoning period for the payment of Documentary Stamp Tax (DST) on Original Issue of Shares of Stocks

- **RMO No. 25-2019, May 15, 2019 -** This Memorandum Order provides for the policies and procedures for the Implementation of the Ninety (90)-Day Period to Process and Grant Claims for Value-Added Tax (VAT) Refund/Credit

- **RMO No. 23-2019, May 8, 2019 -** This Memorandum Order provides for the policies, guidelines and procedures in the processing of applications for Tax Amnesty on Delinquencies Pursuant to Republic Act (RA) No. 11213 Otherwise Known as the "Tax Amnesty Act"

***Revenue Regulation No. 6-2019, May 29, 2019 - This revenue regulation laid down the implementing rules and regulations for the provisions of the Estate Tax Amnesty under the Tax Amnesty Act (RA No. 11218).***

The Estate Tax Amnesty cover the estate of decedents who died on or before December 31, 2017, with or without assessments duly issued, whose estate taxes remained unpaid or have accrued as of December 31, 2017. This does not extend to the following cases:

1. Delinquent estate tax liabilities that are already final and executory and those covered by Tax Amnesty on delinquencies;
2. Properties involved in cases pending in appropriate courts, namely:
    a. Under the jurisdiction of the PCGG;
    b. Involving unexplained or unlawfully acquired wealth under the Anti-Graft and Corrupt Practices Act or an Act Defining and Penalizing the Crime of Plunder;
    c. Involving violations of AMLA;
    d. Involving Tax Evasion and other criminal offenses under Chapter II, Title X of the NIRC, as amended; and
    e. Involving felonies or frauds, illegal exactions and transactions and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code.

The estate tax amnesty rate imposable is six percent (6%) to be imposed on each decedent's total net taxable estate at the time of death without penalties at every stage of transfer of property; Provided that the minimum estate amnesty tax for the transfer of the estate of each decedent shall be Five Thousand Pesos (Php5,000.00). The Estate Tax Amnesty Return or the "ETAR" (BIR Form No. 2118-EA) shall be filed within two (2) years from the effectivity of these Regulations by the executor or administrator, legal heirs, transferees or beneficiaries to the concerned RDO. Failure to submit the documents within the same two (2) year period is tantamount to non-availment of the Estate Tax Amnesty and any payment made shall be applied against the regular estate tax due inclusive of penalties.

In case the estate has properties left undeclared in the filed return, the legal heirs/executors/administrators can file an ETAR or Amended ETAR and pay the estate amnesty tax without penalties based on the Net Undeclared Estate defined in the Regulation. Undeclared properties after the lapse of the said period shall be subject to applicable tax rate prevailing at the time of death of the decedent including interests and penalties.

The RR likewise provides for the Immunities and Privileges of Availing the Tax Amnesty giving the taxpayer immunities from the payment of all

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| | estate taxes and any increments and additions arising from the failure to pay any and all estate taxes for taxable year 2017 and prior years and from civil, criminal administrative cases and penalties under the NIRC. Availing of the said tax amnesty does not imply admission of any civil, criminal and administrative liability on the part of the taxpayer. |
| ***Revenue Memorandum Circular No. 52-2019, May 7, 2019- This circularizes the updated list of accredited microfinance NGOs.*** | The Circular has an attached list of "2019 Microfinance NGOs with Microfinance NGO Regulatory Council (MNRC) Accreditation" and "List of Microfinance NGOs Accredited in 2018 but valid until March 31, 2019" as of April 01, 2019. Under the IRR of the Microfinance NGOs Act, a Certificate of Accreditation shall be valid for a period of three (3) years from the date of issuance, unless earlier revoked by the MNRC.<br><br>The Circular further reminds BIR Officers that Microfinance NGOs with duly issued Certificate of Accreditation from the MNRC shall be eligible to avail of the 2% gross receipt tax on income from microfinance operations in lieu of all national taxes, excluding those MFNGOs with expired accreditation from the MNRC beginning April 01, 2019. |
| ***Revenue Memorandum Circular No. 55-2019, May 21, 2019- This circular clarifies the meaning of "Business Style" being required in the Official Receipts and Invoices*** | This Memorandum Circular clarifies the meaning of "Business Style" that must be indicated in the OR and Invoices. Business Style refers to the business name registered with the concerned regulatory body used by the taxpayer other than its registered name or company name. |
| ***Revenue Memorandum Circular No. 56-2019, May 29, 2019- This circular clarifies the reckoning period for the payment of Documentary Stamp Tax (DST) on Original Issue of Shares of Stocks*** | This Circular clarifies that new corporations shall file the DST declaration/return (BIR Form No. 2000) on original issues of shares of stocks and pay the tax due within five (5) days after the close of the month of the date of registration with the SEC as shown in the Certificate OF Incorporation/Certificate of Recording/License to Do Business in the Philippines. Hence, the penalty shall apply after the lapse of such period. |

***Revenue Memorandum Circular No. 57-2019, May 31, 2019- This circular clarifies certain issues on tax amnesty on delinquencies under RR No. 4-2019 which implemented Title IV of RA No. 11213 or the Tax Amnesty Act***

This circular addresses the frequently-asked questions regarding the Tax Amnesty on Delinquencies. Some questions that were addressed are as follows:

1. Q: If the assessment notices pertain to penalties only (*i.e.* without basic tax assessed), can the taxpayer avail of the tax amnesty?

   A: Yes. The taxpayer shall follow the prescribed manner of availment under Section 5 of RR No. 4-2019. However, since the required tax amnesty amount is based on the basic tax assessed, there shall be no amount due for payment.

2. Q: Can tax amnesty on delinquencies be availed of even if there is no Final Assessment Notice/Formal Letter of Demand/Final Decision on Disputed Assessment that has become final and executory on or before April 24, 2019?

   A: Yes but only under the following instances:
   i. Tax liabilities that are related to the pending criminal cases with the DOJ/Prosecutor's Office or the courts for tax evasion and other criminal offenses under Chapter II Title X and Section 275 of the Tax Code, as amended; and
   ii. Tax liabilities pertaining to unremitted tax withheld by withholding agents.

3. Q: What would be the basis of the tax amnesty payment if the pending criminal charges of the taxpayer as of April 24, 2019 pertain to "failure to obey summon" but the legal complaint does not have assessment of unpaid basic tax?

   A: If an assessment has already been issued as of April 24, 2019, whether final or not, the basis of the tax assessment would be the basic tax per such document. Otherwise, the taxpayer could not avail of the tax amnesty on delinquency.

4. Q: What are the implications of the Tax Amnesty to the current audit being conducted pursuant to a LOA? Will it be suspended?

   A: The current audit will proceed and will not be suspended.

5. Q: Are open stop-filer cases included in the amnesty?

   A: No. These are not covered under RR No. 4-2019

6. Q: Should tax amnesty for different taxable years be availed at once or can it be availed per taxable year or per tax type?

   A: It is advisable for one (1) Tax Amnesty Return to be filed for all tax types and taxable years covered. However, depending on the taxpayer's financial capacity and priorities, the taxpayer may choose to settle the tax liabilities on a per tax type and per taxable year within the one (1) year availment period.

7. Can the tax amnesty amount be paid on installment basis?

   A: No. One-time payment of the tax amnesty indicated in the Tax Amnesty Return and Acceptance Payment Form must be made.

8. Q: Will the tax liabilities covered by a FAN which was timely protested yet withdrawn on or before April 24, 2019 be considered delinquent account qualified for tax amnesty?

   A: The taxpayer shall be qualified to avail of the tax amnesty on delinquencies. If the protest was withdrawn on or before Aril 24, 2019, the tax liabilities shall be considered delinquent from the lapse of the period to protest, as if there is no protest filed.

9. Q: Can a taxpayer be considered to have fully complied with the requirements of RR No. 4-2019 if the tax amnesty amount was paid on the last day of the one-year availment period but failed to file the TAR on the same date?

   A: No. Section 5(C) of RR No. 4-2019 provides that availment of tax amnesty on delinquencies shall be considered fully complied with upon the completion of the enumerated steps which includes the filing/submission of the Tax Amnesty Return with complete documentary requirements to the concerned office within the one-year availment period.

***Revenue Memorandum Order No. 25-2019, May 15, 2019- This Memorandum Order provides for the policies and procedures for the Implementation of the Ninety (90)-Day Period to Process and Grant Claims for Value-Added Tax (VAT) Refund/Credit***

This Memorandum Order enumerates the processing offices authorized to receive claims for VAT refund/credit, the procedures undertaken by Revenue Officers upon receipt of the claims (processing and verification), and the procedures for the processing of payment once the VAT refund claim is approved.

It also provides for penalties imposable upon BIR officers and employees who fails to observed the prescribed time frame for each procedure and the corresponding reportorial requirements of BIR pertaining to the said claims.

***Revenue Memorandum Order No. 23-2019, May 8, 2019- This Memorandum Order provides for the policies, guidelines and procedures in the processing of applications for Tax Amnesty on Delinquencies Pursuant to Republic Act (RA) No. 11213 Otherwise Known as the "Tax Amnesty Act"***

This Memorandum Order laid down the policies and guidelines in processing the applications for tax amnesty on delinquencies, the authorized banks that tax amnesty payments may be made, the Tax Amnesty Return that must be filed and its accompanying documents, the procedures that each appropriate BIR Division and Revenue District Office must undertake, and the administrative sanctions imposable upon the concerned personnel who are found remiss of their responsibility.

***Revenue Memorandum Order No. 28-2019, May 8, 2019- This Memorandum Order prescribes the policies and guidelines on the registration requirements of foreign individuals not engaged and/or engaged in trade or business or gainful employment in the Philippines***

Foreign nationals who are planning to work, engage in trade or business in the Philippines, are required to secure their TIN following existing revenue issuances. Nonresident aliens not engaged in trade or business shall be issued a TIN for withholding taxes on their income from sources within the Philippines. The withholding agent shall apply for the TIN in behalf of the nonresident alien not engaged in trade or business. For foreign nationals who had been issued or holder of Alien Employment Permit or working visa upon arrival shall be registered by their employer.

Registered foreign nationals can avail of preferential tax rates under Philippine tax treaties by filing a Tax Treaty Relief Application with the ITAD.

# SEC ISSUANCES



- **SEC MC No. 7 series of 2019, April 25, 2019 -** This memorandum circular provides the guidelines on the establishment of the One Person Corporation (OPC).

- **SEC MC No. 11, May 29, 2019 -** This memorandum circular amends Rule 7.9 of the IRR of the Investment Company Act

***SEC Memorandum Circular No. 7 series of 2019, April 25, 2019 - This memorandum circular provides the guidelines on the establishment of the One Person Corporation (OPC).***

This memorandum circular is the implementing rules and regulations of Republic Act 11232 or the Revised Corporation Code of the Philippines for the establishment of OPC. The process and requirements for the Application for Registration of OPC, are as follows:

A. Requirements for Registration:
   1. Cover Sheet;
   2. Articles of Incorporation for One Person Corporation (Natural Person, Trust or Estate);
   3. Written Consent from the Nominee and Alternate Nominee;
   4. Other Requirements, if applicable:
      i. Proof of Authority to Act on Behalf of the Trust or Estate (for trusts and estates incorporating as OPC);
      ii. Foreign Investments Act (FIA) Application Form (for foreign natural person)[1];
      iii. Affidavit of Undertaking to Change Company Name, in case not incorporated in the Articles of Incorporation;
      iv. Tax Identification Number (TIN) for Filipino single stockholder;
      v. Tax Identification Number (TIN) or Passport Number for Foreign single stockholder
   5. Filing Fees

B. Application for Registration
   1. Initially, all name reservation requests shall be submitted manually at the SEC Head Office. CRMD personnel verifies the proposed company name; trade/business names by the applicant. If denied, the applicant needs to submit letter of appeal for rejected names subject to the approval of the CRMD appeal officer.
   2. Submit Articles of Incorporation with attached written consent of the nominee and alternate nominee and other requirements required for registration, for preprocessing.
   3. Pay the Filing Fees (Registration Fee, LRF and Name Reservation Fee)
   4. Submit hard copies of signed and notarized documents together with the proof of payment of filing fees at CRMD Receiving Unit
   5. Receive the Approved Certification of Registration as One Person Corporation

[1] A foreign natural person may put up an OPC, subject to the applicable constitutional and statutory restrictions on foreign participation in certain investment areas or activities.

This memorandum circular also provided for the templates/sample forms of the following documents:

a. Articles of Incorporation of OPC with a single stockholder who is a natural person;
b. Articles of Incorporation of OPC under the name of an estate or trustee;
c. Acceptance letter of the Nominee and Alternative Nominee of the OPC; and
d. Notice to Change Nominee/Alternate Nominee of the OPC;

***SEC Memorandum Circular No. 11, May 29, 2019 - This memorandum circular amends Rule 7.9 of the IRR of the Investment Company Act***

This memorandum circular amends Rule 7.9 of the IRR of Investment Company Act (ICA), to reads as follows:

> "7.9. The Fund Manager can invest the funds of the feeder fund, fund-of-funds or co-managed funds to a target fund that is administered by the Fund Manager or its related party/company provided that:
>
> a. There shall be no cross-holding between the feeder fund or fund-of-funds and the target funds where cross-holding refers to the holding of securities in another by two (2) or more funds;
> b. All initial charges on the target fund are waived; and
>
> The management fee shall be charged only once, either at the level of the feeder fund, fund-of-funds, co-managed funds or at the level of the target fund."

## OPINIONS & DECISIONS

- **The amended term of office cannot be applied to the incumbent members of the Board who are elected under the old By-Law provision.** *(SEC-OGC Opinion No. 19-17, May 7, 2019, RE: Board of Trustees)*

- **The Revised Corporation Code's provisions on dissolution of ordinary corporations (Sections 133 to 138) are not applicable to the condominium corporation.** *(SEC-OGC Opinion No. 19-18, May 8, 2019, RE: Term of Existence of Condominium Corporations)*

- **For "short-swing transactions," it is not required that there be "insider trading" as contemplated by the Securities Regulation Code. It is sufficient that there be a purchase and sale, or sale and purchase, of an equity security within a period of less than six months.** *(SEC-OGC Opinion No. 19-19, May 23, 2019, RE: Section 23.2 of the Securities and Regulation Code)*

- **While a corporation, under its articles of incorporation, is allowed to redeem, this is still subject to applicable and existing laws, terms and conditions, and must also not be in violation of the trust fund doctrine.** *(SEC-OGC Opinion No. 19-20, May 27, 2019, RE: Redemption of Preferred Shares; Subscribed Capital Stock)*

***The amended term of office cannot be applied to the incumbent members of the Board who are elected under the old By-Law provision.***

This Opinion is issued pursuant to a request to determine whether or not the eleven (11) members, now acting as members of the Board of Trustees (BOT) of a non-stock, non-profit association, are considered as the duly constituted officers of the corporation.

The non-stock, non-profit association is registered with the SEC. The By-Laws of the association was amended to change the term of office of the members of the BOT from one (1) year to two (2) years. However, no election of officers was held under the new by-laws or the amended one.

The SEC ruled that the Articles of Incorporation of every corporation is required to state the names and nationalities of the persons who shall act as directors or trustees upon incorporation until the first regular directors and trustees are duly elected. The trustees indicated in the Articles of Incorporation of the association are the five (5) trustees elected under the old by-laws and their 6 appointees. These 11 persons are to act as trustees of the association until the election of the first regular trustees on the Election Day stated in its by-laws.

Section 48 of the Corporation Code provides that the amended term of office cannot be applied to the incumbent members of the Board who are elected under the old By-Law provision. ***(SEC-OGC Opinion No. 19-17, May 7, 2019, RE: Board of Trustees)***

***The Revised Corporation Code's provisions on dissolution of ordinary corporations (Sections 133 to 138) are not applicable to the condominium corporation***

This Opinion is issued pursuant a request for confirmation that a condominium corporation ceases to exist upon the destruction of the Condominium Project and the successful sale of all its assets. It also seeks to confirm that Sections 117 to 121 of the Corporation Code, now Sections 133 to 138 of the Revised Corporation Code (the "RCC"), on dissolution is not applicable to the condominium corporation and that it may now proceed to liquidation under Section 122, now Section 139 of the RCC.

The condominium corporation registered was organized for the sole purpose of owning and/or holding the title to the common areas of the Apartments, under the Condominium Act (the "Condo Act"). On 16 July 1990, the Apartments was heavily destroyed by an earthquake and more than one-half (1/2) of the project was severely damaged, hence, the entire edifice became untenantable.

The condominium corporation filed an action for partition (the *"Petition")* with the Regional Trial Court. Having no opposition filed against the *Petition,* the case was resolved and a decision was issued granting the *Petition* which has long become final. Subsequently, these lands were sold to a third person.

As to the first query: that one of the modes provided by the Condominium Act to terminate a condominium project, *vis- à-vis,* dissolution of a condominium corporation pursuant to Section 11, is Section 8(b). The Apartment was terminated when the *Decision* granting the *Petition* attained finality. Consequently, the condominium corporation was dissolved, pursuant to Section 8(b), in relation to Section 11 of the Condominium Act.

As to the second query, SEC rules that the Condominium Act already provides for the modes of dissolution of a condominium corporation. In fact, the condominium corporation has been dissolved pursuant to Section 8(b) in relation to Section 11, thereof. Thus, the RCC's provisions on dissolution of ordinary corporations (Sections 133 to 138) are not applicable to the condominium corporation. Its liquidation has already been effected from the moment the remaining lands of the condominium project were entirely sold to a third person. *(SEC-OGC Opinion No. 19-18, May 8, 2019, RE: Term of Existence of* ***Condominium Corporations)***

***For "short-swing transactions," it is not required that there be "insider trading" as contemplated by the Securities Regulation Code. It is sufficient that there be a purchase and sale, or sale and purchase, of an equity security within a period of less than six months.***

This Opinion is issued pursuant to a requesting on the interpretation and application of Section 23.2 of the Securities Regulation Code (SRC).

A director, by himself or through a company or companies beneficially owned by him, buys and sells shares of stock of the issuer during a six-month period. The director earned profits from the purchase and sale transactions. It appears that the director committed a short-swing transaction in violation of Section 23.2 of the SRC.

The SEC held that "short-swing profit" rule which provides that any profit made by a director, an officer, or a 10% beneficial owner of a reporting company, in the purchase and sale, or sale and purchase, of an equity security of such company, within any period of less than six months, belongs to such company, as the issuer.

The issue actually presented is whether it is necessary to prove that the director took advantage of or used material non-public information in buying and selling the shares during the six-month period before the director can be held liable under Section 23.2 of the SRC. It is not required that there be "insider trading" as contemplated by SRC Section 27. It is sufficient that there be a purchase and sale, or sale and purchase, of an equity security within a period of less than six months. It is immaterial that there be an intention to hold the security purchased for more than six months, or not to repurchase the security sold for a period exceeding six months. ***(SEC-OGC Opinion No. 19-19, May 23, 2019, RE: Section 23.2 of the Securities and Regulation Code)***

***While a corporation, under its articles of incorporation, is allowed to redeem, this is still subject to applicable and existing laws, terms and conditions, and must also not be in violation of the trust fund doctrine.***

This Opinion is issued pursuant to a request involving the redemption of preferred shares.

A domestic corporation decreased its capital stock and reclassified its shares into common and redeemable preferred shares. There is only one subscriber to the preferred shares, and that the domestic corporation intends to redeem and retire the redeemable preferred shares.

The SEC held that the general rule is that there must be unrestricted retained earnings before a corporation can redeem, repurchase, or reacquire its own shares. The exception is when the shares to be redeemed are redeemable as provided in the articles of incorporation and certificates of stock of the corporation. But to redeem said shares, there must be sufficient assets to cover the debts and liabilities of the corporation.

The right to redeem shares is subject to the condition that the redemption would not render the corporation insolvent, and that the corporation has sufficient funds to satisfy its debts and liabilities. While a corporation, under its articles of incorporation, is allowed to redeem, this is still subject to applicable and existing laws, terms and conditions, and must also not be in violation of the trust fund doctrine. ***(SEC-OGC Opinion No. 19-20, May 27, 2019, RE: Redemption of Preferred Shares; Subscribed Capital Stock)***

# IC SSUANCES



- **Insurance Commission (IC) Circular Letter (CL) No. 2019-19, May 7, 2019 –** This letter amends the guidelines of investments in infrastructure projects under the Philippine Development Plan (PDP).

- **IC CL No. 2019-21, May 29, 2019 –** This letter provides for the guidelines for the regulation of online sales platforms and the sale therein of specific insurance products such as compulsory third party liability insurance.

***Insurance Commission (IC) Circular Letter (CL) No. 2019-19, May 7, 2019 – This letter amends the guidelines of investments in infrastructure projects under the Philippine Development Plan (PDP).***

This circular amends CL No. 2018-74, dated December 28, 2018. More particularly,

"SECTION 6. PRE.APPROVAL REQUIREMENTS

6.1. No investment in infrastructure projects under the PDP shall be allowed and/or admitted as an asset of the insurance or professional reinsurance company unless approved by this Commission."

"SECTION 7. NET WORTH AND RISK-BASED CAPITAL CONSIDERATIONS

7.2. In calculating the capital charge relating to investments in infrastructure projects under the PDP, risk factors shall be taken into account and the corresponding risk charges shall be applied, to wit:

7.2.1. Debt Instruments - The risk charge on a debt instrument relating to the investment in an infrastructure project under the PDP shall be six percent (6%) 1. However, the Commission may, at its discretion, impose a lower risk charge considering a high credit rating on the instrument given by an external credit rating agency.

7.2.2. Equity Instrument - The risk charge on an equity instrument relating to the investment in an infrastructure project under the PDP shall be nine percent (9%)."

***IC CL No. 2019-21, May 29, 2019 – This letter provides for the guidelines for the regulation of online sales platforms and the sale therein of specific insurance products such as compulsory third party liability insurance.***

This circular amends Section 2.5 of Insurance Memorandum Circular 3-93 dated June 28, 1993 and Section 7.17 of Insurance Commission Circular Letter No. 2014-47 dated 21 November 2014. More particularly,

"7. CONTRACT FORMATION AND EXECUTION

"7.17 intermediaries who have a website for electronic commerce of insurance products are not allowed to approve policies or endorsements or issue such electronic documents thru their website. This prohibition does not apply when the intermediary is provided access to the system which the insurer administratively owned and controlled and the insurance company allows to extend its facilities to an intermediary, such as in the following example:

xxx xxx xxx

(d) Online Sales Platforms (OSP) - An electronic software program used for ecommerce which allows sellers or merchants to build, manage, and

operate online websites or mobile applications where consumers may directly buy their product/s and avail their service/s.

General agents may be allowed to maintain and operate an OSP for specific insurance products, such as Compulsory Third Party Liability (CTPL) insurance.
Conversely, those that wish to operate an OSP shall be licensed as a general agent, and shall comply with the requirements of one."

"2. LICENSING REQUIREMENTS, LIMITATIONS
2.5 The limitation on the number of non-life insurance companies that a general agent may represent, as referred to in the previous paragraph, may be dispensed with if the general agent operates, maintains, and sells Compulsory Third Party Liability insurance exclusively through an Online Sales Platform."

# IC
## OPINIONS

- **IC Legal Opinion (LO) No. 2019-03, March 14, 2019 –** This opinion deals with clarifications on certain issues regarding the Compulsory OFW Insurance

- **IC LO No. 2019-04, March 19, 2019 –** This opinion deals with whether or not Starr International Insurance Philippines Branch (SIIP) is subject to strict compliance of the Circular Letter by the Insurance Commission which pertains to rules on number of seats, qualifications and term limits of independent director.

- **IC LO No. 2019-05, March 25, 2019 –** This is an opinion in relation to the application/enrollment form of microinsurance.

***IC Legal Opinion (LO) No. 2019-03, March 14, 2019 – This opinion deals with clarifications on certain issues regarding the Compulsory OFW Insurance***

The insurer is seeking the IC's interpretation and opinion on the following items:

1. Period of effectivity of the Compulsory OFW Insurance relative to Accidental Death/Natural Death Claims;
2. Filing of a claim for Permanent Total Disablement;
3. Circumstances when Repatriation Claims may be granted; and
4. Filing and Coverage of Money Claims.

For the first item, the Commissioner opined that an insurance policy remains valid only for the duration of the employment contract of an OFW as long as this stipulation is clearly stated in the insurance policy. Notably, if there are controversies on the terms and conditions of a policy issued in favor of an OFW, the same should be resolved in favor of the OFW and all ambiguities in an insurance contract are construed against the insurer and are resolved in favor of coverage.

For the second item, based on Section 1, Guideline VII on Minimum Benefits, the Commissioner opined that the OFW may validly claim for personal total disablement if such disability is due to any accident, sickness or ailment suffered during the duration of his/her employment, irrespective of whether the same is work-related and irrespective whether such condition appeared only when such OFW is already in the Philippines.

For the third item, the insurer inquired on what is included in the term "just cause" for the purpose of determining payment of repatriation cost. Based on Section 23 of RA 10022 and Section 1 of Guidelines VII of the Insurance Guidelines, the Commissioner is of the opinion that, in order to determine whether or not the termination of employment is for "just cause" for purposes of determining payment of repatriation cost, reference should be made to the employment contract between the OFW and his/her employer. However, if an employment contract fails to define the just cause for the termination of the same, the term "just cause" as defined under Article 282 of the Labor Code of Philippines should be used.

Finally, the insurer is of the position that the payment of money claims shall be limited only to those awarded and/or settled before the NLRC, to the exclusion of POEA, OWWA and DOLE. Based on Section 7 and 23 of RA 10022, the Commissioner opined that NLRC has the exclusive and original jurisdiction to hear and decide money claims, whether by judgment award or settlement. Thus, only the amount awarded by NLRC upon judgment and the amount of settlement based on employer's liability properly detailed in the same are subject of insurance coverage.

***IC LO No. 2019-04, March 19, 2019 – This opinion deals with whether or not Starr International Insurance Philippines Branch (SIIP) is subject to strict compliance of the Circular Letter by the Insurance Commission which pertains to rules on number of seats, qualifications and term limits of independent director.***

SIIP is of the position that it is not covered by the rules on number of seats, qualifications and term limits of independent directors because it is merely a branch of Starr International Insurance (Asia) Ltd., (a foreign entity that is licensed to establish its branch in the Philippines) and does not have a separate legal entity. It does not even have its own Board of Directors.

Based on Section 192 of the Insurance Code and Section 125 of the Corporation Code of the Philippines, the Commissioner opined that entities receiving certificate of authority from the commission shall be subject to the insurance and other applicable laws of the Philippines. Thus, SIIP is not covered by the Circular Letter because it is not an entity with a separate juridical personality. However, Starr International Insurance (Asia) Ltd., shall be covered by the same Circular Letter because it is an entity that is licensed to establish its branch office in the Philippines under the name SIIP. As such, Starr International Insurance (Asia) Ltd. shall comply with the relevant laws, regulations and circular letters of this Commission being the entity that is licensed to establish its branch office in the Philippines under the name SIIP.

***IC LO No. 2019-05, March 25, 2019 – This is an opinion in relation to the application/enrollment form of microinsurance.***

The insurer raised the following inquiries:

1. Whether or not it is allowable for an applicant, instead of signing the approved application form by this Commission, to simply attach or bundle a photocopy of his/her valid proof of identification/ID to the Microinsurance form as sign of proof of insurability; and
2. Whether or not the Microinsurance purchasers can be considered as an "open" group, particularly, if there is no employer-employee relationship between the purchasers.

For the first query, the Commissioner is of the opinion that the signature of the applicant to the form is an indispensable requirement that cannot be disregarded nor substituted by submitting a photocopy of a valid identification/ID. This is because the application form itself indicates that it is a document which requires that an applicant sign to affirm and give his/her consent.

Finally, the Commissioner is of the opinion that microinsurance purchasers may be considered as an “open” group outside of the employee group and can be insured under a group policy, provided that the following matters are complied with:

1. Such group, other than the employee group, has a commonality of purpose, interest or circumstances or engaging in a common economic and/or social activity;
2. The insured members are not its employees;
3. Such group was formed not for the main purpose of availing insurance; and
4. Such group policy should not be issued to an insurance agent or broker as a policyholder, except if the covered members are its employees.

# BSP SSUANCES

# UPDATES

- **Bangko Sentral ng Pilipinas (BSP) Circular No. 1039, May 3, 2019 –** This circular amends the manual of regulations for non-bank financial institutions.

- **BSP Circular No. 1040, May 20, 2019 –** This circular revised the framework on the selection of external auditors.

- **BSP Circular No. 1040, May 20, 2019 –** This circular provides for the reduction in the reserve requirements for banks and non-bank financial institutions with quasi-banking functions.

# BSP ISSUANCES

# UPDATES

***Bangko Sentral ng Pilipinas (BSP) Circular No. 1039, May 3, 2019 – This circular amends the manual of regulations for non-bank financial institutions.***

The Monetary Board approved the amendments to the N and P Regulations of the Manual of Regulations for Non-Bank Financial Institutions, particularly on the requirements for registration of Pawnshops and Money Service Businesses.

It should be noted that under "Subsection 4103P.2 (2016 - 4101P.5) Mandatory training requirement." the proprietors, partners, directors, president or officer of equivalent rank and function, and over-all head of the pawnshop operation and the head of the compliance unit shall attend, before the start of operations, a seminar on AML/combating the financing of terrorism (CFT) laws, rules and regulations, conducted by the Bangko Sentral, AMLC, or any reputable training provider.

***BSP Circular No. 1040, May 20, 2019 – This circular revised the framework on the selection of external auditors.***

The Monetary Board approved the revised framework on the selection of external auditors for Bangko Sentral Supervised Financial Institutions.

The BSP reserved the right to deploy its range of supervisory enforcement actions to promote adherence with the requirements set forth in this Section and bring about timely corrective actions. For this purpose, the BSP may issue directives or impose sanctions on BSFIs and/or its directors/trustees who approved the appointment of the external auditor, who/which are not in the List of Selected External Auditors for BSFIs, and/or for non-compliance with the provisions of this Section.

The BSP may likewise shorten the period of validity of inclusion of an external auditor in the List of Selected External Auditors for BSFIs, suspend, or delist external auditors from its List of Selected External Auditors for BSFIs based on the results of assessment of the quality of audited financial statements (AFS) as well as noncompliance with the provisions of this Section.

***BSP Circular No. 1040, May 20, 2019 – This circular provides for the reduction in the reserve requirements for banks and non-bank financial institutions with quasi-banking functions.***

The Monetary Board approved the reduction in the reserve requirement ratios of selected reservable liabilities of banks and non-bank financial institutions with quasi-banking functions (NBQBS). The rates of required reserves against deposit and deposit substitute liabilities in local currency of banks effective reserve week May 31, 2019 is herein provided.

# HOW BIG IS THE LGU SLICE FROM THE NATIONAL PIE?

By
**Benedicta "Dick" Du-Baladad**

The Supreme Court resolved with finality the main question raised in the Mandanas case (Mandanas vs Ochoa, Jr, GR Nos. 199802 & 208488, May 22, 2019) on "how much share in the national revenue should local government units (LGUs) get?" In short, how much internal revenue allocation (IRA) should LGUs receive?

Corollary to this question of Mandanas is a demand for the payment of additional unpaid IRA of around P500 billion for the years 1992 to 2012 claiming that the computation of the IRA then was wrong since the inception of the Local Government Code (LGC) in 1991. Mainly, the national government (NG) failed to include the collections of the Bureau of Customs (BOC), i.e. customs duties, value-added tax, excise tax and documentary stamp taxes, in the computation of IRA. LGUs should have been given more, he said.

The high court agreed with Mandanas and ruled with finality that LGUs should receive a bigger share from the IRA and that the provision in the LGC limiting the base amount of the 40-percent share to the national internal revenue tax alone rather than on all national taxes is unconstitutional.

Article X, Section 6 of the Constitution, according to the SC, provided three mandates: (1) the LGUs shall have a just share in the national taxes; (2) the just share shall be determined by law; and (3) the just share shall be automatically released to the LGUs.

The issue revolved more on the interpretation of the first mandate. The SC ruled there was no issue on what constitutes the LGUs' just share expressed in percentage of the national taxes such as the 40-percent share provided in the LGC. Yet, section 6 of the Constitution mentions "national taxes" as the source of the just share of the LGUs while Section 284 of the LGC enacted by Congress states that the share of the LGUs must be taken from "national internal revenue taxes."

In other words, the base amount of the IRA must be on national taxes and must not be limited to just national internal revenue taxes. What is the difference between these two?

National internal revenue taxes are as follows: (a) income tax; (b) estate and donor's taxes; (c) value-added tax; (d) other percentage taxes; (e) excise taxes; (f) documentary stamp taxes and (g) all other taxes collected by the Bureau of Internal Revenue (BIR). National taxes, on the other hand, are broader as they include all taxes collected by the NG, including customs duties and other taxes collected by the BOC and all other agencies. So, the LGUs, according to the high court, were deprived of their just share.

But realizing the financial impact of this decision to the country, the SC struck down the demand of Mandanas for P500 billion citing the doctrine of operative fact and declared that the application of its decision was prospective, not retroactive. Otherwise, it would have put the Republic of the Philippines bankrupt.

The high court also admitted Congress had the power to determine the share of the LGUs. But the mistake of Congress in the LGC is, it limited the base amount as prescribed by the Constitution, from "national taxes" to "national internal revenue taxes." Thus, the act became unconstitutional. What Congress should have done was to specifically define "just share" and how to compute the same. It should not have altered the base amount guaranteed under the Constitution, which must include all national taxes.

Sad to say, with this interpretation, the SC seems to have missed the big picture.

In resolving the issue, the high court used elementary legal construction, focusing on defining the term "national taxes" vis-à-vis "internal revenue taxes" thus missing the main essence of the Constitutional provision giving the LGUs their "just share" in national wealth.

The key term is "just share" of the LGUs and should have been the focus of the discussion, rather than simple definition of words. The word national taxes could have been used loosely in the Constitution, referring to national wealth perhaps?

To my mind, it does not matter how IRA is computed or determined, for as long as it is, in the wisdom of Congress, the "just share" of the LGUs.

"Just share" can be determined in many other different ways: either in percentage or fixed amount, or a combination of both. It can be based on one or several barometers, e.g. all taxes in a lump sum, or on a per tax type, or just internal revenue taxes or just customs taxes, or total national wealth. It does not matter.

What matters is the final amount arrived at, which, in the wisdom of Congress, is the "just share" of the LGUs in the revenue of the NG. It need not even be benchmarked on actual revenue collections, although this would simplify the computation. It is a matter for Congress to decide.

Congress, by enacting the LGC and appropriating 40 percent of the national internal revenue taxes as the "just share" of the LGUs in the form of IRA, is a valid exercise of the power of the purse which is within the exclusive zone of Congress. It is beyond judicial intervention.

Justice Marvic Leonen, in his dissent, had this to say: "What petitioners seek is to short-circuit the process (referring to appropriation). They will to empower us, unelected magistrates, to substitute our political judgment disguised as a decision of the Court. We should stay our hands."

The high court fell into the trap.

But, Congress still has the last say. They can amend the LGC or adopt the SC's computation of the IRA as it is.

If the vision is to devolve more power to the LGUs in order to empower the grassroots to be the drivers of the economy, it is but right to equip them with more funds. But it should be coupled with a corresponding demand for bigger responsibility, accountability and transparency in the way these are spent.

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For inquiries on the article, you may call or email

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