MT&F

MATA-PEREZ · TAMAYO · FRANCISCO

ATTORNEYS AT LAW

TAX JOURNAL

January 2021

Highlights

BIR ISSUANCES

Revenue Memorandum Circular (RMC)

- RMC No. 136-2020 clarifies the suspension of the statute of limitation provided under Revenue Regulations No. 11-2020 (Page 3)
- RMC No. 138-2020 clarifies Revenue Regulations No. 25-2020 on the availment of NOLCO for taxpayers adopting fiscal year (Page 3)
- RMC No. 4-2021 prescribes the guidelines in the filing of tax returns, including the required attachments, and payment of internal revenue taxes (Page 3)
- RMC No. 13-2021 prescribes the availability of the BIR Mobile Taxpayer Identification Number (TIN) Verifier Application (Page 4)
- RMC No. 17-2021 prescribes the Extension of the Deadline for the Filing/Submission of the Annual Information Return of Income Taxes Withheld on Compensation and to Final Withholding Taxes (BIR Form Nos. 1604-C and 1604-F) (Page 4)

Revenue Memorandum Order (RMO)

- RMO No. 46-2020 prescribes the guidelines and procedures for the availment of the reduced rate of 15% on intercompany dividends paid by a domestic corporation to a non-resident foreign corporation pursuant to Section 28 (B)(5)(b) of the NIRC of 1997, as amended (Page 4)
- RMO No. 47-2020 consolidates and updates the guidelines and procedures on the processing of claims for Value-Added Tax Credit/Refund, except those under the authority and jurisdiction of the Legal Group (Page 5)

COURT DECISIONS

CTA Division

- City Treasurer of Manila vs. New Coast Hotel, Inc. (Page 5)
- Negros Sugar Farmers Multi-Purpose Cooperative vs. Commissioner of Internal Revenue (CIR) (Page 6)
- Four Seas Trading Corporation vs. CIR (Page 7)
- Dizon Farms Produce, Inc. vs. CIR (Page 7)
- Ayala Corporation vs. CIR (Page 8)
- Toyota Motors Philippines Corporation v. CIR (Page 9)
- AC Energy, Inc. v. CIR (Page 10)
- New Farmers Plaza, Inc. v. CIR (Page 11)

CTA EN BANC

- Philippine Airlines, Inc. vs. CIR (Page 12)
- Wells Fargo Enterprise Global Services, LLC- Philippines vs. CIR (Page 13)
- CIR v. First Balfour, Inc. (Page 13)
- CIR v. Bostik Philippines, Inc. (Page 14)
- Public Safety Mutual Benefit Fund, Inc., v. Laquian (Page 15)

Supreme Court Decisions

- Imelda Sze, Sze Kou For, & Teresita Ng vs. Bureau of Internal Revenue (BIR), represented by the CIR (Page 16)
- CIR vs. Filminera Resources Corporation (Page 17)

DOLE ISSUANCE

- Department Order 221-21- Revised Rules and Regulations for the Issuance of Employment Permits to Foreign Nationals (Page 18)

SEC ISSUANCE

- Opinion No. 20-03- Re: Power to invest Corporate Funds for any other purpose; primary and secondary purpose (Page 18)
- MC No. 01 s. 2021- Guidelines in Preventing the Misuse of Corporations for Illicit Activities through Measures Designed to Promote Transparency of Beneficial Ownership ("BO Transparency Guidelines") (Page 19)

BIR ISSUANCES

REVENUE MEMORANDUM CIRCULAR (RMC)

RMC No. 136-2020 issued on December 7, 2020

- This Circular clarifies the suspension of the statute of limitations under Section 203 and Section 222 of the National Internal Revenue Code (Tax Code) provided under Revenue Regulations (RR) No. 11-2020, which started from March 16, 2020, when the state of emergency was declared due to COVID-19 virus, until 60 days after the lifting of the quarantine.
- With such suspension, the counting of the 3-year prescriptive period to assess and the 5-year period to collect shall exclude the number of days covered by the period of suspension, which is a total of 137 days.

RMC No. 138-2020 issued on December 23, 2020

- This Circular clarifies Revenue Regulations (RR) No. 25-2020 on the availment of the Net Operating Loss Carry-Over (NOLCO) for taxpayers adopting fiscal year.
- RR No. 25-2020 was issued to implement Section 4 (bbbb) of the RA No. 11494, or the Bayanihan to Recover as One Act, which states that "unless otherwise disqualified from claiming the deduction, the business or enterprise which incurred net operating loss for taxable years 2020 and 2021 shall be allowed to carry over the same as a deduction from its gross income for the next 5 consecutive taxable years immediately following the year of such loss."
- Under RR No. 25-2020, Fiscal Year (FY) means an accounting period of 12 months ending on the last day of any month other than December. Taxable Year 2020 and 2021 shall include all those corporations with fiscal years ending on or before June 30, 2021 and June 30, 2022, respectively. Under existing revenue issuances, a FY will fall on a particular taxable year depending on the number of months it has on the 2 years involved.
- Based on the foregoing, those companies with FYs ending before July 31, 2020 and fiscal years ending after June 30, 2022 which incurred net operating loss are only allowed to carry-over the loss as a deduction from its gross income for the next 3 consecutive taxable years under Sec. 34 (D)(3) of the Tax Code, as amended. They cannot avail of the extended period to carry-over the loss for another 2 years.
- The RMC shall take effect immediately.

RMC No. 4-2021 issued on January 8, 2021

- This issuance prescribes the guidelines in the filing of tax returns including the required attachments and the payment of internal revenue taxes. This issuance further clarifies who are the taxpayers required to use the eBIRForms, and the eFPS.
- For Electronic Filing of Tax returns, taxpayers who are required to use or voluntarily opt to use the eBIRForms must pay the taxes due with the Authorized Agent Banks (AAB) under the jurisdiction of the Revenue District Office (RDO) where the taxpayer is registered, with the Revenue Collection Officer under the RDO where the taxpayer is registered, or through Electronic Payment.
- For taxpayers required to use or voluntarily opt to enroll in the eFPS, they are required to file the return electronically and pay the corresponding taxes due thereon through the eFPS-AABs where they are enrolled.
- For Manual Filing of Tax Returns and Payment, Taxpayers who are otherwise not required to file electronically (either through the eBIRForms or the eFPS), nor voluntarily opt to do

so, shall use the electronic or computer-generated returns or photocopied returns in its original format and in Folio/Legal size bond paper. Taxpayers should completely fill out the applicable fields and sign the returns, otherwise, they shall be subjected to penalties under Sec. 250 of the Tax Code, as amended.

RMC No. 13-2021 issued on January 27, 2021

- This Circular is issued to notify that the Bureau's Mobile Taxpayer Identification Number (TIN) Verifier Application, also known as the "BIR Mobile TIN Verifier App" is available for download on both the App Store (for iOS) and Google Play Store (for Android).
- The App is a service channel for taxpayers to send online TIN validation and TIN inquiry using their mobile phones with real-time response from the concerned BIR Office. The development of mobile application is one of the Bureau's effort in its digital transformation by giving the taxpayers a convenient way and alternative in availing the TIN validation service instead of going physically and queuing in the BIR district office.

RMC No. 17-2021 issued on January 29, 2021

- In this Circular, the BIR announced that the deadline of filing the Annual Information Returns (BIR Form Nos. 1604-C and 1604-F), including the submission of the 4th Quarter (QAP) and Annual Alphabetical List of Employees/Payees from Whom Taxes Were Withheld (alphalist) using the new version of the Alphalist Data Entry and Validation Module (Version 7.0) under RMC No. 7-2021 is hereby extended from January 31,2021to February 28, 2021.
- Moreover, resubmission of alphalist that were already submitted prior to the issuance of the said RMC using the old version of the module is no longer required.

REVENUE MEMORANDUM ORDER (RMO)

RMO No. 46-2020 issued on December 23, 2020

- This RMO further seeks to provide guidance for the Non-Resident Foreign Corporation's (NRFC)s intending to avail of the reduced tax rate of 15% on intercorporate dividends received from a domestic corporation pursuant to Section 28(B)(5)(b) of Tax Code, and to lay down the documentary requirements that must be submitted in support of their application.
- Section 28(B)(5)(b) of the Tax Code provides that intercorporate dividends paid by a domestic corporation to a nonresident foreign corporation (NRFC) are subject to income tax of 15% provided that the country of residence of the NRFC shall allow a credit against its tax due taxes deemed to have been paid in the Philippines equivalent to fifteen percent (15%), which represents the difference between the regular tax of 30% on corporations and the reduced tax of 15% on dividends.
- The reduced rate of 15% may be applied to the cash and/or property dividends declared by all corporations, irrespective of their corporate income tax regimes. The domestic corporation paying the dividends may remit outright the dividends to the NRFC and apply thereon the reduced rate of 15% without securing first a ruling from the BIR. It must determine, however, whether the existing law of the country of domicile allows the NRFC a "deemed paid" tax credit in an amount equivalent to the 15% waived by the Philippines or exempts from tax the dividends received.
- The NRFC may opt to avail of the reduced dividend rate under the Tax Code, irrespective of whether a double tax convention or tax treaty exists between the Philippines and its country of residence. If the taxpayer is not entitled to the reduced rate under the Tax Code, the treaty rate shall automatically be applied provided that the NRFC is able to prove its entitlement to the benefits provided under the treaty.

- Holders of Philippine Depositary Receipts (PDRs) may also be entitled to the reduced rate, subject to the fulfilment of the conditions set out in this Order.

RMO No. 47-2020 issued on December 23, 2020

- This RMO consolidates and updates the guidelines and procedures on the processing of claims for value-added tax (VAT) credit/refund, except those under the authority and jurisdiction of the Legal Group.
- Under this Memorandum Order, all concerned offices shall prioritize the processing of VAT Credit/Refund claims filed under Section 112 of the Tax Code, as amended, over other claims not requiring the immediate issuance of Tax Credit Certificates (TCCs)/refund checks.
- Furthermore, only applications with complete documentary requirements and which are filed within the prescribed period, shall be received by the authorized processing office. One of the documentary requirements for a VAT Credit/Refund is the Delinquency Verification Certificate (DVC) prescribed in RMC No. 64-2019, which shows that the taxpayer has no outstanding tax liabilities. Thus, the application shall not be accepted if tax liabilities appear on the DVC, except for outstanding VAT liability which may be deducted from the approved BIR portion of the claim.
- Moreover, applications where the DVC shows delinquent accounts other than VAT shall not be received.
- Lastly, pursuant to the amendment of Section 112(C) of the Tax Code, the time frame to grant claims for VAT refund is 90 days from the date of submission of the official receipts or invoices and other documents in support of the application. Hence, the start of the 90-day period is from the actual filing of the application with complete documents duly received by the processing office.
- The claims shall be processed based on the submitted documents, for verification by the assigned Revenue Officer (RO) or Group Supervisor (GS), and such process shall not be construed as an audit investigation. Thus, the claimant may be subsequently issued an electronic Letter of Authority (eLA) by an authorized officer for that purpose. The result of the verification of the claim shall be communicated to the taxpayer-claimant.
- The RMO shall take effect immediately.

COURT DECISIONS

CTA DIVISION DECISIONS

City Treasurer of Manila v. New Coast Hotel, Inc.
CTA AC No. 231 promulgated on January 13, 2021

Facts:

Company A was assessed for Local Business Taxes (LBT) by the Petitioner City on its declared revenues for Alcoholic beverages and Rental and Other income. Company A later on, filed a protest against the assessment pursuant to Section 195 of the Local Government Code (LGC) on the ground that the assessment lacks the basis for the Petitioner City's re-allocation and tax rates applied on the reallocation. Due to the inaction of the Petitioner City, Company A filed a Complaint for Cancellation of Assessment of LBT in the Regional Trial Court (RTC) in which the lower court decided in their favor.

Petitioner City argues that Company A understated its declaration of gross income when it renewed its business permit and license, hence, evading the payment of correct LBT. Company A however argues that Petitioner City had no clear legal basis in its assessment against it.

Issue:

Is there a valid Assessment in this case?

Ruling:

No. There was no legal basis or explanation indicated in the assessment notice.

Petitioner City failed to explain the basis for the reallocation and the rate used in the computation. Further, no notice of assessment was sent to Company A except for a Data and Assessment Form which was only presented in the Court for the first time, thus, depriving Company A of its right to due process, rendering the assessment null and void.

Furthermore, Petitioner City's compulsory counterclaim in the Petition is not a valid mode to collect the deficiency LBTs and is bereft of legal basis. The said counterclaim cannot be granted for being violative of Company A's right to due process.

Negros Sugar Farmers Multi-Purpose Cooperative v. CIR
CTA Case No. 9810 promulgated on January 11, 2021

Facts:

Company A was assessed for VAT and Expanded Withholding Tax (EWT), for which the appropriate Preliminary Assessment Notice (PAN) and Final Letter of Demand (FLD) have been issued. Upon the receipt of the Final Decision on Disputed Assessment (FDDA), Company A filed a Petition to Set Aside/Recall Final Decision with the Regional Director (RD). In its reply, the RD reiterated its Final Decision and further argued that the assessment has already become final and executory.

Subsequently, Company A filed an administrative appeal with the CIR. Company A primarily argued that it is granted tax-exempt status pursuant to its registration with the Cooperative Development Authority (CDA), as evidenced by a BIR-Ruling. Respondent BIR on the other hand, argued that the assessment has already become final and executory upon Company A's failure to timely file an appeal with the CTA or the CTA within 30 days from its receipt of the FDDA.

Issue:

Is the protest valid in this case?

Ruling:

No. The assessment in this case had already attained finality.

Company A failed to appeal within 30 days from receipt of the FDDA before the CIR or the Court of Tax Appeals (CTA). Instead, it opted to file a Petition to Set Aside/Recall Final Decision with the RD. Under prevailing regulations, when a taxpayer receives a final decision of the CIR's authorized representative, it can either appeal to the CTA or elevate his protest before the CIR, within thirty (30) days from receipt of the said decision.

Company A's motion for reconsideration (MR) couched as "Petition to Set Aside/Recall Final Decision" before the RD did not really toll the running of the 30-day period to appeal to the CTA or respondent CIR himself pursuant to Section 228 of the Tax Code. Company A's repeated and successive filing of MRs at the administrative level could not be a reason to extend the appeal period. Company A's proper recourse should have been to file the administrative appeal directly with respondent CIR or file a Petition for Review before this Court within thirty (30) days from its receipt of the RD's Final Decision.

Four Seas Trading Corporation v. CIR
CTA Case No. 9915 promulgated on January 11, 2021

Facts:

In 2016, Company F received a Letter of Authority (LOA) for taxable year (TY) of 2014. Subsequently, the Respondent BIR issued the Preliminary Assessment Notice (PAN) through registered mail as proven by a Registry Receipt. The Final Assessment Notice (FAN) and the FLD were also issued and served by the Respondent BIR through registered mail as proven by a Registry Receipt. Thereafter, a Final Notice Before Seizure was issued by the Respondent BIR against Company F, for the deficiency taxes for 2014 amounting to PhP34 Million. Company F then filed a petition for Review with the CTA.

Issue:

Did the issuance and service of tax assessments comply with the due process requirements provided by law?

Ruling:

No. The Respondent BIR violated Company F's right to due process in the issuance of the subject tax assessments.

Per RR No. 18-2013, one of the modes of service of the PAN, FLD, and FAN is by service through registered mail. As for such mode of service, the same must be made by sending the said notices "with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered." Moreover, to constitute sufficient proof of mailing, the registry receipt issued by the post office must contain sufficiently identifiable details of the transaction.

Furthermore, it is required that the "[t]he server shall accomplish the bottom portion of the notice" and "shall also make a written report under oath before a Notary Public or any person authorized to administer oath. It was noted that the Respondent BIR only presented Registry Receipts of the PAN, FAN and FLD. Such registry receipts fail to comply with the rules and regulations as set-up by the Respondent BIR themselves. Also, these documents hardly suffice to prove that the said notices were indeed served and received by Company F. These Registry Receipts merely proved the fact of mailing, and nothing more.

Since these due process requirements were not fulfilled for failure of the BIR to properly serve the PAN, FAN, and FLD, the subject tax assessments are null and void.

Dizon Farms Produce, Inc. v. CIR
CTA Case No 9711 promulgated on January 5, 2021

Facts:

Company A was assessed for deficiency income tax, VAT, EWT, Documentary Stamp Tax (DST), and Improperly Accumulated Earnings Tax (IAET) for TY 2013. Company A then filed the Reply to PAN but Respondent BIR issued the FAN only two days after the filing of the Reply to PAN, for the same deficiency taxes but with a corresponding compromise penalty for the taxable year 2013.

Company A argues that the FAN did not include any comment on the matters raised by the Company A to the Reply to PAN thereby failing to meet the due process standards and rendering the FAN null and void.

Respondent BIR on the other hand argues that Company A's Reply to PAN was just a mere denial of the findings of the officers and that the issuance of the FAN dated two days after

the receipt of the Reply to PAN simply means that said Reply failed to dispute the findings therein.

Issue:

Is the FAN considered null and void for violating Company A's right to be heard with regard to its arguments in the Reply to PAN?

Ruling:

Yes. The subject assessments are void, as a consequence of the violation of Company A's right to administrative due process for Respondent BIR's failure to consider the explanations of Company A as embodied in its reply to the PAN.

The issuance of a PAN is a part of due process; that the issuance thereof gives both the taxpayer and the Respondent BIR opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN or to reduce the assessment at the earliest opportunity; that this purpose is not served in case Respondent BIR fails to consider the taxpayer's explanations or arguments before the FAN is issued; that the failure by Respondent BIR to give due consideration to the said explanations or arguments is a deplorable transgression of the taxpayer's right to due process; and that the disregard by Respondent BIR of the standards and rules renders the deficiency tax assessments null and void.

Ayala Corporation v. CIR
CTA Case No. 9556 promulgated on January 11, 2021

Facts:

Corporation Z filed a claim for the issuance of a Tax Credit Certificate (TCC) representing its unutilized or excess Creditable Withholding Tax (CWT) for calendar year (CY) 2014. The prior year's excess credits reported in Corporation Z's 2014 Annual Income Tax Return (ITR), originated from the CWTs for the years 2005 to 2007. However, Corporation Z was only able to substantiate the CWTs for CY 2005. Thus, on February 26, 2020, the Court promulgated a decision only partially granting Corporation Z's claim for refund of excess CWTs.

Hence, Corporation Z filed a motion for partial reconsideration of the February 26, 2020 decision. Corporation Z insists that the court take a look and adopt findings made in similar cases of the CTA which also involves Corporation Z's claims for refund of its excess CWT. Corporation Z asserts that in the records of the previous CTA decisions, Corporation Z's prior year's excess credits reported in 2012 and 2013 annual income tax returns originated from the creditable taxes withheld for CY 2005 to 2007 that were duly supported Certificates of Creditable Tax Withheld at Source. Even though these decisions were not offered as part of documentary evidence, Corporation Z insists that the court take mandatory judicial notice of the said decisions for being acts of the judicial department of the Philippines as provided under Article 129 of the Revised Rules of Court (RRC).

Issue:

Is it mandatory upon courts to take judicial notice of the decisions of other courts?

Ruling:

No. Company Z failed to substantiate the CWTs for CY 2006 and 2007.

In a pending case, it is not mandatory upon the courts to take judicial notice of the pieces of evidence which have been offered in other cases even when such cases have been tried or pending in the same court. Evidence already presented and admitted by the court in a

previous case cannot be adopted in a separate case pending before the same court without the same being offered and identified anew.

Furthermore, Section 3 of Rule 129 of the RRC provides that hearing is necessary before judicial notice of any matter may be taken in court. It is erroneous for Corporation Z to insist that this court take judicial notice of the findings made in other cases. Each case must be decided on its own merits and based on the strength of evidence presented therein. Thus, considering that the CWTs for 2006 to 2007 have not been offered in evidence, no evidentiary value can be given to them as the rules on documentary evidence require that these documents be formally offered during trial.

Toyota Motors Philippines Corporation vs. CIR
CTA Case No. 9250 promulgated on January 19, 2021

Facts:

Company T filed with the Office of the District Collector of the Bureau of Customs (BOC)-Collection District II-A a letter request for tax refund or credit in the total amount PhP248,821,231.76 consisting of customs duties, excess VAT and excess excise taxes it paid on its importations from Japan for the year 2010. Thereafter, a Petition of Review was filed by Company T to the Court due to the inaction of the BOC.

The Court partially granted the petition of the Company T. The Court disallowed the amount of PhP128,963,113.83 due to the failure of the Company T to present machine-validated Import Entry and Internal Revenue Declarations (IEIRDs) and/or Single Administrative Documents (SAD) and that the amended Importer's Sworn Statements (ISS) were unsigned/unnotarized.

Issue:

1. Should the refund of Company T be granted even though the IEIRDs and/or SAD are not machine validated?
2. Does the unsigned/unnotarized Amended ISS materially affect the Company T's claim for tax refund?

Ruling:

1. Yes. The presentation of machine-validated IEIRDs/SADs which were undertaken under the BOC's Electronic to Mobile (e2m Customs System) does not appear indispensable, since the presentation by Company T of the SSDTs issued under the e2m customs system clearly suffices to prove the customs duties and taxes in imported articles have been paid.

   To prove the fact of importation and the corresponding payment of customs duties and taxes through the automated e2m Customs System under Customs Administrative Order (CAO) No. 10-2008, it is imperative that the importer present both the IEIRDs/SADs which must contain the necessary details required by law albeit sans machine validation by the Authorized Agent Banks (AABs); and the SSDTs which shows that the BOC has received the payment of custom duties and taxes through the AABs.

   However, it must be noted that the presentation of the IEIRDs/SADs is still necessary to establish connection between the source document.

2. Yes. Without the Amended ISS, the Court cannot ascertain any excess excise tax paid because there can be no comparison of the original and the adjusted selling price, which is the basis of the excise tax.

Section 149 of the Tax Code and RR No. 25-2003 provides that the computation of the excise taxes shall be based on the selling price of the manufacturer or importer as reflected in the manufacturer's/assembler's or importer's sworn statement duly filed with the BIR. In this case, it should be noted it is Company T who relied on the Amended ISS. Company T submitted in evidence the amended ISS to show that it effected a decrease in the selling price of its CBU Importations.

AC Energy, Inc. v. CIR
CTA Case No. 10009 promulgated on January 25, 2021

Facts:

Company A sold a number of shares it owned from other corporations to Company B and Company C. Pursuant to such sales, Company A filed its Capital Gains Tax (CGT) Returns corresponding to the sales. Thereafter, Company A filed its Annual CGT Return covering the earlier mentioned transactions which reflected an overpayment/refundable CGT amounting to over P19 Million. Company A later on filed with the BIR an Application for Tax Credits/Refunds for its alleged overpayment of CGT. Subsequently, Company A filed a Petition for Review.

Respondent BIR primarily argues that the Petition must fail because there is no erroneously paid tax in the first place. Inversely, Company A argues that there exists an overpayment of CGT after deducting its capital losses from its capital gains.

Issue:

Is Company A entitled to a refund of erroneously paid CGT?

Held:

Yes. Section 52(D) of the Tax Code provides that there are two (2) dates involved in the filing of CGT returns relative to sale of shares not traded thru a stock exchange: one for each transaction within thirty (30) days thereafter; and another relative to the final consolidation of all transactions in the taxable year, before the 15th day of the 4th month following the close thereof. The determination of CGT (from the sale or exchange of shares of stock not traded thru a local stock exchange) to which a domestic corporation may be held liable is on an annual basis.

Such being the case, the CGT paid for a particular transaction should be considered as a mere installment, an advance, or a deposit, subject to the final determination of CGT for the entire taxable year in which such transaction took place, and after considering other transactions which took place within the same taxable year.

Considering that the computation made by Company A is in accordance with Section 27(D)(2) of the Tax Code, as amended, and since Company A complied with the provisions of Sections 52(D) and 56(A)(1) thereof, the amount of over P19 Million represents an amount which was levied without statutory authority or plainly, an erroneously paid CGT, which is refundable under Section 229 of the same law.

New Farmers Plaza, Inc. vs. CIR
CTA Case No. 9474 promulgated on January 27, 2021

Facts:

Company A received a Formal Letter of Demand (FLD) assessing them for deficiency taxes for income tax, VAT and EWT for Calendar Year 2006. Company A then filed for an

Application for Compromise based on doubtful validity of alleged deficiency taxes assessed but was subsequently denied by Respondent CIR in a Notice of Denial.

Company A mainly argues that the CTA is empowered to review the petition pursuant to its "Other Matters" jurisdiction and that the assessment was not just of doubtful validity but was in fact void. Respondent CIR, on the other hand argues that the CTA has no jurisdiction over the instant petition as the issue is his denial of the application/offer of compromise settlement which is discretionary on his part and that it is unappealable and the courts cannot compel a party to give his consent to a contract or agreement.

Issue:

1. Does the CTA have jurisdiction to try the case considering it involves the denial of the Respondent CIR on Company A's Application/Offer of compromise settlement?
2. Are the requirements prescribed by law for the exercise of the power to compromise a tax liability complied with by Respondent CIR?

Ruling:

1. Yes. The CTA has jurisdiction to entertain the present appeal.

   Section 7(1)(1) of R.A. 1125, as amended by R.A. 9282 provides that the CTA shall exercise exclusive appellate jurisdiction to review by appeal, the decision of the CIR in cases involving other matters arising under the Tax Code or other laws administered by the BIR. The appellate jurisdiction of this Court is not limited to cases which involve decisions of respondent CIR on matters relating to assessments or refunds.

   Moreover, in *PNOC v. CA*, the Supreme Court held that the discretionary authority to compromise granted to the BIR Commissioner is never meant to be absolute, uncontrolled and unrestrained and that the Commissioner would have to exercise his discretion within the parameters set by the law, and in case he abuses his discretion, the CTA may correct such abuse if the matter is appealed to them.
   While Respondent CIR's power to compromise is sanctioned under the Tax Code, the exercise thereof, whether in granting or denying the application for compromise, is subject to the determination of this Court, in the first instance, whether the same is "within the parameters set by the law".

2. No. The legal requirements for a valid exercise of CIR's power to compromise a tax liability are as follows:
   a. There exists a reasonable doubt as to the validity of the claim against the concerned taxpayer, or the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax;
   b. The taxpayer has paid the minimum compromise rate, which is either forty percent (40%) or ten percent (10%) of the basic assessed tax or taxes, depending on the ground being relied upon. The compromise offer must have been paid and fully settled by the concerned taxpayer upon filing of the application for compromise settlement; and
   c. In case the basic tax exceeds P1,000,000.00, the application for compromise settlement has been approved by the National Evaluation Board (NEB), with the concurrence of Respondent CIR; and in case the basic tax is P500,00.000 or less, the said application was approved by the Regional Evaluation Board (REB).

   Based on the records, Company A has complied with the payment and full settlement of the required amounts upon filing of its application for compromise settlement. However, there is no indication that the application for compromise settlement for the deficiency

tax assessment, which in this case exceeds P1,000,000.00, was approved by the NEB. The Notice of Denial shows that it was only the Regional Evaluation Board (REB) which 'disapproved' Company A's application for compromise settlement. Thus, it is implied that the same application was never presented to the NEB for review and evaluation. Consequently, for failure to follow the proper exercise of the Respondent CIR's power to compromise tax liability, the Notice of Denial is void.

CTA EN BANC DECISIONS

Philippines Airlines, Inc. vs. CIR
CTA EB No. 2166 promulgated on December 11, 2020

Facts:

Company A filed a claim for refund for its alleged erroneous payment of Excise tax on its importation of articles consisting of cigarettes, alcohol products, and other supplies for use in international flights. Company A mainly argued that it is only required to pay Franchise tax to be paid in lieu of all other taxes including Excise Tax. Respondent BIR on the other hand argues that the claim for refund was not sufficiently substantiated. Company A paid under protest the excise taxes thereon on August 22, 2014.

On August 22, 2016, Company A filed before the Respondent CIR a claim for refund, Likewise, on the same date, Company A also filed a Petition for Review before the CTA.

Respondent BIR alleges that Company A failed to comply with the requirements for claiming a refund when it filed its administrative claim for refund and its Petition for Review on the same day. Company A argued that it complied with the statutory requirement of filing its administrative claim prior to the filing of its judicial claim for refund since the wording of Section 229 of the Tax Code as amended only requires the prior filing of an administrative claim and does not expressly disallow filing of the administrative claim and judicial claim on the same day.

Issue:

Is the claim for refund valid in this case?

Ruling:

No. The Court declared that Company A failed to comply with the requirement of "prior filing" of its administrative claim due to the fact that it filed its administrative claim for refund and Petition for Review on the same day. The same day filing of the subject refund claims falls short of the requirement stated in Section 229 of the Tax Code, as amended, and is ultimately fatal to petitioner's claim

The Court further declared that an administrative claim and a judicial claim filed on the same day is akin to both being filed concurrently, and thus falls short of fulfilling its primary purpose, which is to give the CIR an "opportunity to act" on the first claim. The Court declared, in effect, that the commissioner must be given the chance to act on the administrative claim before the taxpayer can go to court.

**In the case of "Commissioner of Internal Revenue vs. Goodyear Philippines, Inc." (or Goodyear case), it was held that the primary purpose of requiring the prior filing of an administrative claim, therefore, was to give notice or warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. Thus, while it does not mean that the taxpayer must await the final resolution of its administrative claim for refund, the law still requires the prior filing of the administrative claim, before a judicial claim is filed before the Court in Division.*

***The wording of Section 229 of the Tax Code only provides that No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner.*

Wells Fargo Enterprise Global Services, LLC- Philippines v. CIR
CTA EB No. 2087 promulgated on December 14, 2020

Facts:

Company W is a duly licensed Philippine branch office of a company duly organized and existing under the laws of the USA. It is registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone IT Enterprise.

Company W filed an administrative claim for refund for 2015 for its alleged unutilized input Value-added Tax (VAT) amounting to PhP28 Million. The input VAT that Company W incurred, and which it is claiming refund for, relates to its purchase of capital goods from Company F, a PEZA-registered entity, which is a transaction outside Company F's registered activities pursuant to its Registration Agreement with PEZA.

Issue:

Is Company W entitled to the VAT refund?

Ruling:

No. Company W is not entitled to the VAT refund.

The sale of goods by a PEZA registered entity to another PEZA entity (or Intra Ecozone Sales of Goods), is exempt from VAT. Notably, there is no distinction made as to whether or not the goods are to be used for a PEZA-registered activity. Hence, a determination thereon becomes immaterial as the exemption is not dependent thereon.

The VAT exemption of PEZA-registered enterprises flows from the legal fiction establishing Ecozones as foreign territories under Section 8 of Republic Act (RA) No. 7916, as amended, and not by virtue of the special tax incentives granted to them under Section 24 of the same law. Such being the case, it is not essential that the sale of goods to PEZA-registered enterprises be directly connected to its registered activities.

Further, the Court stated that Company W's recourse is to recover the amount it paid for input VAT from its supplier of goods who imposed the same in its purchases.

CIR v. First Balfour, Inc.
CTA EB No. 2116 promulgated on January 14, 2021

Facts:

In its letter dated September 4, 2014, Bank C notified Company A that a Warrant of Garnishment (WG) was issued by the Petitioner BIR pertaining to Company B. Thereafter, Company A assailed Bank C's unilateral act of putting Company A's account on hold through its letters stating that it neither received a WG nor an assessment from the Petitioner BIR.

Furthermore, Company A alleged that the WG does not pertain to it as it patently mentioned a company with a name and TIN different from it which is Company B. On January 9, 2015, Company A received a letter from Bank C informing the former that its deposit with them has been garnished and will be released to the Petitioner BIR through a

manager's check. Furthermore, Bank C furnished a copy of Petitioner BIR's Letter directing Bank C to garnish Company A's deposit.

Thereafter, the Company A filed a Petition for Review on February 6, 2015. Petitioner BIR alleged that the petition was filed out of time as Company A should have filed the same within 30 days from the receipt of the September 4, 2014 letter of Bank C and not the January 9, 2015 letter since the latter is a mere reiteration of the former. Furthermore, the BIR alleges the Company A discreetly changed its name and business address without notice to the Petitioner BIR to evade obligation, thus, petitioner BIR requests that the Court pierce the corporate veil of the Company A since it is a mere alter ego of another corporation and that both companies have almost the same stockholders and officers. Petitioner BIR presented the Amended Articles of Incorporation (AOI) and General Information Sheet (GIS) of both Company A and Company B to prove this fact.

Issue:

1. Was the Petition for Review timely filed?
2. Should the Court pierce the veil of corporate fiction of Company A?

Ruling:

1. Yes, the petition was timely filed. The September 4, 2014 letter only notified Company A that Bank C received a notice of garnishment from the Petitioner BIR. The records do not show that the Company A was furnished with a copy of the WG and it was only on January 9, 2015 that it was informed of the issuance of the WG. Thus, Company A timely filed the Petition for Review on February 6, 2015.

2. No, overlapping of incorporators and stockholders of two or more corporations will not necessarily justify the piercing of the veil of corporate fiction. Petitioner BIR failed to present clear and convincing evidence to warrant the piercing of the veil of corporate fiction. In this case, Petitioner BIR did not formally offer in evidence the supposed AOI and GIS of Company A and that of Company B to prove that both companies have almost the same stockholders and officers. The said documents were only provisionally marked being mere photocopies. Thus, no evidentiary value can be given to pieces of evidence submitted by Petitioner BIR since the rules on documentary evidence require that these be formally offered before the court.

CIR v. Bostik Philippines, Inc.
CTA EB No. 2149 promulgated on January 14, 2021

Facts:

Company A received a Letter Notice (LN) informing it about its alleged VAT deficiency and invited it to a conference to dispute its finding. Subsequently, it received a Post Reporting Notice (PRN) stating an investigation on its alleged tax liabilities has been prepared, further informing Company A that it was being given 10 days from notice to discuss the findings with the Petitioner BIR. Petitioner BIR submitted a letter-reply shortly thereafter.

Petitioner BIR later issued a PAN, FAN, and FLD. However, the address appearing in the said notices was not the correct address of Company A. A Preliminary Collection Letter (PCL) was received by the Company A,, requesting payment for its alleged deficiency tax liabilities within 10 days from such receipt. A protest was filed thereafter in which the Petitioner BIR later on issued a Demand Before Suit, which Company A deemed as a denial of its protest against the assessment.

Issue:

Is there a valid assessment in this case?

Ruling:

No. No LOA was issued to validate the assessment made against Company A, only a LN was issued.

An LOA is addressed to a RO before an examination of a taxpayer may be had, while an LN is not found in the Tax Code and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System. An LN is entirely different and serves a different purpose than an LOA.

Due process demands, as recognized under RMO No. 32-2005, that after an LN has served its purpose, the RO should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner BIR.

Furthermore, the PAN, FAN, and FLD were sent to the wrong address. This fact was also admitted by an RO further stating that the said notices were not received by the taxpayer due to this fact. Hence, there was no valid service of the notices, resulting in a violation of the taxpayer's right to due process.

Public Safety Mutual Benefit Fund, Inc., v. Laquian
CTA EB No. 2198 promulgated on January 15, 2021

Facts:

On October 29, 2015, Respondent CIR issued Tax Order of Payment (TOP1) assessing Company A for deficiency local business tax for taxable years 2009 to 2015, inclusive of penalties and interests. On December 29, 2015, Company A filed its protest letter assailing the TOP1. In 2017, Respondent CIR issued another TOP (TOP2), assessing Company A for deficiency local business tax covering 2009 to 2017, inclusive of penalties and interests.

On January 23, 2018 and January 25, 2018, Company A received a letter from Respondent CIR denying its protest filed in December 2015.

On February 22, 2018, Company A filed a Petition with the Regional Trial Court (RTC) praying for the cancellation and setting aside of TOP 1 and TOP 2. The RTC denied the petition for lack of merit.

Issue:

Has Company A's right to appeal the assessment before the RTC prescribed?

Ruling:

Yes. Company A's right to appeal the assessment before the RTC has already prescribed.

The LGC provides that the taxpayer has sixty (60) days from receipt of the notice of assessment within which to file its written protest with the local treasurer. The local treasurer is then mandated to act on the protest within a period of sixty (60) days counted from the filing of the protest. In case of denial, the taxpayer shall file its appeal before a court of competent jurisdiction within a period of thirty (30) days from the receipt of the adverse decision. However, if the local treasurer fails to act on the protest within the prescribed 60-day period, the taxpayer shall institute an appeal before a court of competent jurisdiction within a period of thirty days reckoned from the lapse of the 60-day period within which the local treasurer should decide. It is further provided that the failure of the taxpayer to file a protest with the local treasurer or to appeal the decision or the inaction of the local treasurer, will result in the finality of the local tax assessment.

Records reveal that Company A received TOP1 on November 3, 2015. Company A then filed its written protest against the said assessment on December 29, 2015. Counting sixty (60) days therefrom, Respondent CIR had until February 27, 2016, within which to decide on the protest. In view of Respondent CIR's failure to act on the subject protest within the mandated 60-day period, such inaction shall be deemed a denial of Company A's protest. Consequently, Company A had thirty (30) days from February 27, 2016 or until March 28, 2016 within which to file an appeal before a court of competent jurisdiction. However, considering that Company A filed its appeal before RTC only on February 22, 2018, the same was clearly filed out of time.

As regards TOP 2, there is nothing on record which would show that Company A filed a written protest thereto. In fact, Company A admitted that it did not file any written protest to TOP2.

Hence, in view of Company A's failure to timely file an appeal before the RTC with respect to TOP1; and its failure to file a written protest with the local treasurer relative to TOP2, both assessments have become final, executory, and unappealable.

SUPREME COURT DECISIONS

Imelda Sze, Sze Kou For, & Teresita Ng vs. BIR, represented by the CIR
G.R. No. 210238 promulgated on January 6, 2020

Facts:

Corporation A availed of the VAP and was issued a certificate of qualification for 1999 and 2000. Respondent BIR clarified that availment of the VAP should not be construed to cover up any fraud or illegal acts that the taxpayer may commit as it is a mere privilege. Respondent BIR issued a Letter of Authority for the examination of accounting books and records of Corporation A but the latter refused to present them despite several notices. Upon investigation, Respondent BIR discovered Corporation A's deficiency taxes. Thereafter, Respondent BIR issued a Notice of Informal Conference, PAN, FLD, and FAN; however, despite the notices, Corporation A failed to file a protest.

On May 19, 2005, Respondent BIR charged the officers of Corporation A with tax evasion/tax fraud in violation of the Tax Code. The Court of Appeals (CA) resolved that probable cause was sufficiently established for tax evasion and violation of the Tax Code. Corporation A filed a petition for review on certiorari before the Supreme Court. While the petition was pending, Corporation A manifested to the Court an amended Information in a criminal case filed against them before the CTA. They moved to quash the Amended Information on the ground of prescription and double jeopardy. Thereafter, the CTA issued a resolution dismissing the cases on the ground of prescription.

Issue:

Did the CA err in finding probable cause for the violation of the Tax Code has become moot and academic?

Ruling:

Yes. The issue is already moot and academic.

Section 281 of the Tax Reform Act of 1997 states that the prescriptive period for violation of the law is five years. In this case, counting 30 days from the service of the FLD and the FAN, the violations were considered discovered on March 9, 2005. Respondent BIR was only able to file the original Information in court on April 23, 2014, which is beyond the five years, thus, the action has prescribed. Thus, the issue in this petition on whether the CA

erred in finding probable cause for the violation of the Tax Code has become moot and academic.

CIR vs. Filminera Resources Corporation
G. R. No. 236325 promulgated on September 16, 2020

Facts:

Company C, a domestic corporation registered with the Board of Investments (BOI), entered into a Sales and Purchase Agreement with Company D. For the third and fourth quarters of the FY ending June 30, 2010, Company D 's sales were all made to Company C. On March 30, 2012 and June 29, 2012, Company D filed administrative claims for refund or issuance of Tax Credit Certificates of its unutilized input VAT attributable to its zero-rated sales for the third and fourth quarters. Thereafter, on August 16, 2012 and November 23, 2012, Company D filed separate petitions for review before the CTA.

The CTA Division initially denied Company D's petition on the ground of insufficiency of evidence. In seeking reconsideration, Company D submitted a certified true copy of a BOI Certification to establish that Company C was a BOI-registered enterprise that exported its total sales volume from July 1, 2009 to June 30, 2010. The CTA Division amended its decision and granted the refund to Company D. The CTA En Banc adopted the CTA Division's decision.

Issue:

Is the BOI Certification presented a sufficient document to prove that sales were exported?

Ruling:

No, a BOI Certification presented was not a sufficient document to prove that sales were exported.

Sales made to a BOI-registered buyer are export sales subject to the zero percent rate if the following conditions are met: (I) the buyer is a BOI-registered manufacturer/producer; (2) the buyer's products are 100% exported; and (3) the BOI certified that the buyer exported 100% of its products. For this purpose, the BOI Certification is vital for the seller-taxpayer to avail of the benefits of zero-rating. The certification is evidence that the buyer exported its entire products and shall serve as authority for the seller to claim for refund or tax credit.

A plain reading of the certification shows that Company C exported 100% of its total sales volume/value, from January 1 to December 31, 2009. However, nothing in the certification shows that Company C similarly exported its entire products for the third and fourth quarters of FY 2010, or from January 1 to June 30, 2010. The validity period of the BOI certification (January 01 to December 31, 2010) should not be confused with the period identified in the certification when the buyer actually exported 100% of its products.

In order for the sales made to Company C during the third and fourth quarters of FY 2010 qualify as zero-rated sales, the BOI must still certify that Company C actually exported its entire product from January 1 to December 31, 2010. The BOI Certification failed to ascertain this fact.

DEPARTMENT OF LABOR & EMPLOYMENT ISSUANCE

Department Order 221-21 issued on January 6, 2021

- The DOLE promulgated this order to govern the employment of foreign nationals here in the Philippines in relation to Article 40 of the Labor Code. As a rule, all foreign nationals who intend to engage in gainful employment in the Philippines shall apply for an Alien Employment Permit (AEP). The application shall be filed in the DOLE Regional Office concerned within ten working days from the date of signing of the contract or prior to the commencement of employment.
- Labor Market Tests must be conducted at least fifteen calendar days prior to the application for AEP in the form of publication of the job vacancy being applied for by the foreign national in a newspaper of general circulation.
- Only one AEP shall be issued to a foreign national. The AEP shall be valid for the position and the company for which it was issued for a period of one year unless granted a longer period vis-à-vis the employment duration, as stated in the employment contract or other modes of engagement, but in no case shall exceed three years. Foreign nationals found to be working without an AEP, working with an expired AEP, or found to possess fraudulent AEPs shall be barred from filing AEP application for five years, plus payment of penalties in accordance with the law.
- This order further stipulates the categories of foreign nationals who are exempt from securing an AEP. Furthermore, the documentary and procedural requirements in order to fully comply with the law has been squarely laid out in this order.

SECURITIES AND EXCHANGE COMMISSION ISSUANCE

Opinion No. 20-03 issued on November 23, 2020

- This SEC Opinion clarifies the issue of HC Consumer Finance Philippines, Inc. (HCFP) on whether a Financing Company may engage in credit card activities as part of investing its corporate funds in similar purpose in relation to Section 41 of the Revised Corporation Code (RCC) without the need of stockholder's ratification.
- The Commission affirmed their position that the ratification by the stockholders of HCFP of the said act is no longer required. The Commission explained in its previous opinion that "where the investment by the corporation is reasonably necessary to accomplish its primary purpose as stated in its articles of incorporation, the approval only of the Board of Directors or Trustees is necessary. However, where the investment of funds is made in any other corporation or business or for any purpose other than the primary purpose for which the investing corporation was organized, the approval by the majority of the board of directors or trustees need the ratification by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or by at least two-thirds (2/3) of the members in case on non-stock corporation. Corollary thereto, other purposes not allied or incidental to its primary purpose shall be classified as secondary purposes.
- Here, since HCFP's primary purpose is to extend loans, credit, or any and all other types of financial accommodations, among others, and to do any and all acts that may be directly or indirectly necessary, proper, or convenient for the accomplishment and furtherance of its primary purpose, then it may engage in credit card activities as part of its secondary purpose, without the need of stockholder's ratification.

Memorandum Circular No. 1 s. 2021 issued on January 27, 2021

- This Memorandum Circular provides for the guidelines in preventing the misuse of Corporations for illicit activities through measures designed to promote transparency of beneficial ownership. Under this Memorandum, all nominee directors/trustees and nominee shareholders, incorporators/applicants for incorporation and all concerned corporations should be guided of the following:

  - Prohibition against the issuance, sale, public offering of bearer shares/bearer share warrants;
  - Disclosure and recording of alienation, sale or transfer of shares shall be disclosed and recorded in the Stock and Transfer Book within 30 days from date of such alienation, sale or transfer;
  - No dividends shall be paid to any person or entity unless his/her/its name appears in the records of the corporation as the owner of the shares of stock for which dividends are being paid;
  - Mandatory disclosure of the person on whose behalf the corporation is registered and the nominators/principals of nominee incorporators/first directors/trustees and shareholders of corporations applying for registration;
  - Mandatory disclosure of nominators on whose behalf the corporation is registered and the nominators/principals of nominee incorporators/first directors/trustees and shareholders of existing corporations;
  - Period to Submit Disclosure Statement (Within 30 days from the date this Circular became effective or from the time they became or assumed the role of or started acting as nominee directors/trustees or shareholders;
  - Exemption from disclosure requirements of all Covered Institutions as enumerated under Section 3(a) of the AMLA, as amended, and SEC Memorandum Circular No. 16, Series of 2018 or any amendments thereof;
  - Compliance shall be done online in such form and manner as the Commission deems practicable;
  - Data handling and management of information and communication technology (ICTD);
  - Beneficial ownership as part of corporate records;
  - Administrative sanctions;
  - Criminal sanctions and criminal liability;
  - Monitoring of compliance and enforcement by the Enforcement and Investor Protection department.