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# TAX JOURNAL

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## *Highlights*

## BIR ISSUANCES

Revenue Regulations (RR)

- RR No. 17-2021 - Amends certain provisions of RR No. 6-2019 to implement the extension of the Estate Tax Amnesty pursuant to Republic Act (RA) No. 11569, which amended RA No. 11213 (Tax Amnesty Act) (Page 3)

Revenue Mémorandum Circular (RMC)

- RMC No. 82-2021- Addresses the absence of confirmation/acknowledgement e-mail after uploading of documents to electronic Audited Financial Statements (eAFS) System (Page 3)
- RMC No. 87-2021- Prescribes the acceptance of Philippine Identification (PhilID) Card as an acceptable supporting document for proof of address and valid proof of identification for all transactions or frontline services with the Bureau of Internal Revenue (BIR) (Page 4)
- RMC No. 91-2021 - Provides the guidelines in the filing of returns and payment of the corresponding taxes due thereon, and submission of reports and attachments falling within the period from August 6 to August 20, 2021 for taxpayers under Enhanced Community Quarantine (ECQ) and Modified Enhanced Community Quarantine (MECQ) (Page 4)
- RMC No. 92-2021- Extends the deadline for filing of position papers, replies, protests, documents and other similar letters and correspondences in relation to the ongoing BIR audit investigation and filing of VAT Refund with the value-added tax (VAT) Credit Audit Division (VCAD) due to the declaration of ECQ and MECQ in the National Capital Region (NCR) and other areas of the country (Page 4)
- RMC No. 93-2021- Suspends the running of the statute of limitations on assessment and collection of taxes pursuant to Section 223 of the National Internal Revenue Code, as amended ("the "Tax Code"), due to the declaration of ECQ and MECQ in the NCR and other areas of the country (Page 5)
- RMC No. 94-2021- Clarifies the computation of Donor's Tax in case the heir waves/renounces his share from the specific property forming part of the estate of the decedent (Page 5)
- RMC No. 97-2021- Clarifies the taxation of any income received by social media influencers (Page 6)

## COURT DECISIONS

Supreme Court Decisions

- Commissioner of Internal Revenue (CIR) v. CTA First Division and Pilipinas Shell Petroleum Corporation (Page 8)

CTA Division

- Arrow Freight Corporation vs. CIR (Page 9)
- Procter & Gamble Distributing (Philippines), Inc., vs. CIR (Page 10)
- Rieckermann Philippines, Inc., vs. CIR (Page 12)
- Citiparking Management Corporation vs. CIR (Page 13)
- Philippine Airlines, Inc. vs. CIR (Page 13)

## DOLE ISSUANCE

- DOLE Labor Advisory No. 4 - Working Conditions of Delivery Riders in Food Delivery and Courier Activities pursuant to Article 5 of the Labor Code and RA No. 11058 (Page 14)

## SEC ISSUANCES

- Opinion No. 21-06- Retail Trade Law; Water Filtration Services (Page 15)
- Opinion No. 21-07- Re: Engaging in Mass Media and Advertising Activities thru the Offering of Space on Assets (Moving Structures) (Page 15)

## BOC ISSUANCE

- Customs Memorandum Order (CMO) No. 24-2021- Rules and Regulations Implementing Customs Administrative Order No. 3-2020 on the Disposition of Forfeited and Abandoned Goods through Condemnation (Page 16)

# BIR ISSUANCES

## REVENUE REGULATIONS (RR)

**RR No. 17-2021 issued on August 3, 2021**

- The regulations are hereby promulgated to implement the extension of the Estate Tax Amnesty provided the Tax Amnesty Act by amending certain provisions of RR No. 6-2019.

*Highlights*

*Section 9:*

- The Estate Tax Amnesty Return (ETAR) (BIR Form No. 2118-EA) shall be filed by the executor or administrator, legal heirs, transferees or beneficiaries, who wish to avail of the estate tax amnesty not later than June 14, 2023 with the Revenue District Office (RDO) having jurisdiction over the last residence of the decedent. The deadline was moved from June 14, 2021 to June 14, 2023.
- Within (5) working days from receipt of documents for estate amnesty tax application, the concerned RDO shall either endorse the Acceptance Payment Form for payment of estate amnesty tax with the Revenue Collection Officers or AABs, or shall notify the taxpayer for any deficiency in the application.
- Proof of settlement of the estate, whether judicial or extrajudicial, need not accompany the ETAR if not yet available at the time of filing but no electronic Certificate Authorizing Registration (eCAR) shall be issued unless such proof is presented and submitted to the concerned RDO.

*Section 13*

- Until such time that the eCAR system is capable of generating one (1) eCAR for all properties covered by a single transaction, one eCAR shall be issued per real property, including improvement if any, covered by an OCT/TCT.
- The eCAR shall only be issued upon submission of the proof of estate settlement.
- If there are properties in the estate settlement documents that were not included in the ETAR, they will be excluded from the eCAR unless additional estate tax amnesty payment is made if the submission is within the amnesty period. Otherwise, they will be subject to estate tax.

## REVENUE MEMORANDUM CIRCULAR (RMC)

**RMC No. 82-2021 issued on July 7, 2021**

- This Circular addresses the absence of confirmation/acknowledgement e-mail after uploading documents to eAFS System.

*Highlights*

- In the absence of confirmation/acknowledgement e-mail after uploading of documents to the eAFS System, in lieu of the confirmation/acknowledgement e-mail, copies of screenshots from the eAFS clearly showing the details contained in the screenshot are considered sufficient proof of submission to the BIR by the concerned taxpayer of the documents described in the said screenshots.

**RMC No. 87-2021 issued on July 15, 2021**

- This Circular prescribes the acceptance of PhilID Card as an acceptable supporting document for proof of address and valid proof of identification for all transactions or frontline services with the BIR.

*Highlights*

- All revenue employees/officials processing BIR frontline services requiring presentation of any valid government-issued ID shall accept/allow the PSA-issued PhilID Card as proof of identification of the taxpayer.
- Presentation of the PhilID alone is sufficient as a valid proof of identification; hence, there is no need to require additional/other government ID to establish the identity of the taxpayer.

**RMC No. 91-2021 issued on August 3, 2021**

- This Circular provides the guidelines in the filing of returns and payment of the corresponding taxes due thereon, and submission of reports and attachments falling within the period from August 6 to August 20, 2021 for taxpayers under ECQ and MECQ.

*Highlights*

- The Circular was published in the context of the possible surge of COVID-19 cases due to the Delta Variant, placing Metro Manila and other areas in the country under ECQ and MECQ. To give relief to the affected taxpayers:
    - The deadline of filing of returns and payment of corresponding taxes that fall within the period from August 6 to August 20 will be extended for a period of 15 calendar days from August 20.
    - If the ECQ/MECQ is further extended, then the 15-calendar day extension will be reckoned from the lifting of the ECQ/MECQ

  During the said period, taxpayers may:
    - Pay internal revenue taxes at the nearest Authorized Agent Banks (AARB)
    - File and pay the corresponding taxes to Revenue Collection Officers (even if there are available AABs)
        - Provided that it does not exceed PhP200,000
    - Pay taxes through these online facilities:
        - Landbank, DBP, UnionBank, GCash, PayMaya and other mobile payment platforms
- If the extended deadline falls on a working holiday, the same shall be on the next working day.

**RMC No. 92-2021 issued on August 9, 2021**

- This Circular extends the deadline for filing of position papers, replies, protests, documents and other similar letters and correspondences in relation to the ongoing BIR audit investigation and filing of VAT Refund with the VCAD due to the declaration of ECQ and MECQ in the NCR and other areas of the country.

*Highlights*

- The deadline for filing of the following papers, letters, and documents falling due on August 6, 2021and during the ECQ and MECQ period, including extensions thereof, for taxpayers registered with the RDOs in areas covered by the ECQ and MECQ declaration or for registered taxpayers filing the aforementioned papers, letters, and documents with the

appropriate BIR Offices located in areas covered by the ECQ and MECQ declarations is hereby extended as follows:

| Letter/ Correspondence | Extended Deadline |
|---|---|
| Position Paper and Supporting Documents in Response to Notice of Discrepancy | 30 Days from lifting of the ECQ and/or MECQ |
| Reply and Supporting Documents in Response to the Preliminary Assessment Notice | 15 days from lifting of the ECQ and/or MECQ |
| Protest Letter in Response to the Final Assessment Notice/ Formal letter of Demand | 30 Days from lifting of the ECQ and/or MECQ |
| Transmittal Letter and Supporting Documents in relation to Request for Reinvestigation | 30 Days from lifting of the ECQ and/or MECQ |
| Request for Reconsideration to the Commissioner of Internal Revenue on Final Decision on Disputed Assessment | 30 Days from lifting of the ECQ and/or MECQ |
| Submission of Documents in Response to Subpoena Duces Tecum | 15 Days from lifting of the ECQ and/or MECQ |
| Submission of Documents in relation to First, Second, and Final Notice | 10 Days from lifting of the ECQ and/or MECQ |
| Other Similar Letters and Correspondences | 30 Days from lifting of the ECQ and/or MECQ |
| Filing of VAT Refund with VCAD | 30 Days from lifting of the ECQ and/or MECQ |

**RMC No. 93-2021 issued on August 9, 2021**

- This Circular suspends 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 ECQ and MECQ in the NCR and other areas of the country.

*Highlights*

- Section 223 of the Tax Code provides that: "The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter".
- In relation thereto, the running of the statute of limitations for assessment and collection of deficiency taxes is suspended in the affected jurisdictions while ECQ and/or MECQ 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. 94-2021 issued on August 10, 2021**

- This Circular clarifies the computation of Donor's Tax in case the heir waves/renounces his share from the specific property forming part of the estate of the decedent.

*Highlight*

- General renunciation of an heir on his share from the inheritance is not subject to Donor's Tax. However, when there is a partial renunciation of inheritance and the heir is waiving his share to only identified properties but not to the entire properties of the decedent, donor's tax shall be imposed on the value forgone as a result of such waiver/renunciation.
- In partial renunciation of inheritance, the net value of inheritance waived shall be imposed donor's tax. The net value of inheritance is the difference between the value of the supposed rightful share of the heir as against the value of property he actually received from the estate of the decedent.

**RMC No. 97-2021 issued on August 16, 2021**

- This Circular clarifies the taxation of any income received by social media influencers.

*Highlight*

- The BIR issued this Circular since they have been receiving reports that some social media influencers have not been paying their income taxes despite earning huge income from the different social media platforms or they are not registered with the BIR.
- The term "social media influencers" referred to in this Circular includes all taxpayers, individuals or corporations, receiving income, in cash or in kind, from any social media sites and platforms (YouTube, Facebook, Instagram, Twitter, TikTok, Reddit, Snapchat, etc.) in exchange for services performed as bloggers, video bloggers or "vloggers" or as an influencer, in general, and from any other activities performed on such social media sites and platforms.
- Unless exempted pursuant to the provisions of the Tax Code, as amended, and other existing laws, social media influencers shall be liable to income tax and Percentage or Value-Added Tax.

A. Income Tax- Social media influencers other than corporations and partnerships are classified for tax purposes as self-employed individuals or persons engaged in trade or business as sole proprietors, and therefore, their income is generally considered business income.

Social media influencers derive their income from the following sources:

1. YouTube Partner Program
2. sponsored social and blog posts
3. display advertising
4. becoming a brand representative/ambassador -
5. affiliate marketing
6. co-creating product lines
7. promoting own products
8. photo and video sales
9. digital courses, subscriptions, e-books
10. podcasts and webinars

To constitute gains or profits from the conduct of trade or business, the payments must be received by a social media influencer in consideration for services rendered or to be rendered, irrespective of the manner or form of payment. Therefore, if a social media influencer receives free products in exchange for the promotion thereof on his/her/it YouTube channel or other social media accounts, he/she/it must declare the fair market value of such products as income.

Income treated as royalties in another country, including payments under the YouTube Partner Program, shall likewise be included in the computation of the gross income of the social media influencer and shall be subjected to the schedular or corporate tax rates.

For resident aliens, any income derived from Philippine-based contents shall generally be taxable. Thus, the burden of proof that the income was derived from sources without the Philippines lies upon the resident alien. Absent such proof, the income will be assumed to have been derived from sources within the Philippines.

B. Business Tax

Besides income tax, social media influencers are also liable for business tax, which may either be percentage or VAT. Self-employed individuals whose gross sales or gross receipts and other non-operating income do not exceed the VAT threshold of PhP3 Million shall have the option to avail of the eight percent (8%) tax on gross sales or gross receipts and other non-operating income in excess of Two hundred fifty thousand pesos (PhP250,000) in lieu of the graduated income tax rates.

C. Allowable Deduction

There shall be allowed as deduction from gross income, among others, all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession.

Social media influencers may claim itemized deductions. As an example, in the case of YouTubers for instance, the common business expenses that may be deducted from their gross income include, but not limited to, the following:

1. filming expenses (cameras, smartphones, microphone and other filming equipment);
2. computer equipment;
3. subscription and software licensing fees;
4. internet and communication expenses;
5. home office expenses (ex. proportionate rent and utilities expenses);
6. office supplies;
7. business expenses (e.g., travel or transportation expenses related to YouTube business,
payment to an independent contractor or company for video editing, costume designer, advertising and marketing costs (cost of contests and giveaway prizes, etc.);
8. depreciation expense; and
9. bank charges and shipping fees.

In lieu of the itemized deductions, the taxpayer may elect Optional Standard Deduction (OSD) or a standard deduction not exceeding forty percent (40%) of gross sales/receipts in the case of individual taxpayers, or 40% of its gross income in the case of corporations.

D. Tax Compliance- Social media influencers must register with the BIR, keep Books of Accounts, file tax returns and pay the corresponding taxes, and withhold taxes, if applicable.

E. Liabilities for Failure to File Returns and Pay Taxes- Social Media influencers who willfully attempts to evade the payment of tax or willfully fails to make a return, to supply accurate and correct information or to pay tax shall, in addition to the payment of taxes and corresponding penalties, be liable criminally liable.

F. Avoidance of Double Taxation- A social media influencer receiving income from a nonresident person residing in a country with which the Philippines has a tax treaty must inform the latter that he/she/it is a resident of the Philippines, and is, therefore, entitled to claim treaty benefits provided under the relevant tax treaty.

Income from YouTube

Early this year, Google LLC, the owner of YouTube, informed the public that any payments from YouTube through any other agreement between the content creator and YouTube (e.g., through the YouTube Partner Program) will be treated as royalties starting June 1, 2021 and that Chapter 3 of the United States (US) Internal Revenue Code requires Google to collect tax information, withhold taxes, and report to the US tax authority when a creator on YouTube earns royalty revenue from viewers in the US. Creators outside the US were thus advised to submit tax information to Google LLC. Hence, for the purpose of fixing the withholding tax rate to be applied on all income payments from YouTube, social media influencers residing in the Philippines are hereby advised to submit their tax information to Google to be eligible to claim treaty benefits under the tax treaty between the Philippines and the US.

# COURT DECISIONS

## SUPREME COURT DECISIONS

**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 08, 2021)

*(Forum shopping exists "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded or the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.)*

*Facts:*

Three petitions were filed on the conflict regarding the issue of whether alkylate, a raw material being imported by Pilipinas Shell Petroleum Corporation (PSPC), is subject to excise tax. Despite the consensus that it is not subject to excise tax, the BIR still insisted on subjecting alkylate to the tax, even seeking out assistance and legal opinions from the Bureau of Customs (BOC) in the process. The first petition was a petition for review on certiorari, filed by the CIR and BOC, assailing the CTA en banc's resolution that denied their initial petition to contest an interlocutory order by the CTA Division which allowed the suspension order prayed for by PSPC against the excise tax assessment made by CIR beyond the period covered by its Amended Petition for Review. The second petition was a petition for certiorari filed by the CIR and BOC, assailing the CTA Division's resolution that granted a suspension order prayed for by PSPC against the excise tax assessments on its Import Entry and Internal Revenue Declarations (IEIRDs). The third petition was a petition for certiorari with an application for a Temporary Restraining Order/writ of preliminary injunction filed by PSPC against the resolution of the CTA Division which denied its application for a suspension order against the collection of excise taxes on the alkylate delivered by MT Marine Express on the ground of the CTA Division's lack of jurisdiction.

*Issue:*

1. Are the CIR and BOC guilty of forum shopping?

2. Does the CTA Division have jurisdiction to issue suspension order against the excise tax assessment made by the CIR?

*Ruling:*

1. Yes, the CIR and BOC are guilty of forum shopping. Forum shopping exists "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded or the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." The rule is that absolute identity of parties is not required but only a shared identity of interest. In this case, although the BIR and the BOC are separate government agencies, in this particular instance, their functions overlap with respect to the assessment and collection of excise taxes for imported articles. 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. Moreover, the Document No. N-059-2012 is a BIR ruling, and is thus, within the jurisdiction of the CTA. Despite being argued by CIR and BOC that it is a mere document evidencing internal communication between the two agencies, the tenor and wording of the document qualifies it as a BIR ruling which is classified to be the official position of the BIR with respect to the classification and interpretation of tax laws. This means that the CTA then has jurisdiction over challenges on the said document. In addition, while there was a violation of the non-exhaustion of administrative remedies, 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.
2. No, the CTA did not have jurisdiction to issue Suspension Orders over the assessments against PSPC's alkylate importations beyond the period covered by its Amended Petition for Review, particularly PSPC's 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, the CTA can only issue such orders for final assessments from the CIR and not a mere preliminary assessment or purely inchoate future assessment.

## CTA DIVISION DECISIONS

**Arrow Freight Corporation vs. CIR**
CTA Case No. 10064 promulgated on July 13, 2021

*(It is settled that all presumptions are in favor of the correctness of tax assessments. The good faith of the tax assessors and the validity of their actions are thus presumed.)*

*Facts:*

Petitioner Arrow Freight Corporation (Arrow Freight) filed an administrative claim for refund in the amount of PhP9,188,766.00, allegedly representing its excess unutilized creditable withholding taxes (CWTs) for calendar year 2016 in April 2018 on the reason that the BIR then issued the Letter of Authority (LOA) dated February 26, 2018, authorizing certain revenue officers to examine Arrow Freight's books of accounts and other accounting records for all internal revenue taxes including documentary stamp tax and other taxes for the period from January 1, 2016 to December 31, 2016. This was received by Arrow Freight on February 28, 2018. Subsequently, the BIR also issued a Preliminary Assessment Notice (PAN), and the Final Assessment Notice (FAN), with Formal Letter of Demand (FLD) dated September 16, 2019, which was received by Arrow Freight on October 8, 2019, assessing it for deficiency taxes for calendar year 2016. Arrow Freight then filed a petition for review on

April 11, 2019. It argues that the claim for refund should be granted because all the elements necessary for the grant of refund of unutilized CWT are present. In its defense, the BIR is now positing that the claim for refund cannot prosper. Settled is the rule that taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable and Arrow Freight failed to substantiate the amount of PhP9,188,766.00 it claims to have erroneously paid to the BIR as excess CWTs for the year 2016. It further contends that Arrow Freight also has deficiency income tax, VAT, expanded withholding tax, and improperly accumulated earnings tax, as evidenced by the FAN/FLD for 2016. It also argues that claims for refund partake the nature of tax exemption, hence, are not favored and to be construed as strictissimi juris against the person or entity claiming the refund.

*Issue:*

Is Arrow Freight entitled to its claim for refund?

*Ruling:*

No, Arrow Freight is not entitled to the refund. While Arrow Freight was able to comply with Section 76 of the Tax Code, by signifying in its annual corporate adjustment return that its balance of PhP9,188,766 will be subject for a claim for refund or credit, law and jurisprudence also provide that to claim the refund or credit, the claim must be filed within a 2-year prescriptive period, the fact of withholding must be established by a copy of a statement duly issued by the payor to the payee, and the income upon which the taxes are withheld must be included in the return. In this case, Arrow Freight was able to file within the 2-year prescriptive period by filing an administrative claim for refund in April 2018, which is within the 2-year period (until 2019). While it was able to establish the fact of withholding in a statement issued through certificates and a schedule of creditable tax withheld, it was only able to satisfy up to the extent of around PhP8,623,221.77, deducting PhP740,000.49 that were not signed and with incorrect tax identification numbers (TIN). Finally, Arrow Freight was also able to report in its Return its gross income from its trucking services and other sources of revenue, which amounted to PhP9,158,753.95. All in all, Arrow Freight's unutilized excess creditable withholding taxes amounted to PhP8,250,300.42. However, Arrow Freight is not entitled to the said unutilized excess CWTs for the taxable year 2016. It is settled that all presumptions are in favor of the correctness of tax assessments. The good faith of the tax assessors and the validity of their actions are thus presumed. In this case, Arrow Freight never objected to the admissibility of the FAN/FLD when they were formally offered in court, meaning that it is to be presumed that the assessments are valid and binding. Since the deficiency income tax assessed amounted to PhP190 million which exceeds the unutilized CWTs, he cannot be entitled to the latter and must pay the assessed taxes.

**Procter & Gamble Distributing (Philippines), Inc., vs. CIR**
CTA Case No. 9946 promulgated on July 22, 2021

*(Entitlement to a refund or issuance of a tax credit certificate (TCC) involving excess withholding taxes requires compliance with certain conditions.)*

*Facts:*

P&G filed with the BIR its Annual Income Tax Return (ITR) for FY 2016, wherein it declared a taxable income of Php109 Million. P&G reported a regular corporate income tax (RCIT) in the amount of Php32.8 Million and a minimum corporate income tax (MCIT) of Php2.5 Million. In total, P&G calculated its income tax liability at Php50.8 Million. In its ITR, P&G likewise reported that it has a total income credit in the amount of Php105 Million. Moreover, in its ITR, P&G also indicated its option to refund its excess and unutilized CWT for FY 2016 and as result thereof, P&G did not carry over the amount of Php105 million to

the succeeding taxable year. Thereafter, P&G initiated its administrative claim for refund; and due to the CIR's inaction, P&G filed the petition for review before the CTA. P&G argues that it has a right to a refund since its excess CWTs remain unutilized. Section 76 of the Tax Code provides that **in** case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Hence, since it did not opt to carry-over the excess and unutilized CWTs to the succeeding taxable year, it should be properly entitled to a refund thereof.

*Issue:*

Is P&G entitled to the refund of its excess and unutilized CWT for FY 2016 in the amount of Php105 million?

*Ruling:*

The claim for refund was partially granted. A corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a Tax Credit Certificate or to claim a cash refund. If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period. In this case, P&G chose to refund its excess and unutilized CWTs. In the case of *CIR v. Team (Phils.) Energy Corporation*, the Supreme Court laid down the following requirements for a corporate taxpayer to be entitled to a refund or issuance of a TCC involving excess withholding taxes, to wit:

1. The claim for refund was filed within the two-year reglementary period pursuant to Section 229 of the Tax Code;
2. The fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and income tax withheld from that amount; and
3. It is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income.

*For the first requisite*, P&G filed its Annual ITR on October 14, 2016. Counting two (2) years from this date, P&G had until October 14, 2018 within which to file a claim for refund of its excess and unutilized CWTs both in the administrative and judicial levels. P&G filed its administrative claim on May 31, 2018 and its judicial claim on October 11, 2018. Hence, the claim for refund was timely filed.

*For the second requisite*, the CTA noted that the certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. In this case, P&G submitted the Certificates of Creditable Tax Withheld at Source and the Summary Alphalist of Withholding Agents of Income Payments Subjected to Creditable Withholding Taxes (SAWTs) for FY 2016. However, out of the Php101.4 Million duly supported by the CWT certificates (BIR Form No. 2307), the amount of Php1.4 Million should be disallowed since the CWT certificate are for the said amount of tax credits is outside of the period subject for refund. Moreover, the said certificate is not signed by the payor.

*For the third requisite*, to prove that the income payments related to the CWTs being claimed for refund were reported as part of its gross income subject to income tax in FY 2016, P&G submitted its VAT registration TIN Sales Invoices, VAT registration TIN Credit Memos, VAT registration TIN Official Receipts, General Ledger (GL), Reconciliation Schedules and Adjusting Journal Entries. However, only Php86.2 Million was able to traceable in the P&G's GL and annual ITR. Moreover, in the said amount, the Php1.5 Million which was traced to P&G's GL and Annual ITR in FY 2015, should be disallowed since the

declaration of income received should be made in the same period with the claiming of the related tax credit.

Hence, out of the total claim of Php105 Million, the CTA partially granted the claim for refund of the unutilized excess CWT of P&G in the amount of Php84 Million.

**Rieckermann Philippines, Inc., vs. CIR**
CTA Case No. 9613 promulgated on July 22, 2021

*(The Tax Code requires that in order for a revenue officer to conduct audit examinations and assessments, it must be authorized by the Commissioner, pursuant to a Letter of Authority)*

*Facts:*

Petitioner Rieckermann received a PAN finding it liable for deficiency taxes for taxable year 2006. An FLD and its corresponding FAN was later followed which prompted Rieckermann to file its protest against the FLD/FAN. At first, the CIR was willing to consider Rieckermann's protests, continuing the audit and investigation of its taxes for taxable year 2006. However, since Rieckermann failed to contest the assessment made in the FLD/FAN, the CIR then indicated through a letter that the assessments issued have become final and executory. Rieckermann continued with its protest by supporting it with schedules and other information that would disprove the deficiency tax assessments. CIR still did not budge and sent a Final Decision on Disputed Assessment (FDDA), prompting the filing of the petition before the Court. Rieckermann contends that it is not liable for the assessed deficiency income tax, VAT and expanded withholding tax (EWT) for taxable year 2006 and since it filed a valid protest, the assessments issued are not final and executory. In its defense, CIR argues that Rieckermann failed to contest the FLD/FAN as the protest it filed only contained summaries and schedules without the necessary receipts, invoices and other documents to support the same.

*Issue:*

Is the assessment against Rieckermann void?

*Ruling:*

Yes. The assessments are void and must be set aside because the CIR had a fatal flaw- its revenue officers lacked authority to conduct the audit investigation. The Tax Code requires that in order for a revenue officer to conduct audit examinations and assessments, it must be authorized by the Commissioner, pursuant to a LOA. The CIR failed to show any LOA that authorized its examiners to do the assessments. While a LOA was indeed mentioned in the notice of informal conference and memorandum during the trial, jurisprudence provides that pieces of evidence offered by the BIR in CTA shall not be given evidentiary value since they must be offered in evidence and be made part of the records. CIR failed to present the LOA that was indicated in its memorandum and notice of informal conference, as evidence in court, nor was it made part of its records. Assuming that the said LOA was offered as evidence and as part of its records, Revenue Memorandum Order No. 43-90 provides that there must be a newly issued LOA for every reassignment and transfer of cases and along with the Tax Code, it further provides the list of duly authorized representatives of the Commissioner who can issue LOAs. Tax verification notices and memorandums can also serve as valid LOAs provided that it is issued by the required officers. While the examination of Rieckermann's records had already been transferred and re-assigned to other revenue officers via the tax verification notice and the memorandum, they were only issued by a revenue district officer, which is not among the list of required officers that can issue a LOA. Furthermore, it was also revealed by one of the reassigned officers that no LOA was further issued to authorize their examination. Thus, the petition by Rieckermann was granted.

**Citiparking Management Corporation vs. CIR**
CTA Case No. 9451 promulgated on July 23, 2021

*(The BIR has a period of 3 years to assess internal revenue taxes, reckoned from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. In case where the BIR issues the assessment within the said 3-year period, it has another 3 years to collect the taxes.)*

*Facts:*

A Formal Letter of Demand (FLD) and the Warrant of Distraint and/or Levy (WDL) was issued against Citiparking Management Corporation (Citiparking) for taxable year 2007. Citiparking filed a Petition for Review before the CTA questioning the validity of the assessment of the BIR. The CIR argues that the assessment has become final, executory, and demandable by reason of Citiparking's failure to timely file a valid protest. In addition, the CIR contends that Citiparking failed to specify newly discovered or additional evidence as well as the applicable law, rules and regulations, or jurisprudence in its protest. Thus, Citiparking's protest is allegedly void and without force or effect.

*Issue:*

Is the Petition for Review timely filed?

*Ruling:*

Yes. As regards the timeliness of the subject Petition for Review, Section 11 of RA No. 1125, as amended, provides that any party adversely affected by a decision or ruling of the CIR may file an appeal with the CTA within 30 days after the receipt of such decision or ruling. In this case, considering that the subject WDL was received by Citiparking on July 28, 2016, it had 30 days therefrom or until August 27, 2016, to appeal and challenge its validity with the CTA. Thus, the filing of the Petition for Review on August 26, 2016, vested this Court with jurisdiction over the present petition. The BIR has a period of 3 years to assess internal revenue taxes, reckoned from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. In case where the BIR issues the assessment within the said 3-year period, it has another 3 years to collect the taxes. In the instant case, considering that the subject assessment was issued within the 3-year prescriptive period to assess, the BIR had another 3 years within which to initiate the collection of taxes by distraint or levy or by court proceeding. Further, said period for collection began to run on the date the assessment notice was released, mailed or sent to the taxpayer. Accordingly, since the FLD/FAN was issued on December 15, 2010, the CIR had a period of 3 years to enforce collection of the subject deficiency taxes by distraint or levy or by a proceeding in court. Evidently, the prescription had already set in when the subject WDL was issued by the CIR on July 26, 2016.

**Philippine Airlines, Inc. vs. CIR**
CTA Case No. 9913 promulgated on July 29, 2021

*(For the franchisee to be exempt from paying excise taxes on imported alcohol and tobacco, it must show that a) it paid its corporate income taxes, b) the imported supplies are for its transport/non-transport services and activities, and that c) the supplies are not locally available in reasonable quantity, quality or price)*

*Facts:*

Philippine Airlines (PAL) is a domestic corporation, which was granted a franchise to operate air transport services domestically and internationally by virtue of Presidential Decree (P.D.) No. 1590. It imports various liquors and wines as part of its in-flight and commissary supplies. In April 17, 2013, BOC ordered the collection of excise taxes from PAL in the

amounts of PhP2,139,699.09 and PhP2,352,544.34 for its importation of alcohol and tobacco supplies. PAL paid the excise taxes under protest and subsequently filed an administrative claim for refund with the BIR, which then prospered into a Petition for Review before the CTA. PAL argues that it is exempt from paying excise taxes pursuant to its franchise since RA No. 9334 did not repeal P.D 1590. CIR in its defense, contends that Section 131 of the Tax Code, as amended by RA No. 9334 withdrew PAL's conditional tax exemption and that PAL failed to prove the veracity of its tax refund claim.

*Issue:*

Is PAL entitled to a refund of the excise taxes it paid?

*Ruling:*

No, it is not entitled. While PAL was able to timely file its claim for refund by filing it two days before the lapse of the period, PAL failed to prove that the excise taxes it paid were illegal. Indeed, the Tax Code as amended by RA No. 9334 did not repeal P.D. 1590's grant of tax exemption to PAL, as per jurisprudence. However, P.D 1590 and jurisprudence have emphasized that these exemptions, particularly from excise taxes, are subject to the following conditions: a) the corporate income tax must be paid, b) the said supplies are imported for the franchisee's transport/non-transport operations and that c) they are not locally available in reasonable quantity, quality or price. PAL was able to prove payment of corporate income tax through its previous ITRs and the imported supplies were proven to be for its transport operations, indicated as "inflight materials" for international inflight consumption in its Import Declaration & Entry and Authority to Release Imported Goods (ATRIG). However, it failed to sufficiently show that the imports were not locally available at reasonable prices, since PAL only relied on price lists from two dealers and RMC No. 90-2012 which was based on a 2010 price survey, not 2013. Thus, PAL's petition to claim refund of excise taxes was denied.

## DEPARTMENT OF LABOR AND EMPLOYMENT ISSUANCE

**DOLE Labor Advisory No. 4 issued on July 28, 2021**

- This advisory is issued to ensure compliance with the applicable general labor standards and better working conditions for all delivery riders in food delivery and courier activities using digital platforms.
- All delivery riders who are deemed employees are entitled to the following minimum benefits, as provided for in the Labor Code:
    A. Minimum wage;
    B. Holiday pay;
    C. Premium pay;
    D. Overtime pay;
    E. Night shift differential;
    F. Service Incentive leave;
    G. Thirteenth-month pay;
    H. Separation pay;
    I. Retirement pay;
    J. Occupational safety and health standards;
    K. Social Benefits e.g., SSS, PhilHealth, Pag-IBIG; and
    L. Other benefits under existing laws.

# SECURITIES AND EXCHANGE COMMISSION ISSUANCES

**Opinion No. 21-06 issued on May 10, 2021**

- Waterlogic is requesting for an opinion on the applicability of the Retail Trade Liberalization Act of 2001("RTLA") on their proposed investment in the Philippines to provide water filtration system services.
- Waterlogic, a foreign company, would like to invest and establish a corporation in the Philippines with one hundred percent (100%) foreign ownership. The main business activity of said corporation is to provide water filtration services utilizing its own patented water filtration system (the "system") at offices, businesses or households of its customers who wish to avail of the same. The water filtration services of Waterlogic also includes the provision of monthly maintenance services to ensure that the system it has installed will continue to operate at the optimum guaranteed level. In consideration for the services that it will provide, Waterlogic will charge its customers a monthly subscription or service fee.
- The customer will never become the owner of the system installed by Waterlogic, as well as the machineries and equipment used in relation to the provision of the service, because ownership over the remains with Waterlogic. Consequently, customers have the obligation to return these items to Waterlogic upon termination of the services.
- The SEC opined that under the RTLA, "retail trade" is defined as "any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption." Hence, the law covers only the sale of goods for consumption to the general public as end-user.
- Thus, for sale transactions to be considered as "retail", the following elements must be present:

    1. The seller should be habitually engaged in selling;
    2. The sale must be direct to the general public;
    3. The object of the sale is limited to merchandise, commodities or goods for consumption.
- Moreover, the SEC opined that a person who renders services for hire or pay, or who leases services, is not engaged in the retail business because he does not sell goods to the general public. A firm engaged in the business of rendering services, in some occasions, may require certain materials in order that the service may be made. In such cases, the client has to pay for the cost of these materials separately from the cost of the service. Although this is a sale, the same is incidental and is not being pursued as an independent business. Thus, the same is not considered retail trade.
- In this case, Waterlogic is engaged merely in the sale of water filtration services. While machineries and equipment will be installed at the location of its clients, the same shall never be owned by said clients and will be returned to Waterlogic upon termination of services. As payment for its services, the company will be charging a monthly subscription fee. Since Waterlogic is a service enterprise, and does not sell goods to its clients, it is not considered as engaged in retail trade as defined under the RTLA.

**Opinion No. 21-07 issued on May 10, 2021**

- The opinion was requested by Metro Promo Concepts Corporation (MPC) with regard to its queries whether its proposed new business of offering space in moving vehicles (assets) for the purpose of advertising products and services constitutes MPC and the owner of the

assets as engaged in advertising and mass media activities, which has constitutional implications.

- The SEC has distinguished the concept of mass media and advertising in its previous opinions, where it was held that advertising is concerned with the creation or conceptualization of the commercial messages with the goal of promoting the goods or services, whereas mass media is involved with the dissemination of information to the public through any medium of communication. However, it has been ruled in a previous DOJ opinion that when an advertising firm sells billboard spaces to advertisers, they are considered to have been engaged in mass media as well for they are disseminating information of billboard spaces to the public. MPC's proposed plan to sell space in moving assets for advertising purposes falls within this DOJ classification, thus they are considered to be engaged in both advertising and mass media activities. Since they are a domestic corporation wholly owned by Filipino citizens, the Constitution allows them to pursue such activities.
- As for the owners of the assets (a 3rd party logistics company), the SEC does not consider them to be engaged in both advertising and mass media activities like MPC, since based on their contractual arrangement, it is MPC who controls and owns the structures and contents that are being advertised in the said moving assets, basically being the only one who is actually advertising the spaces to advertisers. The 3rd party logistics company only retains ownership over the moving assets.

## BUREAU OF CUSTOMS ISSUANCE

**CMO No. 24-2021 issued on August 5, 2021**

- Goods Subject to Condemnation-
    1. Restricted goods which are highly dangerous to be kept or handled;
    2. Goods that are absolutely prohibited unless the mode of disposition is specifically provided by the Customs Modernization and Tariff Act (CMTA);
    3. Goods that are prohibited by law to be released, unless the mode of disposition is specifically provided by the CMTA or by regulation;
    4. Goods that have no commercial value; and
    5. Goods that are injurious to public health.
- Modes of Condemnation-
    1. Rendering;
    2. Crushing;
    3. Thermal decomposition;
    4. Breaking;
    5. Shredding;
    6. Pyrolysis;
    7. Dumping if applicable and deemed as most practicable among other modes; or
    8. Any other method deemed appropriate by the Condemnation Committee and approved by the District Collector.
- There shall be a Condemnation Committee, which shall be tasked to perform the following functions, to wit:
    1. Approve/disapprove the recommendation of the Auction and Cargo Disposal Division (ACDD) or its equivalent unit for the accreditation of a serviced contractor;
    2. Issue the Order of Condemnation for the approval of the District Collector;
    3. To impose, administer and/or recommend to the District Collector the imposition of administrative and/or such other sanctions as maybe appropriate against any service contractor, person or entity found to have committed disorderly act or any act prejudicial or inimical to the interest of the

Government or violated any law, rules and regulations, in connection with any condemnation activity; and

4. Perform other related functions as may be directed by the District Collector.

- Applications for accreditation of service contractors shall be evaluated by the Condemnation Committee. The Certificate of Accreditation shall be valid for three (3) years from the date of accreditation, unless sooner revoked for cause by the District Collector.
- The ACDD or equivalent unit shall, within twenty-four (24) hours from receipt of the Order of Condemnation, furnish the shipping line concerned, via email or other electronic means, the approved Order of Condemnation and supporting documents for the issuance of the required Container Release Order (CRO) covering the shipment for condemnation. For this purpose, the ACDD shall secure from the shipping lines or AISL their respective email address or other means of electronic transmission.
- The Shipping line shall within seventy-two (72) hours from receipt of the Order of Condemnation and supporting documents from the ACDD or equivalent unit, issue the CRO in favor of the nominated service contractor. The shipping lines shall also send copies of the COR electronically to the terminal operators for issuance of their Gate Pass.
- In the event the CRO is not issued despite the lapse of the 72 hours, the District Collector shall write the terminal operator for the issuance of the corresponding gate pass to allow the transfer of the container to the condemnation facility.
- In cases where the goods for condemnation are loaded in containers whose owners are unknown or are owned by shipping lines which are no longer operating in the Philippines and issuance of the CRO is no longer possible, the District Collector concerned shall directly inform the terminal operator of such fact and request the terminal operator to issue the corresponding gate pass even without the requisite CRO.
- Service contractors shall commence the pull-out of containers within twenty-four (24) hours from issuance of the CRO by the shipping line. Unless a different period is indicated in the Order of Condemnation, the nominated service contractors must complete the pull-out containers within five (5) days from issuance of the CRO or authority from the Bureau of Customs, whichever is applicable.
- Upon termination of the condemnation activity, the Supervising Team for Condemnation or equivalent unit shall cause the preparation of the Completion Report which shall be signed by all the members of the Supervising Team including the authorized signatory of the service contractor.
- The Container and Cargo Control Division (CCCD) or equivalent unit shall ensure that empty containers stored at the condemnation facility are still intact thereat for final disposition by the Port. It shall be the responsibility of the CCCD to ensure that the shipping lines concerned are given notice to claim their respective containers within five (5) days from receipt of the notice to claim. The service contractor shall release the empty container to the shipping line upon full payment of the agreed amount in relation to the services rendered in the condemnation of the cargo. Emptied containers which have not been pulled-out by the shipping lines five (5) days after receipt of the notice to claim from the CCCD shall be deemed abandoned and shall be proceeded against by the Bureau pursuant to the rules on abandonment and disposal of forfeited shipments.
- In case the accredited service contractor defaulted in condemning the goods or is found to be in violation of any rules, the Condemnation Committee shall recommend the imposition of the following sanctions to the District Collector, to wit:

  1st Offense: Suspension for one (1) year
  2nd Offense: Suspension for five (5) years
  3rd Offense: Perpetual disqualification

The service contractor may file a motion for reconsideration of the penalty within fifteen (15) days from receipt of the Order. In case of denial thereof, the aggrieved service contractor may file an appeal to the Commissioner of Customs.

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