TAX Insights

BDB Law
DU-BALADAD AND ASSOCIATES

DECEMBER ● VOL. 12 ● SERIES OF 2019

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*).

20/F Chatham House
Valero cor. Rufino Sts.

Salcedo Village
Makati 1227 Philippines

www.bdblaw.com.ph
info@bdblaw.com.ph

T: (632) 8403-2001
F: (632) 8403-2001 loc. 130

PAGE NOS.

UPDATES

- COURT ISSUANCES
  - *CTA* 1-20
- REGULATORY ISSUANCES
  - *DOF OPINIONS* 21-22
  - *BIR ISSUANCES* 23-26
  - *SEC ISSUANCES* 27-29
  - *SEC OPINIONS & DECISIONS* 30-31
  - *IC ISSUANCES* 32-34
  - *IC OPINIONS* 35-36
  - *BSP ISSUANCES* 37-42

INSIGHTS

- The Economic Employer Rule 43-46

OUR EXPERTS

- The personalities 47

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

UPDATES

- **The CTA has authority to rule on issues not raised by the parties in their pleadings.** *(Misamis Oriental Rural Electric Service Cooperative I, Inc. (MORESCO I), vs. Commissioner of Internal Revenue, CTA Case No. 9700, November 4, 2019)*

- **A Letter of Authority issued by the Revenue Regional Director is necessary before a Revenue Officer can examine any taxpayer in order to collect the correct amount of tax or to recommend the assessment of any deficiency tax due; Without a Letter of Authority, a Revenue Officer cannot examine any taxpayer or recommend the assessment of any deficiency tax due; Grant of authority is indispensable before a Revenue Officer can conduct an examination or assessment, and that absence thereof results to the nullity of the examination or the tax assessment itself.** *(Salcedo Ristorante Italiano, Inc., vs Commissioner of Internal Revenue, CTA EB No. 1774, CTA Case No. 8880 Nov. 4 2019)*

- **The Rules of Court places upon the movant, and not with the court, the obligations both to secure a particular date and time for the hearing of his motion and to give a proper notice thereof on the other party. It is precisely the failure of the movant to comply with these obligations, which reduces an otherwise actionable motion to a mere scrap of paper not deserving of any judicial acknowledgment.** *(Barrio Fiesta Manufacturing Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9880, November 5, 2019).*

- **VAT imposed pursuant to Section 108 of the NIRC does not apply to services performed inside the Subic Special Economic and Freeport Zone (SSEFZ) and the area where the latter operates, nor is the 12% VAT under the 1997 NIRC applicable to payments of cash dividends, dividends and per diem payments.** *(Subic Water & Sewerage Co, Inc., v. Commissioner of Internal Revenue, C.T.A. Case No. 9074, November 5, 2019)*

- **An authority emanating from the BIR or his duly authorized representative is required before an examination and an assessment may be made against a taxpayer.** *(Jinzai Experts, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9473, November, 6 2019)*

- **Service Agreements alone are not sufficient to prove that services were rendered in the Philippines for purposes of VAT refund.** *(Ibex Philippines Inc., vs. Commissioner of Internal Revenue, CTA Case No. 9546, November 7, 2019)*

- **Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and therefore void.** *(Republic of the Philippines, vs. Robiegie Corporation, CTA OC No. 024, November 7, 2019)*

- **It should be noted that a denial of the claim for refund made after the 120+30 day period is not considered in counting the period for judicial appeal. This is because the inaction of the CIR during the 120-day period is "deemed a denial", and without a timely appeal, said inaction which is "deemed a denial" becomes final and unappealable.** *(Lepanto Consolidated Mining Company vs. Commissioner of Internal Revenue, CTA Case No. 10163 November 7, 2019)*

- **In case the criminal offender is a corporation, the penalty shall be imposed on the Partner, President, General Manager, et.al., responsible for the violation under Section 253 (d) of the 1997 National Internal Revenue Code (NIRC), as amended.** *(People of the Philippines Vs. RPV Electro Technology Philippines Corporation/ Roland P. Vasquez (President), CTA Crim. Case No. 0-713, November 7, 2019)*

- **A demurrer to evidence is an objection of one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.** *(People of the Philippines Vs. Joseph Derrick B. Yambao, CTA Crim. Case No. 0-674 & 0-675, November 7, 2019)*

- **Section 861 of Republic Act (RA) No. 7916, as amended, mandates that the PEZA shall manage and operate the ecozones as a separate customs territory, thus, creating the legal fiction that the ecozone is a foreign territory. As a result, sales made by a supplier from the customs territory to a purchaser in the ecozone shall be treated as exportation from the customs territory. Conversely, sales made by a supplier from the ecozone to a purchaser in the customs territory shall be considered as an importation into the customs territory.** *(Taganito HPAL Nickel Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9128, November 8, 2019)*

- **Assessment is a preliminary step, essential to a warrant distraint and/or levy and to proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations.** *(Commissioner of Internal Revenue vs. Pacific Hub Corporation CTA EB No. 1837 (CTA Case No. 8895) Nov 8, 2019)*

CTA UPDATES

- **CTA has jurisdiction to review BIR's Notice of Denial of a taxpayer's application for abatement.** *(Commissioner of Internal Revenue, vs. Pacific Hub Corporation, CTA EB No. 1837 (CTA Case No. 8895), November 8, 2019)*

- **A prior TTRA is not necessary to avail of the benefits granted under the tax treaties.** *(Sky Cable Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9069, November 8, 2019)*

- **The filing of the Complaint Affidavit with the DOJ is the reckoning point in the counting of the 5-year prescriptive period for criminal cases arising from the Tax Code.** *(People of the Philippines vs. Ulysses Palconet Consebido, CTA Crim. Case Nos. 0-700, 0-702, & 0-703, November 8, 2019)*

- **Co-venturers are liable for VAT if the MOA they executed shows that they never intended for the joint venture to have a separate and distinct personality.** *(SM Residences Corp., vs. Commissioner of Internal Revenue, CTA Case No. 9395, November 11, 2019)*

- **In order to be entitled to a refund or issuance of a TCC for unutilized input VAT on the cancellation of registration due to retirement from or cessation of business, or due to changes in or cessation of status, taxpayre must show that it has no internal revenue tax liabilities against which the TCC may be utilized.** *(Deltek Systems (Philippines) Ltd., vs. Commissioner of Internal Revenue, CTA Case No. 9445, November 11, 2019)*

- **The issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment. This demand for payment signals the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies. Thus, it must be sent to and received by the taxpayer and must demand payment of the taxes described therein within a specific period.** *(Kultura Store, Inc., vs. Commissioner of Internal Revenue, CTA Case No. 9315, November 11, 2019)*

- **A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. It is an accepted and desirable practice in courts of law and administrative tribunals.** *(Splash Corporation, Inc., vs. Commissioner of Internal Revenue, CTA Case No. 9370, November 11, 2019)*

- **Failure to raise new matters in the MR is a ground for the denial of the same.** *(Commissioner of Internal Revenue, vs. Clark Water Corporation, CTA EB No. 1693 (CTA Case No. 8572), November 12, 2019)*

- **Criminal infractions under the Tax Code shall prescribe after five (5) years, reckoned from the commission of the tax offense and if not known, from discovery thereof and institution of judicial proceedings for investigation and punishment.** *(People of the Philippines vs. Juanchito D. Bernardo, Chairperson Praxedes P. Bernardo and JDBEC Incorporated, CTA Crim. Case No. 0-733, November 12, 2019)*

- **Deficiency tax assessments issued against a taxpayer without a valid LOA is void ab initio.** *(Hobbies of Asia, Inc., vs. Commissioner of Internal Revenue, CTA Case No. 9476, November 12, 2019)*

- **The corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other. However, once the carry over option is taken actually or constructively, it becomes irrevocable for that taxable period. The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer.** *(Wells Fargo Philippines Solutions Inc., vs. Commissioner of Internal Revenue, CTA Case No. 9578, November 12, 2019)*

- **If the sale is subject to zero-percent VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt and non-compliance therewith entails that the said sales cannot qualify for VAT zero rating.** *(Maersk Global Services Centres (Philippines), Ltd., vs. Commissioner of Internal Revenue, CTA EB No. 1804 CTA Case No. 9015 and Commissioner of Internal Revenue vs. Maersk Global Services Centres (Philippines), Ltd., CTA EB No. 1805 (CTA Case No. 9015), November 14, 2019)*

- **The Implementing Rules and Regulations of PEZA Law did not limit, but merely enumerated the allowable deductions. Thus, other items not enumerated may be claimed as deductions.** *(Moog Controls Corporation-Philippine Branch, vs. Commissioner of Internal Revenue, CTA EB No. 1809 (CTA Case No. 9077) and Commissioner of Internal Revenue, vs. Moog Controls Corporation-Philippine Branch, CTA EB No. 1810 (CTA Case No. 9077), November 14, 2019)*

- **A FAN that does not contain a fixed and definite amount of tax to be paid is void.** *(Linde Philippines, Inc. (Formerly Consolidated Industrial Gases, Inc.), vs. Commissioner of Internal Revenue, CTA Case No. 8783, November 15, 2019)*

- **To reiterate, case law dictates that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor.** *(SM Investments Corporation. vs. Commissioner of Internal Revenue, CTA Case No. 9322, November 18, 2019)*

- **There is no rule that the taxpayer is estopped due to the receipt of a LOA beyond 30 days from date of its issuance.** *(Kokoloko Network Corporation vs Commissioner of Internal Revenue, C.T.A. Case No. 9574, November 18, 2019)*

- **Section 228 of the NIRC, as amended, cannot be interpreted in the same manner as Section 195 of the LGC, because the period for the local treasurer to decide on the protest is not the same mandate as the Commissioner of Internal Revenue.** *(Public Safety Mutual Benefit Fun, Inc., represented by its President, Maria A. Avenido vs Rosette F. Laquian, Acting City Treasurer, San Juan City C.T.A. A.C. No. 214 November 22 2019)*

The CTA has authority to rule on issues not raised by the parties in their pleadings.

The taxpayer was assessed for alleged deficiency internal revenue taxes. It assailed the propriety of the assessment but it failed to raise in its Petition the lack of Letter of Authority (LOA) of the Revenue Officers who conducted the audit examination. The CTA, motu proprio took cognizance of the issue despite the failure of the Taxpayer to raise the same. The BIR challenged the act of the CTA.

The CTA ruled that while the taxpayer did not raise the issue of lack of authority of the revenue officers to conduct the audit, the Court could nevertheless can take cognizance of issues that are essential to carry out its mandate, that is, to secure a just disposition of cases brought before it. It is well within the Court's authority to consider in its decision the question on scope of authority of revenue officers who were named in the LOA, even though the parties had not raised the same in their pleadings. There was no valid LOA in this case. Thus, the CTA ruled in favor of the taxpayer. ***(Misamis Oriental Rural Electric Service Cooperative I, Inc. (MORESCO I), vs. Commissioner of Internal Revenue, CTA Case No. 9700, November 4, 2019)***

A Letter of Authority issued by the Revenue Regional Director is necessary before a Revenue Officer can examine any taxpayer in order to collect the correct amount of tax or to recommend the assessment of any deficiency tax due; Without a Letter of Authority, a Revenue Officer cannot examine any taxpayer or recommend the assessment of any deficiency tax due; Grant of authority is indispensable before a Revenue Officer can conduct an examination or assessment, and that absence thereof results to the nullity of the examination or the tax assessment itself.

The BIR assessed the taxpayer for deficiency internal revenue tax for 2008. Through a Memorandum of Assignment, the Revenue District Officer (RDO) referred the matter to a Revenue Officer (RO), who continued the assessment process by virtue of the aforesaid Memorandum. Eventually, the CTA, in division, rendered a decision cancelling all tax assessments, except for the deficiency income tax.

The Court En Banc held that a grant of authority is indispensable before an RO can conduct an examination or assessment, and that absence thereof results to the nullity of the examination or the tax assessment itself. Court records show that the authority of the RO emanated not from an LOA, but from a Tax Verification Notice (TVN) issued to another RO by the RDO. To prove the RO's authority, BIR merely offered in evidence a Memorandum of Assignment which was issued under the same TVN. Since the examination or assessment was done while being devoid of authority, it follows that the subject deficiency taxes are also inescapably void. ***(Salcedo Ristorante Italiano, Inc., vs Commissioner of Internal Revenue, CTA EB No. 1774, CTA Case No. 8880 Nov. 4 2019)***

The Rules of Court places upon the movant, and not with the court, the obligations both to secure a particular date and time for the hearing of his motion and to give a proper notice thereof on the other party. It is precisely the failure of the movant to comply with these obligations, which reduces an otherwise actionable motion to a mere scrap of paper not deserving of any judicial acknowledgment.

This is a Resolution issued by the Honorable CTA in view of the Motion for Reconsideration filed by the BIR. The Court observed that the questioned Motion for Reconsideration lacks the necessary Notice of Hearing.

The CTA denied the Motion for Reconsideration filed by the BIR stating that the deficiency is fatal to BIR's cause since a motion without a notice of hearing is considered a mere scrap of paper. Jurisprudence had been categorical in treating a litigious motion without a valid notice of hearing as a mere scrap of paper. Even if the Court disregards the aforesaid procedural infirmity, perusal of the Motion would reveal that the arguments presented therein are patently without merit; hence, there is no cogent reason to modify the assailed Decision. ***(Barrio Fiesta Manufacturing Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9880, November 5, 2019)***.

VAT does not apply to services performed inside the Subic Special Economic and Freeport Zone (SSEFZ) and the area where the latter operates, nor is it applicable to payments of cash dividends, dividends and per diem payments.

This Resolution denies the BIR's Motion for Partial Reconsideration, stating that the income payments received by the taxpayer from services rendered, under the Franchise Agreement with SBMA, as well as the per diems paid for attending the taxpayer's board meetings, are not subject to VAT because these were performed on a separate customs territory. VAT is levied only on the sale, barter, exchange or lease of goods or properties in the Philippines and on importation of goods in the Philippines. Thus VAT is not applicable or not imposed on distribution made by a corporation to its shareholders out of earnings or profits which may be payable in money or property. Finally, the imposition of compromise penalty without conformity of the taxpayer is illegal and unauthorized. ***(Subic Water & Sewerage Co, Inc., v. Commissioner of Internal Revenue, C.T.A. Case No. 9074, November 5, 2019)***

An authority emanating from the BIR or his duly authorized representative is required before an examination and an assessment may be made against a taxpayer.

On the basis of a Tax Verification Notice, a revenue examiner was authorized to verify the taxpayer's supporting documents and pertinent records relative to its internal revenue tax liabilities for the taxable year 2008.

The taxpayer was found liable for deficiency taxes. The matter was elevated to court, with the taxpayer assailing the validity of the Letter of Authority, among others. The BIR contended that a TVN issued for the purpose of audit and examination of books of accounts and accounting records has the same force and effect as the LOA issued for same purpose.

In finding for the taxpayer, the Court held in this wise, "revenue examiner's must be authorized, through a LOA, in order that said officers may validly examine the books of accounts and accounting records of a taxpayer. In the absence of a LOA, the tax assessments issued by the BIR against such taxpayer shall be void.". It was clear that the revenue examiner derived his authority to conduct assessment from a TVN. Moreover, this TVN was only signed by the Regional District Officer, and not by a Revenue Regional Director. Correspondingly, the revenue examiner is without any authority to assess or examine. Thus, the subject deficiency assessments for the taxable year 2008 is void. ***(Jinzai Experts, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9473, November, 6 2019)***

Service Agreements alone are not sufficient to prove that services were rendered in the Philippines for purposes of VAT refund.

The taxpayer filed for administrative claim for VAT refund before the BIR. Due to the inaction of BIR, it filed a Petition for Review before the CTA. The BIR alleged that the taxpayer is not entitled to the refund for the latter allegedly failed to prove that it had zero-rated sales transactions. The taxpayer on the other hand countered that it sufficiently proved that sale of business process and contact center services to its sole client, a non-resident foreign corporation, is VAT zero-rated.

The CTA ruled that the taxpayer failed to show that it was engaged in zero-rated or effectively zero-rates sales. Although the Service Agreements showed that services to be rendered by the former to the latter shows that the same is other than "processing, manufacturing or repacking goods", it was not proven that the subject services were performed in the Philippines. Taxpayer did not present any evidence to prove the same. Thus, since it was never established that the place of performance of the subject services is in the Philippines. The CTA ruled against the claims of the Taxpayer. ***(Ibex Philippines Inc., vs. Commissioner of Internal Revenue, CTA Case No. 9546, November 7, 2019)***

Any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and therefore void.

The taxpayer in this case received a Letter of Authority from the BIR authorizing Revenue Officer (RO) Enguerra to conduct the audit examination. The case was subsequently transferred to RO Bisares by virtues of a MOA but no new LOA was issued in his favor. The taxpayer then assailed the validity of the assessment for lack of valid LOA. The BIR alleged that the MOA is sufficient to authorize the RO to continue the audit investigations.

The CTA ruled that any tax assessment issued without an LOA is a violation of the taxpayer's right to due process and therefore void. Here, there was no valid LOA, authorizing the ROs to conduct the audit investigation of Taxpayer. Thus, the assessment arising from such investigation is a nullity. ***(Republic of the Philippines, vs. Robiegie Corporation, CTA OC No. 024, November 7, 2019)***

It should be noted that a denial of the claim for refund made after the 120+30 day period is not considered in counting the period for judicial appeal. This is because the inaction of the CIR during the 120-day period is "deemed a denial", and without a timely appeal, said inaction which is "deemed a denial" becomes final and unappealable.

Taxpayer seeks reconsideration of the Court's Decision dismissing the Petition for Review filed by the taxpayer for lack of jurisdiction.

CTA denied the Motion for Reconsideration filed by the taxpayer stating that counting 120 days from the date of filing of the administrative claims, or on February 1, 2013 and August 1, 2013, the CIR had until June 1, 2013 and November 29, 2013 within which to act on the claim for refund. Considering that the BIR failed to act within the 120-day period, the taxpayer had thirty (30) days after the lapse of the 120- day period or until July 1, 2013 and December 29, 2013 within which to file its judicial appeals before the CTA. Here, taxpayer's Petition for Review was filed only on September 9, 2019, clearly, several years after the lapse of the 120+30 day period to file a judicial claim. ***(Lepanto Consolidated Mining Company vs. Commissioner of Internal Revenue, CTA Case No. 10163 November 7, 2019)***

In case the criminal offender is a corporation, the penalty shall be imposed on the Partner, President, General Manager, et.al., responsible for the violation.

The CTA dismissed the instant criminal case for lack of probable cause as the People failed to comply with the Court's Resolution which will establish the personal identity and personal circumstances of the accused, Roland P. Vasquez, under Section 4 of Rule 110 of the Revised Rules of Criminal Procedure ***(People of the Philippines Vs. RPV Electro Technology Philippines Corporation/ Roland P. Vasquez (President), CTA Crim. Case No. 0-713, November 7, 2019)***

A demurrer to evidence is an objection of one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.

The accused was charged for the violation of Section 255 of the 1997 National Internal Revenue Code (1997 NIRC), as amended for failure to pay deficiency taxes for taxable year 2006. After the People presented its pieces of evidence and rested its case, the accused filed a Motion for Leave of Court to file Demurrer to Evidence and Demurrer to Evidence.

The Court granted the Motion and dismissed the instant case on the ground of insufficiency of evidence stating that the People did not present evidence to disclose the names of the responsible officers of the corporation at the time the crime was allegedly committed. People did not present the Articles of Incorporation (AOI) and the General Information Sheet (GIS) of accused FDI Forefront II Trading Corp. to show that the accused Joseph Derrick B. Yambao is its responsible officer at the time the crime was allegedly committed in the year 2012 nor in 2006, the taxable year from which the alleged deficiency taxes arose. Further, the sole witness of the People failed to identify or pinpoint the accused Joseph Derrick B. Yambao as a responsible officer of the corporation FDI Forefront II Trading Corp.

Further, the pieces of evidence adduced by the People do not also prove the existence of the element of willful failure to pay a tax under Section 255 of the 1997 NIRC, as amended, because they did not sufficiently establish that the corporation is required to pay the assessed deficiency income and value-added taxes for taxable year 2006. Overall, the evidence presented by the People is weak and cannot be used to establish the guilt of the accused. ***(People of the Philippines Vs. Joseph Derrick B. Yambao, CTA Crim. Case No. 0-674 & 0-675, November 7, 2019)***

The law mandates that PEZA shall manage and operate the ecozones as a separate customs territory, thus, creating the legal fiction that the ecozone is a foreign territory. As a result, sales made by a supplier from the customs territory to a purchaser in the ecozone shall be treated as exportation

The taxpayer filed a claim for refund of unutilized creditable input tax attributable to its zero-rated sales for taxable year 2013. It is engaged in the business of manufacturing and exporting of nickel/cobalt mixed sulfide and it is also registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise.

The Court partially granted the claim of the taxpayer stating that the VAT zero-rating on the sales of goods, properties or services by a VAT-registered entity to a PEZA-registered entity applies only when such goods, properties or services are consumed, used or rendered within the Ecozone and in connection with the registered activities of the said PEZA-registered entity. Stated simply, if the sales of goods, properties or services are consumed, used or rendered within the customs territory, i.e., outside the ecozone, such sales by a VAT-registered entity to a PEZA-registered entity shall be then subject to the regular twelve percent (12%) VAT.

from the customs territory. Conversely, sales made by a supplier from the ecozone to a purchaser in the customs territory shall be considered as an importation into the customs territory.

Based on the pieces of evidence it presented, the taxpayer was able to establish that only its local purchases of services from SMCC Philippines, Inc. and the lease expenses incurred in Manila office were consumed and rendered outside the PEZA zone. ***(Taganito HPAL Nickel Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9128, November 8, 2019)***

Assessment is a preliminary step, essential to a warrant of distraint and/or levy and to proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations.

The taxpayer paid its basic deficiency taxes for Taxable Years 2005 to 2006 but received a Notice of Denial of its application for abatement. BIR issued a Warrant of Distraint and/or Levy to enforce collection of increments incident to the deficiency taxes. When the matter was elevated to the Court of Tax Appeals, the Court, in Division, decided against the Warrant and the Notice of Denial, rendering both null and avoid. Aggrieved, BIR sought recourse with the Court En Banc, assailing the jurisdiction of the Court, in Division, as well as the propriety of decision nullifying the Warrant and the Notice.

The Court En Banc, in deciding that the same Court, in Division, has jurisdiction over the denial of an application for abatement held that, under Section 7(a)(1) of RA 1125, as amended, other than decisions of petitioner pertaining to assessments or refunds, decision of petitioner relating to "other matters" may be taken cognizance of by the Court of Tax Appeals, for as long as the said "other matters, arose under the NIRC or other laws administered by the BIR. Without a doubt, the Notice of Denial of a taxpayer's application for abatement is a matter, which arose under the NIRC of 1997. The power or the CIR to abate taxes is specifically granted therein.

The Court En Banc is not convinced of BIR's position that an assessment is not necessary for purposes of collecting delinquent taxes pertinent to a delinquent taxpayer. As held herein, an assessment is a step preliminary, but essential to a warrant of distraint; and the BIR may summarily enforce collection, only when it has accorded the taxpayer administrative due process, which vitally includes the issuance of a valid assessment. When there is no assessment, the BIR cannot validly proceed to exercise the summary administrative remedy of distraint and/or levy as provided by law. ***(Commissioner of Internal Revenue vs. Pacific Hub Corporation CTA EB No. 1837 (CTA Case No. 8895) Nov 8, 2019)***

CTA has jurisdiction to review BIR's Notice of Denial of the taxpayer's application for abatement.

The taxpayer had deficiency taxes and sent a letter to the BIR indicating its willingness to pay the said amounts, with a request for abatement of penalties, surcharges and interests incident thereto, due to its alleged continued financial losses. It filed an Application for Abatement or Cancellation of Tax, Penalties and/or Interest and paid the basic deficiency. The BIR then denied its application for abatement of the penalties, surcharge and interest on the EWT and WTC and issued a Warrant of Distraint and/or Levy to enforce collection. This prompted the taxpayer to file Petition for Review before the CTA. BIR challenged the jurisdiction of the CTA to entertain the same alleging that since there is no decision on disputed assessment which could be the subject of review by the CTA, the latter has no jurisdiction.

The CTA ruled that it has jurisdiction to review the Notice of Denial of Taxpayer's application for abatement. The CTA has jurisdiction over other cases that arise out of the NIRC or related laws administered by the BIR. Thus, other than decisions of BIR pertaining to assessments or refunds, decisions of BIR relating to "other matters" may be taken cognizance of by the CTA, for as long as the said "other matters" arose under the NIRC or other laws administered by the BIR. Here, the Notice of Denial of Taxpayer's application for abatement is a matter, which arose under the NIRC of 1997. Thus, CTA has jurisdiction. ***(Commissioner of Internal Revenue, vs. Pacific Hub Corporation, CTA EB No. 1837 (CTA Case No. 8895), November 8, 2019)***

A prior TTRA is not necessary to avail of the benefits granted under the tax treaties.

The taxpayer withheld and remitted final withholding taxes on income payments to nonresident cinematographic films owner, lessor, distributor at the rate of 25%. The taxpayer filed an administrative claim for refund with the BIR for the excess taxes withheld from royalty payments, in view of various Tax Treaties applicable. The BIR denied the claim for refund on the ground that the taxpayer unjustifiably disregarded Revenue Memorandum Order ("RMO") Nos. 1-2000 and 72-2010 which requires a prior application and grant of TTRA necessary to avail of the benefits granted under the tax treaties.

The CTA ruled that a prior TTRA is not necessary to avail of the benefits granted under the tax treaties. TTRAs merely operate to confirm the entitlement of the taxpayer to the relief as held by various jurisprudential pronouncements. The prior application requirement under RMO No. 1-2000 and 72-2010 is not only illogical, but also not found at all in the applicable tax treaties. Clearly, the BIR should not impose additional requirements that would negate the availment of the reliefs provided under international agreements. Thus, the Court ruled in favor of the taxpayer. ***(Sky Cable Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9069, November 8, 2019)***

The filing of the Complaint Affidavit with the DOJ is the reckoning point in the counting of the 5-year prescriptive period for criminal cases arising from the Tax Code.

The accused was charged for alleged violations of Section 255 of the NIRC, as amended. He filed a Motion to Quash the Information on the ground of prescription. He alleged that the date of discovery of the alleged crime is on January 30, 2014, the day BIR filed its Complaint-Affidavit with the DOJ. Counting five (5) years from January 30, 2014, the prescriptive period lapsed on January 30, 2019. Here, the Information was filed only on March 18, 2019. Thus, prescription had allegedly set in.

The BIR countered that under Section 281 of the NIRC, tax cases are "practically imprescriptible" as long as the period from the discovery of the offense and institution of judicial proceedings does not exceed five years. Thus, the reckoning period of 5 years is allegedly interrupted upon the filing of the Complaint Affidavits on January 30, 2014. As such, the filing of the criminal Information on March 18, 2019 was well within the 5-year period.

The CTA ruled that the period of prescription commences to run from the day of the perpetration of the offense, and if not known, from its discovery and the institution of judicial proceedings for its investigation and punishment. Citing the Lim Case, the SC interpreted the commencement of the prescriptive period under Section 281 of the NIRC, as amended, stating that in addition to the fact of discovery, there must be a judicial proceeding for the investigation and punishment of the tax offense before the five-year limiting period begins to run. Here, the filing of the Complaint Affidavit with the DOJ on January 30, 2014 is the reckoning point in counting the 5-year prescriptive period provided under Section 281 of the NIRC, as amended. Thus, the Motion to Quash was granted on the ground of prescription. ***(People of the Philippines vs. Ulysses Palconet Consebido, CTA Crim. Case Nos. 0-700, 0-702, & 0-703, November 8, 2019)***

Co-venturers are liable for VAT if the MOA they executed shows that they never intended for the joint venture to have a separate and distinct personality.

Two corporate taxpayers entered into a Joint Venture Agreement (JVA) to develop a residential condominium building. It sold condo units to its buyers and the BIR assessed both corporations for VAT. The taxpayers assailed the validity of the assessment alleging that since there is an existing JVA and that they are co-venturer, the joint venture itself is the one liable for the payment of VAT. The BIR alleged otherwise citing the provision of the JVA which shows the intention that no separate personality will be created by virtue of the JVA.

The CTA ruled that taxpayers are liable to VAT for their respective share. According to the Court, upon careful reading of the taxpayer's Memorandum of Agreement, the provisions would readily reveal that the parties never intended for the joint venture to have a separate and distinct personality. Several provisions of the Agreement with respect to the reservation, marketing, fixing the sales and payment terms are subject to the mutual agreement of both co-venturers. Thus, there was no separate business organization that was formed by virtue of the JVA. The CTA also noted that the

Quarterly VAT Returns and the payment of the corresponding VAT were made under the name of SM Development Corporation and not under a separate entity. Thus, both taxpayers are subject to VAT. ***(SM Residences Corp., vs. Commissioner of Internal Revenue, CTA Case No. 9395, November 11, 2019)***

In order to be entitled to a refund or issuance of a TCC for unutilized input VAT on the cancellation of registration due to retirement from or cessation of business, or due to changes in or cessation of status, taxpayer must show that it has no internal revenue tax liabilities against which the TCC may be utilized.

The taxpayer filed a claim for refund praying for the issuance of a tax credit certificate representing its alleged accumulated unused/excess input Value-Added Tax (VAT) as of the cancellation of its VAT registration.

The Court denied the claim of the taxpayer stating that upon examining the records of the case, the taxpayer failed to present the tax clearance certificate issued by the BIR, to show that it has no internal revenue tax liabilities. It merely alleges that it filed an application for tax clearance and presented a Delinquency Verification Report for Tax Clearance issued by the BIR. Such document cannot be considered as tax clearance as it does not clearly state that the taxpayer has no pending tax liabilities, but merely verifies and checks the status of the taxpayer (e.g., compliance with the requirements of the BIR, filing of tax returns, existence of open cases or outstanding tax liabilities and on-going assessments). ***(Deltek Systems (Philippines) Ltd., vs. Commissioner of Internal Revenue, CTA Case No. 9445, November 11, 2019)***

The issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment. This demand for payment signals the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies. Thus, it must be sent to and received by the taxpayer and must demand payment of the taxes described therein within a specific period

The taxpayer seeks for the cancellation of the deficiency taxes for taxable year 2010. The Court cancelled and set aside the deficiency tax assessments issued against the taxpayer stating that after careful scrutiny of the Audit Result/Assessment Notices referred to in the FLD reveals that there is no definite period or date certain within which taxpayer must pay the alleged deficiency tax assessments. Remarkably, the due dates on the enclosed Audit Result/Assessment Notices were left blank.

Apparently, the Supreme Court has already ruled that the date certain for the payment of tax liabilities is indispensable in an assessment as it dictates the time when the penalties, surcharges and interest begin to accrue thereon. Accordingly, the Supreme Court held that the Final Assessment Notice is not valid if it does not contain a definite due date for payment by the taxpayer. ***(Kultura Store, Inc., vs. Commissioner of Internal Revenue, CTA Case No. 9315, November 11, 2019)***

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. It is an accepted and desirable practice in courts of law and administrative tribunals.

This is a resolution of the Court for the Joint Motion for Approval of Judicial Compromise Agreement, filed by the parties on May 29, 2019. After submitting the documentary evidence supporting the approval of the offer of comprise the taxpayer to the BIR, the court found that the stipulations in the Judicial Compromise Agreement are not contrary to law, morals, good customs, public order and public policy.

The Court stated that parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided that these are not contrary to law, morals, good customs, public order, or policy. Corollary thereto, once submitted to the Court and stamped with judicial approval, a compromise agreement becomes more than mere private contract binding upon the parties. Having the sanction of the Court and entered as its determination of the controversy, it has the force and effect of any judgment. ***(Splash Corporation, Inc., vs. Commissioner of Internal Revenue, CTA Case No. 9370, November 11, 2019)***

Failure to raise new matters in the Motion for Reconsideration is a ground for the denial of the same.

The BIR in its MR argued that it need not prove that the PAN and FLD were actually received by the taxpayer since the taxpayer's witness only made a self-serving testimony. The taxpayer countered that the BIR has the burden of proof to prove the same and that the latter failed to raise new matters in the MR.

The CTA ruled that arguments raised by the BIR in its Motion for Reconsideration are not new. Not only are they a mere rehash of the arguments he raised but they have also been previously discussed and considered in the Decision previously rendered by the Court. In La Bttgal B'Laan Tribal Association, Inc. vs. Ramol, the Supreme Court, noting that the arguments and positions raised in the Motion for Reconsideration therein were already raised and discussed extensively, held that a further discussion of the same issues would not serve any useful purpose. Thus, the MR of the BIR is denied. ***(Commissioner of Internal Revenue, vs. Clark Water Corporation, CTA EB No. 1693 (CTA Case No. 8572), November 12, 2019)***

Criminal infractions under the Tax Code shall prescribe after five (5) years, reckoned from the commission of tax offense and if not known, from discovery thereof and institution of judicial proceedings for investigation and punishment.

BIR lodged complaint-affidavits against Accused for tax evasion under Section 254 of the NIRC, as amended and failure to supply correct and accurate information in the Tax Returns under Section 255 of the same Code. DOJ dropped the tax evasion for lack of probable cause but charged Accused for violation of Sec. 255 of the Tax Code. The Accused then raised the defense of prescription alleging that the charges brought by the BIR was done beyond the 5-year prescriptive period.

The CTA ruled that the case must be dismissed. Criminal infractions under the Tax Code shall prescribe after five (5) years, reckoned from the commission of the tax offense and if not known, from discovery thereof and institution of judicial proceedings for investigation and punishment. Here, the BIR referred the Joint Complaint-Affidavits to DOJ on September 23, 2010, hence, the five (5)-year prescriptive period begun to run on said date. BIR had until September 23, 2015 to file the requisite Information with the Court. However, the Information was only filed on June 18, 2019. Thus, the case should be dismissed on the ground of prescription. ***(People of the Philippines vs. Juanchito D. Bernardo, Chairperson Praxedes P. Bernardo and JDBEC Incorporated, CTA Crim. Case No. 0-733, November 12, 2019)***

Deficiency tax assessments issued against Taxpayer without a valid LOA is void ab initio.

In this case, the taxpayer received a LOA authorizing Revenue Officer (RO) Taylo and Group Supervisor (GS) Rase to examine its books of accounts and other accounting records for all internal revenue taxes for 2011. However, by virtue of a Memorandum of Assignment (MOA), RO Guerzon and GS Rase continued the audit investigation of the Taxpayer. Taxpayer then challenged the validity of the assessment on the ground of lack of valid LOA of the RO who conducted the investigation.

The CTA ruled in favor of the taxpayer. No LOA was issued naming and authorizing RO Guerzon to conduct the tax audit against Taxpayer. Her action was merely based on the MOA directing her to continue the tax audit. Hence, the deficiency tax assessments issued against the taxpayer, based on her finding and recommendation after audit, is void ab initio. ***(Hobbies of Asia, Inc., vs. Commissioner of Internal Revenue, CTA Case No. 9476, November 12, 2019)***

The corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other. However, once the carry over option is taken actually or constructively, it becomes irrevocable for that taxable period. The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer.

The taxpayer filed a claim for refund representing its excess payment of creditable withholding taxes for the taxable year 2014.

The Court partially granted the claim for refund stating that in addition to its choice to be refunded under Section 76 of the NIRC of 1997, taxpayer must also prove compliance with the following requirements, namely: 1) The claim must be filed with the CIR within the two-year period from the date of payment of the tax; 2) The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld; and 3) It must be shown on the return that the income received was declared as part of the gross income. In fine, the taxpayer was able to prove its entitlement for refund/tax credit, albeit in the reduced amount ***(Wells Fargo Philippines Solutions Inc., vs. Commissioner of Internal Revenue, CTA Case No. 9578, November 12, 2019)***

If the sale is subject to zero-percent VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt and non-compliance therewith entails that

In this case, the taxpayer's claim for VAT Refund was denied by the BIR because the ORs for its export sales of services did not bear the pre-printed words "zero-rated sales". The taxpayer alleged otherwise and argued that it strictly complied with the new invoicing requirements and format prescribed under Revenue Regulations (RR) No. 18-2012 and Revenue Memorandum Order (RMO) No. 12-2013.

The CTA ruled that the NIRC of 1997 mandates that if the sale is subject to zero-percent VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt and non-compliance therewith entails

the said sales cannot qualify for VAT zero rating.

that the said sales cannot qualify for VAT zero rating. To reiterate, Section 113 of the NIRC of 1997 provides the mandatory invoicing requirement for purposes of VAT refund, as enunciated by the Supreme Court in several cases, as opposed to RR No. 18-2012 and RMO No. 12-2013, which are mere regulations intended to govern the Processing of Authority to Print (ATP), ORs, Sis and Other Commercial Invoices (Cis) in the Interim Period until the Online ATP System pursuant to RR No. 18-2012 is fully developed. Thus, the Motion for Reconsideration of the taxpayer is denied. ***(Maersk Global Services Centres (Philippines), Ltd., vs. Commissioner of Internal Revenue, CTA EB No. 1804 CTA Case No. 9015 and Commissioner of Internal Revenue vs. Maersk Global Services Centres (Philippines), Ltd., CTA EB No. 1805 (CTA Case No. 9015), November 14, 2019)***

The Implementing Rules and Regulations of PEZA Law did not limit, but merely enumerated the allowable deductions. Thus, other items not enumerated may be claimed as deductions.

The taxpayer is a foreign corporation organized and existing under the laws of Ohio, USA. It is also a PEZA-registered export enterprise, entitled to the five percent (5%) preferential tax regime on gross income earned pursuant the PEZA law. It was assessed for alleged deficiency taxes arising from the denial by the BIR its "Repairs and Maintenance" as claim for deductions. The BIR countered that the allowable deductions from gross income in Rule XX of the Implementing Rules and Regulations of PEZA Law and RR No. 11-2005, is exclusive. And since "Repairs and Maintenance" costs are not included, the same should be disallowed.

The CTA ruled that Repairs and Maintenance" should form part of Moog's costs of sales in the determination of its taxable income subject to the 5% preferential tax rate on gross income earned. The Implementing Rules and Regulations of PEZA Law did not limit, but merely enumerated the allowable deductions. Subsequently, RR No. 2-2005 limited the direct costs to the enumeration of allowable deductions therein. As it stands, RR No. 11-2005 removed the exclusivity of the allowable deductions from gross income. Thus, the allowable deductions from gross income of PEZA-registered enterprises enumerated in the IRR of the PEZA Law and RR No. 2-2005, as amended by RR No. 112005, are not exclusive. Thus, if a particular cost or expense is directly related to the PEZA-registered activity, it should be treated as a direct cost and includible in the allowable deductions from the gross income**. *(Moog Controls Corporation-Philippine Branch, vs. Commissioner of Internal Revenue, CTA EB No. 1809 (CTA Case No. 9077) and Commissioner of Internal Revenue, vs. Moog Controls Corporation-Philippine Branch, CTA EB No. 1810 (CTA Case No. 9077), November 14, 2019)***

A FAN that does not contain a fixed and definite amount of tax to be paid is void.

The CTA ruled that the FAN issued by the BIR in this case must be struck down since it is not an assessment contemplated by law and jurisprudence. The term "assessment" refers to the determination of amounts due from a person obligated to make payments. It must contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period, the purpose of which is to determine the amount that a taxpayer is liable to pay. Here, the FAN does not contain a fixed and definite amount of tax to be paid, rendering it legally infirm. Thus, the Court ruled in favor of the Taxpayer**. *(Linde Philippines, Inc. (Formerly Consolidated Industrial Gases, Inc.), vs. Commissioner of Internal Revenue, CTA Case No. 8783, November 15, 2019)***

In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor.

This is a Resolution on the two Motion for Partial Reconsideration filed by the respective parties assailing the Decision of the Court promulgated on March 4, 2019. Taxpayer contends that that it was able to comply with all the essential basic conditions to prove its entitlement to its claim for refund. While, BIR posits that the taxpayer is not entitled to refund of excess and unutilized creditable withholding tax for calendar year ended 31 December 2013.

The Court denied the Motion filed by the BIR for lack of merit while it partially granted the Motion filed by the taxpayer as the taxpayer was able to convince the Court that it is partially entitled to its claim. Further, SMIC was able to establish the compliance with the requisite that the income upon which the taxes were withheld should be included in the return of the recipient. ***(SM Investments Corporation. vs. Commissioner of Internal Revenue, CTA Case No. 9322, November 18, 2019)***

There is no rule that the taxpayer is estopped due to the receipt of an LOA beyond 30 days from date of its issuance.

The assailed Decision held that the LOA issued by the CIR is invalid for having been served beyond thirty (30) days from date of issuance. Thus, the conduct of audit examination was without authority and the assessment therefrom was in violation of the taxpayer's due process rights.

The Court, in maintaining that the deficiency assessment should be cancelled and withdrawn, ruled that, the power of the revenue officers to conduct audit examination of taxpayers through an LOA, being a mere delegated power, must be exercised strictly in accordance with the terms of delegation. The court does not agree that taxpayer is estopped due to the receipt of the LOA beyond the reglementary period to serve the same. There is no basis for that rule of estoppel. Neither is the taxpayer estopped from denying the receipt of the PAN and the FAN because the taxpayer allegedly admitted receipt of the Collection Letter as stated in the Joint Stipulation of Facts and Issues. ***(Kokoloko Network Corporation vs Commissioner of Internal Revenue, C.T.A. Case No. 9574, November 18, 2019)***

Section 228 of the NIRC, as amended, cannot be interpreted in the same manner as Section 195 of the LGC, because the period for the local treasurer to decide on the protest is not the same mandate as the Commissioner of Internal Revenue.

The taxpayer was assessed business tax delinquencies from the years 2009 to 2019. According to the taxpayer, the amount sought to be collected pertains to local business tax assessment for different years. However as already decided, the CTA, as well as the Regional Trial Court, has no jurisdiction to entertain the appeal on the ground that the appeal was filed out of time.

In the construction of Section 195 of the Local Government Code(LGC), the filing of an appeal should be made within thirty (30) days from either receipt of the decision issued before the lapse of the sixty (60) day period or from the lapse of the said period, whichever comes earlier. The taxpayer's appeal was filed on February 22, 2018 with the RTC, when it should have been filed on March 26, 2016. Thus, it was filed out of time, which as a result, deprives the said court of jurisdiction.

The CTA rejects the taxpayer's contention that the interpretation of Section 195 of LGC should be interpreted the same as Section 228 of the NIRC of 1997, as amended. In comparing the two provisions, Section 195 of the LGC provides for a period for the local treasurer to decide on the protest while Section 228 of the NIRC, as amended, has no such mandate to the Commissioner of Internal Revenue. Section 195 of the LGC clearly states that when a notice of assessment is received by the taxpayer, he may file a written protest within sixty (60) days from the receipt of such notice. Otherwise, the assessment becomes conclusive and unappealable. Since it was admitted that there was no protest filed, the assessment has therefor become conclusive and unappealable. ***(Public Safety Mutual Benefit Fun, Inc., represented by its President, Maria A. Avenido vs Rosette F. Laquian, Acting City Treasurer, San Juan City C.T.A. A.C. No. 214 November 22 2019)***

DOF OPINIONS

- **DOF Opinion No. 015-2019, October 30, 2019** – Request for review of Bureau of Internal Revenue Ruling ITAD No. ITAD 169-2013

- **DOF Opinion No. 016-2019, October 30, 2019** – Request for review of Bureau of Internal Revenue Certificate of Tax Exemption No. 256-2019

DOF Opinion No. 015-2019, October 30, 2019 - Request for review of Bureau of Internal Revenue Ruling ITAD No. ITAD 169-2013

A non-resident foreign corporation seeks the reversal of the BIR's finding that the existence of a related domestic corporation constitutes a permanent establishment of the foreign corporation because of a Basic Purchase Agreement (BPA) between the two companies based on Paragraph 5(c), Article 5 of the Philippines-Japan Tax Treaty.

Under Paragraph 5(c), Article 5 of the Philippines-Japan Tax Treaty, in order to constitute a permanent establishment, it must be shown that the domestic corporation:

1. is not an agent of an independent status;
2. maintains in the Philippines a stock of goods belonging to the non-resident foreign corporation; and
3. regularly fills orders from that stock of goods or merchandise on behalf of the non-resident foreign corporation.

However, it was found that the domestic corporation, not the non-resident foreign corporation, is the owner of the stock of goods or merchandise. Under the BPA, title shall pass from the domestic corporation to the non-resident foreign corporation based on Free On Board Philippines following the meanings provided under Incoterms 2000. This means that title, and consequently the risk of loss and damage to the goods, shall only pass from the domestic corporation to the non-resident foreign corporation at the port of shipment (which is the Philippine port). Before that, the domestic corporation holds the title to the goods and the corollary risk of loss and damage to the goods.

As such, the non-resident foreign corporation cannot be considered to have a permanent establishment within the Philippines through the domestic corporation.

DOF Opinion No. 016-2019, October 30, 2019 – Request for review of Bureau of Internal Revenue Certificate of Tax Exemption No. 256-2019

The BIR issued in favor of the non-profit, non-stock foundation (a medical school foundation) a Certificate of Tax Exemption from income tax and VAT on tuition fees, school-related fees, and income from canteens/dormitories/bookstores. However, the BIR held that revenues from hospital operations and Institute of Primary Health Care (IPHC) programs are subject to income tax and VAT. The taxpayer sought for a modification of the BIR issued Certificate of Tax Exemption.

The exemption is anchored on Section 4(3) of Article XIV of the 1987 Constitution. The said provision does not require that the revenues and income must also have been sourced from educational activities or activities related to the purposes of an educational institution. The phrase "all revenues" is unqualified by any reference to the source of thxe revenue. Thus, so long as the revenues and income are used actually, directly, and exclusively for educational purposes for educational purposes, then said revenues and income shall be exempt from taxes and duties. Hence, revenues derived by the foundation from its hospital operations and IPHC program are similarly exempt from income tax and VAT.

BIR ISSUANCES

UPDATES

- **Revenue Memorandum Circular No. 116-2019 dated 18 October 2019 –** This clarifies the treatment of alien individuals in the Philippines by regional or area headquarters and regional operating headquarters of multinational companies, offshore banking units and petroleum service contractors or subcontractors pursuant to Section 4.C of Revenue Regulations No. 8-2018.

- **Revenue Memorandum Circular No. 117-2019 dated 6 November 2019 –** This amends Section II of RMC No. 28-2019 in relation to the use of "BIR Printed Receipts/Invoices (BPR/BPI)."

- **Revenue Memorandum Circular No. 118-2019 dated 8 November 2019 –** This pertains to the availability of eRegistration (eREG) System to corporate or non-individual taxpayer-employees.

- **Revenue Memorandum Order (RMO) No. 55-2019 dated 6 November 2019 –** This amends certain portions of RMO No. 37-2019 relative to the prescribed policies, guidelines and procedures on the registration of employees.

Revenue Memorandum Circular No. 116-2019 dated 18 October 2019 – This clarifies the treatment of alien individuals in the Philippines by regional or area headquarters and regional operating headquarters of multinational companies, offshore banking units and petroleum service contractors or subcontractors pursuant to Section 4.C of Revenue Regulations No. 8-2018.

This memorandum circular provides that the respective income of alien individuals employed by the above-mentioned entities shall be similarly taxed as income of regular employees of locally established entities. Hence, these alien individuals are subject to the same administrative requirements such as substituted filing, issuance of BIR Form No. 2316, inclusion of monthly withholding tax remittance on compensation and alphalists.

However, with respect to seconded employees, they are likewise subject to regular income tax rates since the services they render are within the situs of taxation in the Philippines. Therefore, seconded employees are subject to the same administrative requirements as regular employees of locally established entities, except for the substituted filing.

The seconded employees shall comply with the following procedures: (a) the seconded employees shall be provided "Current Employment Status" in the Alphalist as basis for computing withholding tax on compensation. (b) they shall file their annual ITR on or before April 15 together with their BIR Form No. 2316. (c) the phrase "For Seconded Employees" shall be typed or printed in bold capital letters enclosed in open and closed parenthesis immediately under the forms title "Certificate of Compensation Payment/Tax Withheld". And lastly, (d) the local entities shall ensure that the withholding tax on their salaries shall be computed using the annualized withholding tax method in case of termination of their services before the end of the taxable year.

Revenue Memorandum Circular No. 117-2019 dated 6 November 2019 – This Circular amends Section II of RMC No. 28-2019 in relation to the use of "BIR Printed Receipts/Invoices (BPR/BPI)."

This memorandum circular allows new business registrants to immediately commence its business operations by securing (or buying) BPR/BPI in lieu of securing an Authority to Print (ATP) principal receipts/invoices. Hence, ATP principal receipts/invoices become optional to the new business registrants upon registration in case they opt to buy BPR/BPI.

The use of BPR/BPI shall be allowed during the first year of business or until its full consumption, whichever comes first. Further, the new business registrants shall secure an ATP principal receipts/invoices beginning its second year of operations or upon full consumption of the BPR/BPI, whichever comes later. However, for taxpayers whose business transactions will not require more than one (1) booklet of fifty (50) sets in one taxable period, they shall be allowed to secure BPR/BPI even beyond the one-year period as above-mentioned.

The BPR/BPI serves as principal evidence for claiming expenses as deduction from ordinary gross income or claim as input tax credit in the sale of goods and/or properties and/or services or lease of properties.

Revenue Memorandum Circular No. 118-2019 dated 8 November 2019 – This Circular pertains to the availability of eRegistration (eREG) System to corporate or non-individual taxpayer-employees.

This memorandum circular makes eRegistration System (eREG) available for use by corporate or non-individual employers to facilitate the issuance of TIN of their employees. They shall enroll an authorized user who shall access the eREG System and apply for TIN of its new employees without existing TIN. Moreover, existing users shall likewise be required to re-enroll to create an authorized user account by accessing the system thru the BIR official website.

However, self-employed individual employers shall manually secure the TIN of their new employees to the Revenue District Officers having jurisdiction over their principal place of business or branch.

Revenue Memorandum Circular No. 121-2019 dated 20 November 2019 – This Circular allows the use of BIR Form Nos. 2306, 2307 and 2316 in electronic format.

This memorandum circular allowed the use of computer/system generated BIR certificates (2306, 2307 and 2316) to be distributed to their suppliers, payors and/or employees due to the numerous requests from the withholding agents.

The computer/system generated BIR certificates is allowed provided that: (a) the BIR Certificates must be the latest version officially approved by the BIR. (b) The signatories of the certificates must be duly authorized. (c) The certificates shall contain the signature of both parties to be valid and binding [a separate issuance shall be issued in case of adoption of electronic signature]. (d) There should be no repudiation of the facts contained in the BIR Certificates. (e) the signature of the withholding agent should be the proper signature as required by the Tax Code or appropriate regulations to swear to the truth and correctness of such electronic form/certificate and who are named in the Board Resolution or equivalent document submitted by the corporate taxpayer to the BIR. (f) the signature of the withholding agents was affixed with the intention of signing, approving and attesting to the truth and correctness of such certificate.

Revenue Memorandum Circular No. 122-2019 dated 28 October 2019 – This Circular terminates the submission of Semestral List of Regular Suppliers (SRS).

This memorandum circular addresses the issue on overlapping of requirements due to the issuance of RR No. 14-2008, which required the submission of SRS by Top 20,000 private corporations for purposes of monitoring their level of compliance in withholding and remitting the 1% and 2% CWT on purchase of goods or services, respectively. Subsequently, RMC No. 5-2009 prescribed the technical specifications for the electronic file format of report and its modes of submission.

However, prior to these issuances, RR No. 2-98, in relation to RR No. 11-2018, already prescribed the submission of Monthly Alphalist of Payees (MAP) and amended by Quarterly Alphalist of Payees (QAP), which already contains the information required in SRS.

Accordingly and consistent to the BIR's policy of ease of doing business, the submission requirement of SRS is terminated.

Revenue Memorandum Circular (RMC) No. 126-2019 dated 26 November 2019 – This Circular extends the use of BIR Withholding Certificates/Forms – BIR Form Nos. 2306, 2307 and 2316 with old versions.

This memorandum circular deals with the clamor of many withholding agents, particularly those who generate the BIR Withholding Certificates/Forms through their Computerized Accounting System (CAS), that they be allowed to use the old versions of the said Certificates/Forms pending the required configuration of CAS to be undertaken in compliance with the existing revenue issuances.

In response therefrom, this Circular extends the use of the older versions of the aforementioned BIR Forms for all transactions covering the taxable year 31 December 2019, as summarized below:

BIR Form No.	Form Name/Description	Old Version	New Version
2306	Certificate of Final Tax Withheld at Source	September 2005 (ENCS)	January 2018 (ENCS)
2307	Certificate of Creditable Tax Withheld at Source	September 2005 (ENCS)	
2316	Certificate of Compensation Payment/ Tax Withheld	July 2008 (ENCS)	

Revenue Memorandum Order (RMO) No. 55-2019 dated 6 November 2019 – This Order amends certain portions of RMO No. 37-2019 relative to the prescribed policies, guidelines and procedures on the registration of employees.

This memorandum order amends the polices, guidelines, and procedures on the registration of employees. First, the Client Support Section (CSS) of the RDO shall accommodate employees in the event that the eRegistration System cannot process their TIN application due to reasons enumerated under Section II.3 of RMO No. 37-2019.

Second, the transferring-employer shall require employees mentioned in Section II(10.1) that are earning purely compensation income to accomplish BIR Form No. 1905, and facilitate the mass transfer of employees' registration by submitting the update forms and list of said employees to the old RDO together with the request for transfer of registration of the said employers, excluding those employees who have been separated prior to the transfer.

SEC ISSUANCES

UPDATES

- **SEC Memorandum Circular No. 23 dated November 21, 2019 –** Guideline on the Revival of Expired Corporations

- **SEC Memorandum Circular No. 20 dated November 11, 2019 –** Guidelines of the adoption of centralized (One-Stop-Shop) framework for accreditation/selection of external auditors/auditing firms of the Securities and Exchange Commission, Bangko Sentral ng Pilipinas and Insurance Commission's regulated and supervised institution

SEC Memorandum Circular No. 23 dated November 21, 2019 – Guideline on the Revival of Expired Corporations

This Circular provides for the guidelines on the applicability and procedure for the revival of a corporation. The following should be noted upon:

I. The following corporations may file a Petition for Revival of Corporate Existence:

a. Generally, a corporation whose term has expired;
b. An Expired Corporation whose Certificate of Registration has been revoked for non-filing of reports (e.g. General Information Sheet, and Audited Financial Statements), provide that it shall file the proper Petition to Lift its Revoked Status, which may be incorporated in its Petition to Revive, and must settle the corresponding penalties thereof;
c. An Expired Corporation whose Certificate of Registration has been suspended, provided that it shall file the proper Petition to Lift its Suspended Status, which may be incorporated in its Petition to Revive, and must settle the corresponding penalties thereof; or
d. An Expired Corporation whose corporate name has already been validly re-used, and is currently being used, by another existing corporation duly registered with the Commission, provided that the former shall change its corporate name within thirty (30) days from the issuance of its Certificate of Revival of Corporate Existence.

II. The required number of votes for the Revival of an Expired Stock/Non-Stock Corporation is at least a majority vote of the board of directors/trustees, and the vote of at least majority of the outstanding capital stock/members.

III. The Petition for Revival of Corporate Existence may be filed with the Commission's Company Registration and Monitoring Department, any SEC Satellite Office, or any SEC Extension Office.

SEC Memorandum Circular No. 20 dated November 11, 2019: Guidelines of the adoption of centralized (One-Stop-Shop) framework for accreditation/selection of external auditors/auditing firms of the Securities and Exchange Commission, Bangko Sentral ng Pilipinas and Insurance Commission's regulated and supervised institution

This Circular provides for the accreditation/selection of external auditors/auditing firms. The following should be noted upon:

I. The external auditor shall fully meet the independence requirements provided under the Code of Ethics for Professional Accountants in the Philippines on a continuing basis.

II. The accredited/selected external auditor shall have the following qualifications provided under the Circular at the time of application.

III. The external auditor included in the List of Accredited/Selected External Auditors shall adhere to the regulatory and reportorial requirements set out by the respective financial Sector Regulators of the covered institutions.

SEC

OPINIONS & DECISIONS

- **Where the common areas are owned by the unit-owners as co-owners, a condominium unit shall be conveyed only to corporations where 60% of the capital stock belongs to Filipino citizens.** *(SEC-OGC Opinion No. 19-53, November 22, 2019, Re: Foreign Real Estate Holding Company; Ownership of Condominium Unit)*

SEC

OPINIONS & DECISIONS

Where the common areas are owned by the unit-owners as co-owners, a condominium unit shall be conveyed only to corporations where 60% of the capital stock belongs to Filipino citizens.

This Opinion is issued pursuant to a request to determine if a foreign real estate holding company is legally allowed to own and hold a condominium unit.

The SEC clarified that Sec. 5 of RA 4726 is clear that where the common areas are owned by the unit-owners as co-owners, a condominium unit shall be conveyed only to corporations where 60% of its capital stock belongs to Filipino citizens. On the other hand, if the land upon which the project is to be built is owned by a condominium corporation, a foreign-owned company may legally own a condominium unit provided that it will not result with the foreign-owned company owning more than 40% of the capital stock of the condominium corporation. ***(SEC-OGC Opinion No. 19-53, November 22, 2019, Re: Foreign Real Estate Holding Company; Ownership of Condominium Unit)***

IC ISSUANCES

UPDATES

- **IC Circular Letter No. 2019-65, November 22, 2019 –** This was issued to amend certain provisions of CL No. 2018-48, as amended by 2018-60, on Anti-Money Laundering/ Counter-Terrorism Financing (AML/CTF) Guidelines for Insurance Commission Regulated Entities.

- **IC Circular Letter No. 2019-66, November 22, 2019 –** This was issued to provide guidelines on the additional disclosures in the financial statements and submission of status reports of regulated entities relative to IFRS 17.

- **IC Circular Letter No. 2019-67, November 22, 2019 –** This was issued to amend Circular Letter No. 2017-14 by lowering the Minimum Members' Equity Requirement for Mutual Companies to Php900,000,000.00.

IC Circular Letter No. 2019-65, November 22, 2019 –This circular letter was issued to amend certain provisions of CL No. 2018-48, as amended by 2018-60, on Anti-Money Laundering/ Counter-Terrorism Financing (AML/CTF) Guidelines for Insurance Commission Regulated Entities.

The amendments to the guidelines primarily updated the rules of the Commission relating to the identification and verification of beneficial ownership in relation to anti-money laundering and terrorism financing prevention and suppression. The update was issued pursuant to the 2018 IRR of RA No. 9160 or the AMLA of 2001 as well as the IRR of RA No. 10168, otherwise known as the Terrorism Financing Prevention and Suppression Act.

The following are among the salient amendments to the rules:

- The definition of customer/client includes the beneficial owner, transactors or agents of the beneficial owners, beneficiaries, and trustors of a trust;
- Guidelines in the identification and verification of agents and beneficial owners;
- Enhanced due diligence for high-risk jurisdiction or geographic location;
- Clearer guidelines on measures to be undertaken when the enhanced due diligence is required; and
- Updated table of violations and fines.

IC Circular Letter No. 2019-66, November 22, 2019 – This circular letter was issued to provide guidelines on the additional disclosures in the financial statements and submission of status reports of regulated entities relative to IFRS 17.

The circular letter required all insurance and professional reinsurance companies to submit a status report covering the periods ending December 31, 2019 to 2022 pertaining to the specific actions already taken or to be taken in preparation for the IFRS 17 implementation on January 1, 2023. Said reports are to be submitted to the Commission on or before April 2020 and the following years thereafter.

It likewise required additional disclosure in the notes to the financial statements of the regulated entities for period ending December 31, 2022. According to the circular letter, as a minimum, the following are required to be disclosed:

1. The fact that although IFRS 17 shall be applied annually to commence on January 1, 2022, the reporting entity is required by the Commission to apply IFRS 17 one year thereafter.

2. Information about the structure and status of the entity's implementation project.

3. Contracts that meet the definition of an insurance contract but the entity chose to apply IFRS 15 instead of IFRS 17 based on the conditions set by paragraph 8 under Scope of IFRS 17 as follows:

a. The entity does not reflect an assessment of the risk associated with an individual customer in setting the price of the contract with that customer;
b. The contract compensates the customer by providing services, rather than by making cash payments to the customer; and
c. The insurance risk transferred by the contract arises primarily from the customer's use of services rather than from uncertainty over the cost of those services.

4. A description on the transition approach that will take place and whether any practical expedients will be applied.

5. A description of the key judgements and estimates made.

6. Quantification of the expected impact on the implementation of IFRS 17.

IC Circular Letter No. 2019-67, November 22, 2019 – This circular letter was issued to amend Circular Letter No. 2017-14 by lowering the Minimum Members' Equity Requirement for Mutual Companies to Php900,000,000.00.

The table in Item No. 1 of Circular Letter No. 2017-14 was amended to read:

Minimum Total Member's Equity	Compliance Date
Php900,000,000.00	31 December 2019
Php1,300,000,000.00	31 December 2022

- **IC Legal Opinion No. 2019-12, November 22, 2019 –** Questions regarding the meaning of the terms “Flood” and “Written Notice” as stated in an insurance policy relate to the substantive and contractual rights of the parties under the said policy.

- **IC Legal Opinion No. 2019-13, November 22, 2019 –** This is an opinion on whether or not a creditor is entitled to a refund of the unused premium on life insurance in case a group life insurance in favor of its debtors was validly terminated.

IC Legal Opinion No. 2019-12, November 22, 2019 – Questions regarding the meaning of the terms "Flood" and "Written Notice" as stated in an insurance policy relate to the substantive and contractual rights of the parties under the said policy.

The IC was asked whether the emails sent by the lessee of an insured property fall within the definition of "written notice" stated in the insurance policy and whether the inundation brought about by the southwest monsoon fall within the definition of "Flood" as defined in the policy.

The IC denied the request for legal opinion stating that the instant request involves the substantive and contractual rights of the owner and/or lessor of the property and the insurance company under the policy, and in all probability, a party would contest the same in court if the opinion turns out to be adverse to said party. This is one of the grounds for the IC to refrain from rendering an opinion under Circular Letter no. 2017-13.

IC Legal Opinion No. 2019-13, November 22, 2019 – This legal opinion deals with whether or not a creditor is entitled to a refund of the unused premium on life insurance in case a group life insurance in favor of its debtors was validly terminated.

An insurance company issued a Notice of Termination against the Group Credit Life Insurance Policy issued under the name of NPC-EMPC, the policyholder, in favor of NPC's employees. The insurance company offered to refund the unused premium for the unexpired portion of the policy to the NPC-EMPC, the creditor of the employees under said policy. NPC-EMPC requested for an opinion on the propriety of refund.

The IC opined that the insurance company had the right to terminate the policy because the policy expressly stated that the same is renewable yearly. The notice was likewise valid because Section 66 of the Amended Insurance Code specifically exempts a Life Insurance from the 45-day notice requirement. The IC further opined that the refund to NPC-EMPC was justified since under the law, there is no need to issue individual life insurance policies to persons insured for at least 5 years prior to the termination of the insurance if it was the creditor, as policyholder, who insured the life of his debtors.

BSP ISSUANCES

UPDATES

- **BSP Memorandum No. M-2019-027, November 15, 2019 –** This provides guidelines on the electronic submission of biographical data.

- **BSP Memorandum No. M-2019-028, November 26, 2019 –** This provides insights on relevant practices and common red flag in order to help BSFIs detect, prevent, and mitigate risks arising from transactions that relate to illegal investment activities.

- **BSP Circular No. 1058, Series of 2019, November 15, 2019. –** This prescribes the individuals who are allowed to be extended peso consumer loans without prior BSP approval.

- **BSP Circular No. 1059, Series of 2019, November 15, 2019 –** This provides for an indefinite moratorium on the issuance of LTNCTD beginning January 1, 2021.

- **BSP Circular No. 1060, Series of 2019, November 15, 2019 –** This provides that the public offering and listing of bank shares for UBs shall be governed by the rules of the SEC and PSE.

- **BSP Circular No. 1061, Series of 2019, November 25, 2019 –** This provides that borrowings from financial intermediaries are not deposit substitutes.

- **BSP Circular No. 1061, Series of 2019, November 26, 2019 –** This provides for the relaxation of the rules on the issuance of LTNCTDs, bonds and commercial papers, specifically on the qualifications of the underwriter/arranger.

- **BSP Circular Letter No. 2019-080, November 4, 2019 –** This was issued to inform all BSFIs of the approval of the National Quick Response (QR) Code Standard for Payment and Financial Services.

- **BSP Circular Letter No. 2019-083, November 15, 2019 –** This was issued to disseminate the AMLC's FAQs on the DIGICUR Guidelines.

BSP Memorandum No. M-2019-027, November 15, 2019 – This memorandum provides guidelines on the electronic submission of biographical data.

This memorandum requires all BSP-supervised financial institutions (BSFIs) to use the prescribed Biographical Data Template (BDT) and the corresponding prooflist (CP) as posted in its website. Said reports shall be sent to specific email addresses as stated in the memorandum, depending on the type of institution. Each submission should contained one BDT and one scanned CP only. BSFIs that are unable to transmit the reports via email may submit the same in any portable storage device to the BSP through the Department of Supervisory Analytics.

The memorandum likewise reiterated that the following may result to a reporting violation:

1. Failure to use the correct/updated templates;
2. Failure to use an officially registered email address;
3. Transmitting to the wrong email address;
4. Failure to use the prescribed subject line; and

Failure to use the prescribed filename format for BDT and CP.

BSP Memorandum No. M-2019-028, November 26, 2019 – This memorandum provides insights on relevant practices and common red flag in order to help BSFIs detect, prevent, and mitigate risks arising from transactions that relate to illegal investment activities.

This memorandum provides guidelines and practices that BSFIs should conduct in order to protect itself from being used to channel funds associated with illegal investment activities. The memorandum reminded the BSFIs to undertake the following activities, among others:

1. Perform the basic customer due diligence by verifying the customer's identity, background, financial profile, and source of funds. Whenever enhanced due diligence is warranted, obtain additional information/documents, perform validation procedures on any or all of the information provided and secure senior management approval before establishing or continuing business relationship.

2. Incorporate in the transaction monitoring process a surveillance mechanism to timely capture information, advisories, or news reports that identify personalities or entities involved in illegal investment scheme.

3. Examine the background and purpose of all complex, unusually large transactions, and unusual patterns of transactions, which have no apparent economic or legal purpose, and other transactions that may be considered unusual or suspicious.

4. Undertake proactive watchlist monitoring, otherwise known as "name screening", or checking transfer parties against existing customer database for any individual or juridical entity with negative or

5. adverse/derogatory information based on internal Negative File Database system (NFDs).

6. Ensure that relevant personnel, particularly in the branches, are well informed of the BSFI's policies and procedures with respect to handling customers or transactions that may trigger suspicion of involvement in illegal investment scheme.

7. Establish common red flag indicators related to activities of a Ponzi scheme which may include the following:

    a. Frequent and/or significant cash deposits which are not aligned with the customer's business or financial profile;
    b. Sudden spikes in account activity, whether inflow or outflow , and/or inter-account transfers, on accounts of personalities who are related to those identified in regulatory advisories as involved in illegal investment activities;
    c. Several accounts, both personal and businesses purposes, where the account movements materially deviate from the declared, expected or known activities;
    d. Newly-established or registered businesses with unusually high volume of transactions;
    e. High volume of check issuances/clearing (debiting of drawer's account after clearing) transactions from a single customer which are not consistent with the client's financial profile, among others; and
    f. Unusual increase in transactions in branches or units identified illegal investment scheme operates.

BSP Circular No. 1058, Series of 2019, November 15, 2019. – This circular provides for the individuals who are allowed to be extended peso consumer loans without prior BSP approval.

This circular was issued in relation to Resolution No. 1729 dated November 7, 2019 which approved the amendments to the regulation on peso consumer loans to Overseas Filipino Workers, eligible non-immigrant visa holders, and embassy officials and employees under Section 301 of MORB, in order to address their financing needs. Hence, banks are allowed to extend peso consumer loans to the following individuals without prior BSP approval:

1. Overseas Filipino Workers (OFWs) as defined under existing labor laws and regulations;
2. Embassy officials and employees (foreign diplomats and career consular officials and employees) based in the Philippines; and
3. Foreign nationals holding valid visas issued by relevant Philippine authorities, subject to the following conditions:
    a. That the peso consumer loans that may be extended shall not include real estate or housing loans; and
    b. That the lending bank shall ensure that the borrower has resided in the Philippines for a period reasonable enough to allow the bank to make prudent credit decisions.

BSP Circular No. 1059, Series of 2019, November 15, 2019 – This circular provides for an indefinite moratorium on the issuance of LTNCTD beginning January 1, 2021.

This circular was issued in relation to Resolution No. 1727 dated November 7, 2019 which approved the amendments to Sec. 217 of the MORB to reflect the moratorium provision on long-term negotiable certificates of time deposit (LTNCTD).

The indefinite moratorium on the issuance of LTNCTD shall begin on January 1, 2021. However, LTNCTDs that have been approved but remain unissued as of December 31, 2020 may still be issued, provided that this is done within the period allowed by the BSP. Requests for such authority to issue LTNCTDs shall only be accepted by the BSP until September 30, 2020. All LTNCTDs so issued shall remain valid and negotiable until their maturity dates subject to the right of the issuing bank to pre-terminate in accordance with the MORB.

BSP Circular No. 1060, Series of 2019, November 15, 2019 – This circular provides that the public offering and listing of bank shares for UBs shall be governed by the rules of the SEC and PSE.

This circular was issued in relation to Resolution No. 1728 dated November 7, 2019 which approved the amendments to the prudential requirements on the public offering and listing of bank shares for universal banks (UBs) as provided under Sec. 102 and Appendix 1 of the MORB.

The public offering required to be conducted as a condition for the approval of the application for UB authority shall be accordance with the rules of the SEC on minimum public ownership (MPO) and the listing rules of the PSE. For banks whose shares of stock are already listed, a certification signed by the president or compliance officer that a bank has complied with the MPO requirement of the SEC must be submitted. Domestic banks already granted a UB authority must list their shares in the PSE within one (1) year from the date the authority to operate as a UB was granted.

As regards the public offering requirement, a domestic bank applying for a UB authority shall submit to BSP for evaluation, an offering prospectus prepared pursuant to the requirements of the Securities Regulation Code and its IRR, and the PSE listing rules. The bank shall cause the publication of the public offering in a newspaper of general circulation at least twice within a period of one (1) month prior to the offering. The bank must also comply with the investor relation program required by the PSE.

BSP Circular No. 1061, Series of 2019, November 25, 2019 – This circular provides that borrowings from financial intermediaries are not deposit substitutes.

This circular was issued in relation to Resolution No. 1679 dated October 31, 2019 which approved the amendment to the definition of a deposit substitute to exclude borrowings from financial intermediaries (including interbank loan transactions), consistent with the definition of deposit substitutes under Section 95 of the RA No. 7653 or The New Central Bank Act, as amended. For this purpose, the pertinent provisions of the MORB and MORNBFI have been amended to remove any indication that the borrowings from financial intermediaries is a kind of deposit substitute.

The circular also defined the term lender for both MORB and MORNBFI as "individuals and corporate entities that are not banks, quasi-banks or other financial intermediaries".

BSP Circular No. 1061, Series of 2019, November 26, 2019 – This circular provides for the relaxation of the rules on the issuance of LTNCTDs, bonds and commercial papers, specifically on the qualifications of the underwriter/arranger.

This circular was issued in relation to Resolution No. 1730 dated November 7, 2019 which approved the amendments to the MORB and MORNBFI to relax certain requirements on the issuance of LTNCTDs, bonds and commercial papers.

Under the circular, UB/commercial bank or investment house that is a related party of the issuing bank, may serve as the underwriter/arranger of the issuance of an LTNCTD, bond, or commercial paper, subject to the following conditions: (i) That there are other third party underwriters/arrangers that are not related in any manner to the issuing bank or quasi bank; (ii) That the objective conduct of the due diligence review is not undermined; and (iii) That the appropriate safeguards and controls as provided under Sec. 136 on related party transactions shall be instituted to prevent conflict of interest on the said arrangement.

The underwriter/arranger that is a related party of the issuing bank may likewise be a holder of the LTNCTDs, bonds, or commercial papers, provided, that it is part of the underwriting agreement.

BSP Circular Letter No. 2019-080, November 4, 2019 – This circular letter was issued to inform all BSFIs of the approval of the National Quick Response (QR) Code Standard for Payment and Financial Services.	This circular letter was issued to inform all BSFIs of the approval by the PPMI of the EMV QR Code as the National QR Code Standard for payment and financial services. The BSFIs shall adopt this Standard in compliance with BSP Circular No. 1055 dated October 17, 2019.
BSP Circular Letter No. 2019-083, November 15, 2019 – This circular letter was issued to disseminate the AMLC's FAQs on the DIGICUR Guidelines.	This Circular letter was issued to inform all BSFIs of the issuance of the Frequently Asked Questions (FAQs) on the Guidelines on Digitization of Customer Records (DIGICUR Guidelines) by the AMLC as Regulatory Issuance A, B, and C, No. 2, Series of 2018. This circular likewise emphasized that non-compliance with the DIGICUR Guidelines is considered a grave violation under the AMLC's list of administrative offenses which shall be subject to fines provided under the AMLC's Rules of Procedure in Administrative Cases.

THE ECONOMIC EMPLOYER RULE

By

Fulvio D. Dawilan

Technology has rendered time zones and borders irrelevant. Suppliers and providers of services can work with clients and colleagues across all corners of the globe, regardless of whether they are in the same jurisdiction or not. Still, many things can be accomplished only through direct or physical presence. It follows that even in this age of virtual connectivity, cross-border movement of persons is still a necessity.

In taxation, international assignments of employees give rise to issues like—how shall the employee be taxed in his home country and in the host country, and what are the obligations of the host entity? And will the assignment result in doing business or the creation of a permanent establishment for the foreign employer/assignor in the host country? The proper determination of the characteristics of the assignment will usually give the answers to these questions. We will discuss more on the tax implications in a subsequent article in this column.

In the meantime, we focus on the characterization of the assignment, specifically in relation to the "economic employer" concept. In international assignment, to avoid the creation of a permanent establishment for the foreign company, the traditional model is the "secondment" or "formal employment" concept. A formal employment arrangement is recognized between the assigned employee and the host company. The employee becomes an employee of the receiving company.

A global trend has emerged with the adoption of the economic employer concept veering away from the traditional "formal employer" model. Under this arrangement, the employee remains employed with his home country and yet will be economically employed in the host country. Some countries use the economic employer concept in determining the employer of the assignee. An economic employer is most commonly interpreted to be the entity controlling the day-to-day activities of the employee and the one that receives the benefits of the employee's work. Other countries look at where the costs of an assignment are borne. They maintain that if the costs are borne in those countries, then those countries are expected to retain profits generated from the assignment and, therefore, economically becomes the employer of the individual for the period of the assignment.

The OECD Commentary on the Model Tax Convention, however, cautions that the question of whether the remuneration of the individual is directly charged by the formal employer to the enterprise to which the services are provided is only one of the subsidiary factors that are relevant to determine whether services rendered by the individual may properly be regarded as rendered in an employment relationship. Relevant domestic laws may ignore the way in which the services are characterized in the formal contracts. Instead, focus is made primarily on the nature of the services rendered by the individual and their integration into the business carried on by the enterprise that acquires the services. Substance prevails over form, such that the assignee will be considered an employee of the host entity if the services

rendered by the employee are more integrated to the business activities carried on by the host entity. Thus, it is also important to determine whether the services rendered by the individual constitute an integral part of the business of the enterprise to which the services are provided.

The commentary further provides that an analysis of some factors is necessary in determining the economic employer. Among these factors are the following: the party responsible or at risk for the results produced by the employee's work, the entity with the authority to instruct the worker, who has control and responsibility in relation to the employee's place of work; how the remuneration is calculated; who provides the tools and materials; and who determines the number and qualifications of the employees.

In the Philippines, we have not really adopted the economic employer concept in the area of taxation, such as in the application of the exemption from tax for short-term employment services based on tax treaty provisions. A look at the rulings issued by the tax authority, as well as the decisions of the Courts would show that this economic employer principle had not reached that sophistication, for the tax authority or the courts to scrutinize the economic substance of the arrangements between or among the assignor, the assignee and the host entity. Philippine taxpayers and tax authorities alike have relied heavily on the use of bilateral tax treaties in determining the taxation or exemption from income tax of the income of foreign individual assignees in the Philippines. But it has not gone enough to the extent of determining whether employer functions are exercised primarily by the employing entity in the home state or by the host entity.

Some quarters state that Philippine tax authorities are adopting the economic employer approach based on the principle that when there is a recharge to the Philippine entity, the host entity is considered to be the economic employer and the employee cannot claim tax exemption. I respect this view. However, this

is a simple application of the treaty provision which states that if the cost is borne by a Philippine entity or permanent establishment, the exemption will not apply. The tax authorities do not tend to scrutinize whether there is "employer-employee" relationship so the exemption will not be available.

What we have in the Philippines is the four-fold test in determining employer-employee relationship for labor law purposes. These tests in determining the existence of employer-employee relationship approximates that of the tests or factors in determining the economic employer. Thus, an entity determined to be the employer under Philippine domestic law would easily be determined to be an economic employer using the factors stated in the OECD Commentary. Unfortunately, while these four-fold tests had been applied in labor disputes/issues, that is, in determining the rights and obligations between an (alleged) employer and an employee, it had not been applied in tax issues, especially so with respect to international assignments.

There are peculiarities in the characterization of employment in the area of taxation. The improper application of tax treaty provisions may lead to tax leaks or abuse. Also, application of general labor rules is not sufficient. Policy -makers and tax administrators may need to consider this area and craft laws or rules to address this concern.

****

For inquiries on the article, you may call or email

ATTY. FULVIO D. DAWILAN
Managing Partner
T: +63 2 8403 2001 loc. 310
fulvio.dawilan@bdblaw.com.ph

THE BDB TEAM

OUR EXPERTS

BENEDICTA DU-BALADAD
Founding Partner, Chair & CEO
T: +63 2 8403 2001 loc. 300
dick.du-baladad@bdblaw.com.ph

FULVIO D. DAWILAN
Managing Partner
T: +63 2 8403 2001 loc. 310
fulvio.dawilan@bdblaw.com.ph

IRWIN C. NIDEA, JR.
Senior Partner
T: +63 2 8403 2001 loc. 330
irwin.c.nideajr@bdblaw.com.ph

RODEL C. UNCIANO
Partner
T: +63 2 8403 2001 loc. 140
rodel.unciano@bdblaw.com.ph