MT&F

MATA-PEREZ · TAMAYO · FRANCISCO

ATTORNEYS AT LAW

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BIR ISSUANCES

REVENUE MEMORANDUM CIRCULAR (RMC)

RMC No. 36-2021 issued on January 15, 2021

- This RMC provides changes/adjustments in the filling of BIR Forms No. 2550M and 2550Q, as provided below:

BIR Form No.	Line/Schedule Affected	Description	Remarks
2550M	20B	Input tax on sale to Govt. closed to expense	Not to be filled out/To be deactivated from the electronic Payment and Filing System (eFPS)
	23C	VAT withheld on Sales to Govt.	Where the creditable VAT withheld will be reflected
	Schedule 4	Input tax attributable to sale to Govt.	Not to be filled out/To be deactivated from the eFPS
	Schedule 8	VAT withheld on sales to Govt.	Where the details of the creditable VAT withheld will be reflected
2550Q	23B	Input tax on sale to Govt. closed to expense	Not to be filled out/To be deactivated from the eFPS
	26D	VAT withheld on Sales to Govt.	Where the creditable VAT withheld will be reflected
	Schedule 4	Input tax attributable to sale to Govt.	Not to be filled out/To be deactivated from the eFPS
	Schedule 8	VAT withheld on sales to Govt.	Where the details of the creditable VAT withheld will be reflected

- The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs who are required to withhold creditable VAT shall use BIR Form No. 1660-VT (BIR Form No. 1600 for eFPS users) for filing and remittance of the amount withheld.
- The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs who are required to withhold creditable VAT shall issue BIR Form 2307. BIR Form 2307 shall be used as proof by VAT taxpayers in claiming VAT credit in their monthly and quarterly VAT returns.

RMC No. 39-2021 issued on March 18, 2021

- This RMC provides that in compliance with existing health protocols for the mitigation of the COVID-19 pandemic, the filing of VAT Refund, where the two (2)-year period within which to file the claim falls on March 31, 2021, shall be extended until April 12, 2021.
- Moreover, the 90-day period of processing of all VAT refund claims pending with the VAT Credit Audit Division during the temporary closure is also suspended.

RMC No. 41-2021 issued on March 22, 2021

- Under this RMC, the filing of returns as well as payment of taxes due thereon, falling within the period of March 22, 2021 to April 30, 2021 may be made anywhere, even outside the jurisdiction of the Revenue District Office (RDO) where they are registered.
- Taxpayers who are not mandated to use the eFPS and eBIRForms System are encouraged to electronically file their returns through the eBIR Forms Facility and pay the corresponding taxes due thereon through any ePayment Channels.

REVENUE MEMORANDUM ORDER (RMO)

RMO No. 26-2021 issued on February 24, 2021

- This RMO is issued to extend the deadline of submission for the listing of all pre-existing loans, pledges and other instruments of the covered institutions which were granted an extension of payment and/or maturity periods in relation to Revenue Regulations (RR) No. 24-2020 on the exemption from Documentary Stamp Tax of loans extended or credits restructured granted by covered institutions for loans falling due, or any part thereof, on or before December 31, 2020.

COURT DECISIONS

CTA DIVISION DECISIONS

Larry E. Segaya / LES Engineering and Construction v. CIR
CTA Case No. 9875 promulgated on February 26, 2021

Facts:

On November 16, 2012, the BIR issued a Letter of Authority (LOA) to examine E Corp.'s books of accounts and other accounting records for all internal revenue taxes for the period of January 1, 2011 to December 31, 2011. Respondent BIR then issued a Preliminary Assessment Notice (PAN) on November 19, 2015, assessing E Corp. for deficiency taxes for the calendar year 2011. A Formal Letter of Demand (FLD) with Assessment Notices and Details of Discrepancies was issued against the E Corp.

Subsequently, E Corp. filed its Protest with Request for Reinvestigation dated March 12, 2016 on March 21, 2016 with the BIR. On October 27, 2017, the Petitioner received the Final Decision on Disputed Assessment (FDDA) dated September 12, 2017 from the authorized representative of the Respondent CIR. Thereafter, E Corp. filed with Respondent CIR a Request for Reconsideration on November 25, 2017. Due to the alleged inaction of the Respondent CIR, E Corp. filed a Petition for Review before the Court of Tax Appeals (CTA) on July 16, 2018.

Issue:

Does the CTA have jurisdiction over the case?

Ruling:

No. The instant Petition for Review must be dismissed. The Court can, by its own initiative, raise the question of jurisdiction, although not raised by the parties. When the court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.

Under Section 228 of the Tax Code, if the protest is denied in whole or in part, or is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the CTA within 30 days from the receipt of such decision, or from the lapse of the 180-day period; otherwise, the decision shall become final, executory, and demandable.

In case the request for reinvestigation is denied by the Respondent CIR through inaction within the 180-day period counted from the date of filing of the protest, there are two options for the taxpayer, it is either to:

1. File a petition for review with the CTA within 30 days after the expiration of the 180-day period; or
2. Await the final decision of Respondent CIR on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision.

These options are mutually exclusive and the resort to one bar the application of the other. The filing of an administrative appeal before Respondent CIR over an FDDA issued by his duly authorized representative does not give the concerned taxpayer a fresh 180-day period, despite the lapse of the original 180-day period. In this case, the records show that E Corp. filed its Protest on March 21, 2016. Counting from this date, the 180-day period ended on September 17, 2016. Thus, should E Corp. choose to appeal the inaction of Respondent CIR, E Corp. can only do so until October 17, 2016, However, in this case, the Petition for Review was filed on July 16, 2018. Hence, the Petition for Review was belatedly filed.

MTI Advanced Test Development Corporation v. CIR
CTA Case No. 9690 promulgated on February 23, 2021

Facts:

Petitioner Company is a domestic corporation engaged in zero-rated sales of service to several foreign corporations. Petitioner Company filed for an application for a Tax Credit Certificate (TCC) for its alleged unutilized input VAT under Section 112(C) of the Tax Code, primarily arguing that it is entitled to such claims for refund since Petitioner Company has complied with all the requisites under the Tax Code.

Issue:

Is the Petitioner Company entitled to a refund of its unutilized input VAT?

Ruling:

No. Due to the absence of the Certification of Non-Registration of Company and Proof of incorporation or registration in a foreign country of one of the foreign corporations that Petitioner Company was rendering service to, such claim for refund of unutilized VAT must only be partially granted.

To be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported at the very least by both Securities and Exchange Commission (SEC) Certification of Non-Registration of Company and proof of

incorporation or registration in a foreign country (e.g., Certificate of Incorporation, Memorandum of Association, and Articles of Association).

Snowy Old Energy, Inc. v. CIR
CTA Case No. 9618 promulgated on March 3, 2021

Facts:

Company O entered into a Consultancy Agreement with R Corp., a Hong Kong-based foreign corporation, organized and registered in the British Virgin Islands.

Company O received an FLD from the Respondent CIR, assessing Company O for deficiency income tax, Final Withholding Tax and Improperly accumulated earnings tax (IAET), and compromise penalties with respect to the sub-consultant fees it paid to R Corp.

Company O filed a protest against the income tax which was disallowed as an expense, Final Withholding Tax (FWT) and compromise penalty, but recognized all other disallowances in the assessment.

Respondent CIR argues that the CTA has no jurisdiction over the case considering the protest to the FLD and the Petition for Review were both filed out of time.

Company O, on the other hand, contends that the CTA has jurisdiction over the case because the Rules of Court (ROC) provides that if the last day of the period thus computed falls on a Saturday, a Sunday or a legal holiday in the place where the court sits, the time shall not run until the next working day. Moreover, Company O argues that the sub-consultant fees it paid to R Corp. is not subject to FWT and income tax because the latter is a non-resident foreign corporation not engaged in trade or business in the Philippines and that a non-resident foreign corporation is taxable only for income derived from sources within the Philippines.

Issues:

1. Are the protest and Petition for Review filed out of time?
2. Is Company O liable for FWT for its payment to R Corp., a non-resident, foreign corporation not engaged in business in the Philippines, for services rendered in Hong Kong?

Ruling:

1. No. Section 228 of the Tax Code provides that assessments by the CIR may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment. Moreover, the taxpayer adversely affected by the decision of the CIR may appeal to the CTA within thirty (30) days from receipt of the said decision or from the lapse of the 180-day period.

Counting thirty (30) days from 13 January 2017 (Receipt of FLD) and 18 May 2017 (Receipt of Denial of Protest), respectively, the deadline to file the protest would have been on 12 February 2017 (Sunday) and 17 June 2017 (Saturday), respectively, for the appeal to the CTA. It may appear that the protest to the FLD was filed on the 31st day from receipt of the FLD (February 13, 2017) while the Petition for Review with the CTA was filed on the 32nd day from receipt of the questioned Decision (June 19, 2017). However, it is noteworthy that the last day or the 30th day for filing of the protest and the Petition for Review both fell on weekends. Therefore, Company O had until the next business day within which to file them.

2. No. Company O is not liable for FWT and income tax, Sec. 23(F) of the Tax Code provides that a foreign corporation is taxable only on income derived from sources within the Philippines. Considering that R Corp. was organized in British Virgin Islands, it is a foreign corporation taxable only on its income from sources within the Philippines. The payments made in exchange for the services rendered in Hong Kong are income derived from sources outside of the Philippines, thus not subject to income tax and consequently to FWT.

FCF Minerals Corporation v. CIR
CTA No. 8789 promulgated on March 15, 2021

Facts:

On 19 September 2009, Company F and the Republic of the Philippines entered into a Financial or Technical Assistance Agreement (FTAA) where Company F, acting as an FTAA Contractor, was to provide large-scale exploration, development, and commercial utilization of minerals in Quezon, Nueva Vizcaya, in exchange for the exclusive right to conduct mining operations in the said area.

On 15 February 2013, the BIR issued RMC No. 17-2013, declaring that FTAA contractors are liable to pay taxes. On different dates, Company F imported several capital equipment. In connection with the foregoing importations, Respondent CIR collected VAT and customs fees from Company F in the total amount of P57,896,506.00. Company F protested the payment of such taxes and is seeking refund.

Issue:

Is Company F is entitled to a refund?

Ruling:

No. In this case, the government official who has the authority to promulgate rules and regulations implementing the intent and provisions of the Philippine Mining Act, including those governing the tax exemption awarded to FTAA Contractors, is the Department of Energy and Natural Resources (DENR) Secretary and not the CIR. Thus, the CIR should have applied the implementing rules promulgated by the DENR Secretary in resolving Company F's refund claim. The said implementing rules promulgated by the DENR Secretary, provides an enumeration of requisites in order for one to be entitled to the VAT and customs fees exemption on its importations of capital equipment. Company F failed to satisfy one of the requisites which is that "the capital equipment is not available domestically incomparable price and quality". Thus, Company F is not entitled to the VAT and Customs fees refund prayed for.

EDC Burgos Wind Power Corporation v. CIR
CTA No. 9446 promulgated on March 12, 2021

Facts:

Petitioner Company is a renewable energy developer of wind energy. Petitioner Company filed an application for Tax Credit/Refund for its alleged unutilized Input VAT in 2014. Petitioner Company primarily argued that it has complied with the statutory requirements for the grant of a TCC under the Tax Code under Section 112(C) of the Tax Code.

Issue:

Is the Petitioner Company entitled to a refund of its unutilized input VAT?

Ruling:

No. Petitioner Company in this case failed to prove that it was engaged in zero-rated or effectively zero-rated sales. With regard to the sale of energy generated through renewable sources of energy such as wind, the same shall be considered zero-rated under Sec. 108 (b)(7) of the Tax Code upon the compliance of the following documents:

(1) Certificate of Registration issued by the Department of Energy (DOE);
(2) Certificate of Registration issued by the Board of Investments (BOI);
(3) Certificate of Endorsement issued by the DOE; and
(4) Certificate of Compliance (COC) issued by the Energy Regulatory Commission (ERC), secured **before** actual Commercial Operations by the generation company.

At the case at bar, Petitioner Company failed to establish that a Certificate of Endorsement from the Renewable Energy Management Bureau of the DOE was issued. Even though a subsequent Certificate of Endorsement from the DOE was issued to the Petitioner Company, it was outside the period of claims of unutilized input VAT. Moreover, the COC issued by the ERC was issued only **after** the commencement of its commercial operations. With the foregoing disquisitions, it is clear that Petitioner failed to fulfill the requisites for establishing its entitlement to zero-rated sales for the successful prosecution of the instant claim for input VAT refund.

Orduna v. CIR
CTA Case No. 9619 promulgated on March 16, 2021

Facts:

The BIR issued a Preliminary Notice Assessment with Details of Discrepancies assessing the Petitioner for deficiency taxes for Taxable Year 2012. On January 11, 2016, the BIR issued the Formal Letter of Demand. Subsequently, the BIR issued the Final Notice Before Seizure requesting the settlement of the tax liabilities of Petitioner. Consequently, Petitioner filed a Reply Letter stating that he was not aware of any tax liability for TY 2012 and denied the receipt of the Assessment and Demand Letter. Thereafter, on November 7, 2016, the BIR issued a Warrant of Distraint and/or Levy (WDL) for failure of the Petitioner to pay the deficiency taxes. On June 21, 2017, Petitioner filed a Petition for Review before the CTA.

The Petitioner argues that the subject collection/assessment should be cancelled and set aside for being void for the failure of the Respondent to properly serve the assessment notice, hence, the WDL should be cancelled and withdrawn.

On the other hand, Respondent CIR argues that the CTA has no jurisdiction over the case since the assessment had become final, executory, and demandable since Petitioner failed to file an administrative protest to the assessment.

Issue:

Does the CTA have jurisdiction over the case?

Ruling:

No. The Petition for Review was filed out of time; hence, it has no jurisdiction over the case. Under Section 7 of Republic Act (RA) No. 1125, the CTA is not limited to decisions of the CIR involving disputed assessments, but also include "other matters" arising under the Tax Code or other laws administered by the BIR. In this case, what was being appealed by Petitioner is the validity of the WDL dated November 7, 2016. The determination of the validity of the of a WDL issued by the BIR falls within the ambit of "other matters arising under the Tax Code or other laws administered by the BIR" within the jurisdiction of the CTA. However, Section 11 of RA 1125, as amended, provides that in appeals from the

decision, ruling, or inaction of the CIR, the Petition for Review must be filed with the CTA within 30 days from receipt of a copy of the decision or ruling or upon expiration of the period fixed by law for the CIR to act on the disputed assessment.

In this case, the WDL was issued to the petitioner on November 7, 2016. Hence, the Petitioner had 30 days therefrom or until December 7, 2016 to file the appeal. However, the Petition for Review was only filed on June 21, 2017, hence, filed out of time.

CTA EN BANC DECISIONS

International Container Terminal Services, Inc. v. City of Manila
CTA EB No. 277 promulgated on March 10, 2021

Facts:

Corporation T was assessed for two business taxes by the City of Manila, one for which it was already paying (Section 18 of M.O. 7794) and another for which it was newly assessed (Section 21(A) of M.O. 7794, as amended). Corporation T paid the additional assessment but filed a protest letter. When the case reached the Supreme Court (SC), it ruled that there is double taxation and that Petitioner is entitled to a full refund of the erroneously paid local business taxes (LBT) for the first 3 quarters of taxable year (TY) 1999 for which it was assessed. The SC then directed the CTA to determine whether Corporation T is entitled to a refund of illegally and/or erroneously paid LBT for the succeeding periods beyond the 3rd quarter of TY 1999 for which no notice of assessment was issued since it was required for the issuance of their business permit.

Issue:

Is Corporation T entitled to refund the illegally, and/or erroneously paid LBT for the period for which no notice of assessment was issued?

Ruling:

Yes. Corporation T is entitled to a full refund, citing the decision of the SC that the applicable provision in determining the propriety of such claims is **Section 196 of the Local Government Code (LGC)**. On this note, the SC laid several distinctive guidelines to assist the CTA. First, there is no need to comply with the requisite of a prior administrative claim of refund (filed before the local treasurer) as it would be a futile effort, considering that respondents would just deny the same. In fact, Respondent City has manifested its intention to continuously deny Corporation T's claim for refund. Second, the judicial case for refund should have been filed within two (2) years from the payment of the tax, fee, or charge, or from the date when the taxpayer is entitled to a refund or credit. In this case, the judicial claim shall be considered made from the filing of the Amended and Supplemental Petition for Review with the Regional Trial Court (RTC) (11 July 2003). Moreover, the SC declared that Corporation T became entitled to a refund or credit only when the invalidity of Section 21 (A) was judicially pronounced, and became final and executory on 2 July 2007. Following this, the judicial action for Corporation T's claim for refund had not yet expired as of the filing of the Amended and Supplemental Petition since Corporation T only became entitled to the present refund (i.e., 2 July 2007) after such judicial claim has already been filed (i.e., 11 July 2003). Thus, Corporation T is fully entitled to its claim for refund of erroneously and/or illegally paid taxes for the periods succeeding the third (3rd) quarter of TY 1999.

CIR vs. Amparo Shipping Corporation
CTA EB No. 2165 promulgated on February 23, 2021

Facts:

Officer-in-charge-Assistant Regional Director (OIC-ARD) Palmine issued An LOA against Company A authorizing the examination of the latter's books for all internal revenue taxes for the TY 2011. Thereafter, the PAN, Final assessment Notice (FAN) and the FLD were issued by the BIR. The alleged deficiency taxes amounted to PhP16 Million. Company A filed a protest but was denied. Subsequently, an FDDA was issued by the BIR. Company A appealed the FDDA to the CTA.

The CTA dismissed the assessment on the ground that it was issued by an OIC-ARD. The BIR then filed a motion for partial reconsideration (MPR) wherein it submitted a photocopy of the Revenue Travel Assignment Order (RTAO) No. 44-2012 indicating Mr. Palmine's change of assignment from OIC-ARD to OIC-Regional Director (OIC-RD) and a Certification issued by the Chief Personnel Division of the BIR showing Mr. Palmine's status as OIC-RD. The MPR was denied by the CTA.

Issue:

Is the 2011 tax assessment of Company A valid?

Ruling:

No. Only the CIR, Deputy Commissioners, and Regional Directors (RD) possess the power to issue an LOA. Clearly, an ARD is not one of the persons authorized to issue an LOA. Therefore, the LOA was invalid as the same was issued and signed only by OIC-ARD.

Further, when the CIR filed the MPR wherein it seeks the CTA to take cognizance of RTAO 44-2012 and the Certification, it essentially prayed for a new trial and not a mere reconsideration. Furthermore, in *Barut v. People*, the SC held that "the rule that only evidence formally offered before the trial court can be considered is relaxed where two requisites concur, namely: one, the evidence was duly identified by testimony duly recorded; and, two, the evidence was incorporated in the records of the case." In this case, none of the requisites are present to warrant consideration of the attached documents in the present case. As a result, the trial was not re-opened for the presentation and reception of these additional documents into evidence.

CIR vs. Xylem Water Systems International, Inc.
CTA EB No. 2120 promulgated on March 12, 2021

Facts:

On June 5, 2007, X Corp. received from RDO No. 56 a PAN assessing X Corp. of deficiency VAT, Expanded Withholding Tax (EWT), FWT, and Fringe Benefits Tax (FBT) for TY 2004.

On February 21, 2013, X Corp. received a Preliminary Collection Letter (PCL) for the collection of the alleged deficiency taxes to which X Corp. protested. X Corp. then received a WDL on September 9, 2014.

In its Petition for Review, X Corp. argued that it was not properly notified of the FLD and was only made aware thereof on February 21, 2013 when it received the PCL making reference to the said FLD. X Corp. only received the copies on March 11, 2013 after it requested said copies on March 6, 2013. Moreover, while Petitioner CIR was able to present a certified true copy of a certain return card, nothing there indicates that the documents

(accompanied by the said return card) were the FAN and the FLD subject of the herein case. Moreover, X Corp. argues that Petitioner CIR was unable to present an affidavit of the person who mailed the FAN and the FLD. Petitioner CIR also failed to prove that the signature appearing on the return card belongs to any of its authorized representatives. Petitioner CIR on the other hand insists that he was able to properly serve the said FLD on X Corp., as evidenced by the registry return card. Petitioner CIR thus claims that the *onus probandi* has then shifted to X Corp. who, other than its bare denial, should have presented other independent and competent pieces of evidence. The CTA 3rd Division granted X Corp.'s prayer and cancelled the WDL issued by Petitioner CIR.

Issue:

Was Petitioner CIR able to sufficiently prove the service of FLD to X Corp. as evidenced by the registry return card?

Ruling:

No. Since Petitioner CIR failed to sufficiently prove that X Corp. received the FLD, the assessment is void as X Corp. was not accorded due process. In the case at bar, while petitioner was able to present the registry return card relative to the alleged mailing of the FLD to X Corp., Petitioner CIR failed to prove that the same has been signed by the authorized representative of X Corp.

Petitioner CIR showed no evidence to attest to the fact that it was X Corp.'s duly authorized representative who received such document supposedly containing the FLD. In a number of cases, the SC already held that "receipts for registered letters and return receipts do not prove themselves, they must be properly authenticated in order to serve as proof of receipt of the letters." Considering that petitioner CIR failed to authenticate the subject registry return card, the inescapable conclusion is that petitioner was unable to discharge his burden to present proof to show that X Corp. indeed received the FLD, which was sent through registered mail.

Since petitioner CIR failed to sufficiently establish that X Corp. received the subject FLD, the assessment must necessarily be declared a nullity for violating X Corp.'s right to due process under Section 228 of the Tax Code, as amended.

SUPREME COURT DECISIONS

CIR vs. East Asia Utilities Corporation
G.R. No. 225266 promulgated on November 16, 2020

Facts:

Respondent Company, a Philippine Economic Zone Authority (PEZA) registered entity, was assessed for deficiency Income Tax and EWT. The CTA ruled that the amendment of RR No. 2-2005 by RR No. 11-2005 rendered the enumeration of allowable deductions from gross income of a PEZA-registered enterprise, no longer exclusive. The criteria for determining the deductibility of an expense for computing the 5% Gross Income Tax (GIT) is the direct relation of the item in the rendition of PEZA-registered services. Respondent Company primarily argued that RR No. 11-2005 is not all-inclusive and is intended merely as a guide in determining the items that may be considered for income tax deduction purposes.

Issue:

Is the enumeration of direct costs deductible under RR No 11-2005 exclusive?

Ruling:

No. The amendment in RR No. 11-2005 now stands. The enumeration of allowable deductions was only made by way of example or illustration of the nature and type of expenses that may be deducted from a PEZA-registered enterprise's gross income for purposes of computing the 5% GIT. Besides, the BIR should not have issued RR No. 11-2005 and deleted the phrase "shall consist only of the following cost or expense item" and changed it to "the following direct costs are included in the allowable deductions" if it did not intend to remove the restriction on the expenses that may be deducted. The deletion of the restrictive word "only" is also consistent with Section 24 of the PEZA Law that costs and expenses directly related to the enterprise's PEZA-registered activity and are not administrative, marketing, selling, and/or operating expenses or incidental losses shall be allowed as a deduction from the gross income.

Games and Amusement Board (GAB) and BIR vs. Klub Don Juan De Manila, Inc., et al.
G.R. No. 252189 promulgated on November 3, 2020

Facts:

Respondent Company filed a complaint for Injunction with prayer for the issuance of a Temporary Restraining Order (TRO) in the RTC in order to enjoin the Petitioner from enforcing the provision of the TRAIN Law on the increased documentary stamp tax (DST) rate as compared to the rates reflected in the Legislative Franchises of the Petitioner. Petitioner GAB primarily argues that the RTC has no jurisdiction over the case.

Issue:

Does the RTC have jurisdiction over the case?

Ruling:

No. Pursuant to the *BDO v. Republic* case, the CTA has exclusive jurisdiction to resolve all tax problems except in cases questioning the legality or validity of assessment of local taxes where the RTC has jurisdiction. The CTA not only has jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund, but also, the CTA has jurisdiction on cases directly challenging the constitutionality or validity of a tax law, or regulation or administrative issuance such as revenue orders, revenue memorandum circulars, revenue regulations and rulings.

CIR vs. Philex Mining Corporation
G.R. No. 230016 promulgated on November 23, 2020

Facts:

Company P filed its claims for refund on the excess input tax arising from its zero-rated sales with the Department of Finance (DOF)'s One-Stop Shop Center (OSS). Petitioner CIR alleged that Company P did not submit to the DOF-OSS the required checklist of documents, and Company P failed to comply with the accounting requirements, specifically the keeping of subsidiary sales journal and subsidiary purchase journal, and the filing of monthly VAT declarations as required by RR No. 16-2005. The CTA in Division, as affirmed by the CTA En Banc, ruled that Company P timely filed its administrative and judicial claims for refund and that properly it attached the required documents to support its claims.

Issue:

Are tax declarations and subsidiary journals part of the requirements of the law for the grant of tax credit or refund, and is it the obligation of respondent to prove compliance thereto?

Ruling:

No. There was nothing in the Tax Code or in RR No. 16-2005 that would suggest that the subsidiary journals and monthly VAT declarations are part of the substantiation requirements that must be complied with to support a claim for tax refund or credit. The language used in Section 110 of the Tax Code is plain, clear, and unambiguous. To be creditable, the input taxes must be evidenced by validly issued invoices and/ or official receipts containing the information enumerated in Sections 113 and 237. The law does not require that subsidiary journals where the sales and purchases (and the output taxes and their corresponding input taxes) were recorded, are also kept. Indeed, courts may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. To do so would be to do violence to the language of the law and to invade the legislative sphere. In all, Company P's failure to maintain subsidiary sales and purchase journals or to file the monthly VAT declarations should not result in the outright denial of its claim for refund or credit of unutilized input VAT attributable to its zero.

DEPARTMENT OF LABOR & EMPLOYMENT ISSUANCES

Labor Advisory No. 03-21 issued on March 12, 2021

- This advisory is issued to serve as a guideline to all establishments and employers in the private sector that administer COVID-19 vaccines in the workplaces. Covered establishments and employers shall adopt and implement the appropriate vaccination policy in the workplace as part of their occupational safety and health program. They may also procure COVID-19 vaccines and seek the support of appropriate government agencies. The cost of vaccination in the workplace shall not be charged, or passed on, directly or indirectly to employees. Furthermore, the covered establishments and employers shall endeavor to encourage their employees to get vaccinated, but any employee who refuses or fails to be vaccinated shall not be discriminated against in terms of tenure, or other benefits. No vaccine no work policy shall not be allowed.

Department Order No. 224-21 issued on March 12, 2021

- This Department Order aims to lower the risk of COVID-19 transmission in workplaces and cognizant of a large amount of working time indoors and poorly ventilated spaces. The coverage of the order shall cover all commercial and industrial establishments, projects, sites, and all other places, where work is being undertaken indoors.
- For non-air-conditioned spaces, the order prescribes the maximization of natural ventilation through the use of doors, windows, and other openings. If natural ventilation is not feasible or inadequate, mechanical ventilation shall be provided by the employer. Moreover, weekly cleaning of windows, other openings, and ventilating fans, or as necessary shall be done.
- For air-conditioned spaces and Heating, Ventilation, and Air-Conditioning (HVAC) systems, the outdoor air supply should conform to the recommended breathing zone ventilation rates for air dilution and comfort control. The ventilation system shall be utilized for at least 30 minutes before and after spaces are occupied. A cleaning and maintenance program for HVAC systems is required to ensure that no mold and stagnant water will be circulated in the atmosphere. All personnel involved in the cleaning and maintenance of the HVAC must wear the appropriate personal protective equipment.
- In both cases, when mechanical ventilation is utilized, the airflow direction or movement should be considered in the layout of work stations to avoid person-to-person viral spread through airborne respiratory droplets.
- For restrooms and water closets, the following must be done:

1. Ensure that exhaust fans in restroom facilities are functional and operating at full capacity when the building is occupied;
2. Close the toilet bowl seat lid before flushing, if available, to minimize the release of droplets into the air caused by flushing.
3. Do not use hand blowers or jet dryers as it contributes to the dispersion of potentially contaminated air inside the restrooms.

SECURITIES AND EXCHANGE COMMISSION ISSUANCES

Memorandum Circular No. 3 s. 2021 issued on March 9, 2021

- *Mode of Submission of Reports*
  - The submission of annual reports to the SEC shall be done online using SEC's Online Submission Tool (OST).
  - Except as otherwise provided in this MC and other issuances, the SEC shall no longer accept hard copies of reports. No submission through email, mail, courier and chutebox shall be allowed and/or accepted. The submission of General Form for Financial Statements and Special Form for Financial Statements in diskette or compact disc is no longer required.

- *Reports Accepted through the OST*
  - Audited Financial Statements (AFS)
  - Duly stamped received by the Bureau of Internal Revenue (BIR) or proof of filing with the BIR;
  - Duly signed Auditor's Report;
  - Statement of Management's Responsibility duly signed by authorized signatories; and
  - Compliant with all the Audited Financial Statements requirements.

    In PDF format. However, it must be in the multi-page PDF High-Resolution Scan (at least 100x100 dpi) of the document with the Signatories Page and Notarization Page.

  - General Information Sheet (GIS);
    - In 2 formats: (1) Multi-Page PDF with text Layer of the accomplished but unsigned form; and (2) Multi-Page PDF High-Resolution Scan (at least 100x100 dpi) of the document with the Signatories Page and Notarization Page.
  - Sworn Statement for Foundation (SSF)
    - In PDF format. However, it must be in the multi-page PDF High-Resolution Scan (at least 100x100 dpi) of the document with the Signatories Page and Notarization Page General Form for Financial Statements (GFFS) in excel;
  - Special Form for Financial Statements (SFFS) in excel;
  - Affidavit of Non-Operation (ANO), to be filed together with the GIS/AFS in PDF format; and
  - Affidavit of Non-Holding of Annual Meeting (ANHAM), to be filed together with the GIS in PDF format.

- *Mandatory enrollment to OST*
  - Generally, all corporations registered with the SEC must enroll in the OST.
  - Non-stock corporations are given the option of whether they will enroll and submit their reports through OST or proceed to the SEC Kiosk for assistance in the enrollment process or submit their reports over the counter.

- Nonetheless, by 2022, non-stock corporations shall be required to enroll and submit their reports with the OST.

- *Enrollment Procedure*
  - The Corporation shall create an account in the OST by filling out the application form online through https://cifss-ost.sec.gov.ph/. Details provided therein should be the same in the MC28 Report. Further, the Corporation shall also designate its authorized filer. In the event the corporation decides to change its/their authorized filer, the reporting company shall enroll a new filer and replace the old one, revising and updating in the same enrollment form. Furthermore, the Corporation can have multiple authorized filers. However, only one (1) authorized filer can be "activated" by the Corporation which shall be responsible for submitting the documents online.
  - Attach the following documents (in pdf format):
    - Board Resolution, as embodied in a Secretary's Certificate, from the corporation authorizing the Company's representative to file reports on behalf of the corporation (refer to the attached for the format).
    - MC 28 Report, and/or GIS version 2020 or Notification Update Form (NUF) for Foreign Corporations submitted to the SEC.
      - Upload the application form, together with the aforementioned attachments.
      - Wait for the approval of the application through email and the access key (User ID and Password) to file reports through the OST.
      - If the application is pending approval, wait for a notification through registered email for compliance with additional requirements, if any.
      - The issued access key (User ID and Password) shall be used by the filer to access the OST and file the reports.

- *Other Options for the Submission of Reports*
  - In case filers cannot enroll and submit reports through the OST, kiosks shall be provided in SEC offices and other areas. The OST Kiosks will be available for 9 months, from 15 March 2021 to 15 December 2021.
  - The SEC Main Office, all SEC Extension Offices (EOs), and Satellite Offices may accept reports over the counter provided that filers present the Notice from OST that problems have been encountered during the process of enrollment and/or submission.

- *Reports to be Submitted Through Email*
  - Scanned copies of the printed or hard copies of the Reports with wet signature and proper notarization other than AFS, GIS, SSF, GFFS, SFFS like IHFS, PHFS, BDFS, LCFS, FCFS, LCIF, and FCIF, ANO and ANHAM, shall be filed in PDF through email at ictdsubmission@sec.gov.ph

- *OST Operating Hours*
  - The OST shall be open 24 hours. However, all submissions shall only be accepted from Mondays to Fridays. Submissions made outside of the OST's operating hours shall be considered filed on the next working day.

- *Date of Receipt of the Report*
  - The reckoning date of receipt of reports is the date the report was initially submitted to the OST, if the filed report is compliant with the existing

requirements. A report which was reverted or rejected is considered not filed or not received.

Opinion No. 21-02 issued on February 16, 2021

- In this Opinion, a question was raised on whether a corporation which establishes, operates, maintains and/or manages commercial radio and television broadcasting station is a public utility or a mass media entity.
- In the query, the corporation involved is engaged in establishing, operating, maintaining, and/or managing commercial radio and television broadcasting stations. The inquirer raises that while commercial radio and television broadcasting stations help to deliver information to the public, they do not produce the messages disseminated, nor do they dictate what the message will state. Furthermore, they allege that a corporation which establishes, operates, maintains and/or manages commercial radio and television broadcasting stations is an operator of public utility and not mass media.
- Under Section 11, Article 16 of the 1987 Constitution, the ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens. The citizenship requirement is intended to prevent the use of such facility by aliens to influence the public opinion to the detriment of the best interest of the nation. Moreover, the term "mass media" under the Rules and Regulations for Mass Media in the Philippines includes radio, television, and movies, and involved in the gathering, transmission and distribution of news, information, messages, signals and all forms of written, oral and visual communications.
- The SEC opined that "mass media" does not only involve the transmission but also the creation/publication, gathering and distribution of the news, information, messages, and other forms of communication to the general public. Hence, it is clear that a corporation which establishes, operates, and maintains and/or manages commercial radio and television broadcasting station is a mass media entity. By maintaining and operating a commercial radio and television station, the company will essentially be disseminating information and all forms of communication to the public which will, or may have an influence on the standard, aims, ideals and opinions of the latter. Hence, it falls within the coverage of the constitutional mandate limiting ownership and management of mass media to citizens of the Philippines of wholly-owned and managed Philippine corporations.
- Moreover, the SEC opined that the corporation is also a "public utility" since it is covered by the phrase "wire or wireless broadcasting stations" under Section 13(b) of the Public Service Act.
- Based on the foregoing, while the radio and television broadcasting stations are entities engaged in "public service", the same are considered engaged in "mass media" activities, and are therefore covered by the nationality rules governing mass media.

Opinion No. 21-03 issued on February 18, 2021

- In this Opinion, a question was raised on whether a corporation with nominee shareholders, can report in its General Information Sheet (GIS) to the Securities and Exchange Commission (SEC), changes in nominee shareholders through a Deed of Trust and Assignment.
- The SEC opined that a Corporation can validly report in its GIS to the SEC changes in nominee shareholders pursuant to a validly executed Deed of Trust and Assignment.
- The SEC explained that the transfer in this case would be more of a "trust" and not a transfer of "ownership", hence, the beneficial interest in such shares will remain with the assignor while the assignee will hold only the legal title to the stock.
- The SEC also stated that the transferee should be described in the Deed of Assignment, corporate books and certificate of stock merely as a qualifying shareholder or nominee of the transferor. The fact that the stock standing on the corporate books is in the name of

the person only as a qualifying shareholder or that the holder of the stock certificate is described merely as a nominee serves as a notice to the corporation and third parties that the holder thereof does not hold the share in his own right, but holds it only as a nominee for the benefit of the real owner.

- Further, the SEC said that the election or appointment of a new director is a circumstance of a Corporation's governance structure that needs to be reported to the SEC through its GIS as it involves a material change in the Board's composition.

BUREAU OF CUSTOMS ISSUANCE

Customs Memorandum Order No. 12-2021 issued on March 18, 2021

- This Order consolidates various guidelines on the imposition of penalties related to accreditation of importers and customs brokers and establishes the procedure for imposing penalties, which include warning, suspension, and revocation of accreditation.
- The Bureau of Customs (BOC) can impose sanctions such as warning, suspension, or revocation of customs accreditation for breach of the importer's responsibilities and violation of customs laws, rules and regulations. The importer or customs broker will also be blacklisted from further transacting with BOC after due notice and hearing.
- All goods imported into the Philippines will be deemed to be the property of the consignee or holder of the bill of lading, airway bill, or other transport documents if duly endorsed by the consignee, or if consigned to order, duly endorsed by the consignor. Moreover, a customs broker acting as declarant will be presumed to be the agent of the consignee or importer, and as such, may be accountable and liable for any violation of the Customs Modernization and Tariff (CMTA) and other related laws.
- The penalties under this Order are to be imposed without prejudice to the criminal, civil and other liabilities that may be incurred under CMTA and other customs laws, rules or regulations.
- The BOC will impose the preliminary suspension on the importer or customs broker on the following grounds:
    - When the importation contains any prohibited or restricted goods without the permit or clearance from the regulatory agency, even for the first offense.
    - Those whose shipments have been forfeited within the preceding period of one year for violation of the provisions of the CMTA and other customs laws, rules or regulations.
    - Other analogous circumstances at the discretion of the Customs commissioner.
- The importer or customs broker whose accreditation has been preliminarily suspended may request for the continuous processing of the shipments which are still in transit or which have arrived at the ports prior to the suspension.
- Lodgment of goods declaration other than those approved will be deemed unauthorized and subject to penalties.
- After due notice and hearing, BOC will impose the following penalties:
    - Light infractions – suspension of customs accreditation privileges for one month to six months;
    - Less grave infractions – suspension of customs accreditation privileges for six months and one day to 12 months;
    - Grave infractions – cancellation or revocation of customs accreditation privileges.
- The importer and customs broker may file a motion for reconsideration with the Customs commissioner within 15 days from receipt of notice of suspension, revocation, and/or blacklisting.

PHILIPPINE COMPETITION COMMISSION ISSUANCE

PCC Memorandum Circular No. 21-001 issued on January 19, 2021

- This Circular adjusts the Schedule of Fines for Violations of PCA of the 2017 Rules of Procedure of the Philippine Competition Commission and the Rules of Merger Procedure pursuant to Section 29 of the PCA which provides that the schedule of fines "shall be increased by the Commission every five (5) years to maintain their real value from the time it was set."

SUPREME COURT ISSUANCES

A.M. No. 20-12-01-SC issued on December 9, 2020

- Court hearings and proceedings, including the taking of testimony may now be conducted through videoconferencing technology, or the use of video, audio, and data transmission devices to allow participants in different physical locations to simultaneously communicate by seeing and hearing each other.
- These guidelines shall govern the conduct of video conferencing before the first and second level court, the CA, Sandiganbayan, and the CTA. The guidelines shall further apply to all actions and proceedings when the court finds that the circumstances allow the conduct of videoconferencing which will be beneficial to the fair, speedy and efficient administration of justice, in cases such as but not limited to Acts of God, public emergencies, security risks, child in conflict with the law, witness or litigant is a non-resident foreign national or an OFW, and others.
- The order for the conduct of videoconferencing may be made motu proprio by the court or initiated by motion of a party in certain instances which must be filed at least ten (10) days before the scheduled hearing dates. No cancellation of scheduled videoconferencing hearings may be allowed except on meritorious grounds.
- Documentary evidence and judicial affidavits must be filed and served at least three (3) days prior to the scheduled videoconferencing. During the video conferencing, the court may direct a counsel to share documentary evidence on-screen. Object evidence may be presented during video conferencing if the same can be exhibited to, examined or viewed by all participants, by displaying the object on the screen, or physically showing it the witness testifying thereto at his or her location within full view of the participants.

A.M. No. 21-02-01-SC issued on March 16, 2021

- *Application for destruction and disposal*
  If with search warrant, it must be applied by the law enforcement agent or the prosecutor before the court which issued the search warrant If there is no search warrant, it must be applied by the law enforcement agent or the prosecutor before the court which has territorial jurisdiction over the case

- *Ocular inspection*
  The judge shall conduct an ocular inspection within 72 hours from the time the application is filed if:
  - The seized drugs amount to 1 kg or more; or
  - If the seized instruments cannot be brought to court.

- *Retention of Representative Sample*
  - Within 24 hours from the conduct of the ocular inspection or upon presentation to the court, the court shall order the retention of a representative sample of the seized drug which shall be kept in the forensic laboratory of the operating unit that seized the drug.
  - It shall be witnessed by:
    - The person from whom the items were seized or its representative or counsel (his absence however, will not affect the integrity and identity of the seized drugs);
    - The elected public official;
    - Responsible official from the National Prosecution Service or a representative from the media;
    - The law enforcement agent who seized the drugs; and
    - The forensic laboratory personnel.

- *Destruction and Disposal*
  - Within the same 24 hours from the conduct of the ocular inspection or upon presentation to the court, or in the same order for the retention of a representative sample, the court shall order the immediate destruction and disposal of the remaining seized drugs or instruments.
  - The remaining seized drugs or instruments shall be delivered to the Philippine Drug Enforcement Agency for the actual destruction and disposal.
  - Upon proper motion, the seized drugs can be used for K9 training of detector dogs for narcotics.
  - The actual destruction shall be witnessed by:
    - The elected public official;
    - Responsible official from the National Prosecution Service or a representative from the media;
    - The law enforcement agent who seized the drugs; and
    - The forensic laboratory personnel.
  - The ocular inspection, taking of a representative sample and the actual destruction shall be video-recorded and photographed. This shall be preserved for the purpose of authentication when the corresponding information is filed.

- *Filing of Report*
  Within 24 hours from the destruction of the seized drugs and equipment, the applicant shall file a report to the court, indicating a brief summary of the proceedings. If the court is satisfied, and no setting for hearing is made, the court shall issue an order approving the report.

MATA-PEREZ TAMAYO & FRANCISCO (MTF)
Attorneys-at-Law

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