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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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SUPREME COURT
DECISION HIGHLIGHTS

UPDATES

- **The sale of the power plants by Power Sector Assets and Liabilities Management Corporation (PSALM) is not in pursuit of a commercial or economic activity but a governmental function mandated by law to privatize National Power Corporation (NPC) generation asset. Hence, the sale is not subject to value-added tax (VAT).** *(PSALM vs. Commissioner of Internal Revenue, G.R. No. 226556, July 3, 2019)*

- **Membership fees, assessment dues, and fees of similar nature collected by clubs which are organized and operated exclusively for pleasure, recreation, and other non-profit purposes do not constitute as (a) the income of recreational clubs from whatever source that are subject to income tax; and (b) part of gross receipts of recreational clubs that are subject to value-added tax.** *(Association of Non-Profit Clubs, Inc. (ANPC), herein represented by its authorized representative, Ms. Felicidad M. Del Rosario, vs. Bureau of Internal Revenue, herein represented by Hon. Commissioner Kim S. Jacinto-Henares, G.R. No. 228539, June 26, 2019)*

The sale of the power plants by Power Sector Assets and Liabilities Management Corporation (PSALM) is not in pursuit of a commercial or economic activity but a governmental function mandated by law to privatize National Power Corporation (NPC) generation asset. Hence, the sale is not subject to value-added tax (VAT).

The BIR assessed the taxpayer for deficiency VAT in relation to the sale of power plants for the purpose of privatizing power generation assets in accordance with the EPIRA Law. On appeal, the Court of Tax Appeals (CTA) upheld the assessment and held that the taxpayer is subject to VAT for its sale of generating assets, among others.

The case was elevated to the Supreme Court wherein it was held that the issue of whether or not the sale of power plants by the taxpayer is subject to VAT have been passed upon in the case of *PSALM vs. Commissioner of Internal Revenue (G.R. No. 198146, August 8, 2017)*. The Court held that the sale of the power plants by PSALM is not in pursuit of a commercial or economic activity but a governmental function mandated by law to privatize National Power Corporation (NPC) generation asset. The sale of the power plants is clearly not the same as the sale of electricity by generation companies, transmission, and distribution companies, which is subject to VAT under Section 108 of the NIRC. ***(PSALM vs. Commissioner of Internal Revenue, G.R. No. 226556, July 3, 2019)***

Membership fees, assessment dues, and fees of similar nature collected by clubs which are organized and operated exclusively for pleasure, recreation, and other non-profit purposes do not constitute as (a) the income of recreational clubs from whatever source that are subject to income tax; and (b) part of gross receipts of recreational clubs that are subject to value-added tax.

The BIR issued RMC No. 35-2012 which: (a) subjects non-profit recreational clubs to income tax; and imposes VAT on gross receipts of recreational clubs including but not limited to membership fees and assessment dues. The association assailed the circular alleging that the CIR acted beyond its rule-making authority in interpreting that payments of membership fees, assessment dues, and service fees are considered as income subject to income tax, as well as a sale of service that is subject to VAT.

The Court held that the membership fees, assessment dues, and other fees of similar nature only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities offered by recreational clubs to their exclusive members. They represent funds "held in trust" by these clubs to defray their operating and general costs and hence, only constitute infusion of capital which are not subject to income tax.

Likewise, before a transaction is imposed VAT, a sale, barter or exchange of goods or properties, or sale of service is required. When the dues are paid, the members are not buying services from the club; hence, there is no economic or commercial activity to speak of as these dues are devoted for the operations/maintenance of the facilities of the organization. Thus, there is no "sale, barter or exchange of goods or properties, or sale of service" to speak of, which would then be subject to VAT. ***(Association of Non-Profit Clubs, Inc. (ANPC), herein represented by its authorized representative, Ms. Felicidad M. Del Rosario, vs. Bureau of Internal Revenue, herein represented by Hon. Commissioner Kim S. Jacinto-Henares, G.R. No. 228539, June 26, 2019)***

COURT OF TAX APPEALS
DECISION HIGHLIGHTS

UPDATES

- **The Philippine Government's accession to the charter of the Asia Development Bank (ADB) did not excuse Filipino ADB employees from paying income taxes. Further, Section 246 of the NIRC provides for non-retroactivity of circulars issued by the BIR which are prejudicial to the taxpayer. The provision is based on the principle of good faith.** *(Commissioner of Internal Revenue vs. Licel Calderon, et.al, CTA EB No. 1876, July 2, 2019) and (Licel Calderon, et.al vs. Commissioner of Internal Revenue, CTA EB No. 1876, July 2, 2019)*

- **The failure of the Formal Letter of Demand (FLD) to state a definite amount of tax liability and a period or date certain for the payment of the tax assessed renders the assessment void for failure to comply with the due process requirement mandated by law.** *(Commissioner of Internal Revenue vs. Northern Tobacco Redrying Co. Inc., CTA EB No. 1760, July 2, 2019)*

- **A taxpayer who changes its place of residence is duty-bound to give written notice to the Revenue District Officer having jurisdiction over his former legal residence and/or place of business. Failure to do so, renders any communication sent to his former legal residence as valid and binding for purposes of counting the period within to reply or file its protests.** *(PCI Management Solutions, Inc. vs. Commissioner of Internal Revenue, CTA No. 9038, July 2, 2019)*

- **All disputes and claims between government agencies and offices, including refund of internal revenue taxes is not within the jurisdiction of the CTA.** *(Duty Free Philippines Corporation vs. Bureau of Internal Revenue, CTA EB Case No. 1911, July 5, 2019)*

- **Income earners and payee of the Creditable Withholding Tax (CWT) is not mandated by law or regulations to prove actual remittance of the CWT. Such is the legal obligation of the income payors-withholding agents.** *(Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. [Formerly Nissan Motor Philippines, Inc.], CTA EB No. 1789, July 5, 2019)*

- **The BIR in assessing the taxpayer must follow the due process requirements mandated by law. This includes valid service of the Preliminary Assessment Notice (PAN) and issuance of a Letter of Authority.** *(Hon. Thelma S. Milabao OIC Regional Director, Bureau of Internal Revenue, Region No. 18 vs. Dionisia D. Pacquiao, CTA EB No. 1782, July 5, 2019)*

- **The transfer of properties in exchange for shares of stock in a corporation during its pre-incorporation stage is not sale. Hence, the transfer is not subject to VAT.** *(Secretary of Finance vs. Century Peak Property Development, Inc. and Kingsville International Resources, Inc., CTA EB No. 1776, July 5, 2019)*

- **The failure to submit documents in the administrative level is not fatal to the case in the judicial level, as such are litigated de novo.** *(Commissioner of Internal Revenue v. Oriental Assurance Corporation, CTA EB No. 1881 (CTA Case No. 9169), July 5, 2019)*

- **The failure to attach an Affidavit of Service to a Motion for Reconsideration may result in the questioned decision or resolution attaining finality.** *(Commissioner of Internal Revenue vs. GE Consumer Finance, Inc., CTA EB No. 1775 (CTA Case No. 9144), July 5, 2019)*

- **In case of re-assignment or transfer of cases to another revenue officer, it is mandatory that a new LOA be issued with the corresponding notation thereto. Otherwise, the resulting assessment is void.** *(Opulent Landowners, Inc. vs. Commissioner of Internal Revenue, CTA EB Nos. 1802 & 1803 (CTA Case No. 8956), July 5, 2019)*

- **In order to be considered as a non-resident foreign corporation doing business outside the Philippines, such entity must be supported, at the very least, by both a Certificate of Non-registration of Corporation/Partnership issued by the Philippine SEC and a Certificate/ Articles of Foreign Incorporation/ Association.** *(Manulife Data Services, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9126, July 5, 2019)*

- **The burden of proving valid service of the LOA, NIC, PAN, and FLD/FAN devolves upon the BIR and the act of the taxpayer in filing a protest on the FAN will not cure a defective service of the same.** *(Vitalo Packaging International, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9231, July 5, 2019)*

- **The failure of the taxpayer to present the succeeding year's quarterly/annual ITRs is not fatal to the taxpayer's claim for refund of excess and unutilized CWT.** *(Commissioner of Internal Revenue vs. PPI Prime Venture, Inc., CTA EB No. 1666 (CTA Case No. 8795) July 9, 2019)*

- **Since the taxpayer cannot be treated as one required to pay tax as there is no valid assessment to speak of, there is no basis to sustain the criminal charge.** (*People of the Philippines vs. Bienvenido S. Dimson and Gilbert P. Dimson (Dimson Manila, Inc.) CTA EB Crim. No. 044, July 9, 2019*)

- **An application for abatement is properly subsumed under the phrase "other matters arising under the NIRC" falling under the jurisdiction of the CTA.** *(Del Monte Philippines, Inc., vs Commissioner of Internal Revenue, CTA Case No. 9766, July 15, 2019)*

- **Contractees and licensees of PAGCOR shall pay five percent (5%) franchise tax in lieu of all other taxes.** *(Premiumleisure and Amusement, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9572, July 16, 2019*)

- **The shipment of imported products, which entered and were stored in the SSEZ, may not be considered as imported into Philippine customs territory for purpose of imposing taxes and duties on importation.** *(Amira C Foods International DMCC vs. Republic of the Philippines, CTA Case No. 8557, July 18, 2019)*

- **Inaction of the local treasurer on the protest filed by the taxpayer after the lapse of the 60-day period constitutes a denial due to inaction and the taxpayer shall file an appeal within 30 days from the lapse of the 60-day period.** *(Kuehne + Nagel, Inc., vs City of Parañaque and Anthony I. Pulmano, in his capacity as the City Treasurer of Paranaque, CTA AC No. 206, July 18, 2019)*

- **Absence of proof of resorting to other recognized modes of service of the PAN, in case the service by registered mail proved to be unsuccessful, renders the assessment void.** *(Trorev Real TV Co., as represented by its President, Roberto R. Ignacio, vs Commissioner of Internal Revenue, CTA Case No. 9251, July 18, 2019)*

- **Input taxes incurred that were used for transactions or activities that are not related to taxpayer's nature as a zero-rated entity cannot be claimed for VAT refund purpose.** *(Commissioner of Internal Revenue, vs Coral Bay Nickel Corporation, CTA EB Nos. 1735 & 1737 (CTA Case No. 8905), July 18, 2019)*

- **Alkylate falls within the category of naphtha, regular gasoline and other similar products of distillation under Sec. 148 (e) of the 1997 NIRC, and is subject to excise tax.** (*Petron Corporation, vs Commissioner of Internal Revenue, CTA EB No. 1835 (CTA Case No. 9111), July 19, 2019)*

- **PAN and FAN/FLD must be served and received by the taxpayer stating the laws and the facts in which the assessment is based within the three-year prescriptive period to assess by the BIR in order for the assessment to be valid. Otherwise, the assessment is void for being violative of the right to due process of the taxpayer**. *(Clark Water Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8648, July 19, 2019)*

- **The 180-day period within which the CIR should act on the administrative appeal against the FDDA is reckoned from the date of filing of the original protest to the FLD and FAN.** *(Nueva Ecija I Electric Cooperative, Inc vs. Commissioner of Internal Revenue, CTA Case No. 9563, July 23, 2019)*

- **In a claim for refund of input VAT attributable to zero-rated sales, the taxpayer must prove that the payment for said zero-rated sales can be traced to the document supporting the foreign currency inward remittances.** *(Carmen Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9457, July 23, 2019)*

- **The requirement to post a Surety Bond in case of suspension of collection of taxes cannot be lifted until the judgement of the Court in the principal case becomes final and executory.** *(Xylem Water Systems International, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8901, July 25, 2019)*

The Philippine Government's accession to the charter of the Asia Development Bank (ADB) did not excuse Filipino ADB employees from paying income taxes. Further, Section 246 of the NIRC provides for non-retroactivity of circulars issued by the BIR which are prejudicial to the taxpayer. The provision is based on the principle of good faith.

RMC No. 31-2013 provides that all Filipino employees of ADB are subject to tax and those who are tax exempt are the ADB employees which are not Philippine nationals. The RTC of Mandaluyong ruled that the circular was issued without legal basis, without due process, and contrary to law. Based on this, the taxpayers filed an administrative refund for the income taxes paid by them covering TYs 2012 and 2013. The CIR did not act upon the same. The taxpayer thereafter filed a petition for review which was partially granted by the CTA Division. The Decision was challenged by the taxpayers and the CIR.

The CTA En Banc ruled that the Filipino ADB employees are subject to income tax following Sections 23(A) and 24(A)(1)(a) of the NIRC. Further, the Philippine Government's accession to the ADB Charter did not endow its citizens employed at the ADB the privilege of being excused from paying income taxes. The Philippine Government did not waive such right. Rather, it was retained by the Philippine Government.

Also, the CTA En Banc ruled that the application of the RMC was incorrect. Section 246 of the NIRC prohibits the retroactive application of the RMC if the same is prejudicial to the taxpayer. Here, the taxpayers relied in good faith with the differing opinions of the BIR, the application of the RMC should be made only to apply after its efficacy. Therefore, only the refund for TY 2012 should prosper. ***(Commissioner of Internal Revenue vs. Licel Calderon, et.al, CTA EB No. 1876, July 2, 2019 and Licel Calderon, et.al vs. Commissioner of Internal Revenue, CTA EB No. 1876, July 2, 2019)***

The failure of the Formal Letter of Demand (FLD) to state a definite amount of tax liability and a period or date certain for the payment of the tax assessed renders the assessment void for failure to comply with the due process requirement mandated by law.

The BIR conducted a deficiency assessment against the taxpayer in relation with its *de facto merger* transaction with Fortune Tobacco Corporation. The BIR sent the taxpayer a Formal Letter of Demand (FLD) which failed to state a definite amount of the taxpayer's tax liability. Further, the FLD did not state the exact date for the payment of the assessed tax.

The CTA En Banc ruled that the failure of the BIR to provide for the exact amount of the tax liability and the exact date for payment of tax violates the taxpayer's due process. Hence, the assessment is void for the failure to comply with the provisions of the NIRC ***(Commissioner of Internal Revenue vs. Northern Tobacco Redrying Co. Inc., CTA EB No. 1760, July 2, 2019)***

A taxpayer who changes its place of residence is duty-bound to give written notice to the Revenue District Officer having jurisdiction over his former legal residence and/or place of business. Failure to do so, renders any communication sent to his former legal residence as valid and binding for purposes of counting the period within to reply or file its protests.

The taxpayer was assessed with various tax liabilities. The LOA, Notice of Informal Conference, and Amended Notice were sent to the taxpayer's previous address. The above mentioned documents were received by the taxpayer. However, when the PAN and FLD were sent to the taxpayer's previous address, the letter was returned to sender with notation which states that "address unknown" and "moved out".

The CTA ruled that the taxpayer did not notify the BIR of any change in its legal residence. Following Section 11 of RR No. 12-85, the taxpayer must notify the BIR through the RDO of its change of residence otherwise all communications sent to the previous address will be considered valid and binding. Hence, the period to avail of any administrative or judicial remedies has lapsed thereby depriving the CTA of jurisdiction of the case. ***(PCI Management Solutions, Inc. vs. Commissioner of Internal Revenue, CTA No. 9038, July 2, 2019)***

All disputes and claims between government agencies and offices, including refund of internal revenue taxes are not within the jurisdiction of the CTA.

The taxpayer filed an administrative claim for refund The BIR denied the taxpayer's refund claim. Thereafter, the taxpayer filed with CTA to reverse and set aside the BIR's denial of its refund. The Second Division of the CTA dismissed the petition for lack of subject-matter jurisdiction, citing the *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue* case, which states that the disputes and claims between the BIR and another government entity shall be settled administratively following Presidential Decree No. 242.

The CTA En Banc agreed with the Second Division. The CTA En Banc stated that the refund of internal revenue taxes is governed by the administrative procedure in Section 2 and 3 of Presidential Decree No. 242. Further, the CTA En Banc stated that all disputes, claims and controversies solely amongst government agencies are bound by Presidential Decree No. 242, without exception. ***(Duty Free Philippines Corporation vs. Bureau of Internal Revenue, CTA EB Case No. 1911, July 5, 2019)***

Income earners and payee of the Creditable Withholding Tax (CWT) is not mandated by law or regulations to prove actual remittance of the CWT. Such is the legal obligation of the income payors-withholding agents.

The taxpayer filed an administrative claim for refund for the alleged excess and utilized CWT. The claim was not acted upon by the BIR. The CTA in Division partially granted the refund. The BIR appealed the decision stating that an actual proof remittance is a mandatory precondition for a refund claim to prosper.

The CTA En Banc dismissed the appeal stating under Section 58(A) of the NIRC it is the withholding agents' responsibility to deduct and remit taxes due on income payments by requiring them to submit annual information return and provide recipients of income written statements containing: a) the amount of income paid; b) the details of the person to whom such payment was made; and c) the specific details of the sums they deducted and withheld. Further, RR No. 2-98, paragraph (B), Section 2.58.3 expressly states that the proof of remittance is the responsibility of the withholding agent. ***(Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. [Formerly Nissan Motor Philippines, Inc.], CTA EB No. 1789, July 5, 2019)***

The BIR in assessing the taxpayer must follow the due process requirements mandated by law. This includes valid service of the Preliminary Assessment Notice (PAN) and issuance of a Letter of Authority.

In a Letter Notice sent to the taxpayer, the BIR noted discrepancies based on its computerized-matching system. Due to failure to reconcile the discrepancies, a PAN was issued for deficiency taxes. Thereafter, the taxpayer received a Formal Letter of Demand (FLD). Such demand was protested by the taxpayer for lack of factual and legal basis. The protest was denied and the taxpayer elevated the case to the CTA. The CTA in Division granted the protest of the taxpayer.

The CTA En Banc ruled that there was no valid service of the PAN since there was no formidable proof that the person who received the PAN is authorized to receive the same. Further the person who received the PAN was not shown to live or reside in the area or locality of the taxpayer. In addition, the Court noted that the BIR, through the revenue officer, was not authorized to conduct a tax examination and an assessment. The Court cited *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,* wherein the Supreme Court ruled that a Letter Notice is not a substitute for a Letter of Authority. Here, the BIR through the petitioner conducted an examination without a Letter of Authority relying solely on the Letter Notice. Hence, the issuance of the FLD is void and without legal consequence. ***(Hon. Thelma S. Milabao OIC Regional Director, Bureau of Internal Revenue, Region No. 18 vs. Dionisia D. Pacquiao, CTA EB No. 1782, July 5, 2019)***

The transfer of properties in exchange for shares of stock in a corporation during its pre-incorporation stage is not sale. Hence, the transfer is not subject to VAT.

During the pre-incorporation stage, the taxpayer subscribed to 450,000 shares of stock of Century Peak Corporation. In consideration for the shares of stock, the taxpayer assigned two parcels of land. The taxpayer obtained a ruling from the BIR wherein the transfer was deemed subject to VAT.

CTA En Banc ruled that the transaction is neither a sale, barter nor exchange of goods or properties. Rather, the transaction is a pre-incorporation subscription agreement. Further, there was no disposition of property in the course of trade or business. ***(Secretary of Finance vs. Century Peak Property Development, Inc. and Kingsville International Resources, Inc., CTA EB No. 1776, July 5, 2019)***

The failure to submit documents in the administrative level is not fatal to the case in the judicial level, as such are litigated de novo.

The BIR filed the instant Petition for Review alleging that the Court in Division erred in admitting evidence that were not submitted to the BIR in the administrative level. The Court denied the petition citing Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) which categorically provides that the Court of Tax Appeals (CTA) shall be a court of record and as such it is required to conduct a formal trial (trial de novo).

The Court held that the CTA is authorized to receive evidence, summon witnesses, and give both parties, the Government and the taxpayer, opportunity to present and argue their sides, so that the true and correct amount of the tax to be collected may be determined and decided. ***(Commissioner of Internal Revenue v. Oriental Assurance Corporation, CTA EB No. 1881 (CTA Case No. 9169), July 5, 2019)***

The failure to attach an Affidavit of Service to a Motion for Reconsideration may result in the questioned decision or resolution attaining finality.

The Court En Banc found no cogent reason to disturb the questioned Decision and Resolution of the Court in Division. It held that the Court in Division had fully and exhaustively resolved the issues raised in the instant petition. Moreover, the BIR's opportunity to appeal has already lapsed since the assailed Decision has become final and executory for failure of the BIR to file a motion for reconsideration in accordance with the rules, namely, that the motion filed before the Court in Division did not have the necessary Affidavit of Service.

Nevertheless, the Court En Banc affirmed the ruling of the Court in Division that the non-resident foreign corporation is entitled to the refund of capital gains tax it erroneously paid since the transaction is exempt from CGT in the Philippines pursuant to the RP-US Tax Treaty. This is so because the capital gains was derived from the transfer of its shares of stock in GECRF PH, a domestic corporation whose assets do not consist principally of real property in the Philippines. ***(Commissioner of Internal Revenue vs. GE Consumer Finance, Inc., CTA EB No. 1775 (CTA Case No. 9144), July 5, 2019)***

In case of re-assignment or transfer of cases to another revenue officer, it is mandatory that a new LOA be issued with the corresponding notation thereto. Otherwise, the resulting assessment is void.

Both the taxpayer and the BIR elevated the case to the Court En Banc via Petition for Review, primarily raising the issue of whether the taxpayer is liable to pay the deficiency taxes, surcharge, and interests based on the assessment issued by the BIR.

While the parties, in their respective petitions, did not include the issue of whether or not the revenue officers (ROs) who examined the taxpayer were duly authorized, the Court still found it necessary to resolve the same. This is so because it is a vital issue to achieve an orderly disposition of the consolidated case which is sanctioned under Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals.

The Court therefore cancelled the assessment stating that records disclose that the ROs and group supervisor (GS) who recommended the issuance of NIC, PAN, FLD/FAN and FDDA were not named in the LOA. The BIR admitted that the supposed authority of the ROs to conduct the audit investigation of the taxpayer was based solely on Memorandum of Assignment (MOA). The Court held that in case of re-assignment or transfer of cases to another RO, it is mandatory that a new LOA be issued with the corresponding notation thereto, in accordance with RMO No. 43-90. ***(Opulent Landowners, Inc. vs. Commissioner of Internal Revenue, CTA EB Nos. 1802 & 1803 (CTA Case No. 8956), July 5, 2019)***

In order to be considered as a non-resident foreign corporation doing business outside the Philippines, such entity must be supported, at the very least, by both a Certificate of Non-registration of Corporation/Partnership issued by the Philippine SEC and a Certificate/ Articles of Foreign Incorporation/ Association.

The taxpayer filed a claim for refund or issuance of tax credit certificate for its excess and unutilized input VAT. The taxpayer alleged that it is a regional operating headquarters (ROHQ) and that the excess and unutilized input VAT pertains to its zero-rated sales for its services to foreign clients doing business outside the Philippines, which were paid in USD, inwardly remitted into the Philippines.

The Court held that in order for the supply of services to be VAT zero-rated under Section 108(B)(2), the following requisites must be met: 1. the services must be other than processing, manufacturing or repacking of goods; 2. the recipient of such services is doing business outside the Philippines; and 3. the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

In the instant case, the taxpayer failed to present both the Certificate of Non-registration of Corporation/Partnership issued by the SEC and a Certificate/ Articles of Foreign Incorporation/ Association of some of its customers. Hence, the Court disallowed those sales since there was no proof that the recipient of such services is doing business outside the Philippines. ***(Manulife Data Services, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9126, July 5, 2019)***

The burden of proving valid service of the LOA, NIC, PAN, and FLD/FAN devolves upon the BIR and the act of the taxpayer in filing a protest on the FAN will not cure a defective service of the same.

The taxpayer argues that the assessment was not valid because the LOA, NIC, PAN and FLD/FAN were sent through registered mail to its former office address and was received by the security guard of the current possessor of the premises. The BIR alleges, in part, that the taxpayer is estopped from denying actual receipt of the said documents because it had filed a protest to the FAN.

The Court found that the taxpayer has complied with the requirements for a change of business address and that the BIR was well-informed of the transfer of address as shown by various returns filed before it. Accordingly, it was the duty of the BIR to send the PAN and FAN to the proper address to ensure its receipt.

The Court ruled that when service of notice is an issue, as in this case, the person alleging service must prove such fact. In civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing. Absent one or the other, or worse both, there is no proof of service. Since the BIR failed to prove compliance of the requirements for a valid service by registered mail, the assessment is invalid. The fact that the taxpayer was able to protest the FAN does not cure BIR's violation of the taxpayer's right to due process. ***(Vitalo Packaging International, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9231, July 5, 2019)***

The failure of the taxpayer to present the succeeding year's quarterly/annual ITRs is not fatal to the taxpayer's claim for refund of excess and unutilized CWT.

The BIR filed a motion for reconsideration alleging that the Court erred in holding that the failure of the taxpayer to present the succeeding quarterly and annual income tax returns (ITRs) are not fatal to the taxpayer's claim for refund of alleged unutilized creditable withholding taxes (CWT).

The Court ruled that there is no legal merit in the contention of the BIR that the taxpayer is required to present its quarterly income tax returns as well as the annual income tax returns of the succeeding taxable years. It held that the Supreme Court has already declared in the Philam Asset Management and Winebrenner cases that the presentation of the ITR or the Final Adjustment Return (FAR) has no basis in law and jurisprudence. The non-carry over clause may be proved by any other competent document.

On the other hand, the Philam case even declared that it is the BIR which ought to have presented the FAR for the succeeding year in order to buttress its assertion that there was a subsequent credit of the excess income payments for the previous year. ***(Commissioner of Internal Revenue vs. PPI Prime Venture, Inc., CTA EB No. 1666 (CTA Case No. 8795) July 9, 2019)***

Since the taxpayer cannot be treated as one required to pay tax as there is no valid assessment to speak of, there is no basis to sustain the criminal charge.

Taxpayers were charged with tax evasion due to alleged nonpayment of deficiency internal revenue tax liabilities for the year 2002. Subsequently, CTA Division rendered the deficiency tax assessment void. In relation to its decision, CTA Division stated that the Taxpayers, in their motion for reconsideration, have no obligation or requirement to pay the alleged deficiency tax since the deficiency tax assessment was void. Hence, this Petition.

CTA En Banc has held that there is failure to prosecute on the part of the government because it did not prove beyond reasonable doubt the guilt of the accused. The requisites in order for a Taxpayer to be criminally liable are: (1) that a corporate taxpayer is required under NIRC, among others, to pay any tax; (2) that the corporate taxpayer failed to pay the required tax; and (3) that the accused to be criminally liable must be the employee responsible for the violation and willfully failed to pay such tax. Accordingly, the second and third elements are dependent in the existence of the first.

Here, the taxpayers proved that they did not receive the PAN or the FAN from BIR upon assessment. Moreover, since there was no demand to pay tax, the first requisite above-mentioned was not satisfied. Hence, the Taxpayers were properly acquitted. (***People of the Philippines vs. Bienvenido S. Dimson and Gilbert P. Dimson (Dimson Manila, Inc.) CTA EB Crim. No. 044, July 9, 2019***)

An application for abatement is properly subsumed under the phrase "other matters arising under the NIRC" falling under the jurisdiction of the CTA.

The BIR imposed penalties upon the taxpayer in relation to alleged late payment of taxes. The taxpayer applied for abatement of the penalties but the BIR issued a Notice of Denial. The taxpayer questioned the Notice of Denial by elevating the matter to the CTA. The BIR argued that the CTA has no jurisdiction to rule on its Notice of Denial. On the other hand, the taxpayer claims that the CTA has jurisdiction over the petition as it falls under the "Other Matters" jurisdiction of the CTA and the Notice of Denial provided no factual and legal bases for the denial of taxpayer's abatement application, in violation of taxpayer's constitutional right to due process.

The CTA held that the denial of taxpayer's application for abatement is properly subsumed under the phrase "other matters arising under the NIRC". Furthermore, the Court finds that the facts of the case do not fall on any of the instances that would validly allow BIR to dispense with the issuance of a PAN. The present case involves a late remittance of withholding tax which apparently arose from an error in the encoding of the Filing Reference Number. Considering that none of the conditions anent the exemption from pre-assessment notice exists, BIR is not justified in out rightly issuing the Audit Results/Assessment Notice, sans any PAN. The BIR failed to observe the due process requirements. ***(Del Monte Philippines, Inc., vs Commissioner of Internal Revenue, CTA Case No. 9766, July 15, 2019)***

Contractees and licensees of PAGCOR shall pay five percent (5%) franchise tax in lieu of all other taxes.

Taxpayer is a co-licensee of a gaming license granted by PAGCOR, which provided for the payment of PAGCOR license fees, inclusive of franchise tax, in lieu of all other taxes. Subsequently, BIR issued RMC No. 33-13, which subjected PAGCOR and its contractees and licensees to the Regular Corporate Income Tax (RCIT). Consequently, Supreme Court promulgated a decision that clarified that contractees and licensees of PAGCOR are subject to franchise tax but are exempt from payment of all other taxes, including RCIT.

CTA has held that Section 13 of PD 1869, or the PAGCOR charter, provided that the tax exemption privileges of PAGCOR extend to its contractees and licensees, *i.e.* the taxpayer. No tax, fees or charges of any kind shall be assessed or collected from a franchise holder, except a Franchise Tax of Five percent (5%) of the gross revenue or earnings. ***(Premiumleisure and Amusement, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9572, July 16, 2019)***

The shipment of imported products, which entered and were stored in the SSEZ, may not be considered as imported into Philippine customs territory for purpose of imposing taxes and duties on importation.

The taxpayer filed an application for the issuance of TRO regarding the forfeiture of the shipment of imported rice consigned in Subic Special Economic Zone (SSEZ) for failure to secure import permit.

The CTA held that SSEZ is regarded as a separate customs territory. The subject shipment of imported rice, which entered and were stored in the SSEZ, may not be considered as imported into Philippine customs territory for purpose of imposing taxes and duties on importation. Otherwise stated, the taxpayer was not required to secure import permit upon entry of the cargo into the SSEZ. The requirement to secure and present import permit becomes indispensable only when the imported rice is withdrawn from the SSEZ and introduced into the Philippine customs territory, for it is only at that point that said rice are considered imported into the country. ***(Amira C Foods International DMCC vs. Republic of the Philippines, CTA Case No. 8557, July 18, 2019)***

Inaction of the local treasurer on the protest filed by the taxpayer after the lapse of the 60-day period constitutes a denial due to inaction and the taxpayer shall file an appeal within 30 days from the lapse of the 60-day period.

The taxpayer filed a petition for review on the dismissal of the RTC of the complaint against the denial of his protest by the city treasurer for being filed beyond the prescribed period under Section 195 he Local Government Code.

The CTA held that after the taxpayer filed its protest on the notice of assessment issued by the local treasurer, the local treasurer should decide within 60 days from the filing of said protest. If the local treasurer does not come up with a decision after the lapse of the 60-day period from the filing of the protest, the taxpayer shall likewise have 30 days to appeal such inaction which, in effect, constitutes a denial due to inaction. Here the taxpayer filed the complaint beyond the 30 days period to appeal. Hence, the RTC was correct in dismissing the case on the ground of prescription. ***(Kuehne + Nagel, Inc., vs City of Parañaque and Anthony I. Pulmano, in his capacity as the City Treasurer of Paranaque, CTA AC No. 206, July 18, 2019)***

Absence of proof of resorting to other recognized modes of service of the PAN, in case the service by registered mail proved to be unsuccessful, renders the assessment void.

Taxpayer filed a petition for review against the judgement of the CIR declaring the taxpayer liable for deficiency taxes. The taxpayer claims that its constitutional and statutory right to due process was violated when it was not furnished with the required assessment notices under the law.

The CTA held that in case the taxpayer denies receipt of the assessment notices from the BIR, the latter has the burden to prove by competent evidence that the required notices were actually received by the taxpayer. In the present case, the taxpayer categorically denies having received the PAN and submits that it only received the FLD/FAN. In addition, there is also no indication whatsoever that the BIR validly resorted to other recognized modes of service of the PAN, considering the attempt to validly serve the PAN by registered mail proved to be unsuccessful. Thus, for failure of the BIR to inform the taxpayer of the facts and the law on which the assessment was made through the valid service of PAN the subject assessment is void and of no legal effect. ***(Trorev Real TV Co., as represented by its President, Roberto R. Ignacio, vs Commissioner of Internal Revenue, CTA Case No. 9251, July 18, 2019)***

Input taxes incurred that were used for transactions or activities that are not related to taxpayer's nature as a zero-rated cannot be claimed for VAT refund purpose.

Unsatisfied by the decision of the Court in Division, both the taxpayer and the BIR appealed to the CTA En Banc. The taxpayer argues that it is entitled for additional input tax refund on its unutilized input VAT attributed to its zero-rated sales; while the BIR argues that the taxpayer is not entitled for refund for failure to present evidence that will prove that the input taxes were directly attributable to zero-rated or effectively zero-rated sales.

The CTA En Banc finds that the taxpayer failed to comply with the basic requisite that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales because the input taxes incurred were not at all related to its zero-rated sales. The CTA En Banc reasoned out that the input taxes incurred were used for transactions or activities that are not related to its nature as a zero-rated taxpayer.

Note:

The CTA En Banc denied the total amount of claim for refund of the taxpayer. However, considering that the required affirmative votes to reverse the assailed decision was not obtained in the instant case, the assailed decision granting a partial refund are deemed affirmed. ***(Commissioner of Internal Revenue, vs Coral Bay Nickel Corporation, CTA EB Nos. 1735 & 1737 (CTA Case No. 8905), July 18, 2019)***

Alkylate falls within the category of naphtha, regular gasoline and other similar products

Petron filed a petition for review to the CTA En Banc over the denial of the claim for refund of excise taxes paid on the alkylate importations by the Court in Division. Petron argues that the Court erred in ruling that alkylate is subject to excise tax.

of distillation, and is subject to excise tax.	The CTA En Banc ruled that alkylate possesses properties and characteristics similar to that of gasoline, or is considered gasoline although not in its finished state. Thus, the court finds that alkylate fall within the category of naphtha, regular gasoline and other similar products of distillation under Sec. 148 (e) of the 1997 NIRC, and is subject to excise tax. (***Petron Corporation, vs Commissioner of Internal Revenue, CTA EB No. 1835 (CTA Case No. 9111), July 19, 2019)***
PAN and FAN/FLD must be served and received by the Taxpayer stating the laws and the facts in which the assessment is based within the three-year prescriptive period to assess by the BIR in order for the assessment to be valid. Otherwise, the assessment is void for being violative of the right to due process of the Taxpayer.	BIR issued warrant of distraint/levy against the Taxpayer due to the latter's deficiency taxes for the taxable year 2007. Taxpayer contended that it is not liable for such deficiency because it did not receive a PAN and a FAN/FLD resulting to violation of its right to due process. Moreover, the right to assess by BIR already prescribed due to the lapse of the three-year prescriptive period. Conversely, BIR contended that it served a PAN and FAN/FLD to the Taxpayer through registered mail. Pursuant to Section 228 of the NIRC, CTA has held that the taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. Moreover, the denial by the taxpayer of the receipt of the PAN and/or FAN/FLD shifts the burden of proof to BIR that the latter served the said notices. Here, Taxpayer denied having received the PAN and FAN/FLD within the three-year period for BIR to assess. Moreover, it also proved in court that the service of PAN and FAN/FLD were made only five (5) years after the lapse of the prescriptive period. On the other hand, BIR failed to prove with sufficient evidence that it timely served PAN and FAN/FLD to the Taxpayer. Hence, the assessment was invalid because BIR violated the right to due process of the Taxpayer. ***(Clark Water Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8648, July 19, 2019)***
The 180-day period within which the CIR should act on the administrative appeal against the FDDA is reckoned from the date of filing of the original protest to the FLD and FAN.	The BIR argues that the instant Petition for Review was filed beyond the prescriptive period to file an appeal with the CTA. It alleged that since the CIR did not act on the administrative appeal filed by the taxpayer against the FDDA, the taxpayer only has 30 days from the lapse of the 180-day period to decide within which to appeal to the CTA. The Court decided in favor of the BIR and dismissed the Petition for Review. The Court held that in case there is inaction on the part of the CIR on an administrative appeal by way of a motion for reconsideration within the 180-day period, RR 18-2013 provides two mutually exclusive options, to wit, (1) await the decision of the CIR and then file an appeal with the CTA within thirty (30) days from receipt of the decision or (2) appeal to the CTA within thirty (30) days from the expiration of the 180-day period.

	According to the Court, the taxpayer chose the second option because there was no CIR decision from which to appeal. Therefore, the counting of the prescriptive period of 180 days shall start from May 24, 2016, the date of filing of the original protest to the FLD and FAN, and end on November 20, 2016. To avail of the second option, the taxpayer should have filed its appeal with the Court on December 20, 2016. However, it only filed its Petition for Review on April 3, 2017, which was way beyond the period prescribed by law. ***(Nueva Ecija I Electric Cooperative, Inc vs. Commissioner of Internal Revenue, CTA Case No. 9563, July 23, 2019)***
In a claim for refund of input VAT attributable to zero-rated sales, the taxpayer must prove that the payment for said zero-rated sales can be traced to the document supporting the foreign currency inward remittances.	The taxpayer filed a claim for refund or issuance of tax credit certificate for its alleged excess and unutilized input VAT. The taxpayer alleged that for the 1st quarter of TY 2014, it exported 100% of its copper concentrates, the export sales proceeds thereof were paid for in acceptable foreign currency which were inwardly remitted to the Philippines. The Court held that a VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: a) the sales invoice as proof of sale of goods; b) bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and c) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services. In the instant case, the Court disallowed the entire zero-rated sales for VAT refund purposes. The bulk of the disallowance was due to the fact that various amounts of Customer Charges were deducted from the corresponding foreign currency inward remittances which were not supported with any documents. Since the taxpayer failed to present any documents to show that these Customer Charges were actually deducted from the total amount due per sales invoice, the Court was not convinced that the alleged corresponding foreign currency inward remittance actually pertains to the zero-rated sales. ***(Carmen Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9457, July 23, 2019)***
The requirement to post a Surety Bond in case of suspension of collection of taxes cannot be lifted until the judgement of the Court in the principal	The Court resolved two motions pending before it, to wit: the Motion to Lift Bond filed by the taxpayer, and the Motion for Reconsideration filed by the BIR. The Court denied both motions. The Court held that the bond cannot yet be lifted since the decision cancelling the deficiency tax assessment has not yet attained finality because the BIR has timely filed a motion for reconsideration thereon. On the other hand, the Court held that the motion for reconsideration filed by the BIR was bereft of merit. As already held by the Court in its previous

case becomes final and executory.	decision, the writ of distraint and levy constitutes an act of the Commissioner of Internal Revenue on "other matters" arising under the Tax Code which may be subject of an appropriate appeal before the Court of Tax Appeals. Furthermore, the Court ruled that the BIR failed to prove that the FAN and FLD was actually delivered to the taxpayer absent a certification from the Postmaster to that effect and an affidavit of the person who mailed the FAN and the FLD. ***(Xylem Water Systems International, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8901, July 25, 2019)***

BIR ISSUANCES

- **Revenue Memorandum Circular No. 66-2019, July 4, 2019 –** This published the full text of Republic Act (RA) No. 11256, or "An Act to Strengthen the Country's Gross International Reserves."

- **Revenue Memorandum Circular No. 68-2019, July 5, 2019 –** This provides the clarification on certain issues relative to the Estate Tax Amnesty under RA No. 11213.

- **Revenue Memorandum Circular No. 75-2019, July 29, 2019 –** This circularizes the availability of BIR Form No. 1914 April 2019 (ENCS).

- **Revenue Memorandum Order No. 35-2019, July 18, 2019 –** This provides the civil remedies for the collection of accounts receivable or delinquent accounts.

- **Revenue Memorandum Order No. 38-2019, July 24, 2019 –** This clarified the tax exemption of Non-Stock, Non-Profit Corporations under Section 30 of the National Internal Revenue Code of 1997, as amended.

- **Revenue Memorandum Order No. 40-2019, July 30, 2019 –** This prescribes the procedure for the proper service of assessment notices in accordance with the provisions of Section 3.1.6 of RR 18-2013.

- **Revenue Memorandum Order No. 41-2019, July 31, 2019 –** This prescribes the required documents and procedure in the processing of the request for lifting the warrant of garnishment, notice of tax lien, notice of levy, and notice of encumbrance.

Revenue Memorandum Circular No. 66-2019, July 4, 2019 – This memorandum circular published the full text of Republic Act (RA) No. 11256, or "An Act to Strengthen the Country's Gross International Reserves."

This published the full text of RA No. 11256 which amended Sections 32 and 151 of the National Internal Revenue Code. The amendment excludes from gross income and exempts from excise tax the sale of gold to the Bangko Sentral ng Pilipinas (BSP) or to accredited traders for eventual sale to the BSP by registered small-scale miners.

Revenue Memorandum Circular No. 68-2019, July 5, 2019 – This memorandum circular provides the clarification on certain issues relative to the Estate Tax Amnesty under RA 11213, as implemented by RR 6-2019.

This clarified issues regarding the estate tax amnesty. It clarified, among others, that:

- the filing and payment of the estate tax amnesty shall be done manually;
- there must be one extrajudicial settlement (EJS) for every stage of transfer or succession, or one EJS with respect to the inherited share of the common property/ies emanating from the first decedent;
- if there is no zonal valuation at the time of death, the fair market value appearing in the tax declaration issued at the date of death shall be used as reference in computing the value of the property at the time of death. A certificate of zonal valuation need not be submitted since the zonal value verification may be done online. The succeeding tax declaration nearest to the date of death shall be used if there is no available declaration at the time of death;
- A minimum amount of estate tax to be paid is Php 5,000.00 per decedent and at every stage of succession, the minimum rate is 6% based on the decedent's total net taxable estate at the time of death. In computing the estate tax amnesty due on the undeclared properties for the previously filed estate tax return, 6% estate tax shall be imposed on the value of the undeclared properties at the time of death, without the deductions which are deemed to have been claimed in the previous estate tax return, except for the share of the surviving spouse on the undeclared conjugal property.
- Estate tax amnesty may still be availed for undeclared property even if the estate has an existing tax delinquency, provided that the undeclared property is not included in the list of properties covered in the existing estate tax delinquency, and the return must be filed in the RDO that issued the assessment.

	• A partial or total withdrawal of cash in a bank for payment of the estate tax amnesty may be allowed without subjecting it to final withholding tax, if the Commissioner or the Revenue District Officer allows it, upon the taxpayer's request. Installment payment is not allowed, as provided by this circular. • The holder of buyer in a deed of sale transaction may avail of the tax amnesty if he presents the notarized EJS signed by all the heirs, with complete documentary requirements. Failure to submit the validated APF with proof of payment within the two-year period from the effectivity of RR 6-2019 is tantamount to non-availment of the estate tax amnesty but any payment may be applied against the total regular estate tax due, inclusive of penalties.
Revenue Memorandum Circular No. 75-2019, July 29, 2019 – This memorandum circular circularizes the availability of BIR Form No. 1914 April 2019 (ENCS).	This prescribes the revised BIR Form No. 1914 (Application for Tax Credits/Refunds) which must be accomplished and filed by taxpayers applying for tax credits or refunds. The major changes introduced in the revised form are: 1. Breakdown of amount of claim (attributable to the BIR and to the BOC); and 2. Removal of "Lost TRN" and "Expired TRN" as reasons for filing a claim for refund.
Revenue Memorandum Order No. 35-2019, July 18, 2019 – This memorandum order provides the civil remedies for the collection of accounts receivable or delinquent accounts.	This states that the civil remedies under Section 205 of the National Internal Revenue Code, as amended, shall immediately be pursued as soon as the "Form 40-Collectible" report have been received by the offices responsible in the enforcement of collection remedies. A Preliminary Collection Letter and Final Notice Before Seizure shall no longer be sent to the delinquent taxpayers. Once a properly filled out "Form 40-Collectible" is received by the concerned office, together with the dockets of the case, it shall be validated and a Warrant of Distraint and/or Levy (WDL) shall be immediately issued. The other collection procedures to implement the WDL and other collection remedies in the Collection Manual are still relevant shall continuously be adopted.

Revenue Memorandum Order No. 37-2019, July 23, 2019 – This memorandum order amends policies, guidelines, and procedures on the registration of employees.	This provided the revised procedure of the issuance of a TIN. For Large Taxpayer-Employers, the employer shall secure the TIN of its new employees through eRegistration. When eRegistration is unavailable or registration cannot be done via eRegistration, the employer must submit the application to the employer's local RDO. For Non-Large Taxpayer-Employers, the employer shall secure the TIN of its new employees through eRegistration. Other employers not classified as large taxpayers, Tax Account Management Program Corporations, or eFPS-registered users, have the option to secure the TIN through the RDO having jurisdiction over the employer's business address. In the event that eRegistration cannot process the TIN applications, the RDO shall likewise accommodate the said employees.
Revenue Memorandum Order No. 38-2019, July 24, 2019 – This memorandum order clarified the tax exemption of Non-Stock, Non-Profit Corporations under Section 30 of the National Internal Revenue Code of 1997, as amended. ***Note:***	This provided that a corporation claiming tax exemption must be able to show clearly that it is has passed the organizational and operational test, as embodied in Section 30 of the NIRC. The Organizational Test requires that the corporation or association's constitutive documents must show that its primary purpose/s of incorporation fall under Section 30 of the NIRC, while the Operational Test requires that the regular activities of the corporation or association must be exclusively devoted to the accomplishment of the purposes specified in Section 30 of the NIRC. This reiterated that in order for an entity to qualify as a non-profit corporation exempt from income tax, it must demonstrate that its earnings or assets do not inure to the benefit of any of its trustees, organizers, officers, members or any specific person; must not be organized or operated for the benefit of private interests; and must serve a public rather than a private purpose. The memorandum order does not include processing of Certificate Tax Exemption for non-stock, non-profit educational institutions under Section 30(H) of the NIRC, which is covered by Revenue Memorandum Order (RMO) No. 44-2016.

Revenue Memorandum Order No. 40-2019, July 30, 2019 – This memorandum order prescribes the procedure for the proper service of assessment notices in accordance with the provisions of Section 3.1.6 of RR 18-2013.

This provides that an assessment notice shall be served to the taxpayer through personal service by delivering personally a copy of the assessment notice at his registered or known address, or wherever he may be found. If personal service is not possible, it shall be served either by substituted service or by mail. Substituted service can only be resorted to when the party is not present at the registered or known address. Personal or substituted service of assessment notice shall be effected by the RO assigned to the case. However, such service may also be made by any BIR employee duly authorized for the purpose.

Personal service shall be complete upon actual delivery of the assessment notice to the taxpayer or his representative while service by registered mail is complete upon actual receipt by the taxpayer or after five (5) days from the date of receipt of the first notice of the postmaster, whichever date is earlier. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing. Service to the tax agent/practitioner, who is appointed or authorized by the taxpayer in accordance with existing revenue issuances, shall be deemed service to the taxpayer.

Revenue Memorandum Order No. 41-2019, July 31, 2019 – This memorandum order prescribes the required documents and procedure in the processing of the request for lifting the warrant of garnishment, notice of tax lien, notice of levy, and notice of encumbrance.

This provided 12 instances wherein the issued warrant of garnishment (WG), notice of tax lien (NTL), notice of levy (NOL), or notice of encumbrance (NOE) may be extinguished. The additional instances are the following:

1. Full payment of unpaid tax liabilities, including penalties;
2. Acceptance of full payment of the taxpayer's offer of compromise;
3. Full payment of basic tax and subsequent approval of abatement of penalties;
4. Full or partial cancellation of the original assessment and the revised assessment was already paid in full;
5. Prescription of right to assess;
6. Creation of an escrow account with the Bureau's Authorized Agent Banks (AABs) in the amount not less than the tax liability, or has filed a surety bond issued by an accredited surety company for an amount not less than double the amount of the outstanding tax liability;
7. Full destruction of the improvement of property subject to the lien due to fortuitous events;
8. Upon a final and executory order from a competent court ordering the lifting;
9. Seized property is no longer owned by the taxpayer;
10. Garnishment of the account for the salaries of government employees;

11. Meritorious instances, provided the interest of the government is not jeopardized, but with the CIR's prior approval; and
12. Other meritorious cases upon the discretion of the CIR.

Request for the issuance of "Notice of Lifting of WG/NTL/NOL/NOE" shall only be processed if the required documents applicable to the ground invoked are submitted and a request with incomplete documents shall be issued an acknowledgement letter within ten (10) working days from its receipt, stating the lacking documents. Those with complete documents, shall be processed within ten (10) working days from its receipt.

The processing of the application for the issuance of "Notice of Lifting of WG/NTL/NOL/NOE" shall be done by the particular office which has jurisdiction over the tax liabilities subject of the WG/NTL/NOL/NOE.

SEC ISSUANCES

UPDATES

- **SEC Memorandum Circular No. 14 dated July 8, 2019: Rules and Regulations Governing Crowdfunding (CF) –** This provides for the rules governing the operation and use of equity-based and lending-based crowdfunding.

- **SEC Memorandum Circular No. 15 dated July 26, 2019: 2019 Revision of the GIS –** This circularizes the amendment of SEC Memorandum No. 17, Series of 2018 on the Revision of the General Information Sheet (GIS) Form to Include the Beneficial Ownership Information.

- **SEC Memorandum Circular No. 16 dated July 30, 2019: Guidelines on the Number and Qualifications of Incorporators Under the Revised Corporation Code –** This provides for the guidelines on the number and qualifications of incorporators under the Revised Corporation Code

SEC Memorandum Circular No. 14 dated July 8, 2019: Rules and Regulations Governing Crowdfunding (CF) – This circular provides for the rules governing the operation and use of equity-based and lending-based crowdfunding.

This provides for the rules governing the operation and use of equity-based and lending-based crowdfunding by registered persons, investors and issuers who participate in CF through an online platform. Crowdfunding though other means other than electronic online platform is not covered by this RMC. Crowdfunding refer to the offer or sale of equities of a limited scale usually for start-ups, micro, small and medium enterprises (MSEs).

An issuer may offer or sell securities under these Rules without the need for registering said securities under Section 12 of the SRC, provided that:

1. The issuer is an entity organized under the laws of the Philippines or a Filipino natural person, and accredited and/or accepted by a crowdfunding intermediary to utilize its platform;

2. The aggregate amount of securities that can be offered and sold by the issuer within a 12-month period shall comply with the following limits:

    a. Offering of securities with an aggregate value of up to Ten Million Pesos (Php10,000,000.00) within a 12-month period can be offered and sold to any investor;

    b. Offering of securities with an aggregate value of above Ten Million Pesos (Php10,000,000.00) but not exceeding Fifty Million Pesos (Php50,000,000.00) within a 12-month period can only be offered and sold to Qualified Investors.

3. The aggregate amount of securities sold to any investor across all issuers in securities crowdfunding during the 12-month period shall not exceed the following limits set forth:

    a. Retail Investors with income of up to Two Million Pesos (Php2,000,000.00) per year may purchase securities through a Crowdfunding Intermediary in a maximum value of 5% of their total income per year.

    b. Retail Investors with income of more than Two Million Pesos (Php2,000,000.00) per year may purchase securities through a Crowdfunding Intermediary in a maximum value of 10% of their total income per year.

c. Qualified Investors are not subject to the limits set forth above, provided that the Qualified Investor complies with 2015 IRR Rule 10.1.3 and 2015 IRR Rule 10.1.11.

4. The issuance of securities is conducted through an intermediary that complies with the requirements for intermediaries and the related requirements under these Rules, and the issuance of securities is conducted exclusively through the intermediary's platform.

Note that similar crowdfunding done through medium other that online electronic platform may not avail of this exemption from registration of securities under Section 12 of the SRC.

The Circular also requires of intermediaries to be registered either as (i) a broker pursuant to the requirements of Section 28 of the SRC, or (ii) an investment house under the Investment Houses Law and its Implementing Rules and Regulations, or (iii) a funding portal in accordance with the requirements of Section 34 – Registration of Funding Portals. Further, it provides for the criteria that must be complied by the applicant and its board, chief executive, controller, and any other person who is primarily responsible for its operations.

A crowdfunding intermediary shall appoint at least one Lead Person who shall be the chief executive of the intermediary or any person who is primarily responsible for the operations and financial management, by whatever name he is called. The Circular also listed down the required disclosures of the extent of review measure undertaken to be made by the intermediaries, mechanisms for monitoring and compliance, and requires the immediate notification of the SEC in cases of irregularity, breach, material changes or other matters necessary to carry out its functions.

SEC Memorandum Circular No. 15 dated July 26, 2019: 2019 Revision of the GIS – This circularizes the amendment of SEC Memorandum No. 17, Series of 2018 on the Revision of the General Information Sheet (GIS)

This circularizes the amendment on the revision of the General Information Sheet (GIS) Form to Include the Beneficial Ownership Information. The said revision will cover all stock and non-stock corporations required to submit GIS under laws and regulations.

The Circular defines "Beneficial Owner" as any natural person(s) who ultimately own(s) or control(s) or exercise(s) ultimate effective control over the corporation. This definition covers the natural person(s) who actually own or control the corporation as distinguished from the legal owners. Such beneficial ownership may be determined on the basis of the following:

Form to Include the Beneficial Ownership Information.

1. Category A: Natural person(s) owning, directly or indirectly or through a chain of ownership, at least twenty-five percent (25%) of the voting rights, voting shares or capital of the reporting corporation.

2. Category B: Natural person(s) who exercise control over the reporting corporation, alone or together with others, through any contract, understanding, relationship, intermediary or tiered entity.

3. Category C: Natural person(s) having the ability to elect a majority of the board of directors/trustees, or any similar body, of the corporation.

4. Category D: Natural person(s) having the ability to exert a dominant influence over the management or policies of the corporation.

5. Category E: Natural person(s) whose directions, instructions, or wishes in conducting the affairs of the corporation are carried out by majority of the members of the board of directors of such corporation who are accustomed or under an obligation to act in accordance with such person's directions, instructions or wishes.

6. Category F: Natural person(s) acting as stewards of the properties of corporations, where such properties are under the care or administration of said natural person(s).

7. Category G: Natural person(s) who actually own or control the reporting corporation through nominee shareholders or nominee directors acting for or on behalf of such natural persons.

8. Category H: Natural person(s) ultimately owning or controlling or exercising ultimate effective control over the corporation through other means not falling under any of the foregoing categories.

9. Category I: Natural person(s) exercising control through positions held within a corporation (i.e., responsible for strategic decisions that fundamentally affect the business practices or general direction of the corporation such as the members of the board of directors or trustees or similar body within the corporation; or exercising executive control over the daily or regular affairs of the corporation through a senior management position). This category is only applicable in exceptional cases where no natural person is identifiable who ultimately owns or exerts control over the corporation, the reporting corporation having exhausted all reasonable means of identification and provided there are no grounds for suspicion.

In the disclosure of beneficial owners, all SEC registered corporations are required to take reasonable measures to obtain and hold up-to-date information on their beneficial owners and disclose the same in a timely manner in the GIS.

The Circular also provides for guidelines in determining the Beneficial Owner through the following manners:

1. The identity of the natural person(s) who ultimately has controlling ownership interest in the Corporation. – In this case, the beneficial owner is someone who directly, indirectly, or through a chain of ownership, owns at least twenty-five percent (25%) of the voting shares or the capital of the corporation or least twenty-five percent (25%) of the voting rights therein. In case the one owning the 25% is a trust, estate or partnership, then the person controlling that entity.

2. The identity of the natural persons, if any, exercising control of the corporation through other means.

3. The identity of the natural persons composing the Board of Directors/Trustees or any similar body and/or the senior managing official of the reporting corporation.

   Note: This is only applicable in case no natural person is identified as ultimately owning or controlling over the corporation and provided there are no grounds for suspicion.

In case of indirect ownership, the methodology in the "Grandfather Rule" shall be applied in determining the percentage of ownership of natural persons ultimately owning the corporation. The natural person who ultimately owns least twenty-five percent (25%) of the voting shares or the capital of the corporation through ownership of shares by a corporate stockholder or multiple layers of corporate stockholders. Both direct and indirect shareholdings are considered in the determination.

In case the twenty-five percent (25%) of the voting shares or the capital of the corporation is owned by a corporate shareholder after applying the Grandfather Rule Method, the natural persons composing the Board of Directors/Trustees or any similar body and/or the senior managing official of the reporting corporation are considered the ultimate owners. This is subject to strict monitoring by the SEC. If the same was resorted to despite clear evidence of actual beneficial ownership, it shall be considered is prima facie evidence of violation of this Circular.

	An updated GIS must be submitted within seven (7) from the effectivity of changes or from the time it occurred in the beneficial ownership. For corporations with multiple layers of corporate stockholders, an updated GIS must be submitted within the same 7-day period. In case of failure to do so, it must submit an updated GIS within thirty (30) days from the occurrence of changes coupled with an explanation for the failure to submit within the prescribed period.
SEC Memorandum Circular No. 16 dated July 30, 2019: Guidelines on the Number and Qualifications of Incorporators Under the Revised Corporation Code – This memorandum circular provides for the guidelines on the number and qualifications of incorporators under the Revised Corporation Code	To form a domestic corporation, at least two (2) or more persons, but not more than fifteen (15) may organize themselves and form a new corporation. Only the One Man Corporation (OPC) may have a single stockholder as well as director. Each incorporator must subscribe to at least one (1) share of the capital stock or must be a member in case of non-stock corporation. Unlike in the old Corporation Code, the incorporator may now be a combination of natural persons, SEC-registered partnerships, domestic corporations or associations as well as foreign corporations. If the incorporators are natural persons, they must be of legal age and must sign the Articles of Incorporation. If a Partnership is an Incorporator, the application for registration must be accompanied by Partner's Affidavit, duly executed by all partners to the effect that they have authorized the partnership to invest in the corporation to be formed designating one of the partners as its authorized signatory. Dissolved and Expired partnerships are prohibited from becoming incorporators. If the incorporator is a domestic corporation or association, the investment must be approved by a majority of the board of directors or trustees and ratified by the stockholders representing at least 2/3 of the outstanding capital stock or at least 2/3 of the members in case of non-stock corporation at a meeting duly called for the purpose. A Director's/Trustee's/Secretary's Certificate indicating the necessary approval and the authorized signatory shall accompany the application for registration. Corporations or Associations with revoked, delinquent, suspended or expired status with the SEC cannot be incorporators. In case of foreign corporations as incorporator, the application must include a document (Board Resolution, Director's or Secretary's Certificate, etc.) authorizing the foreign corporation to invest in the new corporation. It must be duly authenticated by the Philippine Consulate or with Apostille and it must name the designated signatory of the foreign corporation. The individual must sign the AOI and indicate in what capacity he is signing. The same goes for the authorized signatories of the Corporations, Partnership and Associations. The TIN and the foreign passport numbers of foreign investors other than foreign corporations which have not been issued with TIN must also be indicated in the AOI. Foreign corporations and investors must all secure a TIN

thereafter, otherwise subsequent documents filed with SEC without their TIN will not be accepted by the SEC.

The authorized signatory of non-individual incorporator may not be designated as director or trustee unless he owns at least one (1) share or is a member of the non-stock corporation. Foreign equity limitations under the law are still imposed in this case.

SEC
OPINIONS AND DECISIONS

UPDATES

- **A quorum for a non-stock corporation may be provided by its By-laws. The quorum under the Revised Corporation Code only applies in case the By-Laws is silent as to how quorum is determined.** *(SEC-OGC Opinion No. 19-25, July 22, 2019, Re: Quorum in Meetings of a Condominium Corporation)*

- **A non-profit corporation may derive income or profit without violating its purpose clause as long as the income does not inure to the benefit of any member.** *(SEC-OGC Opinion No. 19-26, July 22, 2019, Re: Right to Lease of a Non-Stock, Non-Profit Condominium Corporation)*

- **A corporation is still engaged in mass media despite the "other than mass media" clause in its Articles of Incorporation considering the extent of its activities. Thus, no foreign ownership is allowed.** *(SEC-OGC Opinion No. 19-27, July 22, 2019, Re: Foreign Ownership Limit; Foreign Investment Act)*

- **All existing corporations automatically now have perpetual existence under the Revised Corporation Code without any positive act on the corporation.** *(SEC-OGC Opinion No. 19-28, July 22, 2019, Re: Corporate Term of Existing Corporations under the Revised Corporation Code)*

- **Misrepresenting the principal business address and the addresses of its incorporators in the Articles of Incorporation is fraud and is a sufficient ground to revoke the SEC Registration of a Corporation.** *(SEC Admin Case No. 06-10-118 dated July 9, 2019, In the Matter of Red White & Blue Arms, Inc.)*

- **Failure to comply with the required disclosures under the applicable financial reporting framework and SRC is considered material deficiencies under the SEC Rules.** *(SEC En Banc Case No. 02-11-230 dated July 16, 2019, For: Review of CRMD's Imposition of Penalty Under SEC Memorandum Circular No. 8 Series of 2009)*

A quorum for a non-stock corporation may be provided by its By-laws. The quorum under the Revised Corporation Code only applies in case the By-Laws is silent as to how quorum is determined.

This is issued pursuant to a request to determine if the proper basis for determining the existence of quorum of an annual membership meeting of a non-stock and non-profit corporation should be stated in the By-Laws and Master Deed. Some of the members opined that the basis should be the attendance of only the simple majority of the members who are in good standing.

The SEC clarified that Sec. 51 in relation to Sec. 46 (c) of the Revised Corporation Code state that a quorum shall consist of stockholders representing majority of the outstanding capital stock or majority of the members unless otherwise provided for by the Corporation Code or the By-Laws. Citing the case of *Tan et. al. vs. Sycip*, the Supreme Court held that only those who are actual, living members shall be counted in determining quorum. Based on the definition of quorum in the corporation's By-Laws and Master Deed, the majority interest (more than 50%) should be based on the numerical equivalent of the total interests of all members who are entitled to vote "whose units are not delinquent in their duties and assessments". The SEC however refused to comment on the accuracy of the figures in the numerical computation considering the same will entail the determination of factual issues. ***(SEC-OGC Opinion No. 19-25, July 22, 2019, Re: Quorum in Meetings of a Condominium Corporation)***

A non-profit corporation may derive income or profit without violating its purpose clause as long as the income does not inure to the benefit of any member.

This is issued pursuant to a request to determine the propriety of holding and leasing out the condominium units without violating its purpose clause of a non-stock and non-profit condominium corporation.
The said non-stock and non-profit condominium corporation foreclosed the mortgage against several condominium unit owners who failed to pay their dues. The condominium corporation emerged as the highest bidder and acquired the foreclosed condo units.

The SEC opined that under Sec. 86 of the Revised Corporation Code, a non-stock and non-profit corporation is allowed to raise funds so long as it is incidental to the corporation's operations and the said funds shall be used for the furtherance of the purpose for which it was established. It is also required that the profit is not distributed to its members. In relation to this, corporations have express and incidental powers. Sec. 35 of the Revised Corporation Code expressly provides Corporations the power to purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage, and otherwise deal with such real and personal property as the lawful business of the corporation may reasonable and necessarily require subject to certain limitations. Further, corporations are granted incidental powers which are essential or necessary to carry out its purposes in the Articles of Incorporation.

	The condominium corporation is allowed to hold and lease out the condo units based on its Articles of Incorporation (AOI). Article II of the AOI expressly confers to the condominium corporation the power to purchase, hold, lease, among others, personal and real properties as may be necessary to achieve the purposes and activities of the corporation. Hence, the condominium corporation may validly acquire, hold and lease such condo units as long as the income derived from leasing will be used for the same purpose for which the condominium dues and fees are collected, that is to cover the expenses in administering and managing the condominium project and corporation. **(SEC-OGC Opinion No. 19-26, July 22, 2019, Re: Right to Lease of a Non-Stock, Non-Profit Condominium Corporation)**
A corporation is still engaged in mass media despite the "other than mass media" clause in its Articles of Incorporation considering the extent of its activities. Thus, no foreign ownership is allowed.	This is issued pursuant to a request to determine whether the corporation is subject foreign equity limitations, and if so, what is the foreign equity limitations set by law. The domestic corporation is primarily engaged in the business of providing telecommunications, media and information technology, telecommunications value added services, digital media and other media except mass media. Citing previous SEC Opinions, the SEC opined that the corporation is engaged in mass media despite the phrase "except mass media". Considering that it is engaged in mass media, no foreign ownership of is allowed. Assuming that it is not engaged in mass media activities, foreign equity is limited to a maximum of forty percent (40%) as it is also engaged in public utility being in the telecommunications business under Article XII, Sec. 11 of the Constitution and as reiterated by the Eleventh Foreign Investment Negative List. ***(SEC-OGC Opinion No. 19-27, July 22, 2019, Re: Foreign Ownership Limit; Foreign Investment Act)***
All existing corporations automatically now have perpetual existence under the Revised Corporation Code without any positive act on the corporation.	This is issued pursuant to a request to confirm whether the corporate is automatically deemed perpetual with the effectivity of the Revised Corporation Code. The corporation's corporate existence is about to expire on December 1, 2020. The SEC opined that the corporate term is now deemed perpetual as provided by Sec. 11, Par. 2 of the Revised Corporation Code. The law clearly states that the corporate term of corporations existing prior to, and which continues to exist upon the effectivity of the Revised Corporation Code shall be automatically deemed perpetual without any further action on the part of the corporation. Since the automatic conversion does not require the amendment of the Articles of Incorporation (AOI), the 2/3 affirmative vote of the outstanding shares to amend the AOI is not required. **(SEC-OGC Opinion No. 19-28, July 22, 2019, Re: Corporate Term of Existing Corporations under the Revised Corporation Code)**

Misrepresenting the principal business address and the addresses of its incorporators in the Articles of Incorporation is fraud and is a sufficient ground to revoke the SEC Registration of a Corporation.

In this case, the Enforcement and Investors Protection Department (EIPD) of the SEC petitioned the revocation of the Certificate of Registration of a corporation on the ground of Fraud under Sec. 6 (i), subparagraph 1 of PD 902-A or the SEC Reorganization Act. The EIPD alleged that based on its investigation, the corporation misrepresented its principal business address and the addresses of its incorporators in the Articles of Incorporation (AOI) and that the same constitutes fraud and a ground for the revocation of its Certificate of Registration. The incorporators also failed to appear in the scheduled conference despite notice.

The SEC ruled that the corporation's juridical existence, being a mere privilege granted by sovereign, may, at any time, be withdrawn on grounds provided by law. The fraud under Sec. 6(i)(1) of PD 902-A covers both actual and constructive fraud. Here, the act of the corporation when it declared a fictitious address as their principal business address in their AOI to induce the SEC to issue a Certificate of Registration in its favor is fraudulent. Moreover, the addresses of the incorporators are either non-existent, cannot be located, or not resided in by said incorporator. Even if there is no deceit employed by the corporation, it could have amended its AOI or filed a GIS to apprise the SEC of any changes of its addresses, however, the corporation failed to do so. It likewise failed to appear in its scheduled conferences despite notice. Thus, there is fraud and bad faith on the part of RWBA sufficient for the revocation of its Certificate of Registration. ***(SEC Admin Case No. 06-10-118 dated July 9, 2019, In the Matter of Red White & Blue Arms, Inc.)***

Failure to comply with the required disclosures under the applicable financial reporting framework and SRC is considered material deficiencies under the SEC Rules.

The corporation is a wholly-owned subsidiary of parent company. The parties entered into a Deed of Assignment where the parent company assigned its mining rights in exchange of the shares of the corporation. The latter increased its authorized capital stock and the same was approved by the SEC. The said transactions were not disclosed in the Audited Financial Statements (AFS) of the corporation for the years 2009 and 2010. Instead, it was indicated in the Notes to the AFS. Thus, the SEC imposed a fine for violation of SEC Memorandum Circular No. 8, Series of 2009 (material misstatements and quantitative disclosures).

The SEC ruled that under SEC Memorandum Circular No. 8, Series of 2009, failure to comply with the required disclosures under the applicable financial reporting framework and SRC is considered material deficiencies. Thus, the disclosures made by the corporation in its Notes to the AFS are deemed material deficiencies since the amounts or values of the mining rights as well as the values of the shares issued in exchange are missing and for failure to make a clear connection between the Deed of Assignment of Mining Rights and the Issuance of Shares in Exchange. The corporation also committed

material misstatements by understating the assets and equity accounts in its AFS. ***(SEC En Banc Case No. 02-11-230 dated July 16, 2019, For: Review of CRMD's Imposition of Penalty Under SEC Memorandum Circular No. 8 Series of 2009)***

IC ISSUANCES

- **IC Circular Letter No. 2019-34, July 18, 2019 –** This provides for the amendments to the rules and regulations on consolidation and merger of insurance companies

- **IC Circular Letter No. 2019-35, July 18, 2019 –** This lays down the guidelines for the conservatorship of Health Maintenance Organizations (HMOs) and appointment of conservators

IC Circular Letter No. 2019-34, July 18, 2019 – This letter provides for the amendments to the rules and regulations on consolidation and merger of insurance companies

This was issued to all domestic insurance companies doing business in the Philippines in relation to the amendment of the rules and regulations on consolidation and merger of insurance companies. Prior favorable recommendation by the Insurance Commissioner is required before the merger or consolidation. To secure the favorable endorsement, the following must be submitted:

1. Certified true copy of the articles of merger or consolidation duly approved by the board of directors, and adopted by the stockholders of the constituent companies;
2. Minutes of meetings approving and adopting respectively the articles of merger or consolidation;
3. Deed of assignment or transfer of all the assets in favor of the absorbing or acquiring company in exchange for shares of the latter;
4. Audited financial statements of the constituent companies;
5. Affidavit of publication of the notice of dissolution of the absorbed company or companies;
6. Certification about increase of capital stock of the acquiring or absorbing company executed whenever necessary;
7. Written proof as to the discharge of accrued liabilities of the company or companies to be absorbed or dissolved; and
8. Such other papers or documents which the Commissioner may require.

IC Circular Letter No. 2019-35, July 18, 2019 – This letter lays down the guidelines for the conservatorship of Health Maintenance Organizations (HMOs) and appointment of conservators

This was issued to all Health Maintenance Organizations (HMOs) doing business in the Philippines and other concerned parties regarding the guidelines for the conservatorship of HMOs and appointment of conservators. Pertinent portions of the circular letter are as follows:

1. **Grounds for Conservatorship**. — If the Commission finds that the HMO is in a state of continuing inability or unwillingness to comply with related laws, circulars, rules, regulations, and/or orders of the Commission, said HMO shall be placed under conservatorship; and the Commission shall consequently appoint a conservator.

2. **Powers of the Conservator**. — The conservator shall take charge of the assets, liabilities, and the management of such HMO, collect all monies and debts due the HMO, and exercise all powers necessary to preserve the assets of

the HMO, reorganize its management, and restore its viability. The conservator shall have the power to overrule or revoke the actions of the previous management and board of directors of the HMO, any provision of the articles of incorporation or by-laws of the HMO to the contrary notwithstanding, and such other powers as the Commission shall deem necessary. The conservator shall not be subject to any action, claim, or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise, or in connection with the exercise, of the powers conferred on the conservator.

3. **Obligations of the Conservator**. — The conservator appointed shall report and be responsible to this Commission until such time as the Commission is satisfied that the HMO can continue to operate on its own.

4. **Remuneration and Other Expenses**. — The remuneration of the conservator and other expenses attendant to the conservation shall be borne by the HMO.

5. **Termination of Conservatorship**. — The conservatorship shall be terminated should the Commission, on the basis of the report of the conservator or of his own findings, determine that the continuance in business of the HMO would be hazardous to planholders and creditors, in which case the HMO shall be subsequently placed either under receivership or liquidation.

- **IC Ruling No. 2019-03, July 17, 2019 –** This deals with whether or not the 20% Deposit under Circular Letter No. 2016-41 as collateral for a loan

IC Ruling No. 2019-03, July 17, 2019 – This ruling deals with whether or not the 20% Deposit under Circular Letter No. 2016-41 as collateral for a loan

The Company sent letters inquiring whether or not the deposit mentioned in Section 1.2. (a) of this Commission's Circular Letter No. 2016-41 may be used as a collateral for a loan.

The IC ruled that the deposit mentioned in Circular Letter No. 2016-41 cannot be used as a collateral for a loan. Section 1.2. (e) of said Circular Letter provides that, "[the] Deposit shall be used to protect the interests of the HMOs' enrolled members and to assure continuation of health care services to them." The said deposit is intended to ensure the delivery of the guaranteed benefits and services provided under the HMOs' enrolled members' respective contracts; and consequently shall, at all times, remain for the exclusive benefit of said enrolled members. Accordingly, it cannot be used for or diverted to any purpose other than for the exclusive benefit of the HMOs' enrolled members.

BSP ISSUANCES

UPDATES

- **BSP Memorandum No. M-2019-020, July 19, 2019 –** This approved the lifting of moratorium on Automated Teller Machine (ATM) fees

- **BSP Circular No. 1042, July 25, 2019 –** This provides for the guidelines on investment activities of BSP Supervised Financial Institutions (BSFIs)

- **BSP Circular Letter No. 2019-50, July 16, 2019 –** This provides for the requirement of publication/posting of Balance Sheet (BS) and Consolidated Balance Sheet (CBS) for banking institutions.

- **BSP Circular Letter No. 2019-51, July 16, 2019 –** This provides for the requirement of publication/posting of Balance Sheet (BS) for trust entities.

- **BSP Circular Letter No. 2019-52, July 16, 2019 –** This provides for the requirement of publication/posting of Statement of Condition and/or Consolidated Statement of Condition for all non-bank financial institutions with quasi-banking functions and/or trust authority.

BSP Memorandum No. M-2019-020, July 19, 2019 – This memorandum approved the lifting of moratorium on Automated Teller Machine (ATM) fees

This was issued approving the lifting of the moratorium on ATM fees in line with the results of the review of ATM fees pursuant to Memorandum M-2013-044 dated 27 September 2013, subject to the following:

1. Each participating BSP Supervised Financial Institutions (BSFI) shall file a letter request with the BSP indicating their proposed ATM fees as well as the costs currently incurred by the BSFI with respect to its ATM activities;

2. Costs declared should be clear and adequately supported, such that when deemed necessary, the same may be validated by the BSP onsite;

3. Setting of fees, including convenience fees, shall adhere to the pricing principles provided under BSP Circular No. 980 dated 06 November 2017, whenever applicable;

4. Acquirer-based charging model should already be adopted. To ensure effective implementation of said model, the imposition of fees arising from agreements among BSFIs to fix the fee or have a fix share in fees shall not be allowed; and

5. Appropriate disclosures on ATM fees and charges shall be provided to the cardholders. The amount to be charged to a cardholder shall be clearly displayed on the ATM location and on the screen of the ATM terminal. Said amount shall consist of the fees charged by the acquiring BSFI and the network switch. The notice shall clearly indicate that the amount displayed is on top of the charges that may be imposed by the cardholder's issuer.

BSP Circular No. 1042, July 25, 2019 – This circular provides for the guidelines on investment activities of BSP Supervised Financial Institutions (BSFIs)	This was issued to set expectations on the prudent conduct of investment activities and the minimum practices that a BSFI should establish for the management and control of risks associated with investments. These guidelines cover all of a BSFI's investments in the trading and banking books. It lays down policies, procedures, and limits that provide a framework for managing investment activities as well as the adoption of additional internal controls. However, the guidelines do not apply to a BSFI's (a) investments that grant control over an enterprise and are accounted for using the equity method, (b) transactions in derivatives involving stand-alone contracts, and (c) receivables arising from repurchase agreements.
BSP Circular Letter No. 2019-50, July 16, 2019 – This circular provides for the requirement of publication/posting of Balance Sheet (BS) and Consolidated Balance Sheet (CBS) for banking institutions.	This was issued with respect to Section 175 of the Manual of Regulations for Banks and Memorandum No. M-2017-030 dated 2 October 2017 which requires universal banks, commercial banks, thrift banks, rural banks, and cooperative banks to publish their quarterly balance sheet as of June 30, 2019 together with their consolidated balance sheets, if applicable.
BSP Circular Letter No. 2019-51, July 16, 2019 – This circular provides for the requirement of publication/posting of Balance Sheet (BS) for trust entities.	This was issued with respect to Section 4192T of the Manual of Regulations for Non-Bank Financial Institutions and Memorandum No. M-2017-027 dated September 11, 2017 which requires trust entities to publish their quarterly balance sheet as of June 30, 2019.

BSP Circular Letter No. 2019-52, July 16, 2019 – This circular provides for the requirement of publication/posting of Statement of Condition and/or Consolidated Statement of Condition for all non-bank financial institutions with quasi-banking functions and/or trust authority.

This was issued with respect to Subsection 4192Q.3 of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) for quasi-banks and Section 4181N of MORNBFI for trust entities which requires non-bank financial institutions with quasi-banking functions and/or trust authority to publish their quarterly balance sheet as of June 30, 2019 together with their consolidated balance sheets, if applicable.

BIR COLLECTION LETTERS AND PAINKILLERS

By

Irwin C. Nidea, Jr.

IT pains me when clients ask for help and my hands are "almost" tied. This happens when clients "self-medicate" and are clueless of the remedies available to them and the jeopardy that their companies are exposed to. When clients present to me collection letters from the Bureau of Internal Revenue (BIR), i.e., Preliminary Collection Letter (PCL), Final Notice Before Seizure (FNBS), Warrant of Distraint and Levy (WDL) or worse, Notice of Garnishment (NG), I know that a pain reliever will not do the trick.

Some taxpayers do not know the urgency and the crucial decisions that they need to make after receiving these collection letters—that can either make or break them. A recent Supreme Court decision (GR 221780, March 25, 2019), illustrates how a wrong appreciation of collection letters can result in finality of a tax assessment.

In the said case, the taxpayer received a PCL, let's say, on June 1. He was surprised to receive said notice since he did not receive any assessment notice before that. He did not receive a Preliminary Assessment Notice (PAN) nor a Final Assessment Notice (FAN). On June 15 or 15 days after receiving the PCL, he visited his BIR Revenue District Office to inquire about the nature of the PCL that he received. The BIR informed him that the PCL is authentic and that his worst

nightmare is true. The BIR is after him and collection against him is now being enforced. Since he has no copies of the PAN and the FAN, he secured certified true copies of the same from the BIR.

Thirty days is about to lapse since he received the PCL on June 1. Knowing that he has only 30 days to appeal to the Court of Tax Appeals (CTA) on matters that it has jurisdiction of, he decided to file an appeal to the CTA on June 30. Was the taxpayer successful in protecting itself from the PCL?

Unfortunately, the SC says no. The tax assessment has become final and executory because the taxpayer's appeal to the CTA is premature. The taxpayer should instead have filed an administrative protest to the BIR within 30 days from receipt of the certified true copy of the FAN. In other words, instead of filing an appeal to the CTA on June 30, the taxpayer should have filed an administrative protest to the FAN within 30 days from June 15.

The SC says that by securing certified true copies of the PAN and the FAN, the taxpayer is effectively notified of the assessment notices. The appeal to the CTA is premature. And since the taxpayer was not able to file an administrative protest within 30 days from June 15, the tax assessment has become final and executory.

This case shows how vague the rules are with respect to the treatment of collection notices. Should they always be treated as decisions of the BIR that are appealable to the CTA? Apparently, the answer is no.

There are other scenarios that the cited case was not able to clarify, e.g., What if the taxpayer did not secure certified true copies of the PAN and the FAN, was it able to file its appeal to the CTA on time? What if instead of appealing the PCL, it waited for the FNBS or the WDL, will its appeal to the CTA be still considered on time? One thing is for sure though, in determining whether appeal to the CTA is proper, the unique circumstances of every case must be evaluated.

In order to simplify the collection process, the BIR recently issued RMO 35-2019 on July 18, 2019. The Commissioner realized that the soft approach in the enforcement of civil remedies to collect taxes no longer bears substantial impact in enhancing collection. Thus, issuance of PCL and FNBS is now a thing of the past. The BIR will now immediately issue WDL.

Taxpayers must now be more wary. It means that the BIR's next move against them after the issuance of the WDL is garnishment or levy of their properties.

It also means that self-medication is over. It is time to let go of the painkiller.

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For inquiries on the article, you may call or email

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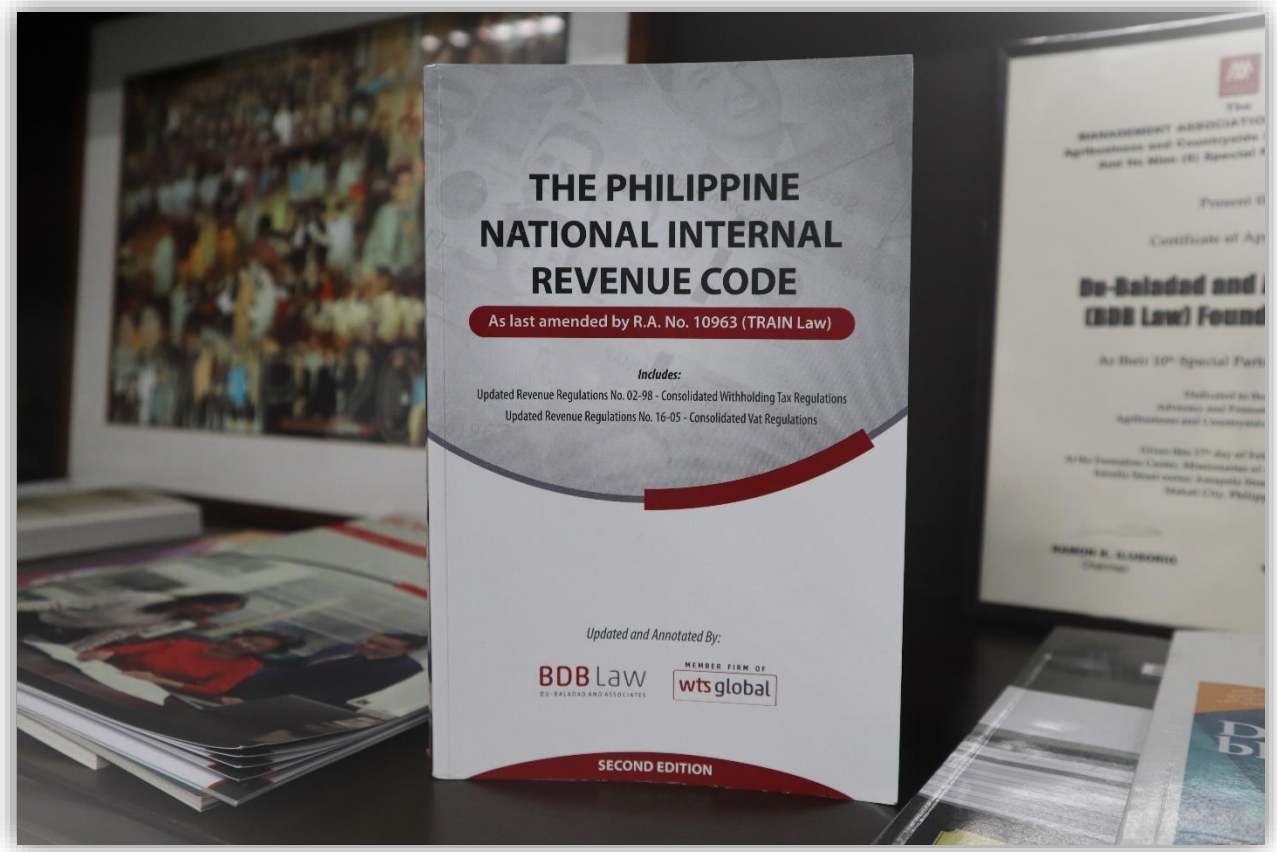
BDB Law Published its 5th book on The NIRC as amended by TRAIN Law



Du-Baladad and Associates (BDB Law) published its 5th book, the "Philippine National Internal Revenue Code as last amended by R.A. No. 10963 (TRAIN Law)"

Attached as Annexes to the book are the updated and consolidated version of Revenue Regulations (RR) Nos. 02-98 on Withholding Tax and 16-05 on Value Added Tax (VAT) reflecting the latest changes on implementing rules due to the Train Law.

The book is designed to serve as a reference and guide for all taxpayers in complying with their obligation to pay the proper taxes.

Should you be interested to get a copy, please contact our office at 403-2001.

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