MT&F

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ATTORNEYS AT LAW

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BIR ISSUANCES

REVENUE MEMORANDUM CIRCULAR (RMC)

RMC No. 12-2021 issued on January 26, 2021

- This RMC consolidates the weekly issuances of Operations Memoranda (OM) Nos. 2-2021, 3-2021, 4-2021, and 5-2021 for the month of December 2020, circularizing the weekly 'Price of Sugar at Millsite' issued by the Sugar Regulatory Administration (SRA).
- The consolidated schedule (Annex A) on the weekly OMs contains only that of the current year for purposes of imposing the one percent (1%) expanded withholding tax on sugar under RR No. 2-98, as amended by RR No. 11-2014, as compared to the weekly SRA-issued 'Price of Sugar at Millsite,' which reflects the comparative prices of sugar between the previous and current years.

RMC No. 14-2021, dated January 27, 2021

- This RMC clarifies the effectivity date of RMO No. 47-2020 which imposed new documentary requirements for the processing of VAT refund claims pursuant to Section 112 of the Tax Code. RMO No. 47-2020 shall commence on January 19, 2021 or after the effectivity period reckoned from the date of submission of the issuance to UP Law Center. Thus, the following shall be observed:

    1. VAT refund claims filed prior January 19, 2021 shall be filed and processed following the guidelines and procedures set forth in RMC No. 47-2019 and RMO No. 25-2019; and
    2. VAT refund claims filed on or after January 19, 2021 shall be filed and processed in accordance with RMO No. 47-2020.

RMC No. 15-2021, dated January 27, 2021

- This RMC announces the availability of Central Business Portal (CBP), an online system which serves as a central system to receive applications and captures application data involving business-related transactions and a platform that will promote the use of the electronic payment systems for SEC, BIR, SSS, PhilHealth, and Pag-ibig. It will be available to the following domestic corporations:

    1. Corporations with two (2) to four (4) incorporators;
    2. Regular corporations whose incorporators are juridical entities and/or the capital structure is not covered by the 25%-25% rule; and
    3. One Person Corporation (OPC).

RMC No. 16-2021, issued on January 28, 2021

- This RMC prescribes the guidelines in the submission of list of recipients of income exempt from income tax pursuant to Bayanihan Act as implemented under Revenue Regulations (RR) No. 29-2020.
- Pursuant to RR No. 29-2020, all employers required to submit Alphabetical List of Employees/Payees are required to submit a one-time list of recipients of income relative to income payments exempt from income tax per Bayanihan Act.
- The circular prescribes the format or template to be used for the required list to be submitted on January 31, 2021. In addition to the one-time list, employer shall also submit a quarterly report pertaining to employees who received retirement benefits exempted from

income tax but later re-employed by them or their related parties during the succeeding twelve-month period from retirement. The submission of this quarterly report shall be done thirty (30) days from the close of all calendar quarters of 2021.

RMC No. 18-2021 issued on February 2, 2021

- This RMC circularizes the clarifications on the filing of BIR Forms 1604-CF and 1604-E.
- For copies of BIR Form No. 2316, the same shall be accepted even without the signature of employee provided that the certificates are duly signed by the authorized representative of the taxpayer-employer. Moreover, taxpayers who already filed their tax returns thru eFPS and offline eBIRForms package need not submit hard copies to the registered Revenue District Office.

RMC No. 19-2021 issued on February 9, 2021

- This Circular is issued in compliance with and in observance of the Bureau's FOI Program. The circular publishes the Revised One-Page FOI Manual of the Bureau (Annex 1), amending the Bureau's One-Page Manual as circularized under RMC No. 3-2021.

RMC No. 20-2021 issued on February 9, 2021

- This Circular reissues RA No. 11494, entitled "An Act Providing for COVID-19 Response and Recovery Interventions and Providing Mechanisms to Accelerate the Recovery and Bolster the Resiliency of the Philippine Economy, Providing Funds Therefor, and for Other Purposes".

COURT DECISIONS

CTA DIVISION DECISIONS

Wells Fargo Enterprise Global Services v. CIR
CTA No. 9849 promulgated on February 8, 2021

Facts:

Petitioner W Co. is a Philippine Economic Zone Authority (PEZA) registered entity operating as a duly licensed Philippine Branch office of Company W, a company duly-organized under the laws of the USA. In the course of its business, Petitioner W Co. purchased goods and services that were subjected to VAT. As a result, Petitioner incurred and paid input VAT attributable to its zero-rated sales.

The administrative claim for refund file by Petitioner W. Co. was denied by the Respondent BIR on the ground that sales made by a VAT-registered supplier from a customs territory to a PEZA-registered enterprise is treated as indirect export subject to zero percent VAT. Petitioner mainly argued that it has complied with all the statutory requisites provided for under Section 112(A) of the Tax Code. Aggrieved with such decision, Petitioner Company W filed a Petition for Review with the CTA.

Issue:

Is Petitioner W Co. entitled to a refund of its excess and unutilized input VAT?

Ruling:

No. Although it would appear from the records that Petitioner incurred and paid input VAT for its domestic purchases, it cannot claim refund on the same.

Refund is not allowed as no VAT should have been passed to the W Co. by virtue of its status as a PEZA entity. Pursuant to the Destination Principle, Cross Border Doctrine, and Sections 8 and 25 of Republic Act (R.A.) No. 7916 (PEZA Law), W Co. is not eligible for the refund since domestic purchases of a PEZA entity should be accorded with zero-rating. Moreover, in reference to the Destination Principle, it is not essential that the sale of goods to a PEZA-registered entity be directly connected with the registered activities of the supplier.

The domestic purchases of goods and services by W Co. that were destined for consumption within the ecozone are deemed exports of petitioner's suppliers and should be free of VAT pursuant to Section 5(3) of RMC 74-99; hence, no input VAT should therefore be paid on such purchases. Accordingly, W Co. is not entitled to its claim for refund of input VAT on domestic purchases of goods and services other than capital goods Furthermore, Petitioner W. Co. can claim refund from its Supplier of Goods, Properties and Services that charged Input VAT in its purchases.

Ginebra San Miguel v. CIR
CTA Case No. 8953 & 8954, February 1, 2021

Facts:

Petitioner filed a Motion for Reconsideration on the earlier decision of the Court denying its claim for refund of erroneously assessed excise taxes in the total amount of Php715,258,843.38.

Petitioner asserted that it simply needs to show that the finished goods were produced exclusively from ethyl alcohol on which the excise taxes had already been paid.

On the other hand, the CIR argued that claims for refund partake the nature of exemptions and are strictly construed against the claimant and cannot be allowed.

Issue:

Is the Petitioner entitled to refund the excise taxes on removals of its distilled spirits or finished products?

Ruling:

The Petition is partially meritorious. A perusal of documents showed that not all imported raw materials were properly supported. Further, under the previous decision, Petitioner failed to determine the ratio of raw alcohol to finished goods, thus, a failure to prove the factual aspect of its claim. With this, Petitioner posited that prorating method utilized by Independent Certified Public Accountant (ICPA) is an accepted method, is mathematically and logically sound, and is a logical consequence of the FIFO method which the ICPA employed.

Moreover, excise taxes on raw material in transit in 2012, though only reflected in the 2013 Official Registry Book, were also disallowed. Therefore, in light of the foregoing, the Motion was partially granted, entitling refund in the reduced amount of PhP319,755,320.82.

Penn Philippines, Inc. v. CIR
CTA Case No 7457 promulgated on January 19, 2021

Facts:

Petitioner P Co. filed a petition for review relative to its application for refund/issuance of TCC in the amount of Php4,758,453.00 on alleged unutilized input VAT for the four (4) quarters of calendar year (CY) 2004.

Issue:

Is P Co. entitled to a refund of its unutilized input VAT?

Ruling:

No. P Co. has complied with all the requirements for the refund of input VAT attributable to zero-rated sales, except that portion of input VAT which were not properly substantiated and not compliant with the invoicing requirements pursuant to Sections 113 and 237 of the Tax Code.

Furthermore, some valid input VAT are not entirely attributable to zero-rated sales since P Co. also had sales subject to VAT.

CTA EN BANC DECISIONS

People of the Philippines v. Consebido
CTA EB Crim. No. 079 promulgated on January 27, 2021

Facts:

Respondent filed three (3) Motions to Quash three (3) separate Informations for violations of Section 255 of the Tax Code, as amended, in connection with Respondent's alleged failure to supply correct and accurate information in his Annual Tax Return and willful failure to file quarterly VAT returns for the taxable year 2009.

Respondent primarily argues that the government's right to file an action has already prescribed.

On the other hand, Petitioner CIR argues that criminal tax cases are imprescriptible as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment does not exceed five (5) years.

Issue:

Has the Government's right to file an action already prescribed?

Ruling:

Yes. Petitioner took more than 5 years to file an information in court from the time of the institution of judicial proceedings for the investigation, in violation of the five-year prescriptive period for criminal violation under Section 281 of the Tax Code as amended. Where the period from the institution of judicial proceedings for the investigation until the filing of the information in court exceeds five (5) years, then the government's right to institute criminal action has prescribed.

In the case at bar, the filing of the complaint affidavit with the DOJ on January 30, 2014 constitutes as the judicial proceeding for investigation which commences the five-year prescriptive period. Counting five (5) years from January 30, 2014, the prescriptive period lapsed on January 30, 2019. Clearly, the prescription had already set in when Petitioner filed the Criminal Informations against the Respondent in March 2019.

CIR v. CE Luzon Geothermal Power Company, Inc.
CTA EB No. 2132 promulgated on January 28, 2021

Facts:

Petitioner CIR filed a Petition for Review seeking to reverse the Court's earlier decision on partial grant of input VAT refund in favor of Respondent Corporation C. Petitioner CIR argued that the Court should not have allowed Respondent Corporation C to present evidence which were not adduced in the administrative level. On the other hand, Respondent Corporation C countered that non-submission of documents during the pendency of the administrative claim does not bar it from availing of the judicial remedies.

Issue:

Is a Taxpayer allowed to introduce evidence (which were not presented during the administrative proceedings) in a judicial proceeding?

Ruling:

Yes. Jurisprudence dictates that a Taxpayer petitioner is allowed to introduce evidence in the judicial proceedings which were not presented during the administrative proceedings, provided that the denial of the VAT refund is not due to failure to submit complete documents despite notice or request.

A distinction must be made between a) an administrative VAT refund claim that was dismissed due to failure to submit complete documents despite notice or request, and b) administrative VAT refund claims that were either deemed denied due to inaction or denied by petitioner other than due to failure to submit complete documents despite notice or request. In the first instance, a taxpayer-claimant must show this Court during the judicial proceedings not only his entitlement to a VAT refund under substantive law, but that he also submitted complete documents as requested by petitioner CIR. In the second instance, a taxpayer-claimant may present all evidence to prove its entitlement to a VAT refund, and the Court will consider all evidence offered even those not presented before petitioner CIR at the administrative level.

In the instant case, the VAT refund claim for the second quarter of TY 2003 was denied by petitioner CIR allegedly because it was carried over to the succeeding periods. Hence, the same was not denied due to failure to submit complete documents despite notice or request. As such, the Court may similarly consider all evidence presented by the taxpayer in the judicial proceedings to support its claim for VAT refund, including those which were not submitted before petitioner CIR at the administrative level.

CIR v. Northwind Power Development Corp.
CTA EB No. 2151 promulgated on January 21, 2021

Facts:

Company A filed a Motion to Withdraw its Petition for Review filed with the CTA for Petitioner CIR's partial denial of Company A's claim for refund of the excess and unapplied input VAT directly attributable to its zero-rated sales for the TY 2016. The CTA then granted Company A's Motion to Withdraw. Petitioner CIR filed a Motion for Reconsideration arguing that while he did not have any opposition to Company A's Motion to Withdraw, the CTA should have resolved the merits of his counterclaim that Company A's claim for refund should be denied in its entirety which the BIR's Excise Large Taxpayer Audit Division mistakenly partially granted. Company A, on the other hand, argues that Petitioner CIR had enough opportunity to review its input VAT claim and that to allow

Petitioner CIR to question its own action through the filing of a counterclaim while revoking what he had already previously granted goes against the rules set forth by law.

Issues:

1. Is the CIR allowed to appeal before the CTA the granted portion of a VAT refund claim?
2. Is there a failure to exhaust administrative remedies on the part of CIR when it resorted to a counterclaim to question a grant of VAT refund?

Ruling:

(1) No. Section 112 (C) of the Tax Code expressly provides that what is appealable before the CTA is a full denial or partial denial of a VAT refund claim. Given the foregoing, Petitioner CIR cannot raise any issue on the granted portion of the VAT refund claim. Otherwise, the rule that only full denials or partial denials of VAT refund claims can be appealed before the court will be subverted.

Elementary is the rule that the right to appeal is a statutory right. "The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law." Hence, matters and issues that can be appealed are limited to those provided under the law. Considering that a granted VAT refund claim is not one of those specifically mentioned under Section 112 (C) of the Tax Code which can be appealed before the CTA, thus, any issue or question raised thereon cannot be entertained by the courts.

(2) Yes. Petitioner's act of immediately seeking a Petition for Review before the CTA denied the administrative machinery (i.e., BIR) a chance to resolve this tax dispute before recourse is had with the courts. Moreover, this deprived Company A of the rights and remedies available before the administrative proceedings, which include among others: the right to have a Letter of Authority (LOA) issued prior to an audit/investigation, the right to receive a preliminary assessment notice ("PAN"), the right to file a reply to said PAN, the right to a final assessment notice ("FAN") (which provides a final demand to pay deficiency taxes due, and the factual and legal bases for an assessment), and the right protest said FAN.

In effect, by setting up the subject counterclaim in a VAT refund case, petitioner CIR is collecting a tax liability without a prior assessment. This manner of tax collection deprives Company A of its due process rights guaranteed under the Constitution, Tax Code, and corresponding revenue issuances. Considering the foregoing, petitioner CIR's act of filing a counterclaim to collect on an erroneously granted and paid VAT refund claim cannot prosper as it violates Company A's right to due process.

CIR v. Lorenzo Shipping
CTA EB Case No. 1964 promulgated on January 26, 2021

Facts:

On April 18, 2013, Company L received an undated FAN and undated Audit Result/Assessment Notices assessing petitioner for alleged deficiency taxes amounting to P2 Billion for the TY of 2008. Company L filed a protest to the FAN on May 17, 2013 via registered mail. The Protest letter was however dispatched by the Post Office only on June 19, 2013.

Issue:

Was the protest filed on time?

Ruling:

Yes. Company L's protest was filed through registered mail on May 17, 2013, notwithstanding its dispatch by the Post Office only on June 19, 2013. This is in accordance with Section 3, Rule 13 of the Revised Rules of Court and by the Supreme Court in the case of *South Villa Chinese Restaurant and City Foods Corporation v. NLRC,* which stated that the date of the post office stamp on the envelope or the registry receipt is considered the date of filing of a pleading sent by registered mail. Thus, the administrative protest was timely filed on May 17, 2013.

CIR v. Kurimoto Corporation
CTA EB No. 2108 promulgated on February 3, 2021

Facts:

The CTA in Division partially granted Company K's application for VAT refund/credit for the 1st and 2nd quarters of TY 2013. Thereafter, Petitioner CIR filed a Petition for Review before the CTA en banc. Petitioner CIR argues that the CTA in Division erred in ruling that Company K was able to prove that it has VAT zero-rated sales of services since Company K failed to comply with the invoicing requirements in its official receipts under the Tax Code.

Issue:

Is a general allegation couched in the nature of a general assignment of error allowed?

Ruling:

No. Petitioner CIR merely alleged that the official receipts submitted by Company K do not contain the required information under the Tax Code without identifying the specific errors in the said documents. The petition for review of CIR is couched in the nature of a general assignment of error which is not allowed under the Rules of Court and jurisprudence.

Petitioner CIR failed to prove that Company K did not comply with the invoicing requirements under the Tax Code. Section 113 of the Tax Code provides for the invoicing requirements for VAT-registered persons. RMC No. 42-03, failure to comply with the invoicing requirements on the documents supporting the sale of goods and services will result in the disallowance of the claim for input tax by the claimant. Clearly, it is vital for a taxpayer claiming VAT refund/credit to prove that it had followed the invoicing requirements, failure of which will cause the denial of the said claim.

Lastly, tax refunds are in the nature of a claim for exemption and, therefore, the law is construed in *strictissimi juris* against the taxpayer. Accordingly, evidence presented entitling a taxpayer to an exemption must be scrutinized and must be duly proven. In this case, Petitioner CIR failed to cite the specific invoicing requirements Company K allegedly violated.

CIR v. Vitalo Packaging International, Inc.
CTA EB Case No. 2148 promulgated on February 3, 2021

Facts:

On April 18, 2008, Company V informed the BIR of its change of address. Company V was issued a Certificate of Registration reflecting its new address. Between 2010 to 2011, Company V received the PAN, FLD/FAN, amended PAN, amended FLD/FAN, and a Preliminary Collection Letter (PCL) at its old address. Company V was able to file a protest to the FLD/FAN and contest the PCL.

Thereafter, in 2011, a Final Notice Before Seizure (FNBS) was issued against Company V at its old address. Company V then filed a letter with the Revenue District Officer refuting the findings against the alleged delinquency taxes.

Company V's request was denied by the Revenue District Officer. In 2011, a warrant of distraint and/or levy (WDL) was issued against Company V at its old address.

Issue:

Is the deficiency tax assessment null and void for having been issued in violation of the due process requirement of law?

Ruling:

Yes. The record shows that the PCL, FNBS and WDL were served in 2011. During that period, RR 12-99 was the prevailing rule. In the said RR 12-99, notices are required to be sent only by registered mail or personal delivery. A constructive service is allowed if the notice was sent by registered mail and no response was received from the taxpayer within the prescribed period from the date of the posting thereof in the mail, the same was to be considered actually or constructively received by the taxpayer. However, this presumes that the notice was sent to the correct address. In *Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc.* where the FAN was sent to the wrong address, the Supreme Court reminds us that "one of the requirements of a valid assessment notice is that the letter or notice must be properly addressed. It is not enough that the notice is sent by registered mail as provided under the said Revenue Regulation."

In the instant case, Company V, in legal fiction, never received any of the notices the CIR sent, actually or constructively, notwithstanding the fact that they were able to protest the PAN and FAN.

In *CIR v. SVI Technologies, Inc.,* the CTA ruled that Section 3.1.4 of RR 12-99 requires that the FAN/FLD must be received by the taxpayer or its authorized representative and that the alleged receipt by a security guard of the FAN/FLD does not satisfy the due process requirement under RR 12-99 and Section 228 of the NIRC. Thus, if service to the security guard of a company is violative of due process for he has no authority to receive notices, what more if the notices are served to a security guard of a different company that has no connection whatsoever to the taxpayer?

In the case at bar, the CIR failed to present a certification of the postmaster that the notice was duly issued and delivered to Company V such that service by registered mail would be deemed completed. Furthermore, the signatures in the registry return receipts remained unidentified and unauthenticated. Neither was it established that the signatures thereon belonged to Company V's authorized representatives. The FAN, in fact, was received by the security guard of the new lessee of Company V's old address and was not even the latter's employee.

Lapanday Agricultural and Development Corp v. CIR
CTA EB No. 2177 promulgated on February 3, 2021

Facts:

In January 2008 and April 2009, Company A filed with the BIR its administrative claims for the issuance of tax credit certificates (TCCs), for excess and unutilized input VAT attributable to zero-rated sales covering the four (4) quarters of TY 2007. Respondent CIR did not act upon the said claims until almost 10 years later when Company A received a Denial Letter denying all four claims. Company A then filed a Petition for Review before the CTA but was dismissed for lack of jurisdiction. Company A argues that the mandatory and

jurisdictional nature of the 120+30-day period upheld in various Supreme Court decisions and RMC 54-2014 does not apply in cases where respondent issues a decision on the claim for input VAT refund/TCC after the 120-day period. Respondent CIR maintains that the CTA was correct in ruling that his inaction on Company A's administrative claims, which is "deemed a denial" decision, has attained finality and thus unappealable.

Issue:

Can the CTA take cognizance of the Petition for Review for actions involving claims for the issuance of TCCs which were denied by the CIR 10 years after its filing?

Ruling:

No. Section 112 of the Tax Code, as amended, provides the procedure for filing a claim for VAT refund or credit, and prescribes the corresponding periods.

Section 112(C) of the Tax Code, as amended, speaks of two (2) periods: (1) the 120-day period, which serves as a waiting period to give time for the CIR to act on the administrative claim for a tax credit or refund; and, (2) the 30-day period, which refers to the period for filing a judicial claim with the CTA. Contrary to petitioner's position that the aforesaid 120+30-day period is merely directory and non-jurisdictional, the Supreme Court, in a long line of cases, has consistently interpreted the 120+30-day period in refund or tax credit cases, pursuant to Section 112(C) of the Tax Code, as amended, as both mandatory and jurisdictional.

It is thus settled that the taxpayer may file the appeal within 30 days after the CIR denies the administrative claim within the 120-day waiting period, or it may file the appeal within 30 days from the expiration of the 120-day period if there is inaction on the part of the CIR. It must be emphasized, however, that the judicial claim has to be filed within a period of 30 days after the receipt of respondent CIR's decision or ruling or after the expiration of the 120-day period, whichever is sooner.

San Miguel Brewery v. CIR
CTA EB Case No. 2144 promulgated on February 4, 2021

Facts:

Company B is seeking to claim a refund or an issuance of tax credit for its erroneously paid excise taxes amounting to PhP48 Million. The CTA partially granted Company B's claim on the amount of PhP44 Million. It denied the refund for the PhP4 Million on the ground that Company B did not submit the required sworn statements as required by RR No. 17-2012. In its appeal to the CTA EB, Company B argued that it should be granted a refund to the remaining PhP4 Million as it had already submitted the sworn statements to the BIR.

Issue:

Is the submission of the sworn statements to the BIR enough in a judicial claim for refund or issuance of tax credit?

Ruling:

No. In tax refund cases filed before the CTA, it is incumbent upon the taxpayer-claimant to prove every minute aspect of his claim. He cannot simply rely on the evidence he has already presented in the administrative claim before the BIR for the success of the judicial claim for refund. He must present and offer anew with the Court the evidence already presented before the CIR and such other evidence (although was not submitted to the CIR during the administrative proceedings) which are necessary to prove his entitlement to his tax refund claim. The Supreme Court held in *CIR v. Manila Mining Corporation* that evidence submitted

before the BIR in tax refund cases cannot be given probative value by the CTA unless presented and formally offered anew by the taxpayer-claimant.

CIR vs. Mindanao Sanitarium and Hospital College, Inc.
CTA EB Case No. 2139 promulgated on January 27, 2021

Facts:

Petitioner CIR filed a Petition for Review seeking to reverse the decision of the CTA in Division to cancel the FLD issued to Respondent College M. In this case, the PAN received by College M was addressed and delivered to a certain "Mindanao Sanitarium and Hospital, Inc." Petitioner CIR insisted that the fact of mailing was supported by the corresponding Master List of Mail Matters and even a certification from the Post Office.

Issue:

Was the service of the PAN valid?

Ruling:

No, service of PAN to the wrong taxpayer necessarily leads to denial of due process. A perusal of records revealed that the PAN was addressed and delivered to a certain "Mindanao Sanitarium and Hospital, Inc." which is a different entity as compared to Respondent College M. Likewise, Petitioner CIR failed to present the registry receipt showing that Respondent College M indeed received the PAN. In *CIR vs. Metro Star Superama, Inc.,* the Court emphasized the importance of PAN to the due process rights of Respondent and the validity of the assessment made by Petitioner. Thus, in the absence of a valid service of the PAN, any assessment is void.

Amadeus Marketing Philippines, Inc. vs. CIR
CTA EB NOS. 2137 and 2153, promulgated on January 26, 2021

Facts:

Corporation A and Respondent CIR filed their respective Petitions for Review seeking the reversal of the earlier decision of the Court in Division partially granting Corporation A's request for refund or issuance of a TCC pursuant to Section 112 of the Tax Code. Respondent CIR argued that sales to Corporation B must be disallowed since the entity is found to be doing business in the Philippines-based Corporation B on an earlier decided case also involving Corporation A. On the other hand, Corporation A argued that the issue that Corporation B is an entity doing business in the Philippines has already been settled by the Court in Division finding the evidence Corporation A had presented to be sufficient in proving that Corporation B is a non-resident foreign corporation doing business outside the Philippines.

Issue:

Is Corporation B an entity considered doing business in the Philippines?

Ruling:

Yes. Although it would seem that under Section 108(B)(2) of the Tax Code, Corporation B is a foreign entity doing business outside the Philippines, a thorough review of the agreement submitted by Corporation A revealed that Corporation B is doing business in the Philippines. Hence, all of the alleged zero-rated sales to which refund is attributed were disallowed since it all resulted in services rendered by Corporation A to Corporation B.

SECURITIES AND EXCHANGE COMMISSION ISSUANCES

Opinion No. 21-01 issued on January 18, 2021

- The By-Laws of Padgett Place Condominium Corp. (TPPC Corp.) does not provide for the procedure in filling-up vacancies in the Board of Trustees, where three out of its five members resigned. Thus, TPPC Corp. seeks the opinion of the SEC on how the vacancies will be filled-up and whether the remaining two trustees have the power and authority to merely appoint the replacement of the members of the Board of Trustees who resigned.
- Section 28 of the Revised Corporation Code (RCC) provides that any vacancy occurring in the board of directors or trustees other than by removal or by expiration of term may be filled by the vote of at least a majority of the remaining directors or trustees, if still constituting a quorum; otherwise, said vacancies must be filled by the stockholders or members in a regular or special meeting called for that purpose. Thus, the law requires that vacancies in the board resulting from resignation be filled-up by the stockholders or members in a regular or special meeting called for the purpose if the remaining trustees do not constitute a quorum to ensure the recognition and strict implementation of the policy that only those who have been elected by the shareholders or members can rightfully exercise and discharge the duties and functions of a director or trustee, and be made fully accountable to the shareholders or members for the same.
- Hence, the SEC opined that the remaining two members of the Board of Trustees of TPPC Corp. cannot fill-up the vacancies left by the three other members of the board who all resigned on the ground that the remaining two trustees will no longer constitute a quorum of the Board which is required under Section 28 of the RCC. Moreover, the remaining two members of the Board of Trustees of TPPC Corp., which do not constitute a quorum, do not have the legal authority to fill-up the vacancies by majority vote. Hence, the filling-up of the vacancies in the Board of Trustee must be done by the general membership of TPPC Corp. in a regular or special meeting called for that purpose.

Memorandum Circular No. 2 s. 2021 issued on February 15, 2021

- SEC previously issued SEC MC No. 18, series of 2019, on the Prohibition on Unfair Debt Collection Practices of Financing Companies (FC) and Lending Companies (LC) applies to all FCs and LCs, whether existing as of the time of its effectivity or newly registered. Section 4 of SEC MC No. 18 requires the submission of a sworn certification stating that the Corporation complied with the provisions thereof.
- This Circular is issued to guide newly registered FCs and LCs in their compliance with Section 4 of SEC MC No. 18 to clarify the period for the submission of the Sworn Certification for FCs and LCs that were incorporated subsequent to the effectivity of SEC MC 18. Thus, FCs and LCs that were incorporated after September 8, 2019, which is the effectivity date of SEC MC No. 18, until the effectivity date of this Circular, shall submit the Sworn Certification within thirty (30) calendar days from effectivity hereof.
- FCs and LCs that will be incorporated subsequent to the effectivity of this Circular shall submit the Sworn Certification within thirty (30) calendar days from the issuance of their Certificates of Authority to Operate as FCs and LCs.
- The violation of Circular herein shall subject the FCs and LCs to the penalties prescribed under Section 5 of SEC MC No. 18.
- This Circular shall take effect immediately after its publication in two national newspapers of general circulation and its posting in the SEC website.

BUREAU OF CUSTOMS ISSUANCE

Customs Memorandum Order No. 03-2021 issued on January 13, 2021

- This CMO is a consolidation of the provisions of the CMTA and its implementing Customs Administrative Orders (CAOs) dealing specifically on the imposition of penalties and liabilities including the effects of failure on the part of the importer, exporter, third parties and other stakeholders to comply with the obligations provided for by laws and their implementing rules and regulation. This also includes other laws, and rules and regulations issued by other government agencies in relation to the importation or exportation of goods.
- The Compendium under this CMO does not supplement nor supplant the provisions under the CMTA and its implementing rules and regulations. Hence, after determining the applicable penalty, reading the text of the actual provision of the CMTA or the particular CAO is highly encouraged to ascertain the context of the penalty being imposed.
- The Compendium, attached as Annex A of the CMO, is presented in a matrix format and is divided into two parts. The first part refers to the specific provisions on penalty under the CMTA while the second part dwells on the implementing CAOs promulgated by the Commissioner of Customs and approved by the Secretary of Finance.
- The first part of the matrix is categorized as follows:
    1. Description of the penalty or specific acts, omissions, or customs clearance process where a penalty, liability or obligation is imposed;
    2. Basis or the specific Section number under the CMTA;
    3. Penalty or the specific citation of the law is provided;
    4. Related CAOs to which the said legal provision is being applied; and
    5. Responsible Office.
- The second part of the matrix is categorized as follows:
    1. CAO number or the specific reference to the implementing CAO number presented in accordance with of date of issuance;
    2. Title or the subject matter of the CAO;
    3. Penalty or the specific section of the CAO dealing on penalty or imposition of liability for violation of the regulation;
    4. CMTA Section or the specific provision of the CMTA which is used as legal basis in the issuance or promulgation of the CAO; and
    5. Responsible Office.
- The CMO shall take effect on January 27, 2021.

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MTF Counsel is a full-service law firm comprised of experienced, multi-disciplined and innovative tax, customs and international trade, corporate, and litigation attorneys.