MT&F

MATA-PEREZ · TAMAYO · FRANCISCO

ATTORNEYS AT LAW

TAX JOURNAL

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Highlights

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REVENUE REGULATIONS (RR)

RR No. 11-2021 issued on June 23, 2021

- This RR implements the tax exemptions and privileges granted under RA No. 11523 or the FIST Act.

Highlights

- *Exempted Transactions*- the following transactions are covered under the tax exemptions:
  a) transfer of a Non-Performing Loan by a Financial Institution to a:
    - 1) Financial Institution Strategic Transfer Corporation (FISTC) or 2) to an individual
  b) transfer of Real and Other Properties Acquired by a Financial Institution to a 3rd party
  c) transfer of a Non-Performing Loan by a FISTC to a 3rd party
  d) transfer of Real and Other Properties Acquired by a FISTC to a 3rd party
  e) transfer of a Non-Performing Loan by an individual to a 3rd party
  f) transfer of Real and Other Properties Acquired by an individual to a 3rd party
  g) dation in payment of a Non- Performing Loan by a borrower to a:
    - 1) financial institution (FI) or 2) to a FISTC/all individuals
  h) dation in payment of a Non- Performing Loan by a 3rd party on behalf of a borrower to a:
    - 1) FI or 2) to a FISTC/all individual

- For the transactions to avail of the exemptions:
  - It must be issued with a Certificate of Eligibility (COE) issued by the Appropriate Regulatory Authority.
  - The Certificate of Eligibility serves as sufficient proof of Non- Performing Loan (NPL) /Real and Other Properties Acquired (ROPA) being a Non- Performing Asset (NPA) and the transfer being in the nature of a true sale, without the need of a prior Bureau of Internal Revenue (BIR) ruling.
  - This is required to be presented to the BIR for every application or request for issuance of Electronic Certificate Authorizing Registration (eCAR) involving the transfer of NPAs.
  - All sales or transfers of NPAs from FIs to FISTCs/individuals which are not in the nature of a "true sale" shall not qualify for the exemptions granted under the FIST Act.

- *Tax Exemptions Procedures regarding Transfers*

Transfers of real property located in PH	*Transfer of Shares of Stocks in a Domestic Corporation*
How to Avail Generally? The transfer must be first reported to the BIR, in which upon satisfaction that it is qualified for exemptions, an eCAR will be issued by the Commissioner. The Regional Director (RD) will then record such exempted transfers to effect the exemption.	**How to Avail Generally?** The transfer must be first reported to the BIR, in which upon satisfaction that it is qualified for exemptions, an eCAR will be issued by the Commissioner. The Corporation will then record such transfers in its books and records to effect the exemption.

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- **Procedure 30 days after COE is issued:**
  - a capital gains tax return shall be filed with the Revenue District Office (RDO) having jurisdiction over the transferred property/where the taxpayer is registered. The return shall be accompanied by either the original or certified true copy of the COE and the ff:
    - Sworn certification by FIs that the transfer is in the nature of a true sale
    - Individual that he/she has no other prior or pending application for issuance of COE with other FIs
    - Taxpayer's TIN and certificate of SEC registration (if FI/FISTC) of both transferor and transferee
    - Notarized Deed of transfer
    - Certificate of shares of stock used to pay the NPL

</td></tr>
<tr><td>For transfer of property:
- OCT/TCT/CCT or any other document showing proof of ownership over the real property tendered as payment for the NPL
- Certified true copy of the latest Tax Declaration and/or sworn Declaration of No Improvement by the Transferee or Certificate of no Improvement by the Assessor</td><td>For transfer of stocks:
- For listed shares, certification from PSE of the price index on the nearest date to the time of the transfer/latest FMV published in the newspaper at the time of transaction
- For unlisted shares, latest Audited Financial Statement of the issuing corporation with a computation of the book value per share, prior to date of transfer but not earlier than the immediately preceding year.</td></tr>
<tr><td colspan="2">If transfer is from FISTC/individual to a 3rd party, a mere photocopy of the COE is sufficiently provided that the barcode reading/electronically readable markings contained in the COE is already in place and operational in the BIR</td></tr>
<tr><td>Upon presentation of Capital Gains Tax Return, together with the corresponding COE and mentioned documentary requirements, the RDO where the property being transferred is located shall issue the corresponding eCAR for the registration of the real property in favor of the transferee.</td><td>Upon presentation of Capital Gains Tax Return, together with the corresponding COE and mentioned documentary requirements, the RDO shall issue the corresponding eCAR for the registration of the shares of stock in favor of transferee in the books of the corporation.</td></tr>
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RR No. 13-2021 issued on June 23, 2021

- This RR is issued to implement the penalty provisions under Sections 76, 77, 78, 79 and 80 of the TRAIN Law.

Highlights

- Any person who willfully attempts, in any manner, to evade or defeat any tax imposed under the Tax Code or the payment thereof shall be fined not less than Five Hundred Thousand Pesos (₱500,000.00) but not more than Php10 Million Pesos and be subject to imprisonment of not less than six (6) years but not more than ten (10) years shall, upon conviction thereof. Moreover, fine and penalty stated in the RR shall be in addition to other penalties provided for by law.
- Any person who commits a violation related to the printing of receipts or invoices shall be fined not less than Five Hundred Thousand Pesos (Php500,000.00) but not more than Php10

Million Pesos and be subject to imprisonment of not less than six (6) years but not more than ten (10) years, which includes the following acts:

a. Printing of receipts or sales or commercial invoices without authority from the BIR; or
b. Printing of double or multiple sets of invoices or receipts; or
c. Printing of unnumbered receipts or sales or commercial invoices, not bearing the name, business style, Taxpayer Identification Number, and business address of the person or entity; or
d. Printing of other fraudulent receipts or sales or commercial invoices.

- A taxpayer who is required but fails to transmit sales data to the BIR's electronic sales reporting system shall be subject to a penalty amounting to one-tenth of one percent (1/10 of 1%) of the annual net income as reflected in the taxpayer's audited financial statements for the second year preceding the current taxable year, or Ten Thousand Pesos (Php10,000.00), whichever is higher, shall be imposed, for each day of violation.
- An additional penalty of permanent closure of the taxpayer shall be imposed should the aggregate number of days of violation exceed one hundred eighty (180) days within a taxable year. The penalty shall not apply if the failure to transmit is due to force majeure or any causes beyond the control of the taxpayer.
- Any person who shall purchase, use. possess, sell or offer to sell, install, transfer, update, upgrade, keep, or maintain sales suppression devices shall be subject to a fine of not less than Five Hundred Thousand Pesos (₱500,000.00) but not more than Php10 Million Pesos and imprisonment of not less than two (2) years but not more than four (4) years. These are any software or device designed for or is capable of:

  a. suppressing the creation of electronic records of sale transactions that a taxpayer is required to keep under existing tax laws and/or regulations; or
  b. modifying, hiding, or deleting electronic records of sales transactions and providing ready means of access to them.

- The maximum penalty shall apply in case of cumulative suppression of electronic sales records in excess of the amount of Php50 Million Pesos, which shall be considered as economic sabotage.
- The RR also provides a schedule of penalties applicable to any person who commits offense/s related to fuel marking. Furthermore, any person who is authorized, licensed, or accredited to conduct fuel tests, who issue false or fraudulent fuel test results knowingly, willfully or through gross negligence, shall suffer the additional penalty of imprisonment ranging from one (1) year and one (1) day to two (2) years and six (6) months. The additional penalties of revocation of the license to practice his profession in case of a practitioner, and the closure of the fuel testing facility, may also be imposed at the instance of the court. Lastly, the penalties stated in the RR for offenses related to fuel marking are in addition to the penalties imposed under the Tax Code, as amended, Section 1401 of RA No. 10863 or the Customs Modernization and Tariff Act (CMTA).

REVENUE MEMORANDUM CIRCULAR (RMC)

RMC No. 80-2021 issued on June 29, 2021

- This Circular clarifies the suspension of the statute of limitations on assessment and collection of taxes due to the declaration of quarantine in various areas in the country.

Highlights

- The RMC is issued to supplement RMC No. 52-2021 which suspended the running of the statute of limitations on assessment and collection of taxes pursuant to Section 223 of the Tax Code due to the declaration of Enhanced Community Quarantine (ECQ) in Metro Manila, Bulacan, Cavite, Laguna, and Rizal (NCR Plus), and other applicable jurisdictions.
- The running of the statute of limitations in assessment and collection shall be suspended in areas placed under ECQ as well as Modified ECQ (MECQ). With such suspension, the concerned offices of the Bureau shall be provided with additional days for them to issue the Assessment Notices, Warrants of Distraint and/or Levy, as well as Warrants of Garnishment, to enforce collection of deficiency taxes against taxpayers covered by the ECQ and MECQ declaration, which is equivalent to the number of days the particular area was placed under ECQ and MECQ, plus sixty (60) days from its lifting.

RMC No. 83-2021 issued on July 12, 2021

- This Circular circularizes the IRR of Title XIII of the Tax Code, as amended by RA No. 11534 or the CREATE Act.

Highlights

- Tax and Duty Incentives
  - A Certificate of Authority to Import (CAI) is now required to avail of the Customs Duty extension on the importation of capital equipment, raw materials, spare parts or accessories.
  - The posting of a performance bond from the GSIS is now a precondition to the zero percent duty importation by registered business enterprises (RBEs). This can be lifted and waived by the Investment Priority Agency (IPA), subject to exportation, utilization and installation of the equipment for the former.
  - For the incentives on the importation of COVID-19 vaccines, it is now required that the vaccines must not be intended for resale or commercial purposes and only the importer entity will be solely and exclusively using such vaccines.
  - For the incentives on the importation of petroleum products, within the period provided in the Code or CMTA, the importer can file claims for the refund of duties and taxes under Section 900 of the CMTA, and Sections 106(A)(2), 109(u) and 112 of the Tax Code, respectively.

- Period of Availment
  - The option to avail of either Special Corporate Income Tax (SCIT) or enhanced deductions after the Income Tax Holiday (ITH) period shall be exercised by the registered business enterprise at the time of application for registration of the project with the concerned IPA. The option chosen shall be irrevocable for the entire duration of entitlement to such incentives.
    - RBEs who avail of the transitory provision and incentives under the CREATE Act on reapplication will not be eligible to apply for new incentives under the CREATE Act for their existing activities unless there is qualified expansion, entirely new project or additional investments.
  - Projects or activities located in areas recovering from armed conflict or a major disaster are entitled to 2 additional years of ITH, subject to either a declaration of the President or his/her representative of the existence of such conflict or disaster or the issuance of a presidential directive for the implementation of recovery programs of those affected.

- Strategic Investment Priority Plan (SIPP)
  - Additional Contents in the SIPP:
    - Qualifications for expansion, or entirely new projects or activities, to avail of incentives;
    - Criteria and conditions for existing registered projects or activities prior to the effectivity of the CREATE Act to register and avail of the incentives under the CREATE Act;
    - Conditions and qualifications for export enterprises registered prior to the effectivity of the CREATE Act to reapply and avail of SCIT after the expiration of the transitory period under Section 311(C) of the CREATE Act;
    - Specific qualification requirements or conditions for a particular sector or industry and other limitations as set and determined by the Board of Investments and in coordination with the Fiscal Incentives Revenue Board (FIRB); and
    - Export of at least seventy percent (70%) of products and services.

  - Criteria for Investment Priority Determination:
    - must be covered by the Philippine Development Plan or its equivalent, as published by the (NEDA) and other priority government programs
    - Meets the considerations indicated in Section 300(a) of the Tax Code
    - Industry tier requirements in Section 296 of the Tax Code
    - Constraints preventing RBEs from entering or upgrading the specified project or activity
    - Areas necessary for countrywide development or found to be deficient in infrastructure, public utilities, and other facilities

- Registration and Evaluation of Business Enterprises

  - Updated qualifications for those planning to register:
    - Included in the SIPP and met all the qualifications therein
    - ownership requirement of the Constitution and/or such law has been complied with (if project was nationalized)
    - Meet the minimum nationality percentage requirements in the membership of the Board of the Directors
    - Project it is engaged in is within the scope of its corporate powers and not prohibited by law

  - Role of the FIRB and the IPA
    - shall grant tax incentives to registered business enterprises only to the extent of their approved registered project or activity under the Strategic Investment Priority Plan.
    - If more than P1 billion, the FIRB (upon the IPA's recommendation) shall approve or disapprove the grant of tax incentives to registered projects or activities

  - Overall Evaluation and Registration Process
    - In general, the IPA will conduct:
      - Pre-evaluation of eligibility and documentary requirements
      - Initial impact evaluation
      - Order of payment
      - Notify the applicant of any issues encountered during the evaluation process (such applicant will be given a reasonable time to address and comply)

- If investment capital is Php1 billion or below, IPA will be the one granting the tax incentives (if accepted) or it will give notice of denial to the enterprise (if denied). If investment capital is above Php1 billion, the IPA will still give recommendations of tax incentives to be given, but the Secretariat shall review the evaluation and recommendations of the IPAs and prepare an evaluation report to be submitted to the Technical Committee.
    - The Technical Committee may adopt or reject the Secretariat's evaluation and shall submit its recommendations to the Board.
    - The Board shall have the exclusive authority to decide on all applications for tax incentives and may adopt, revise, or reverse the recommendations of the Technical Committee, through a Board resolution issued and signed by at least a majority of the members of the Board.
        - The FIRB Secretariat shall provide the concerned IPA with a copy of the Board resolution on the approved tax incentives to be provided in the terms and conditions for registration of the RBE.
- The end result of the application, if accepted, is a Certificate of Registration, which shall be issued by the IPA.

- *Tax Incentives*
    - All applications for Tax Incentives shall be filed with the concerned IPA and shall be filed on a per-project basis and made upon the prescribed forms.
    - Prior to the filing of Income Tax Return (ITR), the RBE shall apply for a Certificate of Entitlement to Tax Incentives (CETI) which shall be filed electronically, together with the documentary requirements through a system prescribed by the FIRB, or through the system of an IPA. Thereafter, upon verification of the compliance with the terms and conditions of its registration and payment of the corresponding fee by the RBE, the CETI shall be issued by the concerned IPA, in a prescribed form; upon application by the RBE which shall be attached to the ITR filed with the BIR.
    - The following are the conditions for the Grant of Tax Incentives:
        a. The availment of incentives shall be subject to the requirements and conditions set forth in the SIPP and performance review by concerned IPA;
        b. Compliance with the target performance metrics specified under the terms and conditions of the registration of a registered project or activity;
        c. Compliance with the e-receipting and e-sales requirement in accordance with Sections 237 and 237(a) of the Tax Code;
        d. Installation of an adequate accounting system that shall identify the investments, revenues, costs and profits or losses of each registered project or activity undertaken the enterprise separately from the aggregate investments or of the whole enterprise; or establish a separate corporation for each registered project or activity if the IPA should so require; and
        e. Submission of annual reports of beneficial ownership of the organization and related parties.

- *Monitoring Report*
    - The concerned IPA shall submit to the FIRB a report on the compliance of RBEs with the terms and conditions imposed for registration and availment of tax incentives within 90 days after the statutory deadline for filing the annual ITR for registered entities with investment capital of more than Php1 billion or within 180 days after the statutory deadline for filing the annual income tax return for registered entities with investment capital of Php1 billion and below.

- *Power of the President to Grant Incentives*
  - President may, in the interest of national economic development and upon the recommendation of the FIRB, modify the mix, period, or manner of availment of tax incentives, or craft the appropriate financial support package for a highly desirable project or a specific industrial activity subject to maximum incentive levels recommended by the FIRB.
  - The total period of incentive availment shall not exceed 40 years. The grant of ITH shall not exceed 8 years. For the remaining incentive period, a Special Corporate Income Tax (SCIT) rate of 5% may be granted. The FIRB shall determine whether the benefits that the government may derive from such investment are clear and convincing and far outweigh the cost of incentives that will be granted in determining whether a project or activity is highly desirable.
  - The exercise by the President of his powers under this section shall be based on a positive recommendation from the FIRB upon its determination that the following conditions are satisfied:
    1. the project has a comprehensive sustainable development plan with clear inclusive business approaches, and high level of sophistication and innovation
    2. minimum investment capital of Php50 Billion Pesos or its equivalent in US dollars, or a minimum direct local employment generation of at least 10,000 within 3 years from the issuance of the certificate of registration

- *Cancellation of incentives*
  - If the project fails to substantially meet the projected impact on the economy and agreed performance targets, the FIRB shall recommend to the President the cancellation of the tax incentive or financial support package or the modified period or manner of availment of incentives, after due hearing and an adequate opportunity to substantially comply with the agreed performance targets and outputs.

- *Filing and Submission of the Annual Tax Incentives Report*
  - All RBEs and Other Registered Entities (OREs) are required to file their tax returns and pay their tax liabilities, on or before the deadline as provided under the Tax Code using the electronic system for filing and payment of taxes with the BIR.
  - All RBES and ORES availing of tax incentives shall, within 30 calendar days from the statutory deadline for filing of tax returns and payment of taxes, submit to their respective IPAs or OGAs administering tax incentives the following:

    (1) Complete Annual Income Tax Return (ATIR) of their income-based tax incentives, value-added tax (VAT) exemptions and zero-rating, customs duty exemptions, deductions, credits or exclusions from the income tax base, and exemptions from local taxes; and

    (2) Complete Annual Benefits Report (ABR) which shall include data such as the approved and actual amount of investments, approved and actual employment level and job creation including information on quality of jobs and hiring of foreign and local workers, approved and actual exports and imports, domestic purchases, profits and dividend payout, all taxes paid, withheld and foregone.

- *Expanded Functions of the FIRB*
  - The FIRB shall exercise policy making and oversight functions on the administration and grant of tax incentives by the IPAs and OGAs administering tax incentives.
  - FIRB oversight functions over OGAs administering tax incentives
  - FIRB oversight functions over registered enterprises with tax incentives
  - Power to approve or disapprove the grant of tax incentives
  - Power to formulate place-specific strategic investment plans

- Power to Cancel, Suspend, or Withdraw the Enjoyment of Tax Incentives
    a. Non-compliance with the agreed performance targets or material violation of any of the conditions imposed in the grant of fiscal incentives or tax;
    b. Material misrepresentation of information for the purpose of availing more incentives than what it is entitled to under the Code; or
    c. Non-compliance of the registered business enterprise with the reportorial requirement.
- Power to require submission of incentives and benefits data
- Authority to publish incentives and benefits data
- Power to recommend the grant of non-fiscal incentives for highly desirable projects
- Power to adopt policies for supply chain development and expansion
- Power to approve application for tax subsidies
- Power to cancel, suspend, or withdraw the enjoyment of tax subsidy
    a. Misrepresentation or any fraudulent transaction or importation concerning the tax subsidy application;
    b. Any attempt to transfer or manipulate the issued Certificate of Entitlement to Subsidy;
    c. Use of the tax subsidy for purposes other than the mandated function/s of the applicant agency or the specific project or transaction as stated in the justification for tax subsidy application; and
    d. Non-compliance with the conditions and reportorial requirements under the CREATE Act or these Rules in the grant of tax subsidy.
- Submission of annual report to President.
- Evaluation of tax incentives granted to registered entities.
- Exercise all necessary and incidental powers in accordance with its expanded functions.

COURT DECISIONS

SUPREME COURT DECISIONS

CIR vs. The Hongkong Shanghai Banking Corporation Limited Philippine Branch
G.R. No. 227121 promulgated on December 9, 2020

(A taxpayer has the legal right to decrease the amount of what otherwise would be his taxes or altogether avoid them by means which the law permits.)

Facts:

The CIR issued a Final Assessment Notice (FAN) against HSBC for deficiency Income Tax on the sale of "Goodwill" of its Merchant Acquiring Business (MAB). HSBC filed its Administrative Protest. CIR issued a Final Decision on Disputed Assessment (FDDA). HSBC, thus, filed the present Petition for Review with the CTA Division. In its Answer, CIR claimed that the Deed of Assignment did not pertain to a sale of shares but to a sale or transfer of business or "Goodwill," which is subject to ordinary income tax and not capital gains tax. CTA Division granted HSBC's petition and cancelled the FDDA and FAN. The CTA Division found that, contrary to CIR's assertion, the evidence bears that the transaction in question is a sale or transfer of capital asset, and not a sale of an ordinary asset which the CTA *En Banc* affirmed.

Issue:

Is the deficiency income tax assessment against HSBC on the alleged sale of "Goodwill" of its MAB for Taxable Year (TY) 2008 proper?

Ruling:

No. In its intention to restructure its MAB in the Asia-Pacific Region in order to achieve efficiency, HSBC entered into two transactions: (1) the transfer of its Point of Sales Terminals, other information technology assets and Merchant Agreements of its MAB in the Philippines, in exchange for Company G-Philippines shares and (2) the subsequent sale or assignment of its Company G-Philippines shares to Company G-Singapore. The first transaction qualifies as a tax-free exchange.

The CIR, however, insists the second transaction involves an alleged sale of the "goodwill" of the MAB, which makes HSBC liable for deficiency income taxes. CIR anchors its finding on the value of the "goodwill" indicated in the Share Sale and Purchase Agreement. Thus, in the FAN, CIR subjected the gain derived by HSBC to the Regular Corporate Income Tax (RCIT) of 35% on the sale of its Company G-Philippines shares. The Court agrees with the findings of the CTA that the assessment has no legal and factual bases because the subject transaction is covered by capital gains tax and not RCIT.

A taxpayer has the legal right to decrease the amount of what otherwise would be his taxes or altogether avoid them by means which the law permits. This is called tax avoidance. It is the use of legal means to reduce tax liability. However, this method should be used by the taxpayer in good faith and at arms-length.

CIR vs. Yumex Philippines Corp
G.R. No. 222476 promulgated on May 5, 2021

(The fact of registration with the PEZA under RA No. 7916 alone excludes a corporation or enterprise from the coverage of corporations upon which IAET may be imposed.)

Facts:

A Preliminary Assessment Notice (PAN) with attached Details of Discrepancies, was issued by the BIR finding YPL liable to pay tax deficiencies including Improperly Accumulated Earnings Tax (IAET). Thereafter, a Formal Letter of Demand (FLD) was likewise issued.

YPL filed a protest on the FLD asserting its status as a PEZA-registered entity; and that since all of its activities are registered under PEZA, it is therefore fully exempt from the IAET.

YPL filed a Petition for Review before the CTA. The CTA held that the assessment is invalid and illegal because the BIR issued the FLD and the FAN without giving YPL an opportunity to answer the PAN, which is a violation of procedural due process and that there is no factual basis for the deficiency IAET assessment.

On the other hand, the CIR alleged that the PAN and FLD/FAN were properly issued by the BIR in compliance with RR No. 12-99 which allows constructive service of the PAN stating that if the notice to the taxpayer is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer.

Furthermore, the CIR asserts that the dates when the PAN and FLD/FAN had been sent can be easily seen in the registry return cards, which are part of the BIR records. The PAN was mailed on December 17, 2010, and 15 days therefrom, the BIR still had not received any response from YPL. Consequently, CIR considered the PAN to have been constructively served, and the FLD/FAN could already be issued by January 10, 2011.

Moreover, the CIR contends that there is sufficient factual basis for the IAET assessment. He stated that the YPL had two types of registered activities: (1) those enjoying ITH; and (2)

those under the 5% special rate. The IAET was being imposed on the income derived from YPL's registered activity under the ITH, and not from those under the preferential tax rate.

Issues:

1. Is the assessment of the BIR valid?
2. Is there a valid constructive service of the notices upon Yumex?
3. May the BIR impose IAET against Yumex?

Ruling:

1. No. Pursuant to RR No. 12-99, the taxpayer has 15 days from date of receipt of the PAN to respond to the said notice. Only after receiving the taxpayer's response or in case of the taxpayer's default can the BIR issue the FLD/FAN. Based on the records, the BIR issued a PAN dated December 16, 2010, which it posted by registered mail the next day, December 17, 2010. It then issued and mailed the FLD/FAN on January 10, 2011. Although posted on different dates, the PAN and FLD/FAN were both received by the Post Office on January 17, 2011, and served upon and received by YPL on January 18, 2011. Under the circumstances, YPL was not given any notice of the preliminary assessment at all and was deprived of the opportunity to respond to the same before being given the final assessment.

2. No. The reliance by the CIR on constructive service of notice is unavailing and not justified by the circumstances. The PAN was posted through registered mail so there are easily records available by which the BIR could have determined whether the YPL actually received the notice and the date of such receipt. The CIR did not offer any explanation as to why it did not verify first these details with the post office, which would have been the more prudent thing to do instead of immediately considering YPL to have already constructively received the PAN for purposes of issuing the FLD/FAN. Hence, since RR No. 12-99 explicitly grants the taxpayer 15 days from receipt of the PAN to file a response, the assessment is invalid for the violation of procedural due process.

3. No. RR No. 2-2001 identified additional corporations which are not subject to IAET, which includes enterprises duly registered with the PEZA. In this case, YPL is registered with the PEZA as an Ecozone Export Enterprise. PEZA-registered enterprises, are exempted from the imposition of the IAET, without further qualification. Section 4(g) made no distinction whether a corporation duly registered with the PEZA enjoys an ITH or the special tax regime at a rate of 5% on its registered activities.

   In other words, the fact of registration with the PEZA under RA No. 7916 alone excludes a corporation or enterprise from the coverage of corporations upon which IAET may be imposed.

CIR vs. CTA First Division and Pilipinas Shell Petroleum Corporation
G.R. No. 210501/G.R. No. 211294/G.R. No. 212490 promulgated on March 15, 2021 (Uploaded on July 8, 2021)

Facts:

PSPC is an importer of alkylate to produce petroleum products. While it has been proven before that it is not in the nature of gasoline but an additive, thus not subject to excise tax, the BIR still insisted in subjecting them to the tax, even seeking out legal assistance from the Bureau of Customs (BOC). The result of this assistance was Document No-059-2012, in which it was opined that since alkylate is similar to naphtha as a product of distillation, it should be subject to excise tax.

This led PSPC to file a petition for review, assailing the document as an invalid BIR ruling. It also pursued a suspension order against the planned implementation of the said document, which they had already started through the serving of a demand letter to PSPC.

The suspension order was eventually granted by the CTA Division, prompting BIR and BOC to file an omnibus motion to dismiss the case. CTA junked the omnibus motions, holding that it has jurisdiction over PSPC's petition since the involved document was a BIR ruling and the involved demand letter was a tax assessment.

This then led to the filing of the consolidated 3 petitions for certiorari filed by CIR, BOC and PSPC, with the first two petitions filed by the CIR and BOC against the granted suspension order of PSPC to restrain the excise tax assessment on its alkylate importations and its Import Entry and Internal Revenue Declarations (IEIRDs). The third petition was filed by PSPC against the denial of the CTA Division of its another application for suspension order against the collection of excise taxes on the alkylate delivered by MT Marine Express on the ground that it lacked jurisdiction over the subject alkylates in that ship.

Issues:

1. Are the CIR and BOC guilty of forum shopping?
2. Is the Document N-069-2012 a Respondent BIR ruling and in effect within the CTA's jurisdiction?
3. Is the Demand Letter a tax assessment and in effect within the CTA's jurisdiction?
4. Was there a violation of the exhaustion of administrative remedies?
5. Does the CTA have jurisdiction to issue the Suspension Orders beyond the period of its Amended Petition to Review?

Ruling:

1. Yes. It was shown that the first two petitions filed by the agencies were clear indications of forum shopping since the two petitions basically involve the same parties and the same issues, and a resolution of one of the petitions will amount to res judicata for the other petition.

2. Yes. Despite being argued by CIR and BOC that it is a mere document evidencing their internal communication between the two agencies, the tenor and wording of the document qualify it as a BIR ruling, which is classified to be the official position of the Petitioner BIR in regards to the classification and interpretation of tax laws. This means that the CTA then has jurisdiction over challenges on the said document.

3. Yes. Its jurisdiction is based from its appellate jurisdiction over a decision involving a disputed final assessment, which is the nature of the demand Letter. The Demand Letter issued by the Collector states that it is based on Document No. M-059-2012, the Commissioner of Customs (COC)'s August 31, 2012 Letter to the CIR asking for the latter's computation of deficiency excise taxes against PSPC, and the CIR's letter-reply thereto, while simultaneously attaching the said documents. The said attachments reveal that the computation amounting to P 1,994,500,677.47 came from the Petitioner CIR herself. It is therefore clear that the assessment against Petron, as contained in the Demand Letter, did not really come from the Collector, but actually from the COC and the Petitioner CIR. It has already been held that the designation of the demand letter is not the real test on whether it should constitute the final decision of the taxing authority which is ripe for judicial appeal; rather, the language and tenor should likewise be examined.

4. No, the exceptions are applicable in this case. With respect to challenges against tax issuances, jurisprudence recognized the following exception to the rule when the question is purely legal, which in this case, the issue of the validity of the BIR document is a clear legal issue that courts have to resolve.

5. No. It did not have jurisdiction to issue Suspension Orders over the assessments against the alkylate importations beyond the period covered by its Amended Petition for Review, particularly subsequent and future alkylate importations. The CTA law provides that to issue a suspension order, there must be a tax liability and considering that the CTA only has appellate jurisdiction over CIR's rulings, it has been held that they can only issue such orders for final assessments from the Petitioner CIR and not a mere preliminary assessment or purely inchoate future assessment.

CTA EN BANC DECISIONS

Dennis Yap vs. CIR
CTA EB No. 2272 promulgated on June 15, 2021

(Preliminary Collection Letter [PCL] *is a final demand or decision. While the subject PCL does not contain the words "final decision", the tenor is unmistakably one that warned the Taxpayer to settle or pay his tax liabilities)*

Facts:

Yap received 3 Letters of Authority, authorizing the examination of his books of accounts and other accounting records. He then received 3 FLDs, each with attached Details of Discrepancies and Assessment Notices.

On 22 September 2015 or within the alleged 60-day period to submit supporting documents, Yap filed 3 Legal Petition Notices supplementing his previous request for reinvestigation and transmitting relevant documents.

Yap then received a copy of the PCL and argued that he had requested for reinvestigation. Afterwards, Yap received a copy of CIR's Warrant of Distraint and/or Levy (WDL) and within 30 days, he filed a Petition for Review before the CTA Division which was dismissed. It ruled that the PCL is CIR's final decision on Yap's and thus, the 30-day period to file an appeal should be reckoned from Yap's receipt of the PCL. Since the prior Petition for Review was filed only on 01 February 2019, the CTA Division concluded that it has failed to acquire jurisdiction over the said petition as the assessments had already become final, executory and demandable.

Yap argues that the PCL cannot be considered as a final demand or decision appealable to the Court because the wordings of the PCL do not state in clear and unequivocal language that such letter already constitutes Respondent CIR's final determination of the disputed assessment. On the other hand, CIR agrees with the ruling of the CTA Division that the prior Petition for Review was filed out of time as Yap should have filed the same within 30 days from receipt of the PCL.

Issue:

1. Is the Petition for Review filed on time?
2. Is the PCL a final demand/decision?

Ruling:

1. No, the appeal must be filed within 30 days from receipt of such decision or ruling, or after the expiration of the period fixed by law for action. Following Section 228 of the Tax Code, after the filing of a protest against a tax assessment, the period of action on the part of the CIR is 180 days from the submission of documents which must be done within 60 days from the filing of the protest. For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within 60 days from date of filing of his letter of protest, otherwise, the assessment shall become final.

However, the 60-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. If the taxpayer fails to file a valid protest against the FLD within 30 days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

2. Yes, the PCL is a final demand or decision because it is noted that, while the subject PCL does not contain the words "final decision", the tenor is unmistakably one that warned Yap to settle or pay his tax liabilities; otherwise, CIR would proceed with his administrative summary remedies to ensure collection of the tax liabilities and protect the interest of the government. The "finality" of the latter's decision can also be inferred from the fact that Yap was similarly warned that his failure to pay the same will result in the accumulation of interest and surcharges.

CIR vs. Barrio Fiesta Manufacturing Corporation
CTA EB NO. 2186 (CTA Case No. 9880) promulgated on June 21, 2021

(CIR must ensure not only the sending of the FAN but also the assessment's receipt by the taxpayer.)

Facts:

On July 2, 2018, Barrio Fiesta received a WDL from CIR, which reasoned Barrio Fiesta's tax delinquency, forcing the latter to file a petition for review (with urgent motion to suspend tax collection) before the CTA, which was followed by a motion to lift garnishment. It contends that it never received the notice and receipt of the PAN and FAN. The CTA Division granted the petition, prompting the CIR to file this current petition, contending that the WDL served on Barrio Fiesta is indicative of the issuance of the PAN and FAN.

Issue:

Is the issuing of WDL indicative of the PAN and FAN'S issuance?

Ruling:

No, it is not indicative. It must be emphasized that the issuance of the subject notices and Barrio Fiesta's receipt thereof are two (2) different matters. The PAN and FAN's issuance is not in question in the present case but only the actual receipt thereof by the taxpayer. Even assuming that the notices were indeed issued, it does not prove the fact of their receipt by the intended addressee. Jurisprudence has consistently held that the Petitioner CIR must ensure not only the sending of the FAN but also the assessment's receipt by the taxpayer. In this case, there was no proof that Barrio Fiesta ever received any FAN or PAN from the CIR.

People of the Philippines vs. Juanchito Bernardo, Praxedes P. Bernardo and JDBEC Incorporated
CTA EB Crim. No. 079 promulgated on July 7, 2021

(A second pro forma Motion for Reconsideration did not toll the running of the 15-day period to appea ot the CTA en banc.)

Facts:

An Information was filed against respondents for failure to supply the correct and accurate information in Corporation J's ITR covering TY 2008. The CTA Division dismissed the case on the ground of prescription. Petitioner moved for reconsideration of the First Resolution. In the Second Resolution, the CTA denied petitioner's motion for being belatedly filed. Petitioner sought the reconsideration of the Second Resolution but was rejected by the CTA Division in the assailed Third Resolution. The CTA Division held that a second motion for reconsideration (MR) is a prohibited pleading.

Petitioner questions the finding that its action has prescribed. According to it, the CTA Division reckoned the 5-year prescriptive period when the BIR referred the Joint Complaint-Affidavits to the Department of Justice (DOJ) for preliminary investigation. Petitioner claims that the period from the filing before the DOJ up to the filing of the Information before the CTA should not have been counted. Moreover, Petitioner maintains that the CTA Division erred in ruling that its MR was belatedly filed. It argues that the applicable reglementary period to file an MR is 15 days and not 5 days as the Court ruled. According to it, the 5-day period for meritorious motions should not be used considering that the case was dismissed on the party's own free will in the First Resolution and not hinged on the Ex-Parte Joint Motion to Dismiss filed by the respondents.

Respondents argue that the actual filing of the case in court tolls the running of the prescriptive period. Additionally, considering that petitioner filed a second MR, the running of the reglementary period to file an appeal with the CTA En Banc was not tolled.

Issue:

Is the Petition for Review filed within the reglementary period?

Ruling:

No, the Petition for Review was not filed within the reglementary period and thus, the dismissal of the case was proper. Petitioner filed another MR seeking the reversal of the Second Resolution. Upon receipt of the Second Resolution, petitioner should have already elevated the dismissal of the case and the denial of its MR by filing a Petition for Review before the Court *En Banc* instead of filing another MR seeking the reversal of the Second Resolution. In so doing, petitioner assumed the risk that the 15-day reglementary period within which to file a Petition for Review would lapse, thus depriving the Court *En Banc* of jurisdiction to entertain the present petition. Moreover, and as correctly found by the CTA Division, RRCTA proscribes the filing of a second MR. Thus, the Court *En Banc* has no other recourse but to hold that petitioner's second pro forma MR did not toll the running of the 15-day period to appeal. It is noted that petitioner had 15 days reckoned from 22 January 2020 to file the Petition for Review before the Court *En Banc*. In failing to do so, the period to file the instant Petition for Review has indeed lapsed.

People of the Philippines vs. E & D Parts Supply Inc., Cipriano C. Uy, and Margaret L. Uy
CTA EB Crim. No. 075 (CTA Crim. Case Nos. 0-670 & 0-671) promulgated on July 05, 2021

(CIR is required to establish the guilt of the accused. Failure on this, the dismissal of the criminal action results to the dismissal of the corresponding civil action as the act or omission from which the civil liability might arise did not exist.)

Facts:

Two Separate Information for violation of Section 255 of Tax Code, in relation to Section 253(d) and 256 of the same code were filed against the E & D Parts Supply, Inc. (E & D) and its officers, Cipriano Uy (deceased) and Margaret Uy.

The CIR primarily argues that the PAN, FAN and Final Notice before suit were all received by E & D through one of its authorized personnel, thus the responsible officers of the Corporation will be held liable for the penal liability.

In its defense, E & D argues that the evidence presented by the CIR does not substantially establish a case against Margaret Uy since no evidence was presented to prove that she was an officer of the company at the time of the commission of the crime.

Issue:

Are E & D and its officers (Margaret Uy) liable for the crime charged?

Ruling:

No. A perusal of the evidence adduced by CIR showed that there is no document exhibiting that E & D was a registered taxpayer in 2006. The Articles of Incorporation and the General Information Sheet of E & D were not presented in Court. Clearly, CIR failed to establish the guilt of the accused as it failed to prove that she is one of the responsible officers in the E & D. Hence, with the dismissal of the criminal action against the accused Margaret L. Uy, the corresponding civil action was likewise dismissed as the act or omission from which the civil liability might arise did not exist.

With regard to the civil liability of the E & D, due to the acquittal of Margaret L. Uy, it resulted in the removal of the essential element of "willfulness" in the nonpayment of the tax therefore, E & D cannot be held liable under Section 255 of the Tax Code.

CTA DIVISION DECISIONS

iSCALE Solutions, Inc. vs. CIR
CTA Case No. 9845 promulgated on June 30, 2021

(Revenue Memorandum Order [RMO] No. 3-2009 requires surveillance activities in the conduct of Oplan Kandado must be authorized through a validly issued mission order.)

Facts:

A Petition for Review was filed by iScale Solutions, Inc. (iScale) to nullify the 48-hour notice and the 5-day VAT compliance notice issued by the BIR against iScale in pursuit of its Oplan Kandado activities, on the ground that the conduct of Oplan Kandado was procedurally infirm, that the issuance of the compliance notices was null and void, and that the BIR failed to show any basis on their assessments of iScale.

Issue:

Is the Oplan Kandado conducted in accordance with procedural due process?

Ruling:

No. RMO No. 3-2009 requires surveillance activities in the conduct of Oplan Kandado must be authorized through a validly issued mission order. In this case, no mission order was ever issued or shown to iScale at the onset of BIR's surveillance. Likewise, the compliance notices (the 48-hour notice and the 5-day VAT compliance notice) are also infirmed, for they failed to state the details of the findings of the investigating officers and computation and legal basis of the alleged VAT deficiency. Most notably, there was no PAN or FAN issued at all, and that the tax audit of iScale was actually still ongoing during the pendency of the case. Clearly, the Oplan Kandado was not conducted with the prescribed procedure and thus should be held null and void.

Petron Corporation vs. CIR
CTA Case. No. 9751, 9813 and 9848 promulgated on June 21, 2021

(The CTA is clothed with authority to review the Customs Memorandum Circular [CMC] No. 164-2012 and the letter of the Respondent CIR, embodying the interpretation of Section 148 of the Tax Code, as these are considered "other matters" contemplated under Section 7 of RA No. 1125, as amended, which includes the Customs Commissioner's decisions in cases involving liability for customs duties and fees under the Customs Law.)

Facts:

Petron Corp, an importer of alkylate, filed its three separated judicial claims for refund of excise taxes on its aforesaid importations of alkylate in 2016, which were later on consolidated. It is arguing that alkylate is not a product of crude oil distillation similar to naphtha and regular gasoline and that imposition of excise taxes on both imported alkylate and finished gasoline has resulted in double taxation.

In its defense, the CIR alleged that the CTA has no jurisdiction over the case since the subject matter thereof is a collateral attack on a validly issued CMC No. 164-2012 which embodied the interpretation of Section 148 of the Tax Code. Moreover, alkylate is a product of distillation and falls within the category of naphtha, regular gasoline and other similar products of distillation subject to excise tax under Section 148 of the Tax Code.

Issue:

1. Does the CTA have the authority to review CMC No. 164-2012 and CIR's letter?
2. Is the importation of alkylate subject to excise taxes?

Ruling:

1. Yes. The CTA is clothed with authority to review the CMC No. 164-2012 and the letter of the Respondent CIR, embodying the interpretation of Section 148 of the Tax Code, as these are considered "other matters" contemplated under Section 7 of RA No. 1125, as amended which includes the Customs Commissioner's decisions in cases involving liability for customs duties and fees under the Customs Law. Hence, rulings or opinions of the CIR or the COC implementing tax laws are reviewable by the CTA as they pertain to "other matters" arising under the Tax Code or other laws administered by the BIR or by the BOC.

2. No. Alkylate is not subject to excise taxes. While Section 148 of the Tax Code imposes the excise tax only and particularly to " naptha, gasoline and other similar products of distillation", it is to be noted that where the law enumerates the subject or condition upon which it applies, it is to be construed as excluding from its effects all those not expressly mentioned. In this case, the expert witness of Petron Corp, Mr. Simon Christopher Mulqueen, specifically stated in his Judicial Affidavit that alkylate is not a product of

distillation but produced through a process called "alkylation". Alkylate cannot be produced through distillation because alkylate only comes into existence after the combination of two components or raw materials, which is what alkylation does, and not the physical separation of a mixture, something that distillation does. Just because one of its two (2) basic ingredients was a product of distillation, does not make alkylate a product of it as well. Therefore, Alkylate cannot be classified under the catch-all item -"other similar products of distillation" under Section 148 of the Tax Code.

Fabtech Kitchens Unlimited, Inc. vs. CIR
CTA Case No. 9589 promulgated on June 23, 2021

(Non-receipt of the assessment notices violated its right to due process in the issuance of assessments which nullifies the same.)

Facts:

CIR issued a Letter Notice (LN) against FKU stating that a computerized matching conducted by the BIR disclosed discrepancies for TY 2012.

FKU received LOA to examine its books of accounts and other accounting records for all internal revenue taxes. CIR then issued a PAN with Details of Discrepancies and afterwards issued a FLD with Details of Discrepancies and Assessment Notices with Demand.

CIR issued a Preliminary Collection Letter (PCL). The issuance of a Final Notice Before Seizure (FNBS) followed on December 5, 2016. On February 27, 2017, a WDL was received FKU. FKU filed an administrative protest which was denied; hence, it filed a Petition for Review.

Warrants of Garnishment were issued to FKU bank accounts. FKU argues that the FLD and its accompanying Assessment Notices are void because the BIR failed to serve FKU with a copy thereof, the FLD was issued without the requisite PAN, the FLD was issued without prior proof of receipt of the PAN, and that FKU was not duly informed of the legal and factual bases of how the tax assessment was arrived at.

The CIR contends that the Court has no jurisdiction over the case as the subject assessment has long become final, executory and demandable for FKU's failure to timely file a valid protest despite service of 2 copies of the FLD on July 21, 2016 to its registered address.

Issue:

Is FKU liable for the assessed deficiency taxes under the FLD?

Ruling:

No, there is no proof that the notices were received by FKU. FKU denies receipt of the PAN, FLD and Assessment Notices but admits the receipt of the LOA, which it claims was served at its new business address in Makati City, despite bearing the same address as the PAN, FLD and Assessment Notices.

It explains that while the LOA was personally served at its new business address in Makati City, the PAN, FLD and Assessment Notices were served at its old business address. Consequently, it insists that its non-receipt of the assessment notices violated its right to due process in the issuance of assessments which nullifies the same.

Bethlehem Holdings, Inc. vs. CIR
CTA Case No. 10050 promulgated on July 7, 2021

(Requisites of a valid tax refund are: a) the claim of refund is filed within 2 years after payment of tax, b) the fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount withheld and c) it must be shown that the income received was declared as part of gross income on its return.)

Facts:

BHI filed with the BIR its Annual ITR for calendar year (CY) 2016 in March 2017, which was later amended in October 2017. In both of these ITRs, BHI indicated therein its option to be refunded for its tax overpayments for CY 2016.

In February 2019, BHI filed with the BIR RDO No. 41 an administrative claim for its excess and unutilized creditable withholding tax (CWT) for CY 2016 in the amount of Php7,859,319, which later became a petition for review, upon BIR's inaction of the administrative claim. It argues that a) it had complied with all the requirements for claiming a refund, b) that they were filed within the 2-year prescriptive period, c) its CWT for CY 2016 are duly supported by Certificates of Creditable Tax Withheld at Source issued by the payor as withholding agents, d) the income upon withholding was made was included as part of gross income declared in its ITR and e) it did not exercise the option to carry-over its excess and unutilized CWT for CY 2016 to the succeeding taxable periods.

Issue:

Is BHI entitled to the CWT refund?

Ruling:

Yes, it is entitled to the refund. BHI already signified in its annual ITR its intention to refund the excess CWT, as per the Tax Code. BHI was also able to meet all of the requisites for a valid tax refund. The Tax Code provides that the requisites of a valid tax refund are: a) the claim of refund is filed within 2 years after payment of tax, b) the fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount withheld and c) it must be shown that the income received was declared as part of gross income on its return. In this case, BHI was able to file its claim on February 22, 2019, which is a month short of the end of the prescriptive period which is on March 24, 2019. It was also able to show proof of withholding by presenting its Certificates of Creditable Tax Withheld at Source issued by its income payor during CY 2016, supporting the refund claim with duly accomplished CWT certificates. Finally, it was also able to declare that the income it received was part of its gross income by declaring it in its amended ITR, amounting to P52 million. Therefore, the refund claim shall be granted.

Pilipinas Kyohritsu vs. CIR
CTA Case No. 9757 promulgated on July 6, 2021

(For the export sale of service, it must be provent that the service was actually done outside the country and and to show proof of receipts for such services.)

Facts:

PK filed with the BIR Large Taxpayers Division (LTAD) its Application for Tax Credits/Refunds, covering the period from January 1, 2016 to March 31, 2016, in the aggregate amount of Php10,923,055.28 and also submitted complete supporting documents along with its Letter-Request for refund of unutilized input VAT. This request was however denied via a denial letter from the BIR denying its claim for tax credit/refund based on the following grounds:

- there were no export sales for the covered period because the total sales for the first three (3) quarters per quarterly VAT returns were already greater than the total sales per annual ITR for Fiscal Year (FY) ending 31 March 2016;
- proceeds from export sales were not duly accounted for in acceptable foreign currency in accordance with BSP rules and regulations;
- there was no sufficient proof that the goods were exported and the services were rendered to non-resident foreign corporations (NRFCs) doing business outside the Philippines;
- the total amount of input VAT arising from importations and local purchases in the 4th quarter of FY 2016 should only be Php10,856,049.93; and,
- the authenticity of the entries/information appearing on Kyohritsu's supporting documents cannot be ascertained outright and BIR cannot merely rely upon the affidavit of Kyohritsu's representative as to the general validity of the invoices and official receipts (ORs).

Issue:

Is PK entitled to the refund of its unutilized VAT in the amount of Php10,923,055.28 covering the period from January 1 to March 1, 2016?

Ruling:

Partially yes, PK is entitled to the refund of its unutilized VAT but only up to Php6,583,578.11.

The Tax Code and previous jurisprudence provided some of the important requisites in obtaining a credit/refund of input VAT and this was partially complied with by PK. Particularly, PK was able to show that it was engaged in zero-rated sales of goods and services to the PEZA and goods outside the Philippines, as shown in their quarterly VAT return for FY 2016.

Specifically, for the export sale of goods, PK was able to show the sale of goods to a NRFC like SWS Japan, supported through receipts and that a Certificate of Inward Remittance supported the fact of acceptable payment in foreign currency, in accordance to BSP rules.

For the export sale of services however, it failed to prove that the service was actually done outside the country and that they failed to provide receipts for such services. Hence, the total zero-rated sales of PK only counted its export sales of goods outside the Philippines and goods and services to PEZA, thus amounting to Php1,279,725,754.31 worth of zero-rated sales.

Pk was also able to show that the VAT being claimed are not transitional input taxes in their quarterly VAT return and that the input taxes are due or paid, though it was only a portion. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, since the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume. Hence, only the amount of Php10,592,965.65 represents valid input VAT attributable to its zero-rated sales. While the input taxes have been applied against output taxes during and in the succeeding quarters, there was still output VAT due amounting to Php72,285.72. Deducting the latter from the valid input VAT is allocated to total zero-rated sales of Php10,520,679.93. After dividing it with the total zero-rated sales and multiplying it with the valid zero-rated sales, the product of Php6,583,578.11 is attained, which will serve as the unutilized input VAT attributable to valid zero-rated sales.

Advanced Systems, Inc. vs. CIR
CTA Case No. 9984, promulgated on July 1, 2021

(RR No. 1-2017 did not create an exception to the 120+30-day mandatory and jurisdictional period.)

Facts:

ASI filed with the BIR an administrative claim for tax credit of excess input tax attributable to zero-rated export sales covering the period April 1, 2012 to March 31, 2013.

During the pendency of the claim, RMC No. 54-2014 was issued, which was later followed by RR No. 1-2017.

ASI then received a denial letter denying its claim for VAT credit for the covered period which prompted it to file a Petition for Review with the CTA Division seeking the cancellation of the denial letter and to grant its claim for tax credit.

The BIR argues that the Court has no jurisdiction over the case since the petition was filed out of time, that RR No. 1-2017 does not modify the rule that the inaction of the CIR to the claim for refund/tax credit is "deemed a denial" and assuming that the Court has indeed acquired jurisdiction, the tax credit was properly disallowed.

Issues:

1. Was the Petition for Review timely filed?
2. Was ASI deprived of its right to appeal due to RMC 54-2014?
3. Does the issuance of RR No. 1-2017 modify the 120-day period rule of RMC No. 54-2014?

Ruling:

1. Yes. The Rules and Regulations of the Court of Tax Appeals (RRCTA), provides that a party adversely affected by a decision or a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA En Banc within 15 days from receipt of the questioned decision or resolution.

   ASI was able to file on time amidst the circumstances, since the filing period was continuously extended first through its granted motion for extension of time and later the COVID-19 pandemic which postponed the reckoning period and extended the filing period to 30 days, now to be reckoned from June 1. Therefore, the filing of the present Petition for Review on June 30, 2020 was timely.

2. No, it was not deprived of its right to appeal. RMC No. 54-2014 is clear and unequivocal that BIR's inaction on an application for refund/credit shall become final and unappealable where there is failure on the party of the taxpayer to file a judicial claim with the CTA within 30 days from the expiration of the 120-day period. There is nothing therein which prohibited ASI's claim. On the contrary, the refund was denied because ASI failed to act on its application within the 120- day period.

3. No, RR No. 1-2017 did not create an exception to the 120+30-day mandatory and jurisdictional period. It is clear from previous jurisprudence as well as Sec. 2 and 3 of the law itself that such claims filed prior to RMC No. 54-2014 shall continue to be processed administratively. RR No. 01-2017 did not and could not amend Section 112 of the Tax Code, as amended.

Casas +Architects, Inc. vs. CIR
CTA Case No. 10058 promulgated on July 9, 2021

(The 2-year prescriptive period to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return because this is where the figures of the gross receipts and deductions have been audited and adjusted, reflective of the results of the operations of a business enterprise.)

Facts:

A Petition for Review was filed by Casas seeking the refund representing its alleged excess and unutilized creditable withholding taxes for Taxable Year 2016 pursuant to Section 76 of the Tax Code and claims that it made an option to claim the refund of the subject overpaid taxes and consistent with that option, it did not carry over the same to the succeeding taxable quarter.

The CIR contends that the instant Petition for Review for tax refund was filed out of time. Citing Sections 204 (C) and 229 of the Tax Code, he asserts that the administrative and judicial claims for refund shall be filed within 2 years from the date of payment of taxes or penalties and not from the date of the filing of the annual ITR.

CIR submits that the reckoning of the 2-year period for Casas' refund claim would be from the date of monthly remittance of the claimed CWTs for January to December 2016. CIR also notes that the last month covered by the subject claim is December 2016, which under RR No. 2-98, as amended, should have been paid on January 15, 2017 or January 20, 2017, if it availed of the eFiling and Payment System (eFPS). Therefore, Casas had only until January 15, 2019 or January 20, 2019, as the case may be to file its claim for refund for the months of January to December 2016 both in the administrative and judicial levels. Considering that Casas' judicial claim was filed on April 5, 2019, CIR is convinced that its judicial claim was filed way beyond the prescriptive period for filing the same.

Issue:

Is the claim for refund filed beyond the prescriptive period for filing?

Ruling:

No, the claim for refund was filed within the prescriptive period. Jurisprudence clarified that the 2-year prescriptive period to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return because this is where the figures of the gross receipts and deductions have been audited and adjusted, reflective of the results of the operations of a business enterprise. After examination by the CTA of the "Prior Year's Excess Credits Other Than MCIT found in Casas' AITR for TY 2017 shows a zero balance, which means that the amount prayed to be refunded in this case has not been carried over to the succeeding TY 2017. Thus, the unutilized CWTs for TY 2016 may be the subject of a claim for refund under Section 76 of the Tax Code.

Petron Corporation vs. CIR and Collector of Customs
CTA Case No. 8544 promulgated on July 19, 2021

(Alkylate is not a product of distillation, but of alkylation, thus, the logical conclusion is that alkylate is not subject to excise tax.)

Facts:

In a previous decision regarding Petron's claim for tax refund, the Court held that while alkylate is not a direct product of distillation, its very existence was derived from the

utilization of the two distilled raw materials, namely, olefins and isobutane, which are both products of crude oil distillation, thus the refund claim, in that case, was set aside and alkylate was held to be subject to excise tax.

Petron now argues that it is erroneous for the Court to apply the rule on strict construction of tax exemptions against it merely because the instant case involves a claim for refund. Citing *CIR vs. Fortune Tobacco Corporation*, it alleged that strict construction would apply only if a claim for refund is based on a tax exemption, however, the same rule would not apply to a claim for refund premised on the erroneous payment of tax or the government's exaction of tax in the absence of a law. It also argues that to be covered by Section 148 of the Tax Code, alkylate itself, rather than its "raw materials", must be the "product of distillation".

Issue:

Is alkylate considered a product of distillation, hence, its importation is subject to excise taxes?

Ruling:

No, it is not. Not all claims for tax refund partakes the nature of a tax exemption. Rather, its claim for refund of erroneously paid taxes is premised on the doctrine of strict interpretation. As held in the *Fortune Tobacco Corporation* case, the rule in the interpretation of tax laws is that a statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. Since Congress did not clearly, expressly, and unambiguously impose excise tax on alkylate (or those which are not directly produced by distillation) under Section 148(e) of the Tax Code, applying the strict interpretation doctrine to the instant case, alkylate is not a product of distillation, but of alkylation, thus, the logical conclusion is that alkylate is not subject to excise tax.

Furthermore, there must be a clear delineation between a claim for refund premised on a tax exemption under a statute and a claim for refund based on erroneous payment when the taxpayer or article, as the case may be, is not subject to tax. The former should be construed against the claimant-taxpayer, whereas the latter should be construed against the government. Petron's importation is placed under the second scenario where the interpretation should be construed against the government. In this case, non-taxability is the rule, while taxability is the exception. Hence, in the absence of a distinction in Section 148 of the Tax Code between direct and indirect products of distillation should work in Petron's favor, following the rule on strict interpretation in the imposition of taxes.

Berringer Marketing Inc. vs. CIR
CTA Case No. 8978 promulgated on July 13, 2021

(FLD and its corresponding FAN are void for the lack of a definite date for payment.)

Facts:

Berringer received an undated PAN with attached Details of Discrepancies being assessed for deficiency Income Tax, VAT, Expanded Withholding Tax (EWT), and Withholding Tax on Compensation (WTC) for Taxable Year 2010. A FLD was subsequently issued by CIR. A Request for Reconsideration was later filed by Berringer, upon the inaction of CIR, a Petition for Review was filed with the present court.

Berringer primarily argues that the assessment issued against them lacks the sufficient factual and legal basis as required by the Tax Code since the assessment is based only on presumptions and/or estimates with regard to the demandable amount of taxes.

It further argues that the compromise penalty should be declared void since there was no mutual agreement between CIR and Berringer.

On the other hand, CIR argues that he observed both procedural and substantive due process in issuing the assessments. He insists that Berringer was well informed of the factual and legal bases of his findings. He states that the audit conducted is in line with the mandate of the Tax Code, including the matching of Berringer's Summary List of Sales and Purchases (SLSP) with that of its customers and suppliers, respectively. He insists Berringer failed to present sufficient evidence and valid argument to rebut the discrepancies he had noted. Further, CIR explains that the assessments had not yet prescribed because Berringer executed 2 Waivers which validly extended the assessment period until 30 June 2014.

Issue:

Is Berringer liable to pay the deficiency tax liabilities?

Ruling:

No, Berringer is not liable to pay the deficiency tax liabilities because the FLD and its corresponding FAN are void for the lack of a definite date for payment. In a string of cases decided by the Supreme Court, it was established that an assessment must contain not only a computation of tax liabilities but also a demand for payment within a prescribed period. Without a definite demand, such assessment is considered invalid. An assessment must contain 1) a computation of the tax liability, 2) an explanation narrating the CIR's factual and legal bases, and 3) a definite demand for payment. In the case at bar, the assessments issued against Berringer do not contain a definite demand for payment for lack of due date. The FLD merely states CIR's request for Berringer to pay the deficiency tax liabilities through the authorized agent bank within the time shown in the FANs. The said date only serves as the end date for CIR's computation of the interest and penalty.

SECURITIES AND EXCHANGE COMMISSION ISSUANCES

Opinion No. 21-08 issued on May 17, 2021

- This Opinion was requested by Trident Water Company Holdings, Inc. (Trident Water), with regard to its inquiry in relation to the election of a foreign member in the 11-seat Board of Directors of Manila Water Company, Inc. (MWC), a corporation engaged in a partly nationalized activity.
- The SEC clarified in this opinion that the participation of foreign investors in the governing body of any public utility shall be limited to their proportionate share in its capital in pursuance to the relevant provisions of the 1987 Constitution and the Anti-Dummy law. In determining the "representation of alien stockholders in the board of directors of corporations engaged in partially nationalized activities", the basis should be the actual share of the alien stockholders in the capital of the corporation which share, however, should not exceed the foreign equity ceiling, prescribed by law for a particular corporation or association.
  In the case at bar, Trident Water can elect a foreigner as a director provided that the number of foreigners in the 11-member Board of MWC does not exceed the allowable seats (40% x 11 = 4 seats) that may be filled up by a foreigner. This is subject to the limitations, if any, that are provided in MWC's By-Laws and in the applicable special rules that are implemented by the regulatory authority of the water industry.

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