MT&F

MATA-PEREZ · TAMAYO · FRANCISCO

ATTORNEYS AT LAW

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Highlights

BIR ISSUANCES

RMC No. 113-2023, October 17, 2023
(Circularizing the Implementing Rules and Regulation ("IRR") of the Maharlika Investment Fund ("MIF") Act of 2023 (RA 11954))

- It should be noted that President Marcos suspended the implementation of said IRR on October 18, "pending further study thereof."

- The Maharlika Investment Corporation ("MIC") shall act as a sole vehicle for the purpose of mobilizing and utilizing the MIF.

- *Capitalization of the MIC*
  The MIC shall have an authorized capital stock of Php500,000,000,000.00 to be divided into Php5,000,000,000.00 shares, with a par value of Php100.00 per share. The fund shall consist of 3,750,000.00 common shares, taking its start-up capital from GFIs and the national government, as follows:

  Land Bank of the Philippines ("Land Bank") – Php50,000,000,000.00
  Development Bank of the Philippines ("DBP") – Php25,000,000,000.00
  National government – Php50,000,000,000.00

  The fund shall likewise consist of 1,250,000.00 preferred shares, to be made available for subscription by the National Government, its agencies or instrumentalities, government-owned and controlled corporation ("GOCC") or GFIs. Additional investments may likewise be sourced from investments of reputable private and State-owned financial institutions and corporations in the form and under the terms and conditions that the Board of Directors ("BOD") may prescribe.

  The contribution of the National Government shall come from the following sources:

  a. 100% of Bank Sentral ng Pilipinas' ("BSP") total declared dividends, in the amount not exceeding the P50,000,000,000.00 initial subscription of the National Government, for the 1st and 2nd fiscal years.

  b. 10% of the National Government's share from PAGCOR income, for a period of 5 years. *Provided*, That the share earmarked for the Universal Health Care Act shall not in any manner be diminished.

     Other government-owned gaming operators and/or regulators shall also contribute 10% of their revenues from gaming operations for a period of 5 years.

     Government agencies and GOCCs providing for the social security and public health insurance of government employees, private sector workers and employees and other sectors, such as, but not limited to, the SSS, GSIS, PhilHealth, Pag-IBIG Fund, OWWA, and PVAO Pension Fund shall be absolutely prohibited to contribute to the capitalization of the MIC.

- *Board of Directors of MIC*
  There shall be 9 members of the Board of Directors composed as follows:

  a. Secretary of Finance as Chairperson in an *ex officio* capacity
  b. President and Chief Executive Officer ("PCEO") as Vice- Chairperson
  c. PCEO of the LBP
  d. PCEO of the DBP
  e. 2 Regular Directors
  f. 3 Independent Directors from the private sector

  Directors shall be appointed by the President of the Philippines upon recommendation of the Advisory Body. Regular Directors shall serve for a term of 3 years, while Independent Directors shall have a term of 1 year. Independent Directors shall be eligible for reappointment, provided that the cumulative term shall not exceed 9 years.

  The Board of Directors may engage in the following investments:

  a. Cash, foreign currencies, metals, and other tradeable commodities;
  b. Fixed income instruments issued by sovereigns, quasi-sovereigns and supranationals;
  c. Domestic and foreign corporate bonds;
  d. Listed or unlisted equities, whether common, preferred, or hybrids;
  e. Islamic investments, such as Sukuk bonds;
  f. Joint ventures or co-investments, mergers and acquisitions;
  g. Mutual and exchange-traded funds invested in underlying assets;
  h. Real estate and infrastructure projects directed towards the fulfillment of national priorities;
  i. Programs and projects on health, education, research and innovation, and other such investments that contribute to sustainable development;
  j. Loans and guarantees to, or participation into joint ventures or consortiums with Filipino and foreign investors in commercial, industrial, mining, agricultural, housing, energy, and other enterprises, which may be necessary or contributory to the economic development of the country, or important to the public interest; and
  k. Other investments with sustainable and developmental impact, as may be approved by the Board.

SUPREME COURT NOTICES

A.M. Nos. 10-3-7-SC & 11-9-4-SC, August 07, 2023
Re: Guidelines on submission of electronic copies of pleadings and other court submissions being filed before the lower courts pursuant to the efficient use of paper rule.

- The Guidelines shall cover the filing of pleadings and other court submissions and their additional accompanying documents before all lower courts

- The PDF copies must be transmitted to the official e-mail address of the court where the case is pending.

- In instances when the primary manner of filing is through personal filing, by registered mail, or by accredited courier, the PDF copies must be transmitted within 24 hours from the filing of the paper copy.

- Date and Time of Filing:

Primary Manner of Filing (Rule 13 of Revised Rules of Civil Procedure)	Date and time to have been deemed filed
• Personal filing • Registered mail • Accredited courier	Date and time of filing of the paper copy
• Electronic filing	Date and time of the electronic transmittal

- Express permission must be granted by the court for the primary filing through electronic transmittal of the following:

  (i) initiatory pleadings and initial responsive pleadings, such as an answer to a complaint or a comment to a petition;
  (ii) annexes, appendices, exhibits, or other accompanying documents to pleadings or other court submissions not readily amenable to digitization to PDF; and
  (iii) sealed and confidential documents or records.

- Electronic File Format:

  - The PDF copy of the primary pleading or court submission is separate from the PDF copy of its attachments.
  - If the primary manner of filing is through electronic transmission the form and substance of the contents of the PDF copy, as first filed, shall be controlling.
  - If primary manner of filing is through other modes, the PDF copy to be transmitted should be the exact copy of the filed paper copy.
    - Material discrepancies may result to an appropriate sanction/disciplinary action on the party responsible for the filing
  - The Guidelines also provide for the prescribed nomenclature of the PDF files.

- All filings by electronic transmittal must be made with any of the e-mail addresses of record. If an electronic transmittal is made with an e-mail address not of record, the entire transmittal shall be deemed as not filed.

- If primary manner of filing is through modes other than electronic transmittal, the filer shall execute a verified declaration that the pleading or court submission and its accompanying documents, if any, submitted electronically are complete and true copies of the paper copies filed before the court.

- The Guidelines took effect on August 25, 2023. (Two weeks after publication which was on August 11, 2023)

- By April 5, 2024, the primary manner of filing of all pleadings, motions, and other court submissions in cases covered by the Guidelines, before any court, shall be through electronic transmittal, in accordance with the Guidelines.

COURT DECISIONS

SUPREME COURT

Chamber of Customs Brokers, Inc. v. COC
G.R. No. 256907, February 20, 2023, Uploaded on August 05, 2023
(Implied repeal by irreconcilable inconsistency takes place when the two statutes are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized.)

Facts: On March 30, 2004, Republic Act ("RA") 9280 or the "Customs Brokers Act" was enacted.

Particularly related to this case is Section 27 of RA 9820, which reads:

> "SECTION 27. Acts Constituting the Practice of Customs Brokers Profession. - Any single act or transaction embraced within the provision of Section 6 hereof shall constitute an act of engaging the practice of customs broker profession. Import and export entity declarations shall be signed only by customs broker under oath based on the covering documents submitted by the importers."

Subsequently, Congress enacted RA10863 or the "Customs Modernization or Tarriff Act" ("CMTA"). Section 106 (d) and Section 107 of the law read:

> "SECTION 106. Declarant. - A declarant may be a consignee or a person who has the right to dispose of the goods. The declarant shall lodge a goods declaration with the Bureau and may be:
>
> xxxx
>
> (d) A person duly empowered to act as agent or attorney-in-fact for each holder.
>
> xxxx
>
> SECTION 1 07. Rights and Responsibilities of the Declarant. – xxxx
>
> The declarant shall sign the goods declaration, even when assisted by a licensed customs broker, who shall likewise sign the goods declaration."

Chamber of Customs Brokers, Inc. ("CCBI") filed a Petition for Declaratory Relief before the Regional Trial Court ("RTC") praying that Section 27 of RA 9280 should remain in full effect despite the passage of Section 106 (d) of RA 10863, or that the latter be struck down as unconstitutional for being in violation of the equal protection clause of the Constitution, contending that Section 106 (d) of RA 10863 did not repeal or amend RA 9280 as there were no irreconcilable inconsistencies between them. As such, the provisions of the latter law should be harmonized and read in conjunction with the provisions of the former law.

Issue: Did Section 106 (d) of RA 10863 effectively repealed Section 27 of RA 9280?

Ruling: Yes. Section 27 of RA 9280 has been repealed. A scrutiny of RA 9853 would reveal that it is an express repeal considering that it identified or designated the act or acts that are intended to be repealed. The title of the law itself states that it is "An Act Amending

Republic Act No. 9280, otherwise known as the Customs Brokers Act Of 2004." Hence, even before the enactment of RA 10863, the law in question, the exporter on their own can already sign the goods declaration even without the assistance of a customs broker.

Furthermore, even assuming arguendo that RA 9853 was not enacted, RA 10863 should be considered to have impliedly repealed Section 27 of RA 9280. The pertinent provisions of the two statutes, RA 9280 and RA 10863, have apparent irreconcilable inconsistencies. As adverted to above, Section 27 of RA 9280 provides that import and export declarations shall only be signed by a customs broker. On the other hand, Section 106 (d) of RA 10863 (and even RA 9853 which was enacted before RA 10863) provides that the declarant them self is allowed to sign the goods declaration or delegate such act to their agent or attorney-in-fact.

CIR v. Maxicare Healthcare Corporation
G.R. No. 261065, July 10, 2023, 2023, Uploaded on October 04, 202
(The reckoning point of the 60-day period for the submission of relevant supporting documents is from the filing of the administrative protest to the Final Letter of Demand/Final Assessment Notice ("FLD/FAN"), when such protest constitutes a request for reinvestigation, and not from the response or reply to the Preliminary Assessment Notice ("PAN").)

Facts: The CIR filed a Petition for Review to question the decision of the CTA first division which withdrew and set aside the Final Decision on Disputed Assessment ("FDDA") dated December 9, 2015, issued by the CIR against Maxicare Healthcare Corporation ("Maxicare"), and also cancelled and set aside the FLD and FAN, both dated October 8, 2015, assessing Maxicare for deficiency value-added tax ("VAT") and compromise penalty for calendar year 2012, on the ground that the CIR had violated Maxicare' s right to due process because the FDDA was issued prior to the lapse of the 60-day period which Maxicare had to file its supporting documents.

Issue: Did the CTA En Banc err in ruling that the CIR violated Maxicare's right to due process?

Ruling: Yes. The Supreme Court ruled that with CIR's issuance of the FDDA on December 09, 2015, before the lapse of the sixty (60) day period or mere thirty (30) days after the filing of the protest to the FLD/FAN, Maxicare was essentially precluded from exercising its right to submit supporting documents in support of its protest. This is in violation of the law which categorically grants the taxpayer a definite period within which to substantiate its administrative protest of the deficiency tax assessment issued against him. Such period cannot be dispensed with or waived by the taxing authority as the same is part and parcel of the due process requirement in the issuance of deficiency tax assessments.

CTA EN BANC

CIR v. Deutsche Knowledge Services PTE., LTD
CTA EB No. 2641, October 04, 2023
(Untranslated documents offered as evidence do not have probative value.)

Facts: On September 1, 2015, Deutsche Knowledge Services Pte, Ltd. ("Deutsche") filed an administrative claim for VAT refund excess input VAT. To prove that its zero-rated sales were made to NRFCs doing business outside the Philippines, it submitted the business registration documents of its clients. However, the business registration documents were in the original foreign language and Deutsche failed to present an English translation.

Issue: May the untranslated business registration documents be admitted?

Ruling: No. In discussing the Deutsche's petition, the CTA ruled that untranslated documents offered as evidence do not have probative value. Clearly, the reason for this is that without an English translation, the contents of a document written in a foreign language cannot be understood by a court. Hence, there is no way for a court to determine whether the foreign document actually supports the contention by a party-litigant for which such has been offered as evidence. The CTA, not being fluent in the language in which such documents were written, could not verify if such documents indeed constitute the foreign business registration of Deutsche's clients.

CIR v. ABS-CBN Film Production, Inc.

CTA EB No. 2619, September 28, 2023

(The principle of estoppel can never justify the non-compliance with the Letter of Authority requirement.)

Facts: Star Songs, Inc. was audited for deficiency taxes. The Chief of the Regular Large Taxpayers Audit Division 1 issued a Memorandum of Assignment ("MOA") referring the continuation of the audit of Star Songs, Inc. to different revenue officer and group supervisor than the one provided for under the previously issued Letter of Authority ("LOA"). The CIR argued that Star Songs, Inc. is estopped from questioning the authority of the revenue officers who conducted the audit of its records since it did not raise this issue at the administrative level.

Issue: Is the assessment void?

Ruling: Yes. Any document may qualify as an LOA provided that the essential requisites of an LOA are present. To be effective, an LOA may be issued by the Commissioner of Internal Revenue himself or by his duly authorized representative. Guided by this, a MOA may be considered a valid and effective LOA if it was issued by the Commissioner or its authorized representatives. However, in this case, the memorandum was issued only by the chief of the Regular Large Taxpayers Audit Division 1.

Furthermore, the taxpayer's right to know the specific revenue officers who are authorized to examine his or her books is a due process requirement not only enshrined in the National Internal Revenue Code of 1997, as amended, ("Tax Code") but also protected by the 1987 Constitution. It protects taxpayers from unnecessary encroachment by the State over its person and property. As such, the principle of estoppel can never justify the non-compliance with the LOA requirement.

Irish Fe N. Aguilar v. Honorable Lila Catris Guillermo, in her capacity as CIR

CTA EB No. 2652, October 02, 2023

(The provision of the Tax Code is clear and unequivocal and needs no statutory construction.)

Facts: Irish Fe N. Aguilar ("Ms. Aguilar") is a Filipino employee of the Asian Development Bank ("ADB") a bank formed by an international agreement, wherein the Republic of the Philippines is a signatory. Ms. Aguilar filed for income tax refund contending that the charter of ADB provides tax exemptions for its employees.

Issue: Are the Filipino employees of ADB exempt from income tax?

Ruling: No. Article 56 of the ADB Charter provides that no tax shall be levied on the salaries and emoluments of its officers and employees except where the member State retains its right to tax salaries and emoluments of its citizens, and the Philippines has expressly reserved its right to tax the salaries and emoluments paid by ABD to its citizens.

Furthermore, the Tax Code clearly provides that all citizens of the Philippines residing therein are subject to income tax on all income sourced within and outside the Philippines.

The provision of the Tax Code is Clear and unequivocal and needs no statutory construction.

People of the Philippines v. Ronnel Lampa Deguzman

CTA EB No. CRIM-089, October 03, 2023

(*The PAN cannot be used as a basis to determine civil liability since it is not the final decision of the CIR contemplated in Section 205.*)

Facts: De Guzman, the sole proprietor of Lucky Sea Trading, was indicted for violation of Section 254, in relation to Section 255 of the Tax Code for willful failure to file his Income Tax Returns ("ITR") for taxable years 2012 and 2013. He did not offer any documentary evidence but only his bare testimony. He was found guilty beyond reasonable doubt. Hence, the present Petition for Review.

The People argues that the CTA Division erred in not imposing civil liability for taxes and penalties. Meanwhile, De Guzman contends that the obligation to pay tax is not deemed instituted in a criminal case, citing *Gaw, Jr. v. CIR* which cited the 1967 case of *Republic v. Patanao*, wherein the Court explained that the Tax Code did not mandate that civil liability is deemed included in the criminal action.

Issue: Did CTA Division err in not imposing civil liability when De Guzman was found guilty beyond reasonable doubt for violation of Section 255 of the Tax Code

Ruling: No. The tax law referred to in *Patanao*, a 1967 case, was the NIRC of 1939. The NIRC of 1939 failed to provide the collection of tax in criminal proceedings. The present tax law is different. In particular, Section 205 of the Tax Code now provides that the judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.

However, Section 205 requires that there must be a final determination of such liability. This determination of civil liability for the payment of taxes refers to a formal assessment or Final Assessment Notice. In this case, the prosecution merely presented the PAN and no other subsequent notice was served. The PAN cannot be used as a basis to determine De Guzman's civil liability since it is not the final decision of the CIR contemplated in Section 205.

CIR v. Medicard Philippines Inc.

CTA EB No. 2603, October 11, 2023

(Section 222(b) of the Tax Code provides an exception to the period of limitation of assessment, i.e., the execution of a waiver by the CIR, or his or her authorized representative, and the taxpayer to extend the period to assess.)

Facts: Medicard Philippines, Inc. ("MPI") received an LOA and Notice of Informal Conference ("NIC") for taxable year 2008. On October 5, 2011, a representative of MPI executed a waiver of the defense of prescription extending the period of assessment until March 31, 2012. Another waiver extending the period of assessment until June 30, 2012. However, aside from not being notarized, it did not bear any date and signature of BIR's authorized representative. Later on, MPI received a FDDA for its alleged deficiency.

Issue: Is the second waiver that extended the period to assess valid?

Ruling: No. Section 222(b) of the Tax Code provides an exception to the period of limitation of assessment, i.e., the execution of a waiver by the CIR, or his or her authorized representative, and the taxpayer to extend the period to assess. Moreover, to guide the

revenue officials and the taxpayers in the proper execution of the waiver of the statute of limitations, Revenue Memorandum Order ("RMO") No. 20-90 and Revenue Delegation of Authority Orders ("RDAO") No. 05-01 were issued. Here, the second waiver was not properly executed due to the following reasons: (1) BIR or his or her authorized representative did not accept the waiver (thus lacking the required signature); (2) there is no date of MPI's execution nor date of BIR's acceptance; (3) it was not notarized; and, (4) there is no proof that MPI was notified of BIR's acceptance. Moreover, the BIR failed to prove that the extraordinary 10-year Thus, when MPI received the FAN on 30 April 2012, the assessment had already prescribed (since the period to assess was until 31 March 2012 only), and the BIR lost his or her right to enforce the collection.

CIR v. BAC-MAN Geothermal Inc.

CTA EB No. 2621, October 11, 2023

(To completely afford a taxpayer of administrative due process in cases of disputed assessments also requires that the arguments and evidenced adduced by the taxpayer be taken into consideration in arriving at a conclusion as regards it liabilities.)

Facts: Bac-Man Geothermal Inc ("BMGI"). received a PAN to which it protested. Subsequently, BMGI received a FAN/FLD reproducing the PAN's contents differing only in the calculation of interest due to the lapse of time in between the PAN and the FAN/FLD.

Issue: Was BGMI's right to due proves violated?

Ruling: Yes. To simply afford a party the opportunity to be heard is not enough in tax cases. To completely afford a taxpayer of administrative due process in cases of disputed assessments also requires that the arguments and evidenced adduced by the taxpayer be taken into consideration in arriving at a conclusion as regards it liabilities. The FLD was a mere reproduction of the PAN's contents differing only in the calculation of interest. No mention was made of the additional documents that BGMI submitted to support its protest to the PAN.

CIR v. Bethlehem Holdings, Inc.

CTA EB No. 2673, October 11, 2023

(As long as the administrative claim and the judicial claim were filed within the two-year prescriptive period, then there was exhaustion of the administrative remedies)

Facts: Bethlehem Holdings, Inc. ("BHI") filed an administrative claim for refund on March 7, 2018, applying for the refund of its unutilized Creditable Withholding Taxes ("CWT") for Calendar year 2015, in the amount of PhP8,004,578. Without waiting for the decision of the CIR, BHI filed a petition for review with the CTA on March 23, 2018. The CIR contends that BHI claim for refund must be denied for failure to exhaust administrative remedies. It alleged that BHI has not submitted the documents required by the BIR under RMO 19-2015.

Issue: Was there violation of the doctrine of exhaustion of administrative remedies if the taxpayer failed to submit all the documents required by RMO No. 19-2015 in the administrative level?

Ruling: No. A cursory reading of RMO No. 19-2015 reveals that it did not state that the failure to submit the required document is tantamount to a non-filed claim. Moreover, jurisprudence dictates that a taxpayer need not await the BIR's action on an administrative claim before going to the CTA.

The law only requires that an administrative claim be priorly filed. That is, to give the BIR at the administrative level an opportunity to act on said claim. In other words, for as long as

the administrative claim and the judicial claim were filed within the two-year prescriptive period, then there was exhaustion of the administrative remedies. Hence, there is nothing in our laws and jurisprudence that supports the CIR's position that the exhaustion of an administrative claim for tax refund is a condition precedent that must be completely acted upon by the BIR before a judicial claim for refund may be filed by the taxpayer concerned.

CIR v. Maersk Global Services Centers LTD

CTA EB No. 2665 October 11, 2023

(The Court will consider all evidence offered, even those not presented before respondent at the administrative level)

Facts: In its judicial claim for refund before the CTA, Maersk Global Service Centers LTD ("Maersk"), presented for the first time, evidence to prove its claim for refund.

I*ssue:* May evidence be presented for the first time at the Judicial Level?

Ruling: Yes. The in exercising its appellate jurisdiction, the CTA it is not precluded from considering evidence that was not presented in the administrative claim before the BIR. Parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. No value is given to documentary evidence submitted before the Bureau of Internal Revenue unless it is formally offered in the Court of Tax Appeals.

CIR v. Kurimoto (Philippines) Corporation

CTA EB No. 2666, October 11, 2023

(*As a matter of due process, an administrative remedial process is mandated as a condition precedent to the judicial determination of liability for deficiency taxes.*)

Facts: Kurimoto (Philippines) Corporation ("KPC") filed an administrative claim for refund/tax credit, alleging that it accumulated excess input VAT attributable to zero-rated/effectively zero-rated sales. It had two sources of zero-rated sales: (a) Sale to Kurimoto Japan, a non-resident foreign corporation ("NRFC") not engaged in trade or business in the Philippines, and (b) Sale to THPAL, a PEZA-registered enterprise.

The BIR denied the claim. KPC filed a Petition for Review before the CTA. The CTA Division held that the sales to THPAL were zero-rated or effectively zero-rated sales, but the sales to Kurimoto Japan were not. Thus, KPC shall be allowed a refund/credit but only to the extent of the portion it was able to substantiate properly (namely, the sales to THPAL).

Issues:

1. Are KPC's sales to THPAL are zero-rated sales
2. Are KPC's sales to Kurimoto Japan are zero-rated sales
3. Assuming either or both sales are not zero-rated, is KPC liable for 12% deficiency VAT

Ruling:

1. Yes. RMC No. 74-99 explicitly states that all sales of goods, property or services by a VAT-registered supplier to a PEZA-registered enterprise, regardless of the type of tax exemption availed of by the latter, shall be subject to VAT at zero percent. That THPAL is a PEZA-registered enterprise is established by its PEZA Certificate of Registration. This certification, by itself, entitles KPC a VAT zero-rating with respect to its sales of services to THPAL.

2. No. Sales of "other services" shall be zero-rated pursuant to Section 108 (B)(2) of the Tax Code if the following conditions are met: First, the seller is VAT-registered. Second, the services are rendered "to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed." Third, the services are "paid for in acceptable foreign currency and accounted for in accordance with BSP rules and regulations."

KPC did not meet two of the requisites with reference to its sales to Kurimoto Japan. It failed to adduce evidence to prove (a) the latter's NRFC status and (b) that the services had been "paid for in acceptable foreign currency and accounted for in accordance with BSP rules and regulations."

3. No. While KPC's sales of services to Kurimoto Japan are not subject to zero percent VAT, it does not follow that KPC shall be liable for 12% deficiency VAT on these transactions. The courts have the power to review tax assessments issued by the CIR. However, it has no assessment powers and cannot, by itself, assess a taxpayer for deficiency taxes. The law vests sole authority to the CIR to make such assessments. As a matter of due process, an administrative remedial process is mandated as a condition precedent to the judicial determination of liability for deficiency taxes. We cannot allow the tax authorities to use a claim for refund as a means to assess a taxpayer for deficiency VAT, especially if the period to assess had already prescribed.

CIR v. Paymentwall Inc.

CTA EB No. 2510, October 17, 2023

(Without a Mission Order, revenue officers have no authority to conduct surveillance activities and, much less, close a business establishment.)

Facts: Paymentwall Inc. (Paymentwall) received a 48-Hour Notice informing it that it failed to comply to issue sales invoices or receipt, pay VAT and reflect correct taxable sales/receipt. It later received a Commissioner's Close Order. Paymentwall filed a Petition for Review to nullify the 48 Hour Notice, declare that it is not liable for deficiency VAT and to suspend its collection.

Issues: Is the CIR or any of its representatives authorized to issue Closure Order without a valid mission order?

Ruling: No. Without a Mission Order, revenue officers have no authority to conduct surveillance activities and, much less, close a business establishment. A Closure Order may only issue after the taxpayer has already submitted its corresponding explanations in response to the 48-hour Notice and, later, the 5-day VAT Compliance Notice. In turn, said notices must have been based on the results of surveillance activities conducted pursuant to a valid Mission Order. Here, the CIR admits that the closure implemented against Paymentwell was not preceded by surveillance activities nor supported by a valid Mission Order.

CIR v. Philip Morris Philippines Manufacturing, Inc.

CTA EB No. 2632, October 17, 2023

(In order for an export sale to qualify as zero-rated, the following conditions must be present: 1.) the sale was made by a VAT-registered person; 2.) there was sale and actual shipment of goods from the Philippines to a foreign country; and, 3.) the sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.)

Facts: Both CIR and Philip Moris Philippines Manufacturing Inc. ("PMPMI") are assailing the Decision which partially granted Philip Morris' claim for refund/issuance of TCC of unutilized input VAT attributable to its zero-rated sales for the 1st and 2nd quarters of 2015. They

also assailed the Resolution, which denied the parties' respective motions for partial reconsideration.

Issue: Is PMPMI entitled to the claim of refund/tax credit of the whole amount being claimed?

Ruling: No. In order for an export sale to qualify as zero-rated, the following conditions must be present: 1.) the sale was made by a VAT-registered person; 2.) there was sale and actual shipment of goods from the Philippines to a foreign country; and, 3.) the sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

Here, PMPMI was able to establish that there were actual shipments from the Philippines to foreign countries for the export sales of goods in the amount of Php56,748,621.90. Moreover, out of the substantiated export sales of Php56,748,621.90 only the amount of Php87,363.34 was traced to the inward remittances per bank certifications or has proof of payment in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP. Thus, the Court partially granted the claim of PMPMI.

CIR v. Drugmakers Biotech Research Laboratories, Inc.

CTA EB No. 2570, October 17, 2023

(After a Letter of Notice ("LN") has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment)

Facts: Drugmakers Biotech Research Laboratories, Inc. ("Drugmakers") received a LN pursuant to the BIR's RELIEF System. Years later and without receiving an LOA, FAN, PAN, or FDDA, Drugmakers receives a Warrant of Distraint and/or Levy ("WDL"). As a result, Drugmakers filed a Petition for Review before the CTA.

The CIR claims that it issued a PAN through regular mail, but Drugmakers is denying this.

Issues:

1. Does an LN grant authority to the revenue officers to issue a tax assessment?

2. Was the PAN received by Drugmakers?

Ruling:

1. No. It is the LOA which is the concrete manifestation of the grant of authority bestowed by the CIR or his authorized representatives to the revenue officers to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities.

An LN is different from an LOA and a previously issued LN must be converted to an LOA before the revenue officer may further proceed with the audit and examination of the taxpayer as an LN is merely issued for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System.

2. No. Although the CIR presented (1) the PAN, (2) the Registry Return Receipt thereof, and (3) the Certification from the BIR General Services Division, to exhibit Drugmakers' actual receipt of the PAN, these documents simply prove the fact of mailing and nothing more. The CIR failed to adduce proof to show that the actual recipient who signed the registry receipt was Drugmakers' duly authorized representative.

CTA DIVISION

Petron Corporation v. CIR

CTA Case No. 9947, September 27, 2023

(Given the limited time frame remaining for petitioner to file its judicial claim, appealing Customs Memorandum Circular ("CMC") No. 164-2012 with the Secretary of Finance ("SOF") may result in the nullification petitioner's claim for refund; thus, direct recourse to this Court is understandable and warranted)

Facts: Petron Corporation filed an administrative claim for refund of excise taxes paid on the importation of alkylate. Considering CIR's inaction and since the 2-year period under Section 229 of the Tax Code, was about to lapse, Petron filed the Petition for Review, judicial claim, within the 2 year period without waiting for the CIR's decision. CIR argues that it is not a real party in interest considering that the excise taxes is paid to the Bureau of Customs ("BOC") and not to the BIR. It also argued that even assuming that CIR is the real party in interest, the petition should be dismissed since the case ultimately challenging the legality and constitutionality of CMC No. 164-2012, interpreting Section 148 (E) of the Tax Code, it should have been brought before the SOF and not before the Court.

Issue: Does the Court have jurisdiction over the petition for refund filed by Petron Corporation?

Ruling: Yes. CIR is still the real party in interest even if it was the BOC that collected the excise taxes. Section 12 of the Tax Code, provides that COC and his subordinates with respect to the collection of national internal revenue taxes on imported food, are considered as agents of the BIR Commissioner. Being the SOF's principal and the primary agency tasked to collect all national internal revenue taxes, including excise taxes, CIR is a real party in interest in the suit for recovery of erroneously collected excise taxes.

This present case is one of the jurisprudentially recognized exceptions on the doctrine of exhaustion of administrative remedies, i.e., where insistence on its observance would result in the nullification of the claim being asserted. Settled is the rule that in cases of recovery of erroneously paid or illegally collected tax under Section 229 of the Tax Code, both the administrative claim for refund and the filing of the suit in Court should be made before the expiration of two (2) years from the date of payment regardless of any supervening cause that may arise after payment.

Therefore, given the limited time frame remaining for petitioner to file its judicial claim, appealing CMC No. 164-2012 with the SOF may result in the nullification petitioner's claim for refund; thus, direct recourse to this Court is understandable and warranted.

Zambales Electric Cooperative I, Inc. v. BIR Regional Director of Revenue Region 4

CTA Case No. 10165, August 01, 2023

(The income from electric cooperative's electric service operations and other sources including interest income from all bank deposits and yield or any other monetary benefit form bank deposits and yield or any other similar arrangements shall remain taxable.)

Facts: Zambales Electric Cooperative, Inc. I ("ZAMECO I") was assessed for deficiency income tax. ZAMECO I argues that under Presidential Decree ("PD") 269 provides for the exemption of income tax of electric cooperatives and that RMC No. 74-2013 stating that the duty and tax exemptions enjoyed by electric cooperatives pursuant to PD 269 previously withdrawn are now restored.

Issue: Is ZAMECO I, as an electric cooperative, absolutely exempt from income tax?

Ruling: No. The Fiscal Incentive Revenue Board ("FIRB") issued Resolution No. 24-87, which restored, with a qualification, the tax and duty exemption privileges of electric cooperatives. It provided that the income from electric cooperative's electric service operations and other sources including interest income from all bank deposits and yield or any other monetary benefit form bank deposits and yield or any other similar arrangements shall remain taxable. This resolution by the FIRB was merely amplified by RMC No. 74-2013.

Halliburton Worldwide Limited – Philippine Branch v. CIR

CTA Case No. 10139, July 26, 2023

(For Regional cases, the Regional Director may approve or disapprove the claim. Should there be no proof that a Denial Letter from the Regional Director was received by the claimant, the Court deems that there is decision rendered on the application for refund or tax credit. The Court treats the case as an appeal due to CIR's inaction, having received no "decision" after the lapse of the 90-day period.)

Facts: Halliburton Worldwide Limited ("Haliburton"), filed its administrative claim for refund/tax credit of its unutilized input VAT.

Halliburton then received a Denial Letter signed by RDO Camba, Jr., stating that Halliburton's claim for refund was denied.

Issue: Can the RDO sign the denial letter on application for VAT refund or tax credit?

Ruling: No. For Regional cases, the Regional Director may approve or disapprove the claim within the 90-day time frame set forth in Section 112(C) of the Tax Code. If the claim is disapproved or denied, the Regional Director may also sign the denial letter. Notably, the participation of an RDO after the filing of the claim is limited only to "verification/processing."

Considering that the RDO is not authorized to sign the denial, this Court deems that there is no decision rendered on Haliburton's application for refund or tax credit. Nonetheless, this Court treats this case as an appeal due to CIR's inaction, having received no "decision" after the lapse of the 90-day period.

Schaeffler Philippines Inc. v. CIR

CTA Case No. 10310, October 17, 2023

(In the absence of a specific statutory definition, and without a contrary definition within the material, words must be given their plain, ordinary and literal meaning)

Facts: Schaeffler Philippines, Inc. ("Shaeffler") filed an administrative claim for refund with Revenue District Office No. 47. The BIR denied the refund indicated that the refund claim should have been filed with the VAT Credit Audit Division ("VCAD") as Shaeffler was considered a "direct exporter". RMC No. 47-2019 provides that direct exporters must file refund claims with the VCAD, regardless of the percentage of export sales to total sales. Hence, Schaeffler filed for a Petition for Review before the CTA.

Shaeffler argues that it cannot be considered a "direct exporter" for purposes of RMC No. 47-2019 as the volume of its sales could not warrant its classification as a direct exporter, nor is it engaged in such a line of business.

Issue: Is Schaeffler considered a "direct exporter" for its export sales to a Non-Resident Foreign Corporation?

Ruling: Yes. Shaeffler is considered a "direct exporter" for purposes of RMC No. 47-2019. The phrase "direct exporter" is not defined under the Tax Code. Hence, it must be given its plain, ordinary and literal meaning.

The CIR's approximation of the term is restated for clarity - "the sale of a product directly to its customer in another country, without the participation of another person or organization to facilitate the same", wherein in such an instance, it can be expected that the seller will issue its own invoice directly to its customer.

RMC No. 47-2019 defines direct exporters, for purposes of the Circular, further within the rule itself, indicating "regardless of the percentage of export sales to total sales", to clarify its scope. Absent any showing that RMC No. 47-2019 contravenes the Tax Code, Shaeffler's argument must fail.

The records show that Shaeffler made direct export sales to Schaeffer Thailand in the covered period of the claim. Rightfully, Shaeffler should have filed its claim with the VCAD.

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

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