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BIR ISSUANCES

REVENUE REGULATIONS (RR)

RR No. 1 issued on April 8, 2021

- This RR implements the tax incentives and fee privileges for the procurement, importation, donation, storage, transport, deployment, and administration of the COVID-19 vaccines under RA No. 11525 or the COVID-19 Vaccination Program Act of 2021. Under RA No. 11525, beginning January 2021, the procurement, importation, donation, storage, transport, deployment, and administration of the COVID-19 vaccines by the government or any of its political subdivisions and private entities shall be exempt from custom duties, value-added tax (VAT), excise tax, donor's tax, and other fees.
- Under this RR, no VAT shall be part of the contract price for the procurement of the vaccine, the importation of the vaccines shall not be subject to the issuance of the Authority to Release Imported Goods (ATRIG), and no VAT shall be imposed by service providers on the services to be rendered for the storage, transport, deployment, and administration of the vaccines. Moreover, no donor's tax shall be imposed on the donation of the vaccines to the entities mentioned and the tax incentives shall only be applicable if the vaccines are not intended for resale or other commercial use and shall be distributed without any consideration from persons to be vaccinated.
- The requirements to qualify for the incentives are the following:
    a. Certified true copy of the COVID-19 vaccine procurement agreement/multiparty agreement;
    b. Certified true copy of the COVID-19 vaccine's Certificate of Product Registration or Emergency Use Authorization (EUA) issued by the Food and Drug Administration (FDA);
    c. Sworn Declaration that the vaccines are not intended for resale or other commercial use and shall be distributed without any consideration from persons to be vaccinated;
    d. For donated COVID-19 vaccines, certified true copy of the duly accepted Deed of Donation and Bureau of Internal Revenue (BIR) Form 2322 (Certificate of Donation) (for private entities and international humanitarian organizations).

RR No. 2 issued on April 8, 2021

- This RR amends certain provisions of RR No. 2-98, as amended, to implement the amendments introduced by RA No. 11534 relative to the Final Tax on certain passive income.
- Purchases made by Government-Owned and Controlled Corporations (GOCC), National Government Agencies, Local Governments, and other government instrumentalities, from person or entities subject to percentage tax shall be subject to one percent (1%) withholding tax for the period July 1, 2020 until June 30, 2023.

RR No. 3 issued on April 8, 2021

- This RR implements Section 3 of RA No. 11534, particularly on the submission by the Commissioner of Internal Revenue (CIR) of the needed tax-related information to the Department of Finance (DOF) in relation to the grant of incentives to a particular entity under Section 16 of RA No. 11534, amending Sec. 20 of the Tax Code.
- A request for tax related and pertinent information of entities receiving incentives under Title XIII of the Tax Code of 1997, as amended shall be made upon the authority of the

Secretary of Finance and shall be addressed to the CIR. It shall identify the specific information sought, as well as the reason or justification for the request for information related to the incentives granted to a particular entity under Title XIII of the Tax Code. Should a request for official information or document be received by another office within the BIR, it shall immediately be transmitted to the Office of the Commissioner for appropriate action. Moreover, a prior written approval of the CIR is required before a revenue official or employee provides or makes known any official information or documents to the DOF, specifically on the information relative to the grant of incentives.

RR No. 4 issued on April 8, 2021

- This RR implements the provisions on Value-Added Tax (VAT) and Percentage Tax under RA No. 11534.

- *VAT-Exempt transactions*

    - The sale of residential lots valued at P1,500,000.00 and below or house & lots and other residential dwellings valued at P2,500,000.00 and below must be adjusted in 2011 using the 2010 Consumer Price Index Values. Further, starting January 1, 2021, the VAT Exemption shall only apply to:
        - Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business;
        - Sale of real property utilized for socialized housing; and
        - Sale of house and lot, and other residential dwellings with selling price of not more than P 2,000,000.00.
    - The sale, importation, printing, or publication of books, magazines, newspapers and other related articles or any such educational reading material covered by the United National Educational Scientific and Cultural Organization (UNESCO) Agreement on the importation of educational, scientific, and cultural materials including digital or electronic format thereof are also exempt from VAT. Provided that the materials enumerated are not devoted principally to the publication of paid advertisement.
    - The sale or importation of prescription drugs and medicines for cancer, mental illness, tuberculosis and kidney diseases will now be exempt from VAT starting January 1, 2021.
    - Beginning January 1, 2021 to December 31, 2023, the sale or importation of the following will be exempt from VAT:
        - Capital equipment used in the production of PPEs;
        - Drugs, vaccines and medical devices used for the treatment of COVID-19; and
        - Drugs for the treatment of COVID-19 as approved by the FDA.
- The suppliers/importers of items (i) and (iii) are mandated to submit the following documents:
    1. CTC of their License to Operate issued to the Manufacturer-buyer by the DOH-FDA authorizing the manufacture of PPEs and drugs for the treatment of COVID-19
    2. Sworn declaration from the manufacturer-buyer that the items will be used for the manufacture of PPEs and drugs from treatment of COVID-19
- The DTI shall certify that such equipment, spare parts, or raw materials for importation are not locally available or insufficient in quantity or not in accordance with the specification required.

- *Percentage Tax*

  - Any person whose sales or receipts are exempt from the payment of VAT and who is not a VAT-registered person shall pay a tax of 3% of his gross quarterly sales or receipts. Provided that the following shall be exempt from the 3% percentage tax:
    1. Cooperatives; and
    2. Self-employed individuals and professionals availing of the 8% tax on gross sales and receipts and other non-operating income.

  - Provided, further, that effective July 1, 2020 until June 30, 2023, the rate shall be 1%

- *Transitory Provisions*

  - A VAT-registered taxpayer who opted to register as non-VAT as a result of the additional VAT-exempt provisions under RA No. 11534 provided that it did not meet the P 3,000,000.00 threshold shall
    a. Submit an inventory list of unused invoices and/or receipts as of the date of filing of application for update of registration from VAT to non-VAT; and
    b. Surrender the said invoices and/or receipts for cancellations
  - The taxpayer shall treat the resulting excess taxes paid due to the inclusion in the items exempt from VAT or adjustment in percentage tax rates, as the case may be, in the following manner:
    a. Unutilized VAT paid on local purchases and importation for the sale or importation of VAT Exempt prescription drugs and medicines and sale or importation of equipment and drugs in relation to the treatment of COVID-19 may be carried over to the succeeding taxable quarter/s or to be charged as part of cost, pursuant to Sec. 110 of the Tax Code.
    b. Excess percentage tax as a result of the decrease of the tax rate from 3% to 1% may be carried forward to the succeeding taxable quarter/s by reflecting the excess percentage tax payment.
  - Further, excess/unutilized input taxes as a result of the change of status from VAT to Non-VAT registration under Sec. 112(B) of the Tax Code may be subject to refund or issuance of a TCC at the option of the taxpayer.

RR No. 5 issued on April 8, 2021

- This RR implements the new income tax rates on the regular income of corporations on certain passive incomes and additional allowable deductions of persons engaged in business or practice of profession as provided for under RA No. 11534.

- Corporate income tax rates:

Type of Corporation	The higher between the "Regular" or "Minimum Corporate Income Tax (MCIT)" rates			
	Regular		MCIT	
	Rate	Effectivity	Rate	Effectivity
Domestic Corporation:				

Domestic corporations, in general	25%	July 1, 2020	1% 2%	July 1, 2020 to June 30, 2023 July 1, 2023
For corporations with net taxable income not exceeding PhP 5 Million AND total assets not exceeding PhP 100 Million, excluding the land on which the particular business entity's office, plant and equipment are situated	20%	July 1, 2020	1% 2%	July 1, 2020 to June 30, 2023 July 1, 2023
Proprietary Educational Institutions and Hospitals	1% 10%	July 1, 2020 to June 30, 2023 July 1, 2023	Not Applicable	
Foreign Corporation [on taxable income (e.g., net or gross income, as applicable) derived from all sources within the Philippines]:				
Resident Foreign Corporation	25%	July 1, 2020	1% 2%	July 1, 2020 to June 30, 2023 July 1, 2023
Offshore Banking Units (OBUs) *Note: OBUs shall now be taxed as resident foreign corporation upon effectivity of the CREATE	25%	Upon the effectivity of CREATE	1% 2%	Upon the effectivity of CREATE until June 30, 2023 July 1, 2023
Regional Operating Headquarters (ROHQ)	25%	January 1, 2022	1% 2%	January 1, 2022 to June 30, 2023 July 1, 2023
Non-Resident Foreign Corporation	25%	January 1, 2021	Not applicable	

- Income tax rates on certain passive income:

Type of Individual/Corporation	**Nature of Income**	**Rate**	**Effectivity**
Non-Resident Alien Individual	Winnings from Philippine Charity Sweepstake Office (PCSO) games amounting to more than P10,000.00 Winnings from PCSO games amounting to P10,000 and below	20% Exempt	Upon the effectivity of CREATE
Domestic Corporation	Intercorporate Dividends (Domestic and foreign source dividends)	From another domestic	For foreign source dividends, these will be exempt

		corporation - Exempt From non-resident foreign corporation - 25% or 20%, as the case may be	from income tax upon the effectivity of CREATE, subject to the conditions imposed under Section 5 of these Regulations
Resident Foreign Corporation	Interest income from a depositary bank under the expanded foreign currency deposit system	15%	Upon the effectivity of CREATE
	Capital gains from sale of shares of stock not traded in the stock exchange	15%	Upon the effectivity of CREATE
Non-resident Foreign Corporation	Gross income received from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains from sale of shares of stock not traded in the stock exchange	25%	January 1, 2021
	Intercorporate dividend received from a domestic corporation, in general	25%	January 1, 2021
	However, if the country in which the non-resident foreign corporation is domiciled, allows a tax credit equivalent to the difference between the regular income tax rate of 25% under Section 28(B)(1) of the Tax Code (25%) and the 15% tax on intercorporate dividends or does not impose tax on dividends, the rate to be imposed shall be 15%	15%	January 1, 2021
	Capital gains from sale of shares of stock not traded in the stock exchange	15%	Upon the effectivity of CREATE

- Exemption from income tax of foreign-sourced dividends received by domestic corporations;

- Requisites:
    1. The dividends actually received or remitted into the Philippines are reinvested in the business operations of the domestic corporation within the next taxable year from the time the foreign-sourced dividends were received or remitted;
    2. The dividends received shall only be used to fund the working capital requirements, capital expenditures, dividend payments, investment in domestic subsidiaries, and infrastructure project; and
    3. The domestic corporation holds directly at least twenty percent 20% in value of the outstanding shares of the foreign corporation and has held the shareholdings uninterruptedly for a minimum of two (2) years at the time of distribution of the dividends. In case the foreign corporation has been in existence for less than two (2) years at the time of dividends distribution., then the domestic corporation must have continuously held directly at least twenty percent (20%) in value of the foreign corporation's outstanding shares during the entire existence of the corporation.

- Absent any of the requisites, the foreign-sourced dividends shall be considered as taxable income of the domestic corporation in the year of actual receipt or remittance, subject to surcharges, interest, and penalties, as applicable.
- Improperly accumulated earnings tax shall no longer be imposed on corporations upon the effectivity of RA 11534 onwards. This shall apply to the entire taxable year for all fiscal years/taxable years after the effectivity of RA No. 11534.
- Allowable deductions from gross income for business persons:
  Additional deduction from taxable income of 50% of the value of labor training expenses incurred for skills development of enterprise-based trainee:
    1. Trainees are enrolled in public senior high schools, public higher education institutions, or public technical and vocational institutions duly covered by an apprenticeship;
    2. Deduction shall not exceed 10% of direct labor wage; and
    3. The enterprise shall secure proper certification from DepEd, TESDA, or CHED.
    - Non-recognition of gain or loss on exchange of property
      No gain or loss shall be recognized on a corporation or its stock or securities if such corporation is a party to a reorganization and exchanges property in pursuance of a plan of reorganization for stock or securities in another corporation that is a party to the reorganization.
- No gain or loss if property is transferred by a person (alone or together with others not exceeding four persons) in exchange for stock. As a result: transferor or transferors, **collectively**, gains **or maintains** control.
- Sale or exchanges of property used for business for shares of stocks shall **not be subject to VAT.** Prior **BIR confirmation or tax ruling no longer required** for the availment of tax exemption on tax free exchanges.

- *Transitory Provisions*
  The following shall be applied for taxable year 2020 by corporations (except non-resident foreign corporations) to compute the rate to be used in the deduction of a certain percentage of interest income subject to final tax from the claimed interest expense to come up with the allowable interest expense, or the interest arbitrage:
    1. Divide the gross interest income subjected to final tax for the year by 12 months: Interest income subjected to final tax ÷ 12
    2. Multiply the number of months applicable to old arbitrage rate by the resulting monthly gross interest income subjected to final tax; then multiply the product by the old arbitrage rate: Number of months applicable x (a) x 33.33%
    3. Multiply the number of months applicable to the new arbitrage rate by the resulting monthly gross interest income subjected to final tax; then, multiply the product by

the new arbitrage rate: Number of months applicable x (a) x (20% or 0%, as the case may be)

4. Add the computed interest arbitrage under items (b) and (c) above to get the amount to be deducted from the interest expense claimed to arrive at the allowable interest expense.

REVENUE MEMORANDUM CIRCULAR (RMC)

RMC No. 52-2021 issued on April 14, 2021

- This RMC suspends the running of statute of limitations for assessment and collection of deficiency taxes in affected areas where Enhanced Community Quarantine (ECQ) is in effect, including any extension/s thereof and for sixty (60) days thereafter. The suspension of the running of the Statute of Limitations shall apply with respect to the issuance and service of assessment notices, warrants, and enforcement and/or collection of deficiency taxes.

RMC No. 54-2021 issued on April 27, 2021

- This RMC Clarifies certain provisions of RR No. 34-2020 (prescribing the guidelines and procedures on the submission of BIR Form No. 1709, Transfer Pricing Documentation and other supporting documents).
- A taxpayer is required to accomplish and file the Related Party Transaction (RPT) Form if the following conditions are present:
  a. It is required to file an Annual Income Tax Return (AITR);
  b. It has transactions with a domestic or foreign related party during the concerned taxable
  c. period; and
  d. It falls under any of the following categories:
     i. Large taxpayers;
     ii. Taxpayers enjoying tax incentives, i.e. Board of Investments (BOI)-registered and economic zone enterprises, those enjoying Income Tax Holiday (ITH) or subject to preferential Income Tax rate;
     iii. Taxpayers reporting net operating losses for the current taxable year and the immediately preceding two (2) consecutive taxable years; and
     iv. A related party that has transactions with (i), (ii) or (iii).
- In determining whether a taxpayer is subject to preferential income tax rate, reference must be made to the provisions of the Tax Code or other special laws on how these taxpayers are taxed as a whole and not on a per transaction basis. Hence, a corporate taxpayer that is subject to regular corporate Income Tax but has transactions that are subject to preferential Income Tax rate under tax treaties or the Tax Code are not required to file an RPT Form.
- Taxpayers who are exempt from Income Tax under Section 30 or similar provisions of the Tax Code or special laws are not required to file an RPT Form. Furthermore, regional or area headquarters and representative offices of foreign corporations that are not allowed by law to derive income from the Philippines are also included in the classification of tax-exempt taxpayers. Post-employment benefit plans are also not required to file an RPT Form if their related party transactions consist only of the contributions from their sponsor employers.
- The net operating losses for Income Tax purposes should be the basis and not the amount reflected in the Audited Financial Statements.
- Since the non-resident foreign related party is not required to file an RPT Form, the domestic party is likewise not required to file an RPT Form.
- The materiality threshold is only relevant in determining who are required to prepare a Transfer Pricing Documentation (TPD). A taxpayer who is required to file an RPT Form must disclose all related party transactions irrespective of the amount. In filling out the RPT Form, similar transactions with the same related party must be aggregated, if possible. The

TPD and other supporting documents shall no longer be attached to the RPT Form but shall instead be made available during audit.

- No less than the actual amounts of the related party transactions shall be declared in the RPT Form. Just like any other tax returns, the RPT Form likewise contains a perjury clause whereby the taxpayer or its duly authorized representative attests to the truthfulness of the facts stated therein. The filing of RPT Form shall only be mandatory for short period returns that are originally required by law or existing revenue issuances to be filed in 2021 and subsequent years.
- The enumeration under Section 2 is exclusive such that all taxpayers not included therein are not required to file the RPT Form. A taxpayer who is required under Section 2 to file the RPT Form shall only prepare its TPD if it satisfies any of the conditions set out under Section 3 of RR No. 34-2020. If the taxpayer is not required to file the RPT Form then it is not also mandated to prepare a TPD.
- The preparation of a TPD shall be mandatory if the taxpayer meets any of the following conditions:
    a. Annual gross sales/revenue for the subject taxable period exceeding Php150 Million and the total amount of related party transactions with foreign and domestic related parties exceed Php90 Million;
    b. Sale of tangible goods involving the same related party exceeding Php60 Million within the taxable year;
    c. Service transaction, payment of interest, utilization of intangible goods or other related party transaction involving the same related party exceeding Php15 Million within the taxable year;
    d. If TPD was required to be prepared during the immediately preceding taxable period for exceeding (a) to (c).
- In computing the total amount of related party transactions with foreign and domestic related parties, the following items shall be totalled:
    a. Amounts received and/or receivable (trade receivables) from related parties during the taxable year;
    b. Amounts paid and/or payable (trade payables) to related parties during the taxable year less any; and
    c. Outstanding balances of loans and non-trade amounts due from/to all related parties (nontrade receivables and payables).
- The BIR requires the submission of a duly accomplished RPT Form. If the taxpayer fails to provide any material information, the Bureau will regard the RPT Form as not duly filed and the penalty for failure to file such information return will be imposed.
- The BIR will conduct an initial transfer pricing risk assessment through the RPT Forms submitted, identify the high-risk taxpayers and make an informed decision whether or not to conduct a transfer pricing audit of a particular entity or transaction. As to who will be subjected to transfer pricing audit will greatly depend on the results of such initial assessment.
- The BIR still retains the right to conduct transfer pricing audit against taxpayers with related party transactions, irrespective of whether or not they are required to file the RPT Form and prepare a TPD. When subjected to audit, taxpayers who are not mandated to file the RPT Form and to prepare a TPD must still present sufficient evidence to prove that their related party transactions were conducted at arm's length.
- Taxpayers who are not required to file an RPT Form and have already finalized their AFS for taxable year 2020 prior to the effectivity of RR No. 34-2020 are not expected to comply with the mandate of Section 4 thereof and cannot, therefore, be penalized for non-disclosure. Section 4 only applies to the AFS that are required to be submitted after the effectivity of RR No.34-2020.

REVENUE MEMORANDUM ORDER (RMO)

RMO No. 14-2021 issued on March 31, 2021

- This RMO streamlines the procedures and documents in availing treaty benefits and relief/s and to observe the Ease of Doing Business Act (RA No. 11032). It also repeals, amends and modifies all previous issuances involving applications or grants of reliefs from double taxation under relevant tax treaties.

- *What to file*
  - The local withholding agent/income payor may rely on the following: (a) BIR Form 1901 or Application Form for Tax Treaty Purposes (Application Form), (b) Tax Residency Certificate (TRC) duly issued by the foreign tax authority, and (c) the relevant provision of the applicable tax treaty on whether to apply a reduced rate of, or exemption from, withholding at source on the income derived by the non-resident taxpayer from sources within the Philippines.
  - Under the previous process (covered by RMOs Nos. 72-2010 and 8-2017), if the income earned by the non-resident taxpayer pertains to royalties, interest, and dividends, the non-resident taxpayer is required to submit a Certificate of Residence for Treaty Relief (CORTT) Form to the local withholding agent/income payor before the income is paid or credited. Subsequently, the withholding agent/income payor shall submit the CORTT to the BIR within 30 days after payment of withholding taxes due.
  - RMO No. 14-2021 no longer requires the filing of the CORTT Form. Instead, it requires that if the tax treaty rates have been applied on the income earned by the non-resident-taxpayer, the withholding agent/income payor shall file with the International Tax Affairs Division (ITAD) of the BIR a request for confirmation on the propriety of the tax rates applied. The request for confirmation shall be filed at any time after the payment of withholding tax but shall in no case be later than the last day of the fourth month following the close of each taxable year of the withholding agent.

- *Tax Treaty Relief Application*
  - If the regular rates have been imposed on said income, the non-resident taxpayer shall file a TTRA with the ITAD to prove its entitlement to tax treaty benefits. The filing of TTRA, in the event the non-resident taxpayer is required to do so (when regular tax rates have been imposed on income sourced within the Philippines instead of the tax treaty rates or benefits), shall be filed by the non-resident taxpayer at any time after the receipt of income.
  - Under this RMO, if the BIR determines that the withholding tax rate applied is lower than the rate that should have been applied on an item of income based on the tax treaty applicable, or that the non-resident taxpayer is not entitled to tax treaty benefits, the BIR will issue a ruling denying the request for confirmation or TTRA. In the event of such denial, the non-resident taxpayer shall be liable to pay deficiency tax and penalties.
  - In case the withholding tax rate applied for in the TTRA is proper, the BIR will issue a certificate confirming the entitlement of the non-resident taxpayer to tax treaty benefits. If the BIR finds that a higher tax rate was imposed, the non-resident taxpayer may apply for a refund of the excess withholding tax paid.
  - Both the old and new rules provide that the withholding agent/income payor or the non-resident taxpayer, as the case may be, can appeal adverse decision to the Department of Finance within 30 days from receipt of the decision.

COURT DECISIONS

CTA DIVISION DECISIONS

Ecotechnovations v. CIR
CTA Case No. 9701 promulgated on March 3, 2021

Facts:

On June 16, 2017, the BIR issued a Formal Letter of Demand (FLD) with Final Assessment Notice (FAN) and Details of Discrepancies assessing E Corp. for deficiency income tax and VAT for Taxable Year (TY) 2012, which was served by substituted service. Thereafter, E Corp. received a letter from the BIR acknowledging E Corp.'s protest Reply Letter to the Preliminary Assessment Notice (PAN) and informing that the FLD had been issued.

In its Protest with Request for Reinvestigation to the FAN on August 22, 2017, E Corp. alleged that it did not receive the FLD or the FAN. Thereafter, E Corp. received a letter from the BIR declaring that the assessment became final, executory, and demandable for the alleged failure of the petitioner to file a valid protest. Subsequently, Petitioner filed a Petition for Review before the Court of Tax Appeals (CTA). E Corp. claims there was invalid service of the FLD and that the assessment was made without a valid authority.

Issue:

Was there a valid substituted service?

Ruling:

No, the substituted service of the FLD/FAN was not validly effected by the BIR.

Under Section 3.1.6 of RR No. 12-99, as amended, substituted service may be availed of only when it is shown that personal service is not practicable. Furthermore, it provides when the party is not present at the registered or known address by leaving the assessment notices at the party's registered address, with the "party's clerk" or with a "person having charged" thereof. In this case, no proof was presented by the Respondent CIR to establish that personal service was not practicable in this case and there was no showing that the FLD/FAN was served to E Corp.'s "clerk" or with a "person having charged" of E Corp.'s office.

Moreover, upon examination of the FLD/FAN, it shows that it merely contains the notation "constructively served on 06-16-17" without indicating the required details including relevant facts surrounding the substituted service.

Lastly, the official positions of the barangay officers are not indicated as required under the rules. Hence, there was no valid service of the FAN/FLD to E Corp.

CTA EN BANC DECISIONS

Thermaprime Drilling Corporation vs. CIR
CTA EB No. 2155 promulgated on March 2, 2021

Facts:

T Corporation filed its Amended Quarterly VAT Returns for the 3rd and 4th quarters of the TY 2011, claiming to have unutilized input taxes. On **September 24, 2013**, T Corporation filed an application for tax credit/refund of input VAT for the 3rd and 4th quarters of 2011.

On February 28, 2014, T Corporation received a Letter of Authority (LOA) from the BIR. Thereafter, a First Notice was issued by the BIR requesting presentation and production of accounting books pursuant to the Letter of Authority (LOA), hence, T Corporation transmitted a copy of its Sale Invoice and official receipts covering the period July to December 2011.

On **April 22, 2014**, T Corporation received another request from the BIR for presentation of records stating that T Corporation has not presented the needed records for their examination to which T Corporation submitted additional documents.

Respondent CIR failed to act on the T Corporation's administrative claim for refund, hence, it filed a Petition for Review before the CTA on **September 22, 2014**. The CTA Division dismissed the Petition for lack of jurisdiction; thus, T Corporation filed its Petition for Review before the CTA *en banc*. T Corporation contends that the reckoning period of the 120-day period is the complete submission of documents by the taxpayer and that it had later submitted additional documents on April 22, 2014. Hence, T Corporation alleges that the 120-day period runs from the complete submission of documents and not the filing of the application.

Issue:

Does the CTA have jurisdiction over the case?

Ruling:

No, pursuant to RMC No. 49-2003, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has 30 days within which to submit the documentary requirements to support his claim unless given further extension by the CIR.

Subsequently, upon filing by the taxpayer of his complete documents to support his application or expiration of the period given, the CIR has 120 days within which to decide the claim for tax refund. In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the 2-year period. The foregoing rules should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014 in view of RMC 54-2014.

In the present case, after filing its administrative claim on September 24, 2013 attached with the VAT returns for the 3rd and 4th quarters of TY 2011, T Corporation no longer submitted additional documents to support its claim within the 120-day period from the submission of its administrative claim. Moreover, since the application for tax refund of input VAT is for the 3rd and 4th quarters of TY 2011, which closed on September 30, 2011 and December 31, 2011, respectively, T Corporation had until **September 30, 2013 and December 31, 2013**, or two years after the close of the taxable quarters when sales were made to submit all pertinent supporting documents to the BIR.

The submission of the additional documents on April 22, 2014 was already beyond the 2-year period, thus, cannot be considered in the counting of the 120-day period. The 120-day period within which Respondent CIR should act shall be reckoned from September 24, 2013, the date of filing of the administrative claim, therefore, Respondent CIR had until **January 22, 2014** to act on the petitioner's administrative claim. T Corporation had 30 days from January 22, 2014 or **until February 21, 2014** to file the Petition for Review. The Petition for Review filed before the CTA on September 22, 2014 was filed out of time.

Hence, considering that the 120+30 day periods are mandatory and jurisdictional, the CTA Division is correct in dismissing the judicial claim for lack of jurisdiction.

CIR vs. Actuate Builders, Inc.
CTA EB No. 2211 promulgated on March 2, 2021

Facts:

Respondent Company A filed with the BIR an administrative claim for refund or issuance of Tax Credit Certificate (TCC) of its excess input VAT in March 2015 for Calendar Year 2013. For Petitioner CIR's failure to act on the refund, Respondent Company A filed a Petition for Review with the CTA.

The CTA 2nd division partially granted the refund. Hence, Respondent Company A filed a Petition for Review before the CTA *en banc*.

Petitioner CIR argues that there is no valid claim for refund because the persons who filed the claim for refund were not authorized by Respondent Company A. According to the Petitioner CIR, Respondent Company A failed to present a Board Resolution authorizing the filing of the claim for refund nor authorizing the signatory of the claim for refund. Following the lack of a valid claim for refund, the CTA 2nd Division has no jurisdiction over the case.

On the other hand, Respondent Company Aargues that Petitioner CIR required the submission of numerous documents for the claim of refund, a board resolution was not among the required documents. It only required the notarized Secretary's Certificate showing the authority of the representatives to file under RMC No. 47-2019, which cannot be made to retroactively apply to its refund claim filed in 2015.

Issue:

Is there a valid claim for refund despite the absence of the board resolution?

Ruling:

The issue is moot and academic.

The Petition for Review was dismissed for having been filed out of time. As found in the records, Petitioner CIR received the assailed Resolution (dated December 16, 2019) on December 26, 2019 through the BIR RR No. 8 – Makati and Office of the Solicitor General. Thus, Petitioner CIR had only until January 10, 2020 within which to file his Petition for Review or his motion for extension of time, as the case may be. The Motion for Extension was filed only on January 14, 2020.

Petitioner CIR alleged that the assailed Resolution was received on January 10, 2020 contrary to the actual stamp showing receipt on December 26, 2019. Petitioner also alleged that at that time, BIR Revenue Region No. 08-Makati City was already dissolved due to the reorganization in the BIR. But the petitioner did not present any document showing that any reorganization took place within the BIR. Petitioner CIR was trying to mislead the Court as to the timeliness of the Motion for Extension, and to hide the fact that the Motion for Extension was already filed one day late on January 14, 2020 (January 10 was a Friday, January 13 – Suspension of office because of Taal Eruption). A motion for extension of time to file a pleading must be filed before the expiration of the period sought to be extended. Since the motion for extension was filed after the lapse of the prescribed period, there was no more period to extend.

SUPREME COURT DECISIONS

Metropolitan Waterworks and Sewerage System vs. Central Board of Assessment Appeals, et al.
G.R. No. 215955 promulgated on January 13, 2021

Facts:

Petitioner Metropolitan Waterworks and Sewerage System (MWSS) received Real Property Tax (RPT) computations from the Pasay City Treasure for taxable year 2008. Allegedly on the same day, MWSS filed a Protest Letter addressed to the City Mayor, arguing that it is a public utility and a government instrumentality, and its properties and facilities are exempt from real property taxes. Due to the inaction of the Pasay City Treasurer, MWSS filed an appeal to the Local Board of Assessment Appeals (LBAA). The LBAA ruled that MWSS failed to comply with Section 252 of the Local Government Code (LGC) for failure to file protest with the city treasurer that made the assessment final and not appealable. On appeal, the Central Board of Assessment Appeals (CBAA) affirmed the assessment's finality. The Court of Appeals (CA) thereafter dismissed the appeal for MWSS' failure to exhaust administrative remedies.

Issue:

1. Did the CA err in dismissing MWSS's appeal for failure to exhaust administrative remedies?
2. Is Pasay City authorized to assess and collect RPT from MWSS?

Ruling:

1. Yes. Administrative remedies are inapplicable when the issue presented is a pure question of law. In the oft-cited case of *Ty v. Hon. Trampe*, the Court held that the rule on exhaustion of administrative remedies does not apply when the controversy does not involve questions of fact but only of law. The protest contemplated under Section 252 of the LGC is required when there is question as to the reasonableness or correctness of the amount assessed, while an appeal to the LBAA under Section 226 is fruitful only where questions of fact are involved. Accordingly, when the very authority and power of the assessor to impose the assessment, and of the treasurer to collect real property taxes are in question, the proper recourse is a judicial action.
2. No. MWSS is a government instrumentality with corporate powers, not liable to the local government of Pasay City for real property taxes. The case of *MWSS v. The Local Government of Quezon City* (2018 MWSS Case) has already settled with finality that MWSS is a government instrumentality vested with corporate powers, and as such, exempt from payment of real property taxes. Consistent with our ruling in the 2018 MWSS Case, in relation to Manila International Airport Authority (MIAA), the tax exemptions under Sections 133(0) and 234(a) of the LGC apply to MWSS. The tax exemption under Section 234(a), however, ceases when the beneficial use of the real properties is alleged and proved to have been granted, for a consideration or otherwise, to a taxable person. Beneficial use means actual use or possession of the property. Actual use refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof.

   In sum, MWSS is not liable to the local government of Pasay City for real property taxes. The tax exemption of its properties, however, ceases when the beneficial or actual use is alleged and proven to have been extended to a taxable person. All the assessments issued in the name of MWSS should thus, be declared void. To be clear, Pasay City is not precluded from availing of the appropriate remedies under the law to assess and collect real property taxes from the private entities to whom MWSS may have granted the beneficial use of its properties.

Philippine Dream Company, Inc. vs. CIR
G.R. No. 216044 promulgated on August 27, 2020

Facts:

The BIR issued a PAN to P Corporation for its supposed VAT and Expanded Withholding Tax deficiencies for TY 2002. P Corporation protested. Thereafter, a FLD and Assessment Notice dated March 31, 2006 was issued by the BIR, which was received by P Corporation on April 10, 2006. On May 10, 2006, P Corporation filed its protest. On October 31, 2007, P Corporation filed its petition for review before the CTA.

Issue:

Did P Corporation timely file its appeal to the CTA?

Ruling:

No. Under Section 228 of the Tax Code, in case of inaction of the Respondent CIR on the protested assessment, the taxpayer has two options, either (1) to 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 the 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 resort to one bars the application of the other.

In this case, P Corporation mistakenly computed the period of appeal. Having chosen the remedy of appeal against Respondent CIR's supposed inaction on its protest, P Corporation should have reckoned its 30-day period for appeal from the lapse of 180 days from the time it filed its protest against the FLD and Assessment Notice. Thus, the petition should have been filed on December 6, 2006, and not October 31, 2007.

SECURITIES AND EXCHANGE COMMISSION ISSUANCES

Memorandum Circular No. 5 s. 2021 issued on April 11, 2021

- This MC extends the deadline for the submission of 2020 annual reports for the calendar year ended December 31, 2020.
- Due to the challenges in the preparation and finalization of the audited financial statements ("AFS") and the completion of statutory audits brought about by the Enhanced Community Quarantine in some major parts of the country, the deadline for submission of the 2020 Annual Reports for calendar year ended December 31, 2020 is extended from April 15, 2021 to May 17, 2021.
- The extension applies to all publicly listed companies, issuers of registered securities and public companies.
- This extended deadline is without prejudice to the schedule on the filing of AFS as may be required by the BIR.

Memorandum Circular No. 6 s. 2021 issued on April 22, 2021

- This MC is issued to amend Rules 9 (Exempt Securities) and 10 (Exempt Transactions) of the Securities Regulation Code (SRC).
- *Rule 9.1 – Exempt Securities*
  Rule 9.2 – Other Exempt Securities (No changes, except for the title)
  Under this RMC, Rule 9.1.1 (previously just Rule 9.1) states that the requirements and procedures for registration under Section 8 (Requirement of Registration of Securities) and Section 12 (Procedure of Registration Securities), shall not as a general rule apply to

the enumerated classes of securities. It further added a new section – Rule 9.1.2, which states that the registration requirements shall not likewise apply to the following:

9.1.2.1. Any evidence of indebtedness issued by a financial institution that has been licensed by the BSP to engage in banking or quasi-banking shall be exempt from registration under Section 8.1 of the Code.

9.1.2.2. Evidence of indebtedness issued to the BSP under its open market and/or rediscounting operations;

9.1.2.3. Bills of exchange arising from a bona fide sale of goods and services that are distributed and/or traded by banks or investment houses duly licensed by the Commission and BSP through an organized market that is operated under the rules approved by the Commission;

9.1.2.4. Any security issued or guaranteed by multilateral financial entities established through a treaty or any other binding agreement to which the Philippines is a party or subsequently becomes a member (hereinafter referred as Multilateral Financial Entities or MFE), e.g., international financial institutions, multilateral development banks, development finance institutions or any other similar entities; or by facilities or funds established, administered, and supported by MFEs; Provided, that the issuer shall file an offering circular/ memorandum in a format prescribed by the Commission and containing among others; (1) information about the issuer and the security to be issued, (2) information about the MFE, and (3) information about the guarantee.

9.1.2.5. The registration requirements shall not likewise apply to evidence of indebtedness, e.g., commercial papers, that meet the following conditions:

9.1.2.5.1. Issued to not more than nineteen (19) non-institutional lenders;

9.1.2.5.2. Payable to a specific person;

9.1.2.5.3. Neither negotiable nor assignable and held on to maturity; and

9.1.2.5.4. In an amount not exceeding One Hundred Fifty Million Pesos (PhP150,000,000.00) or such higher amount as the Commission may prescribe.

It further added Sections 9.1.3 and 9.1.4 which regulates the exemption from registration.

- *Rule 10.1 Exempt Transactions*

The following changes were made to Section 10.1.3 which now reads:

"10.1.3. Offer or Sale of Securities to Qualified Buyers under Section 10.1(1) of the Code. Sections 8 and 12 shall not likewise apply to securities issued and sold to the following qualified buyers:

a. Bank;

b. Registered investment house;

c. Insurance company;

d. Pension fund or retirement plan maintained by the Government of the Philippines or any political subdivision thereof or managed by a bank or other persons authorized by the BSP to engage in trust functions;

e. Registered Securities Dealer;

f. An account managed by a Registered Broker under a discretionary arrangement as provided for in the other relevant provisions in these SRC 2015 Rules;

g. Registered Investment Company (e.g., mutual fund companies);

h. Provident fund or pension fund maintained by a government agency or by a government or private corporation and managed by an entity authorized accordingly by the BSP or the SEC to engage in trust function or in fund management;

i. A trust corporation that is authorized by the BSP to perform the acts of a trustee;

j. Unit investment trust funds that are established in accordance with rules and regulations of the BSP;

k. A fund established and covered by a trust or IMA agreement under a discretionary arrangement in accordance with rules and regulations of the BSP, A discretionary arrangement means that the entity managing the fund is granted authority to decide on the investment of the trust funds or IMA funds;

l. A fund established and covered by a trust or IMA agreement under a non-discretionary arrangement in accordance with rules and regulations of the BSP, provided that the beneficial owner/s or principal/s of such fund possess the qualifications on financial capacity and sophistication as specified in 2015 SRC Rules 10.1.11.1 for natural persons, and 10.1.11.2 for juridical persons; and provided also, that the treatment of such fund as qualified buyer does not contravene the trust or IMA agreement.
m. A fund established and covered by a trust or IMA agreement wherein the beneficial owner or principal of the fund has been deemed or conferred as a qualified buyer under SRC Sec. 10.1 (l) or SRC Rule 10.1.11; and
n. An entity with quasi bank license issued by BSP;
o. Pre-need company authorized by the Insurance Commission;
p. Collective Investment Scheme authorized by the relevant regulatory authority pursuant to existing laws and regulations;
q. A listed entity on the Philippine Stock Exchange, or a related body corporate of a Philippine Stock Exchange listed entity provided that it engages the service of a professional fund manager, through direct hire or via outsourcing to an authorized fund management entity;
r. A foreign entity not being established or incorporated in the Philippines that, if established or incorporated in the Philippines, would be covered by one of the preceding paragraphs; and
s. Such other person as the Commission may by rule or order determine as qualified buyers, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial and business matters, or amount of assets under management."

Memorandum Circular No. 7 s. 2021 issued on April 23, 2021

- This circular is issued to publicly-listed companies to promote good corporate governance and the protection of minority investor. The Securities and Exchange Commission (SEC) issued rules which gives a right to any number of shareholders of a corporation ("Qualifying Shareholders") who hold at least ten percent (10%) or more of the outstanding capital stock ("Qualifying Shares") of a Publicly Listed Company (PLC) to call for a Special Stockholders' Meeting, subject to the guidelines set under Section 49 of the RCC and other relevant regulations.
- *Rules:*
    1. The Qualifying Shareholders should have continuously held the Qualifying Shares for a period of at least one (1) year prior to the receipt by the Corporate Secretary of a written Call for a Special Stockholders' Meeting.
    2. The Call for a Special Stockholders' Meeting shall be in writing, signed by all Qualifying Shareholders, addressed to the Board of Directors and transmitted through the Corporate Secretary at least forty-five (45) days prior to the proposed date of the special meeting.
    3. The Board of Directors shall determine if the objectives and conditions in the Call for Special Stockholders' Meeting are consistent with the requirements of this Circular.
    4. In the event that the Board of Directors fail to respond to the Call for Special Stockholders' Meeting within twenty (20) days from receipt of the request, the Qualifying Stockholder/s may avail of the remedy provided under paragraph 7, Section 49 of the RCC. The Qualifying Shareholders may avail of the same remedy if the Board of Directors refuses to call a meeting under Section (4) above.
    5. Any officer or agent of the corporation who shall refuse to allow a Qualifying Shareholder to exercise his/her right to call a meeting shall be liable under Section 158 of the RCC.

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.