TAX JOURNAL

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Highlights

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- RR No. 15-2022 - Further amends certain provisions of RR No. 2-98 as amended by RR No. 11-2018, which implemented the provisions of RA No. 10963 (Tax Reform for Acceleration and Inclusion Law), relative to some changes in the rate of Creditable Withholding Tax on certain income payments (Page 3)

Revenue Memorandum Circular (RMC)

- RMC No. 152-2022 – Further clarifies the transitory provisions for the value-added tax (VAT) zero-rate incentives under Sections 294(E) and 295(D), Title XIII of the Tax Code, as amended, and as implemented by Section 5, Rule 2 and Section 5, Rule 18 of the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act Implementing Rules and Regulations (CREATE IRR) (Page 3)
- RMC No. 154-2022 re: Superseding the provisions of RMC No. 142-2019 circularizing the Electronic Documentary Stamp Tax (eDST) system's balance adjustment facility as an option for recovery of erroneously deducted Documentary Stamp Tax (DST) (Page 4)

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BUREAU OF INTERNAL REVENUES ISSUANCES

REVENUE REGULATIONS

RR No. 15-2022 issued on December 9, 2022

- This issuance seeks to implement the changes of creditable withholding tax (CWT) rate under Section 57 of the National Internal Revenue Code (the "Tax Code") which provides that beginning January 1, 2019, the rate of withholding shall not be less than one percent (1%) but not more than fifteen percent (15%) of the income payment as follows:
  - The Manila Electric Company (MERALCO) payments on the following:
    - MERALCO Refund arising from the ERC Case No. 202-043 RC Order promulgated on February 19, 2021 and ERC Case Nos. 2010-069 RC, 2011-088 RC, 2012-054 RC, 2013-056 RC, and 2014-029 RC Orders promulgated on April 29, 2022 – on gross amount of refund given by MERALCO to non-residential customers – fifteen percent (15%).
    - Interest income on the refund of meter deposits determined, computed and paid in accordance with the "Rules to Govern Refund of Meter Deposits to Residential and Non-Residential Customers", as approved by the Energy Regulation Commission ERC under Resolution No. 12, series of 2016, exempting all electricity consumers from the payment of meter deposit – on gross amount of interest paid directly to the customers or applied against the customer's billings:
      - Residential and General Service customers whose monthly electricity exceeds 200 kwh as classified by MERALCO – ten percent (10%).
      - Non-residential customers – fifteen percent (15%).
- Interest income on the refund paid through direct payment or application against customer's billings by other electric distribution utilities (DUs) in accordance with the rules embodied in ERC Resolution No. 12, series of 2016, governing the refund of meter deposits which was approved and adopted by ERC, exempting all electricity consumers from the payment of meter deposit – on gross amount of interest paid directly to the customers or applied against the customer's billings:
      - Residential and General Service customers whose monthly electricity exceeds 200 kwh as classified by concerned DU – ten percent (10%).
      - Non-residential customers – fifteen percent (15%).

REVENUE MEMORANDUM CIRCULARS

RMC No. 152-2022 issued on December 7, 2022

- This Circular further clarifies the transitory provisions for the VAT zero-rate incentives under Sections 294(E) and 295(D), Title XIII of the Tax Code, as amended, and as implemented by Section 5, Rule 2 and Section 5, Rule 18 of the CREATE IRR.
- Starting from the effectivity of RR No. 21-2021 on December 10, 2021, Registered Export Enterprises (REEs) whose incentives period have already expired are already subject to value-added tax. Thus, such entities are no longer qualified for VAT zero-rating on their local purchases.
- In RMC No. 24-2022, REEs whose incentive periods have already expired are already subject to 12% VAT. Thus, they are no longer qualified for VAT zero-rating on their local purchases. However, considering that RMC No. 24-2022 was issued only on March 9, 2022, confirming that the said transactions are indeed subject to VAT at 12%.
- While RR No. 21-2021 has already become effective, RMC No. 24-2022 was only issued on March 9, 2022. Thus, there might be suppliers that declared their sales to unqualified Registered Business Enterprises (RBEs) as subject to VAT at zero-percent (0%) from

December 10, 2021 to March 8, 2022. These include REEs with expired incentives (e.g. Income Tax Holiday) that were erroneously endorsed by their respective Investment Promotion Agencies (IPAs) as still qualified for VAT zero-rating.

- Since the REE buyers have been endorsed for VAT zero-rating by their respective IPAs, the sellers/suppliers might have treated and declared their sales to these REEs as VAT zero-rated in their respective quarterly VAT returns.
- This Circular clarified that RMC No. 24-2022 has retroactive application and transactions which transpired from the effectivity of RR No. 21-2021 on December 10, 2021 up to the day before the effectivity of RMC No. 24-2022 on March 8, 2022, shall remain as VAT zero-rated.
- In case the purchaser is qualified for VAT zero-rate, but was imposed 12% VAT by the seller during the said transitory period, the following shall be the procedures to correct the situation:
  - Retain the transaction as subject to 12% VAT. The seller shall still declare the sales as subject to 12% VAT. Consequently, the purchaser, if VAT-registered, can utilize the passed-on VAT as input tax and shall be deducted from output tax, if any. Should the purchaser be engaged in zero-rated activities, the same can be recovered through VAT refund pursuant to Section 112(A) of the Tax Code, as amended. If the purchaser is not a VAT-registered taxpayer, the VAT paid shall be claimed as part of the cost of sales or expenses.
  - Revert the transaction from VAT at 12% to VAT zero-rated. If the transactions have already been declared in the VAT return/s, the seller may amend the same after reimbursing/returning the VAT paid by the buyer that is an REE.
  - The adjustment to sales shall only be to the extent of the reimbursed VAT to the REE. The resulting overpayment due to unutilized input tax credits, if any, may be recovered through VAT refund pursuant to Section 112(A) of the Tax Code, as amended, since the corresponding sale is reverted to VAT zero-rated. On the part of the VAT-registered REE purchaser, the VAT return/s filed shall likewise be amended to reflect the reduced input VAT it previously declared in the VAT return/s,
  - In this regard, the seller shall retrieve the VAT Sales Invoice/Official Receipt (SI/OR) originally issued to the REE buyer for cancellation and replacement with a zero-rated SI/OR. The seller shall prepare a list of VAT SI/OR cancelled, together with the corresponding zero-rated SI/OR replacement subject to validation of the Bureau of Internal Revenue (BIR).
- Moreover, RMC No. 24-2022 requires REEs who have completed their ITH and now under the 5% General Income Tax (GIT)/Special Corporate Income Tax (SCIT) regime or those already enjoying the 5% GIT/SCIT upon the effectivity of CREATE Act but remained VAT-registered to change their registration to non-VAT within two (2) months from the expiration of the ITH incentive or effectivity of RMC No. 49-2022, whichever is applicable.
- The Circular also clarified that REE that changed their status from "VAT" to "non-VAT", are not subject to Percentage Tax (PT).
- "PT" tax type should not be registered since these REEs are only subject to GIT/SCIT in lieu of all other internal revenue taxes.

RMC No. 154-2022 issued on December 15, 2022

- This Circular supersedes the provisions of RMC No. 142-2019 which prescribed the requirements for availing the Balance Adjustment facility of the eDST System as an option for recovery of erroneously deducted amount of DST from the taxpayer's ledger, in lieu of the tax credit/refund remedy.
- For the recovery of erroneously deducted DST from the taxpayer's ledger balance in the eDST System, the Balance Adjustment Facility of the system shall be available only for reasons arising from technical/system errors while the tax credit/ refund remedy provided

for under Sections 204 (C) and 229 of the Tax Code, as amended, shall apply for reasons other than purely technical/system errors.

- To avail the Balance Adjustment Facility, a written request for adjustment in the taxpayer's ledger balance shall be filed by the taxpayer-user with the Chief, Miscellaneous Operations Monitoring Division (MOMD), Collection Service (CS) located at the National Office of the BIR, together with all the necessary documentary proofs on the incident(s) that gave rise to the erroneous deduction of DST from the taxpayer's ledger balance. Within twenty-four (24) hours from receipt of the written request, the MOMD shall check the completeness of the documentary proofs submitted by the taxpayer-user and, if determined complete, shall endorse the taxpayer's request to the Chief, Administrative Systems Division (ASD) using the Balance Adjustment Recovery Data Request Form.
- The ASD shall validate/verify the request of the taxpayer and the results of such validation/verification shall be indicated in the space provided for under the same data request form. The accomplished data request form shall be returned by the ASD to the MOMD within five (5) days from receipt of the same.
- The MOMD shall then forward the data request form to the Assistant Commissioner (ACIR), CS for review and approval or denial thereof. Upon receipt of the data request form from the ACIR, CS, the MOMD shall perform the following:
    - The MOMD shall notify the taxpayer-user, in writing or through email, the results of the request for balance adjustment within one (1) working day from receipt of the duly accomplished request form from the ACIR, CS.
    - In case of approval, the Chief, MOMD shall approve the taxpayer-user's request in the "Balance Adjustment Details" facility of the eDST System indicating briefly the reasons for adjustment in the box provided for.
    - In case of denial, the reason(s) for the denial of the taxpayer's request shall be clearly stated in the notice to the taxpayer.
    - Should it be determined that the reason for the erroneous deduction of DST from the taxpayer's ledger did not arise from purely technical/system error, the MOMD shall notify the taxpayer-user of the denial of its request and inform the latter that the tax credit/refund remedy provided for under Sections 204 (C) and 229 of the Tax Code, as amended, shall apply on the case.

COURT DECISIONS

SUPREME COURT DECISIONS

Maibarara Geothermal, Inc. v. CIR
G.R. No. 250479, July 18, 2022 (Uploaded on November 23, 2022)

(The two-year prescriptive period for filing an administrative claim for refund begins to run from the close of the taxable quarter when the relevant sales were made, and not from the time the input VAT was incurred.)

Facts:

On June 24, 2013, Maibarara Geothermal, Inc. (MGI) filed with the BIR administrative claims for refund of its unutilized input VAT for the four quarters of taxable year (TY) 2011. The CIR failed to act on MGI's administrative claims for refund of its unutilized input VAT, thus, MGI filed its judicial claim for refund before the Court of Tax Appeals (CTA). The CTA Division denied the petition of MGI, which was affirmed by the CTA En Banc.

When the case reached the Supreme Court, MGI contends that the two-year prescriptive period provided under Section 112(A) of the Tax Code, as amended, should be reckoned from the time the sales relating to the input VAT occurred.

Issue:

Is MGI entitled to the refund of its unutilized input VAT for the first, second, third, and fourth quarters of taxable year 2011?

Ruling:

No.

The two-year prescriptive period for filing an administrative claim for refund begins to run from the close of the taxable quarter when the relevant sales were made, and not from the time the input VAT was incurred.

Here, MGI, through its Accounting Manager, admitted that it had no sales during the TY 2011 and only started selling during the first quarter of 2014. MGI has no zero-rated or effectively zero-rated sales during the first to fourth quarters of TY 2011. Thus, there is no output VAT against which the input VAT may be deducted. Hence, the input VAT incurred from the first to fourth quarters of TY 2011 attributable thereto cannot be refunded. It is clear under Section 112(A) that the refund or tax credit of unutilized input VAT is premised on the existence of zero-rated or effectively zero-rated sales.

Thus, MGI is not entitled to its claim for a refund having failed to establish its claim for refund or tax credit of its unutilized input VAT for the first, second, third, and fourth quarters of TY 2011.

Prime Steel Mill, Incorporated v. CIR

G.R. No. 249153, promulgated on September 12, 2022 (Uploaded on December 16, 2022)

(There can be no substantial compliance with the due process requirement when the BIR completely ignored the fifteen (15)-day period by issuing the Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) before the taxpayer was able to submit its Reply to the PAN.)

Facts:

On January 7, 2009, Prime Steel Mill, Incorporated (Prime Steel) received a Preliminary Assessment Notice (PAN) dated December 19, 2008 from the BIR, assessing it with deficiency income tax, VAT, and expanded withholding tax (EWT) for taxable year 2005. Prime Steel received a FAN and FLD which reiterated the findings contained in the PAN. Subsequently, Prime Steel received the Final Decision on Disputed Assessment (FDDA).

Prime Steel filed a Petition for Review before the CTA, claiming that the BIR's right to assess had already prescribed. The CTA Division ruled that the BIR's right to assess Prime Steel for VAT had already prescribed and upheld the assessment for deficiency income tax.

Prime Steel raised for the first time on appeal that: (1) No Letter of Authority (LOA) was offered in evidence by the BIR; (2) the FAN was issued prior to the lapse of the fifteen (15)-day period to protest the PAN; and (3) the FAN/FLD did not set and fix the tax liability since the interest and total tax due was still subject to modification.

The CTA En Banc, in upholding the decision of the CTA Division, ruled that there was substantial compliance with the due process requirements in this case considering that Prime Steel was still able to submit a well-prepared protest letter and that the modification or adjustments to be made as to the applicable interests will not make the FAN and FLD legally infirm because such amounts would necessarily depend on Prime Steel's actual date of payment of the assessed amounts.

Issues:

1. Can the CTA En Banc entertain new arguments raised for the first time on appeal?
2. Was the CTA En Banc correct in upholding the deficiency tax assessment against Prime Steel?

Ruling:

1. Yes.

   The CTA En Banc, or even a Division thereof, may consider arguments raised for the first time on appeal or on motion for reconsideration, respectively, only if two conditions concur: one, these arguments are related to the principal issue to be resolved by the court and are necessary to achieve an orderly disposition of the case; and two, the resolution of these new arguments would not require the presentation of additional evidence and must rely solely on factual bases that are already matters of record in the case.

   Here, the issue on the violation of Prime Steel's right to due process is inextricably linked to the validity of the assessment. BIR's right to collect deficiency taxes must flow from a valid assessment. Thus, a void assessment bears no valid fruit. Moreover, a resolution on the apparent violation of Prime Steel's right to due process is indispensable for an orderly and comprehensive disposition of this case.

   Unlike the issue on the invalidity or non-existence of the LOA, the non-observance of the 15-day period to reply to PAN may be resolved by an examination of the evidence on record without requiring the presentation of additional proof. Thus, the CTA En Banc correctly took cognizance of this new issue.

2. No.

   The FAN was issued during the 15-day period for Prime Steel to reply to the PAN. As recounted above, the PAN was received by Prime Steel on January 7, 2009 and its reply thereto was filed on January 22, 2009. Without waiting to receive Prime Steel's Reply to the PAN, the BIR issued the FAN on January 14, 2009 and was received by Prime Steel only on February 12, 2009.

   The 15-day period provided under RR No. 12-99 for a taxpayer to reply to a PAN should be strictly observed by the BIR. The Supreme Court highlighted that "only after receiving the taxpayer's response or in case of the taxpayer's default can respondent issue the FLD/FAN." There can be no substantial compliance with the due process requirement when the BIR completely ignored the 15-day period by issuing the FAN and FLD even before the taxpayer was able to submit its Reply to the PAN.

   In the same vein, it is beside the point that Prime Steel was able to submit a "well-prepared protest letter." The fact remains that the BIR violated Prime Steel's right to due process by issuing a FAN without even awaiting its reply to the PAN. Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and RR No. 12-99 is void and produces no effect.

CTA EN BANC DECISIONS

<u>CIR v. BW Shipping Philippines</u>
CTA EB No. 2482, promulgated on December 22, 2022

(To constitute doing business, the activity undertaken in the Philippines should involve profit-making. Clearly, it was BW Shipping, and not its foreign clients which derived income from the transaction in screening and engaging Filipino seamen and engineers for employment on board the vessels of the latter.)

Facts:

BW Shipping is a corporation duly organized and existing under the laws of the Philippines. It filed its quarterly VAT Returns for TY 2015. On March 2017, BW Shipping filed an application for refund or issuance of a Tax Compliance Certificate (TCC) for its alleged unutilized input taxes attributable to its zero-rated sales for the four quarters of TY 2015.

BW Shipping filed a Petition for Review with the CTA due to CIR's inaction on BW Shipping's administrative claim for refund. In his Answer, the CIR claimed that the judicial claim should be denied because BW Shipping's alleged claim for refund or issuance of TCC is still subject to administrative investigation by the BIR. The CIR contended that BW Shipping's claim for refund was not fully substantiated by proper documents pursuant to RR No. 7-95 in relation to Sections 113 and 237 of the Tax Code, as amended.

The CTA Division partially granted BW Shipping's petition and ordered refund/issuance of TCC. BW Shipping filed an omnibus motion for reconsideration and motion for new trial. CIR filed a motion for partial reconsideration. Both were denied by the CTA Division. Hence, this case before the CTA En Banc.

Issues:

1. Did the CTA Division err in ordering only a partial refund or issuance of TCC in favor of BW Shipping?
2. Did the CTA Division err in holding that the receipts of BW Shipping's services made to foreign corporations doing business outside the Philippines?
3. Did the CTA Division err in holding that BW Shipping generated zero-rated sales?

Ruling:

1. No.

   BW Shipping failed to strictly comply with the invoicing requirements for input VAT refund. To accord 0% VAT on sales of services, such sales of services must also be substantiated by their corresponding VAT ORs, compliant with invoicing and substantiation requirements.

   Some of BW Shipping's zero-rated sales should be disallowed for the following reasons: a. Customer's name/registered name is NOT the same as the one reflected in the Articles of Association, Certificate of Registration, Securities and Exchange Commission (SEC) Certificate of Non-Registration; b. The amounts in the official receipts were not reflected as "Zero-Rated Sales"; and c. Noted erasures in the official receipts without countersignature.

2. No.

   The clients of BW Shipping do not fall in the definition of "doing business" as defined in Section 1(f) of the Implementing Rules and Regulations of RA No. 7042 or the Foreign Investment Act of 1991, as amended by RA No. 8179.

   The foreign client engaged BW Shipping for its crewing, manning, information technology and purchasing support services. BW Shipping's authority to act on behalf of its foreign client as an alleged "agent" is limited to screening Filipino seamen and/or engineers for employment onboard the latter's vessels. Thus, BW Shipping was paid agency fees in foreign currency duly accounted for in accordance with the rules and regulations of the Bangko

Sentral ng Pilipinas (BSP). There is no evidence that BW Shipping acts in furtherance of its foreign clients' shipping activities.

To constitute doing business, the activity undertaken in the Philippines should involve profit-making. Clearly, it was BW Shipping, and not its foreign clients which derived income from the transaction in screening and engaging Filipino seamen and engineers for employment on board the vessels of the latter.

3. No.

The following elements must concur for services to be subject to the rate of zero percent (0%) VAT:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;
2. The services fall under any of the categories under Section 108(B)(2)F;
3. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules; and
4. The services must be performed in the Philippines by a VAT-registered person.

Here, BW Shipping satisfied the above-enumerated elements for zero-rating of services.

BW Shipping was able to establish that its foreign clients are Non-Resident Foreign Citizens (NRFCs) doing business outside the Philippines. As shown by documentary evidence, such as (1) Certificates of Non-Registration of Company issued by the Securities and Exchange Commission (SEC), (2) Certificates of Registration, (3) Articles of Association, and (4) Memorandum of Association.

Lead Export and Agro-Development Corporation v. CIR
CTA EB No. 2458, promulgated on December 13, 2022

(When the 120-day period lapses and there is inaction on the part of the CIR, the taxpayer must no longer wait for the CIR to come up with a decision as the inaction is the decision itself. By operation of law, the refund claim is deemed denied by the CIR's inaction)

Facts:

Lead Export and Agro-Development Corporation (LEAD) filed applications for tax credit of its excess and unutilized input VAT attributable to zero-rated sales. The CIR denied LEAD's application for VAT credit on the ground of prescription.

LEAD Corporation contends that Section 112(C) of the Tax Code, as amended, provides taxpayers with two (2) alternative remedies in the filing of a judicial claim for refund, to wit: 1) file a judicial claim within the 30-day filing period from the denial or partial denial of the administrative claim; or 2) file a judicial claim within a 30-day filing period from the end of the 120-day waiting period, after which the inaction of the CIR may be deemed a denial.

LEAD availed of the first remedy, which is to await the decision of the CIR and validly filed its judicial claim for refund. It believes that the mandatory nature of 120+30-day period means that in case of inaction, the taxpayer must wait for the 120-day waiting period to lapse before filing a judicial claim, but the law did not exclude the available remedy of going to the CTA should the CIR issue a decision after the lapse of the 120-day period.

LEAD contends that the doctrine in *Lascona Land* Co., *Inc. vs. Commissioner of Internal Revenue (Lascona case)* is applicable in this case due to the almost identical language in Sections 228 and 112 of the Tax Code, as amended, and the equivalence in the circumstances therein.

Issues:

1. Does the 120+30 day period under Section 112(C) apply in cases where the CIR issues a decision on the VAT refund after the lapse of the 120-day period?
2. Are Sections 228 and 112 of the Tax Code identical?

Ruling:

1. No.

   Section 112(C) of the Tax Code speaks of two (2) periods: (1) the 120-day period, which serves as a waiting period to give time for the CIR to act on the administrative claim for refund or credit; and, (2) the 30-day period, which refers to the period for filing a judicial claim with the CTA. The 120+30-day period is mandatory and jurisdictional.

   Stated simply, the taxpayer may file the appeal within thirty (30) days from the expiration of the 120-day period if there is inaction on the part of the CIR.

   When the 120-day period lapses and there is inaction on the part of the CIR, the taxpayer must no longer wait for the CIR to come up with a decision as the inaction is the decision itself. By operation of law, the refund claim is deemed denied by the CIR's inaction.

   Thus, the taxpayer must file an appeal within thirty (30) days from the lapse of the 120-day waiting period. Any claim filed beyond the 120+30-day period provided by the NIRC is outside the jurisdiction of the CTA.

2. No.

   Section 228 of the Tax Code pertains to the period for the CIR to decide a taxpayer's disputed assessment. It is therefore erroneous for LEAD to insist on the application of *Lascona case* here, considering that the present case involves claims for tax credit or refund under Section 112 of the Tax Code, and not a disputed assessment under Section 228.

Larry Segaya/Les Engineering and Construction v. CIR
CTA EB No. 2526, promulgated on December 13, 2022

(There is only one "180-day period" of inaction to speak of which shall be counted from the date of filing of the protest or from the submission of the relevant supporting documents.)

Facts:

Segaya and Les Engineering and Construction was assessed deficiency income tax, VAT and EWT. A PAN and subsequently, a FLD was issued. Segaya then filed a timely Protest/Request for Reconsideration on March 21, 2016.

The FDDA was received by Segaya on October 27, 2017. To which, Segaya filed a Request for Reconsideration/Reinvestigation on November 25, 2017. Due to the alleged inaction of the CIR on the Request for Reconsideration/ Reinvestigation, Segaya filed the Petition for Review before the CTA Division on July 16, 2018. The CTA Division dismissed the Petition.

On March 15, 2021, Segaya filed a Motion for Reconsideration which was denied. Segaya elevated the case to the CTA En Banc on October 9, 2021.

Issues:

Did the CTA Division validly dismissed the case?

Ruling:

Yes.

In determining the timeliness of an appeal from the inaction of the CIR, a plain reading of Section 228 of the Tax Code, and Section 3.1.4 of RR No. 12-99, as amended, reveals that there is only one "180-day period" of inaction to speak of which shall be counted from the date of filing of the protest (if the protest is a request for reconsideration) or from the submission of the relevant supporting documents (if the protest is a request for reinvestigation) and not from the date when the decision of the CIR's authorized representative was appealed to the CIR.

Under the same provision, when the decision of the CIR's authorized representative on the protest is received only after the lapse of 180 days after the filing of the protest, the taxpayer's only remedy would be to file an appeal before the CTA within 30 days from receipt of such decision.

Here, when Segaya received the FDDA on October 27, 2017, he only had 30 days or until November 26, 2017 in which to file an appeal before the CTA. His filing of Motion for Reconsideration/Reinvestigation did not toll the 30-day period nor is there a separate 180-day period in which the CIR should decide upon the Motion.

Therefore, Segaya's July 16, 2018 Petition for Review was filed way beyond the 30-day reglementary period to appeal the inaction on the administrative protest/appeal, and the CTA Division was deprived of jurisdiction to take cognizance of the case.

CTA DIVISION DECISIONS

Hijo Agrarian Reform v. CIR
CTA Case No. 9797, Promulgated on November 28, 2022

(*There is no new or separate 180-day period that will start to run when the taxpayer appeals to the CIR. There is only one 180-day period, i.e., the period counted from the filing of the protest or the submission of the required documents.*)

Facts:

Hijom Agrarian Reform Beneficiaries Cooperative (Hijom) was being assessed for deficiency withholding tax on compensation and EWT for TY 2010 in the aggregate amount of PhP3,454,376.98.

The pertinent dates in determining the timeliness of Hijom's Petition for Review are as follows:

Date	Event
February 3, 2015	Hijom received FLD/FAN dated January 27, 2015
February 26, 2015	CIR received Hijom's Protest dated February 25, 2015, requesting for reinvestigation of the FLD/FAN
March 10, 2016	Hijom received Amended FLD/FAN dated March 2, 2016

April 8, 2016	CIR received Hijom's Protest dated March 28, 2016, requesting a reinvestigation of the Amended FLD/FAN, together with the submission of an additional document
October 5, 2016	*End of the 180-day period from the submission of complete documents*
October 3, 2017	Hijom received FDDA dated September 22, 2017
November 2, 2017	*End of the 30-day period to file an administrative appeal before the CIR or a judicial appeal before the CTA*
November 2, 2017	Hijom filed an Motion for Reconsideration before the CIR within the 30-day reglementary period
April 2, 2018	Hijom filed a Petition for Review before the CTA

Issue:

Does the CTA have jurisdiction over the case?

Ruling:

No.

Since the CIR has not yet acted on Hijom's administrative appeal, for the CTA to exercise jurisdiction over the Petition for Review, the appeal must have been brought within thirty (30) days after the expiration of the 180-day period for CIR or his duly authorized representative to act on Hijom's Protest against the Amended FLD/FAN.

In cases where a taxpayer's protest is denied by the CIR's duly authorized representative, a taxpayer is given two (2) alternative remedies, to either: (1) appeal to the CTA within 30 days from the date of receipt of the representative's decision, or (2) to elevate his protest through a request for reconsideration to the CIR, within the same 30-day period, otherwise referred to as an "administrative appeal". Thereafter, if the taxpayer's administrative appeal is not acted upon by the CIR within 180 days from the filing of the protest, the concerned taxpayer may either: (1) appeal to the CTA within 30 days after the expiration of the said 180-day period, or (2) await the final decision of the CIR on the disputed assessment, and appeal such final decision to the CTA within 30 days from receipt of a copy thereof.

In line with the rules set forth in RR No. 12-99, as amended by RR No. 18-2013, implementing Section 228 of the Tax Code and the ruling in *PAGCOR v. BIR* (G.R. No. 208731, January 27, 2016), the proper remedy for Hijom would have been to file a Petition for Review before the CTA within 30 days from receipt of the FDDA on October 3, 2017, or until November 2, 2017 (as the FDDA already served as CIR's denial of its Protest against the Amended FLD/FAN).

Moreoverm in *Nueva Ecija II Electric Cooperative, Inc. Area II v. CIR* (G.R. No. 258101, April 19, 2022) where the Supreme Court held that there is no new or separate 180-day period that will start to run when the taxpayer appeals to the CIR. There is only one 180-day period, *i.e.*, the period counted from the filing of the protest or the submission of the required documents.

Considering that the 180-day period has already lapsed by the time Hijom received the FDDA on October 3, 2017 issued by CIR's representative and Hijom opted to file an administrative appeal before CIR (instead of filing a judicial appeal before the CTA) within 30 days from receipt thereof, the only remedy available to Hijom at this point is to wait for CIR's decision before filing an appeal before the CTA.

Joselito Yap v. BIR

CTA Case No. 10063, Promulgated on November 29, 2022

(A letter may be considered the CIR's final decision on a disputed assessment, if it communicates to the taxpayer in clear and unequivocal language what constitutes the CIR's final determination of the disputed assessment. A Preliminary Collection Letter (PCL) reiterating the tax deficiency assessment of the taxpayer and requested payment thereof is considered as the CIR's final decision on a disputed assessment.)

Facts:

Joselito Yap (Yap) is the proprietor of JAPI Enterprises. On January 15, 2015, a PAN was issued assessing Yap with over PhP171 million in deficiency taxes. A Reply to PAN was shortly filed. On June 22, 2015, a FAN/FLD was issued increasing the assessed deficiency tax of Yap to PhP179 million. Thus, on July 25, 2015, a Protest to FAN was filed with the BIR. Subsequently, on May 24, 2018, the BIR issued a Letter granting Yap's Request for Reinvestigation.

On September 4, 2018, Yap received a letter informing him of his alleged failure to submit relevant supporting documents within sixty (60) days from the filing of his protest, thus, his cases have become final, executory and demandable due for collection.

On April 4, 2019, Yap received copies of the PCL. Yap filed his Petition for Review on April 11, 2019.

The BIR argues that the CTA has no jurisdiction in this case since the Petition for Review was filed out of time since the September 4, 2018 letter should be considered the CIR's final decision on disputed assessment. Yap, on the other hand, argues that the April 4, 2019 PCL should be considered the CIR's final decision on disputed assessment. Moreover, Yap argues he was denied his right to due process since the LOA, PAN and FAN were all improperly served at the wrong address and to unauthorized persons/representatives of Yap.

Issues:

1. Does the CTA have jurisdiction in this case?
2. Was Yap denied due process?
3. Was Yap properly informed of the legal and factual bases of the assessments?

Ruling:

1. Yes.

The thirty (30)-day period to appeal with this CTA should be reckoned from the receipt of the PCL Notices, i.e., April 4, 2019, and not from the date Yap received the letter dated July 30, 2018, i.e., September 4, 2018. The Petition for Review was therefore timely filed on April 11, 2019.

A letter may be considered the CIR's final decision on a disputed assessment, if it communicates to the taxpayer in clear and unequivocal language what constitutes the CIR's final determination of the disputed assessment.

The PCL Notices reiterated the tax deficiency assessments of Yap and requested the payment thereof. It is clear that the letter received on September 4, 2018 did not communicate the BIR's final determination on the disputed assessment in clear and unequivocal language but merely informed Yap that he failed to submit relevant supporting documents within sixty (60) days from filing of the protest.

Even granting that Yap failed to submit relevant supporting documents, his failure to submit additional documents in support of his protests would only render the assessments final as defined by RR No. 18-2013, which means that the taxpayer is barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence.

2. Yes.

The LOA and FAN/FLD (collectively, BIR Notices) were received by persons who are not employees of JAPI Enterprises and that the LOA and FAN/FLD were not served at JAPI Enterprise's registered address.

The witnesses of Yap during trial clearly established that the LOA and FAN/FLD were served to persons who are not employees of Yap (daughter, and accounting staff of another business), and were not properly served to Yap's registered address.

It was ruled that it is a requirement of due process that the notice be sent to the taxpayer and not to a disinterested party; that it must be served on and received by the taxpayer. If the taxpayer denies having received an assessment or the LOA, as in this case, from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that the LOA was indeed received by the addressee..

No proof was adduced by the BIR that the persons served with the LOA and FAN had apparent authority to represent Yap in this case.

3. No.

Yap was left unaware on how the BIR appreciated the arguments and defenses raised in connection with the assessment. The BIR did not apprise Yap the factual and legal bases of its conclusion or decision after Yap submitted his protests and supplemental protests. Instead, the BIR issued the PCL Notices, without any explanation on how it considered or appreciated Yap's arguments and evidence.

Here, it is evident that the BIR merely reiterated in the PCL Notices the deficiency taxes due as found in the PAN and the FAN/FLD. Moreover, there was no other communication from the BIR to Yap that was presented as evidence indicating the particular factual and legal bases upon which the respondent's conclusion and decision are based in connection with the assessments issued against Yap.

Aecom Philippines, Inc. v. CIR
CTA Case No. 9239 promulgated on December 9, 2022

(A claimant for tax refund has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.)

Facts:

On January 15, 2014, Aecom Philippines, Inc. (Aecom) electronically filed its Annual Income Tax Return (ITR) for the year ended September 30, 2013. Subsequently, it filed on January 15, 2015 an Amended Annual ITR.

Aecom indicated in its Amended Annual ITR that its Tax Overpayment amounting is "To be refunded". Thus, on January 13, 2016, Aecom filed an application for tax refund for its unutilized creditable withholding taxes (CWTs). Thereafter, on January 14, 2016, Aecom filed a Petition for Review with the CTA Division. However, the CTA Division denied the

claim for refund and ruled that Aecom failed to prove that the income upon which the taxes were withheld were included in the return of the recipient.

Issue:

Did the CTA err in denying the claim for refund?

Ruling:

No.

The grant of a claim for refund of creditable withholding income tax, to wit:

1. The claim must be filed within the two (2)-year period from the date of payment of the tax; and/or the filing of the Annual ITR;
2. The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld; and
3. It must be shown on the return of the recipient that the income upon which the withholding was made was declared as part of the gross income.

In this case, the CTA Division was unable to verify whether the total income recorded per Aecom's books (per Project Status Report [PSR]) tallies with that reflected in its 2013 ITR. Hence, Aecom failed to prove that the income upon which the taxes were withheld were included in the return of the recipient.

It bears stressing that a claimant for tax refund has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds or credits, just like tax exemptions, are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.

<u>Ecossential Foods Corp. v. Piñol</u>
CTA Case No. 9929 promulgated on December 1, 2022

(In filing an appeal before the CTA, it is essential that the appealed action has been done in the exercise of judicial or quasi-judicial power.)

Facts:

On March 16, 2018, the Department of Agriculture (DA), through its then Secretary, Hon. Emmanuel F. Piñol, issued Department Order (D.O.) No. 06 imposing special safeguard (SSG) duties on certain imported commodities (coffee products, among them) pursuant to the provisions of RA No. 8800.

Pursuant thereto, the Commissioner of Customs (COC) issued Customs Memorandum Circular (CMC) No. 76-2018 reiterating the contents of D.O. No. 06 and CMC No. 156-2018 specifying SSG-eligible products, together with their trigger prices.

Thereafter, Ecossential Foods Corp. received a copy thereof with an Assessment Notice (AN) for payment of SSG on their "Kopiko 3-in-1" products.

Issues:

1. Does the CTA have jurisdiction?
2. Did the issuance of D.O. No. 06 violate international treaties?

Ruling:

1. No.

In filing an appeal before the CTA, it is essential that the appealed action has been done in the exercise of judicial or quasi-judicial power. Rules issued in the exercise of an administrative agency's quasi-legislative power may be taken cognizance of by courts in the first instance as part of their judicial power.

The imposition of general safeguard (GSG) measures requires Secretary Piñol to first hear and determine the factual basis (*i.e.*, the existence of serious injury or threat to the local industry) for the imposition of said measures. On the other hand, in imposing SSG measures, the mere existence of the conditions for its imposition triggers Secretary Piñol's duty to impose the same. Hence, in issuing D.O. No. 06, Secretary Piñol did not exercise a quasi-judicial function. RA No. 1125, as amended, limits the scope of the CTA's jurisdiction only to "decisions" rendered by Secretary Piñol.

Further, it follows that the exhaustion of administrative remedies does not apply in challenging the validity of D.O. No. 06, a quasi-legislative act.

2. No.

Assuming that the enactment of D.O. No. 06 was indeed a quasi-judicial act, the CTA noted that Section 28 of RA No. 8800 places a limit on the effectivity of an SSG measure. As of date, the World Trade Organization (WTO) has not made any reforms or decisions abolishing the imposition of SSG. Neither have the conditions for its imposition been modified. Article 5 of the WTO Agreement on Agriculture (WAA) remains effective and intact, and is sufficient basis for the Philippines' imposition of SSG.

To the mind of the Court, it is only after the WTO makes a definitive ruling to remove the State's right to impose SSG that an action under the procedures of Chapter II of RA No. 8800 on GSG can be resorted to. Hence, to challenge D.O. No. 06 by way of appeal would be premature given that the WTO's reform process (at least on the issue of the need for SSG is concerned) has not yet ended.

SECURITIES AND EXCHANGE COMMISSION ISSUANCES

SEC MC No. 9 series of 2022 issued on December 6, 2022

- This Circular discusses the 2023 Filing of Annual Financial Statements (AFS) and General Information Sheet (GIS)
- *For the AFS*
    - All corporations, including branch offices, representative offices, regional headquarters and regional operating headquarters of foreign corporations, whose fiscal years ended on December 31, 2022, shall file their AFS through the SEC Electronic Filing and Submission Tool (eFAST) depending on the last numerical digit of their SEC registration or license numbers:

Submission Dates	*Last Digit of SEC registration/license number*
May 2-5	1 and 2
May 8-12	3 and 4
May 15-19	5 and 6
May 22-26	7 and 8
May 29-June 2	9 and 0

- For brokers and dealers whose fiscal years end on December 31, SEC Form 52-AR shall be filed with the SEC depending on the last numerical digit of their registration numbers as prescribed by the SEC.

- The following corporations shall not follow the above schedule and file their AFS as follows:

Corporation	*Submission date or period*
Those whose fiscal years end on a date other than December 31, 2022	Within 120 calendar days from the end of their respective fiscal year
Brokers and dealers whose fiscal years end on a date other than December 31	Within 110 calendar days after the close of their respective fiscal year (SEC Form 52-AR)
Those whose securities are listed on the Philippine Stock Exchange (PSE), those whose securities are registered but not listed on the PSE, those considered as public companies, and other entities covered under Sec.17.2 of the Securities Regulation Code (SRC)	Within 105 calendar days after the end of fiscal year, as attachment to their Annual Reports (SEC Form 17-A)
Those whose AFS are being audited by the Commission on Audit	

- All corporations may file their AFS regardless of the last numerical digit of their registration or license numbers before the first day of the coding schedule.
- Late filings or submissions shall be accepted starting June 5, 2023.
- The AFS to be submitted, other than the consolidated financial statements, shall be stamped "received" by the Bureau of Internal Revenue (BIR) or its authorized banks, unless the BIR allows an alternative proof of submission for its authorized banks (e.g., bank slips) and/or other facilities. For companies which filed their AFS through the BIR e-AFS system, they shall attach the system-generated Transaction Reference Number issued by the BIR, in lieu of the manual "received" stamp.
- The following shall submit annual audited financial statements pursuant to the general financial reporting requirements stated in Revised Securities Regulation Code (SRC) Rule 68:
  a) Stock corporations with total assets or total liabilities of Six Hundred Thousand Pesos (Php600,000.00) or more, as prescribed under the Revised Corporation Code (RCC) and any of its subsequent revisions or such amount as may be subsequently prescribed;
  b) Nonstock corporations with total assets or total liabilities of Six Hundred Thousand Pesos (Php600,000.00) or more as prescribed under the RCC and any of its subsequent revisions or such amount as may be subsequently prescribed;
  c) Branch offices/representative offices of stock foreign corporations with assigned capital in the equivalent amount of One Million Pesos (Php1,000,000.00) or more;
  d) Branch offices/representative offices of nonstock foreign corporations with total assets in the equivalent amount of One Million Pesos (Php1,000,000.00) or more; and
  e) Regional operating headquarters of foreign corporations with total revenues in the equivalent amount of One Million Pesos (Php1,000,000.00) or more.
- *For the GIS*
  - All corporations shall file with the SEC, through eFAST, their GIS within 30 calendar days from:

Stock corporations	Date of annual stockholders' meeting
Nonstock corporations	Date of actual annual members' meeting

Foreign corporations	Anniversary date of the issuance of their respective SEC licenses

- *For All reports*
    - Reports not yet accepted through eFAST may be submitted through email at ictdsubmission@sec.gov.ph. Submission of reports over the counter and/or through mail or courier under the SEC Express Nationwide Submission (SENS) facility shall no longer be accepted.

SEC MC No. 10 series of 2022 issued on December 6, 2022

- Section 3 of MC No. 15, s. 2019 was amended regarding the disclosure of beneficial ownership information which now includes, as an alternative to the Taxpayer Identification Number (TIN), among others, the passport number for foreign individuals who do not have a TIN.
- Section 7 of MC No. 15, s. 2019 was amended regarding the updating of beneficial ownership information. An updated General Information Sheet (GIS) shall be submitted to the SEC within thirty (30) calendar days after such change occurred or became effective (previously, the period provided was only seven (7) working days).
- Section 11 of MC No. 15, s. 2019 on Penalties on failure to make the necessary disclosure on beneficial ownership was amended to show the following changes:

	MC No. 15, s. 2019	MC No. 10, s. 2022
For stock corporations with retained earnings of less than PhP500,000.00:		
a. For the first violation	PhP10,000.00	PhP50,000.00
b. For the second violation	PhP20,000.00	PhP100,000.00
c. For the third violation	PhP50,000.00	PhP250,000.00
d. For the fourth and subsequent violations	PhP100,000.00	PhP500,000.00
For non-stock corporations with fund balance of less than PhP500,000.00		
a. For the first violation	PhP5,000.00	PhP25,000.00
b. For the second violation	PhP10,000.00	PhP50,000.00
c. For the third violation	PhP20,000.00	PhP100,000.00
d. For the fourth and subsequent violations	PhP50,000.00	PhP250,000.00

- For all other penalties on failure to make the necessary disclosure, the penalties remained the same. However, the Circular added another penalty when the reporting corporation will be imposed an additional fine of PhP1,000.00 for each day of delay in the submission of beneficial ownership information as a continuing violation, but the additional fine for the continuing violation shall in no case exceed PhP2,000,000.00.
- Likewise, Section 11 of MC No. 15, s, 2019 was amended to include a new provision on Penalties with regard to False Declaration. The SEC, upon its finding motu proprio or upon referral by a competent authority that a corporation submitted false beneficial ownership information, shall send a Notice and Order to the reporting corporation stating that: 1) the fact of false disclosure of beneficial ownership information; and 2) giving the corporation fifteen (15) calendar days to comply and submit complete and accurate beneficial ownership

information and a written explanation for the false disclosure. However, if the period provided has lapsed without the reporting corporation complying with the Notice and Order and the SEC has found that the corporation indeed submitted a false beneficial ownership information, the penalty shall be a fine of up to PhP2,000,000.00 and shall be subsequently dissolved.

- Section 11 of MC No. 15, s. 2019 on Penalties with regard to the liability of directors/trustees and officers of the corporation was amended to show the following changes:

	MC No. 15, s. 2019	MC No. 10, s. 2022
Penalties on violation of failure to disclose beneficial ownership shall be imposed upon such directors, trustees and/or officers:		
a. For the first violation	PhP5,000.00	PhP10,000.00
b. For the second violation	PhP10,000.00	PhP20,000.00
c. For the third violation	PhP20,000.00	PhP50,000.00
d. For the fourth and subsequent violations	PhP50,000.00	PhP100,000.00

- If the violation pertains to the false declaration, the responsible directors, trustees and officers, after due notice and hearing, shall each be penalized with a fine of up to PhP200,000.00 and shall be disqualified to be directors, trustees and officers of any corporation for a period of five (5) years.
- Moreover, the Circular provides that, in case of willful violation of the Circular or related orders of the SEC, other imposable penalties, to the discretion of the SEC, of suspension or revocation of the certificate of incorporation of the reporting corporation along with other penalties that is within the power of the SEC to impose may be imposed. The Circular provides that in such cases, the SEC shall be guided by the principles of effectiveness, dissuasiveness and proportionality.
- The Circular also provides that the administrative sanctions shall be without prejudice to the filing of criminal charges against persons responsible for violation of the Revised Corporation Code and other applicable laws.
- The Circular clarifies that its provisions, as well as the penalties, shall remain applicable to foreign corporations.
- The Circular instructs that the submission of the GIS shall be through Electronic Filing and Submission Tool (eFAST), and the submission of reports over the counter and/or mail/courier via SENS shall no longer be accepted.
- The Circular shall take effect on January 1, 2023 subject to its publication in two (2) national newspapers of general circulation and posting on the SEC's website.

SEC Advisory Against Dealing with Unregistered Cryptocurrency Exchanges issued on December 23, 2022

- The SEC released this advisory considering the recent collapse of a large international cryptocurrency exchange that left unsecured creditors with little to no recourse in recovering their money. The SEC, through this advisory, warns the public against transacting with unregistered and unlicensed cryptocurrency exchanges.
- There are several unregistered cryptocurrency exchanges targeting Filipino investors and borrowers with high risk and sometimes fraudulent products and schemes. These exchanges allow Filipinos to access online platforms to create, enroll, or register client accounts.

- Citing the Securities Regulation Code, the SEC reminds us that securities shall not be sold or offered for sale or distribution within the Philippines without a registration statement duly filed with and approved by the Commission. (Sec. 8) Likewise, a person cannot engage in the business of buying or selling securities in the Philippines whether as a broker, dealer, salesman, or an associated person of any broker or dealer unless registered with the Commission. (Sec. 28)
- The SEC also cited the Lending Company Regulation Act of 2007 (RA No. 9474). Section 3(a) provides that only corporations registered in the Philippines are allowed to engage in granting loans from its own capital funds or funds sourced from not more than nineteen (19) persons while Section 4 states that no lending company shall conduct business unless granted an authority to operate by the SEC.
- The SEC listed examples of offerings by these unregistered cryptocurrency exchanges like the sale of unregistered cryptocurrencies deemed as securities, conversion of one cryptocurrency to another cryptocurrency, and the facilitation for the issuance of unregistered coin or token offerings.
- The SEC reminds the public to check whether it is safe to transact with an online platform by verifying the entity's registration.

DEPARTMENT OF JUSTICE ISSUANCES

DOJ Opinion No. 31, series of 2022 issued on December 13, 2022

- In this legal opinion, there was a request to revisit Department of Justice (DOJ) Opinion No. 55, series of 2014, relative to tax exemption afforded to electric cooperatives (ECs) by virtue of RA No. 10531, otherwise known as the National Electrification Administration (NEA) Reform Act of 2013.
- Section 13 of the NEA Law, approved on May 7, 2013, provides that ECs, which comply with the financial and operational standards set by National Electrification Administration (NEA), enjoy preferential rights granted to cooperatives under RA No. 7160, or the Local Government Code (LGC).
- Under Section 193 of the Local Government Code, ECs were stripped of their privilege to claim tax exemption, which was formerly provided in Presidential Decree (PD) No. 269, and the same tax exemption was only afforded to local water district, cooperatives registered under RA No. 6938, and non-stock and non-profit hospitals and educational institutions.
- In DOJ Opinion No. 55, series of 2014, the Bureau of Local Government Finance (BLGF) and the Department of Finance (DOF) declared that ECs are liable to pay for local taxes, including RPT, in contrast to the policy of the NEA Law. In fine, it states that:
    - Sections 133(n) and 234(d) of the LGC , which grant preferential rights to cooperatives referred therein, require ECs to register first with the Cooperative Development Authority (CDA) before they could avail of such preferential rights;
    - There is no clear intention under the NEA Law to extend these preferential rights under the LGC to all NEA-registered ECs, which are not registered with the CDA; and
    - Since NEA Law did not specifically amend Sections 133 and 234 of the LGC, these provisions, which supposedly require non-stock ECs to be duly registered with the CDA before they can avail of these preferential rights, prevail.
- In the re-examination of the abovementioned sections, the DOJ opined that these provisions are mere limitations on the taxing power of the local government units and do not necessarily impose conditions, additional qualifications, or requirements before cooperatives in general can be entitled to such preferential rights. Thus, Opinion No. 55, s. of 2014, was reversed and rendered ineffectual.
- Under Section 12 of the NEA Law, all ECs are given the option to either remain as a non-stock, non-profit (NSNP) cooperative under NEA, or to convert into and register as a stock

cooperative under the CDA, or as a stock corporation with the SEC. This provision clearly shows the legislature's intent to extend the preferential rights under the LGC even to those ECs which would opt to remain as NSNP cooperatives under the NEA.

- Further, Section 13 of the NEA Law merely requires ECs to comply with NEA's "financial and operational standards" for them to "avail the preferential rights granted to cooperatives" under the LGC, among others. No other requirement for the availment of these preferential rights, like the supposed CDA registration, is mentioned.
- Hence, all ECs, whether NSNP cooperative under NEA, stock cooperative under the CDA, or stock corporation registered under SEC pursuant to the Revised Corporation Code, may avail of the preferential rights granted under the LGC without need of prior registration with the CDA, as long as compliant with the financial and operational standards set by the NEA.

DOJ Opinion No. 34, series of 2022 issued on December 15, 2022

- In a letter, Architect Johnny A. Degay (Arch. Degay), Building Official, City Buildings and Architecture Office of Baguio Citysought the opinion of Department of Public Works and Highways (DPWH) regarding the issue of whether or not a building permit may be issued on structures built on parcels of land covered by a Certificate of Ancestral Domain Title (CADT) or a Certificate of Ancestral Lands Title (CALT), and its derivative titles that were not nullified by a court order.
- Based on DPWH's evaluation, the matter deals with PD No. 1096 (or the National Building Code of the Philippines). Under Section 302 of PD No. 1096, in order to obtain a building permit, every application shall provide, among others, a certified true copy of the Transfer Certificate Title (TCT) covering the lot on which the proposed work is to be done. It further provides that if the applicant is not the registered owner, in addition to the TCT, a copy of the contract of lease shall be submitted.
- The DOJ explained the nature of the CADT and a CALT. A CADT refers to a title formally recognizing the rights of possession and ownership of Indigenous Cultural Communities/ Indigenous People (ICCs/Ip) over their ancestral domains identified and delineated in accordance with Indigenous Peoples Rights Act (IPRA) or RA No. 8371, while a CALT refers to a title formally recognizing the rights of ICCs/IPs over their ancestral lands.
- On whether or not a building permit may be issued on structures built on parcels of land covered by a CADT or a CALT that were not nullified by a court order, the DOJ opined in the affirmative since a CADT and a CALT are considered as recognition of ownership. At the time PD No. 1096 took effect, the IPRA was not yet enacted; hence, there was no CADT or CALT.
- The DOJ clarified that PD No. 1096 requires a document that proves ownership. The requirement of submission of a TCT may be understood to mean a document evidencing or recognizing ownership over a real property, which may be construed to include a valid title over a property, such as a CADT or CALT. Since a CADT and CALT are considered as recognition of ownership, it may be submitted with the Building Official, in lieu of an OCT or TCT for the purpose of procuring a building permit.

DEPARTMENT OF LABOR AND EMPLOYMENT ISSUANCE

Labor Advisory No. 23-22 issued on November 28, 2022

- Thirteenth-month pay shall be paid to rank-and-file employees in the private sector regardless of their position, designation, or employment status, and irrespective of the method by which their wages are paid, provided that they have worked for at least one (1) month during the calendar year.

- It shall also be given to rank-and-file employees who are paid on piece-rate basis, fixed or guaranteed wage plus commission, with multiple employers, resigned or were terminated, and were on maternity leave and receive salary differential are also entitled to 13th-month pay.
- The minimum 13th-month pay shall not be less than one-twelfth (1/12) of the total basic salary earned by an employee within a calendar year. To illustrate:

$$\frac{\text{Total basic salary earned during the year}}{\text{12 months}} = \text{proportionate } 13^{\text{th}}\text{-month pay}$$

- The 13th-month pay shall be paid on or before December 24, 2022.
- No request or application for exemption from payment of 13th-month pay, or for deferment of the payment thereof shall be accepted and allowed.

NATIONAL PRIVACY COMMISSION ISSUANCES

NPC Advisory Opinion No. 2022-023 issued on November 11, 2022

- The University of the Philippines Diliman (University) requested for an opinion on whether it may disclose its students' personal data in connection with an "on-going case build-up" preparatory to the filing of a case for violation of RA No. 11053 or the Anti-Hazing Act of 2018. The requested information consists of a list of the subject fraternity's: 1) alleged current members, 2) student and alumni members, and 3) new recruits.
- The following specific information pertaining to the listed individuals were also requested: Full name, Address, Phone number and/or email address, Enrolment, course, degree, and campus, and for new recruits, in addition to the above, their parents' name, addresses, phone number and/or email address.
- The request for the forgoing information is purportedly intended for a case build-up, and to invite or summon potential witnesses and/or co-complainants or co-plaintiffs.
- The NPC opined that the requested information are classified as personal information and sensitive personal information (collectively, personal data) under the Data Privacy Act (DPA). Specifically, names and contact details (addresses, phone numbers, and email addresses) of the students and their parents are considered as personal information under the DPA. On the other hand, the requested information on enrolment, course, degree, and campus may be considered as sensitive personal information since it pertains to an individual's education.
- For the sensitive personal information requested, the disclosure may find basis under Section 13 (f), viz.:

> "SECTION 13. Sensitive Personal Information and Privileged Information. – The processing of sensitive personal information and privileged information shall be prohibited, except in the following cases: x x x
> (f) The processing concerns such personal information as is necessary for the protection of lawful rights and interests of natural or legal persons in court proceedings, or the establishment, exercise or defense of legal claims, or when provided to government or public authority."

- The term "establishment" may include activities to obtain evidence by lawful means for prospective court proceedings.
- On the other hand, the disclosure of personal information may be justified as falling under legitimate interest criterion in Section 12 (f):

> "SECTION 12. Criteria for Lawful Processing of Personal Information. The processing of personal information shall be permitted only if not otherwise prohibited by law, and when at least one of the following conditions exists: x x x

(f) The processing is necessary for the purposes of the legitimate interests pursued by the personal information controller or by a third party or parties to whom the data is disclosed, except where such interests are overridden by fundamental rights and freedoms of the data subject which require protection under the Philippine Constitution."

- Thus, the disclosure of the requested personal data for the declared purpose finds support under the DPA.
- It was further opined by the NPC that the University should evaluate whether the personal data requested is relevant and is not excessive to the purpose. While the law may allow processing when there is a lawful basis for the same, the processing of personal data remains to be subject to the proportionality principle which requires that the processing shall be adequate, relevant, suitable, necessary, and not excessive in relation to a declared and specified purpose.
- Should the University deem it proper to grant the request, it is recommended that the requesting party be made to sign an undertaking that the use of the requested information will only be for the purpose for which it is requested (i.e., filing a complaint for violation of the Anti-Hazing Act of 2018). Further, the proper disposal of such personal data should be ensured should the parties decide not to pursue the filing of the case. Likewise, the undertaking must include a clause to the effect that the requesting party acknowledges that he or she becomes a personal information controller (PIC) upon receipt of the requested documents and, therefore, is bound to observe the obligations of a PIC under the DPA.

NPC Advisory Opinion No. 2022-24 issued on November 21, 2022

- The Bureau of International Trade Relations (BITR) of the Department of Trade and Industry (DTI) inquired in whether the concept of free flow of data falls under the purview of the Data Privacy Act (DPA) and if the NPC foresees any future implications on data localization, data sovereignty, and data protection.
- This is in relation to the concept of "free flow of data" in high-level statements of the Asia Pacific Economic Cooperation (APEC), and G20. Likewise, in the World Trade Organization (WTO) Joint Statement Initiative on e-commerce, the relevant working text refers to the "flow of information" as well as "cross-border transfer of information by electronic means" or "cross-border data flows."
- The NPC opined that the use of the term "free" in relation to "flow of information" is not intended to denote absoluteness in the use and/or transfer of information by PICs whether locally or across transnational borders. Any processing of personal data is still regulated and subject to the requirements of the DPA and issuances of the NPC. There is a recognition that free flow of data should be facilitated but subject to the implementation of sufficient safeguards and where appropriate, conditions, limitations, or restrictions on the flow of data should be proportionate to the risks of the personal data processing activity.
- The transfer of personal data must adhere to general privacy principles of proportionality, transparency, and legitimate purpose. PICs must also ensure that recipients of personal data outside the Philippines process data in a manner consistent with requirements of the DPA and must put in place contractual or other reasonable safeguards to guarantee a comparable level of protection for data transferred.
- The NPC further ruled that a PIC cannot be absolved of its violations of the DPA on the argument that the processing for purposes of collections was subcontracted. The NPC explained that the PIC cannot escape the fact that it was in the position to control and exercise discretion over what personal information it processed and the extent of its processing.
- The NPC further explained that data sharing requires that the sharing, disclosure, or transfer to a third party of personal data should adhere to the general data privacy principles

of transparency, legitimate purpose, and proportionality. Likewise, organizations should implement reasonable and appropriate organizational, physical, and technical security measures intended for the protection of personal data against any accidental or unlawful destruction, alteration, and disclosure, as well as against any other unlawful processing.

NPC Advisory Opinion No. 2022-25 issued on November 22, 2022

- An employee of the Department of Agriculture (DA) received a Special Order reassigning him to a remote province. He filed an appeal before the Civil Service Commission (CSC) to assail the reassignment, and pending appeal, he requested to be reinstated at his original station but was denied.
- Months later, he was dropped from the rolls without notice. As a consequence, he filed a petition before the CSC for being dropped from the rolls.
- To support his petition, he requested a copy of his 201 file which is in the custody of the Human Resources Office of DA. This request was denied by the Officer-in-Charge Regional Director (OIC-RD) on the ground that the provisions of DPA do not apply to him citing Section 4(a) of the DPA, which states that the DPA do not cover information about any individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual.
- The NPC has previously opined that an employee, being a data subject, is entitled to have reasonable access to the personal information in his 201 file. Moreover, NPC issued Advisory No. 2022-01 entitled "Guidelines on Requests for Personal Data of Public Officers", which provides guidance in dealing with personal and sensitive personal information (collectively, personal data) of government employees.
- The said Advisory unequivocally states that public officers and employees are recognized as data subjects with all the concomitant rights and available redresses.
- That the provisions of the DPA do not apply to government employees is misplaced. As a data subject, a government employee has data privacy rights to his own personal data, including the right to access such information. A PIC must have policies to facilitate the exercise of a data subject's right to access.
- Thus, a government employee should be provided with the information requested in accordance with the policies of DA on a data subject's right to access information and the retention period for personal and sensitive personal information, as well as other existing policies related to government employment records.
- Moreover, he requested his 201 file to support his petition before the CSC to question his reassignment and eventual dropping from the rolls.
- Thus, the request was made for the establishment, exercise or defense of legal claims which is a lawful criterion for processing under Section 13(f) of the DPA, which covers necessary processing of data for the protection of lawful rights and interests of natural or legal persons in court proceedings, or the establishment, exercise or defense of legal claims, or when provided to government or public authority.

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