MT&F

MATA-PEREZ · TAMAYO · FRANCISCO

ATTORNEYS AT LAW

TAX JOURNAL

SEPTEMBER 2023

Highlights

BIR ISSUANCES

RR No. 10-2023, September 08, 2023
(Amends certain provisions of RR No. 6-2019, as amended, to implement the extension on the period of availment of the Estate Tax Amnesty pursuant to Republic Act ("RA") No. 11956, further amending RA No. 11213 (Tax Amnesty Act), as amended by RA No. 11569)

	RR No. 6-2019 (OLD)	RR No. 10 -2023 (NEW)
Coverage	Unpaid estate tax/es for state of decedent/s who died on or before December 31,2017 (with or without assessments)	Unpaid estate tax/es for state of decedent/s who died on or before **May 31, 2022** (with or without assessments)
Place of Filing Estate Tax Return (BIR Form 2118-EA)	1. Revenue District Office ("RDO") having jurisdiction over the last resident of the decedent; 2. If non-resident decedent, with executor or administrator in the Philippines - RDO where executor administrator is registered, or if not yet registered, at the executor or administrator's legal residence. 3. If non-resident decedent with no executor or administrator in the Philippines - RDO No. 39-South Quezon City	Estate Tax Return (BIR Form 2118-EA) shall be filed **and paid, either electronically or manually**
Payment of Estate Tax Due	The duly accomplished and sworn Estate Tax Amnesty Return ("ETAR"), and Acceptance Payment Form ("APF") [BIR Form No.0621-EA) [Annex C], together with the complete documents as enumerated in the ETAR, shall be presented to the concerned RDO for endorsement of the APF prior to the payment of the estate amnesty tax with the Authorized Agent Banks ("AAB") or Revenue Collection Officers ("RCO").	Any authorized agent bank, through revenue collection officer of any RDO or **authorized tax software provider as defined in Revenue Memorandum Order ("RMO") 8-2019** The duly accomplished and sworn ETAR, and Acceptance Payment Form ("APF") [BIR Form No.0621-EA) [Annex C], **and the complete documents shall be presented to the concerned RDO.**
Time of Filing Estate Tax Return (BIR Form 2118-EA) Payment of Estate Tax Due	Within 2 years from the effectivity of the regulation	**Within June 15, 2023 until June 14, 2025**
Documentary Requirements		**The documents to be submitted shall be limited to the following:**

	RR No. 6-2019 (OLD)	RR No. 10 -2023 (NEW)
		○ **Mandatory Requirements:** ▪ **Certified True Copy of the Death Certificate ("DC") or if not available, the Certificate of No Record of Death from the Philippine Statistics Authority and any valid secondary evidence including but not limited to those issued by any government agency/office sufficient to establish the fact of death of the decedent;** ▪ **Taxpayer Identification Number ("TIN") of decedent and heir/s;** ▪ **For "Claims Against the Estate" arising from contract of loan, notarized promissory note, if applicable;** ▪ **Proof of the claimed "Property Previously Taxed", if any;** ▪ **Proof of the claimed "Transfer for Public Use", if any; and** ▪ **At least one (1) government issued identification card ("ID") of the Executor/Administrator of the Estate, or if there is no executor or administrator appointed, the heirs, transferees, beneficiaries or authorized representative.** ○ **For Real Property/ies, if any** ▪ **Certified true copy/ies of the transfer/original condominium certificates of title of real property/ies;** ▪ **Certified true copy of the tax declaration of real property/ies, if untitled, including the improvements at the time of death or the succeeding available tax declaration issued nearest to the time of death of the decedent, if none is available at the time of death; and** ▪ **Certificate of No Improvement issued by the assessor's office at the time of death of the decedent, if applicable**

	RR No. 6-2019 (OLD)	RR No. 10 -2023 (NEW)
		○ **For Personal Property/ies, if applicable** ▪ **Certificate of Deposit/Investment/Indebtedness owned by the decedent alone or decedent and the surviving spouse, or decedent jointly with other;** ▪ **Certificate of Registration of vehicle/s and other proofs showing the correct value of the same;** ▪ **Certificate of Stocks;** ▪ **Proof of valuation of shares of stock at the time of death; or** ▪ **Proof of valuation of other types of personal property.** ○ **Other Requirements, if applicable** ▪ **Duly notarized original Special Power of Attorney (SPA), if the person transacting/processing the transfer is the authorized representative or one of the heirs, designated as executor/Administrator;** ▪ **Certification from the Philippine Consulate or Apostille, if the document is executed abroad; or** ▪ **Location Plan/vicinity map if the zonal value is not readily available.** Provided, however, that in the absence of the abovementioned documents, the Commissioner may request for alternative documents, as may be deemed appropriate.
		Within five (5) working days from the receipt of complete documents, the concerned RDO shall either endorse the APF for payment of the estate amnesty tax with the AABs, RCOs, **or authorized tax software provider,** or shall notify the taxpayer in case there is any deficiency in the application. Only the duly endorsed APF shall be presented to and received by the AAB, RCO **or authorized tax software provider.**
		After payment, the duly accomplished and sworn ETAR and APF with proof of payment, together with the complete documentary

	RR No. 6-2019 (OLD)	RR No. 10 -2023 (NEW)
		requirements, shall be immediately submitted to the **concerned** RDO in triplicate copies. Failure to submit the same **until June 15, 2025** is tantamount to non-availment of the Estate Tax Amnesty and any payment made may be applied against the total regular estate tax due inclusive of penalties.
		Installment payment shall be allowed within two (2) years from the statutory, date of its payment without civil penalty and interest.
		Proof of settlement of the estate, whether judicial or extra-judicial, need not accompany the ETAR if it is not yet available at the time of its filing and payment of taxes, but no electronic Certificate Authorizing Registration ("eCAR") shall be issued unless such proof is presented and submitted to the concerned RDO.

RR No. 11-2023, September 14, 2023 (Published on September 15, 2023)
(Prescribes the use of electronic mail (e-mail) and electronic signature as additional mode of service of the Warrant of Garnishment pursuant to Section 208 in relation to Section 244 of the National Internal Revenue Code of 1997, as amended.)

The following Revenue Officers and employees are mandated to observe and perform the following general policies and guidelines in order to implement service thru e-mail of the Warrant of Garnishments (WGs) as additional mode of service:

a. The Regional Director concerned, Assistant Commissioner-Collection Service (CS), Assistant Commissioner-Large Taxpayers Service (LTS), and Chief, Large Taxpayers District Offices (LTDOs), shall issue and electronically sign the WGs issued against the deposits of the delinquent taxpayer;
b. The Collection Division concerned, Accounts Receivable Monitoring Division (ARMD), LT-Collection Enforcement Division (LTCED), and the LTDO concerned shall use the Office's official e-mail address to transmit and serve the signed WGs to the Bank Head Offices and Bank Branches within the locality of the registered taxpayer simultaneously, showing the details of the tax liabilities of the taxpayers over which the corresponding WGs are based and issued;
c. Bank Head Offices and Bank Branches are required to provide their official e- mail address, if not yet available, to the concerned BIR office where they are registered;
d. Service thru e-mail is complete at the time of such e-mail is made, or, when available, at the time that the electronic notification of service of the WGs is sent. The Collection Division, ARMD, LTCED, and the LTDOs concerned, however, may request for an acknowledgement receipt of the signed WGs from the authorized official of the concerned banks;
e. As proof of service, the concerned BIR official or employee who sent the e- mail shall execute an Affidavit of Service, with a printed proof of transmittal. This shall be attached to the records of the docket of the case, together with the copy of the signed WGs sent via e-mail;
f. The Collection Division, ARMD, LTCED, and the LTDOs concerned shall request from the concerned banks to facilitate and act expeditiously on the issued WGs and send the corresponding reply thru the official e-mail address of the BIR. Immediately thereafter, a copy

of the served WGs, together with the acknowledgement receipt, shall be sent to the concerned delinquent taxpayer thru his/her/its e-mail address, if applicable, and thru registered mail in the registered address indicated in the Integrated Tax System (ITS) and/or Internal Revenue Integrated System (IRIS);

g. The Collection Division, ARMD, LTCED and the LTDOs concerned shall send a claim letter for the garnished amount, if any, via e-mail addressed, to the concerned banks and issue Authorization Letter to the handling Revenue Officer to collect the said garnishable amount, and claim the manager's check corresponding to deposit/s of the taxpayer under garnishment pursuant to the information electronically transmitted to the BIR by the concerned banks;
h. The Revenue Officer concerned shall remit the check in payment of the tax liability/ies of the taxpayer to the authorized agent bank where the taxpayer's business is located.

HOUSE OF REPRESENTATIVES BILL

House Bill No. 8937
(An Act Enhancing the Fiscal Regime for the Mining Industry, amending for the purpose section 34(B), and creating new sections 151-A, 151-B, 151-C, and 151-D, all under RA 8424, otherwise known as the national internal revenue code of 1997, as amended.)

<table>
<tr><th colspan="2">Salient Amendments to the National Internal Revenue Code of 1997 (“Tax Code”)</th></tr>
<tr><th></th><th>House Bill No. 8937</th></tr>
<tr><td>Exemption (Sec 34 (B)(4))</td><td>(4) Limitation of interest expense deductions for metallic mining contractors:
If a mining contractor has debt-to-equity ratio in excess of 3 to 1 at anytime during a taxable year, deductions shall be disallowed as tax-deductible expense for the interest paid by the metallic mining contractor during that year on that part of the debt exceeding the 3 to 1 ratio for the period the excess in ratio occurred</td></tr>
<tr><td>Royalties (Section 151-A)</td><td>Royalties for Large-scale metallic mining operations within mineral reservations:
3% of gross output of the minerals or mineral products extracted or produced by the metallic mining operations, exclusive of all other taxes

Royalties for Large-scale metallic mining operations outside mineral reservations:
The rate shall be a margin-based royalty on income from metallic mining operations:
<table>
<tr><th>Margin</th><th>Rate</th></tr>
<tr><td>1% up to 10%</td><td>1.00%</td></tr>
<tr><td>Above 10% up to 30%</td><td></td></tr>
<tr><td>Above 20% up to 20%</td><td>1.50%</td></tr>
<tr><td>Above 30% up to 40%</td><td>2.00%</td></tr>
<tr><td>Above 40% up to 50%</td><td>3.00%</td></tr>
<tr><td>Above 50% up to 60%</td><td>3.50%</td></tr>
<tr><td>Above 60% up to 70%</td><td>4.00%</td></tr>
</table></td></tr>
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	Above 70% — 5.00% Royalties for Small-scale metallic mining operations: 1/10 of 1% of gross output of the minerals or mineral products extracted or produced by small-scale metallic mining operations
Windfall Profit Tax (Section 151-B)	In addition to the taxes imposed under this code (Tax Code), there is hereby imposed for each taxable year a windfall profits tax on income from metallic mining operation, in accordance with the following table: Provided that it shall not be deductible from taxable income:
Tax Treatment of Metallic Mining Operations (Section 151-C)	"Each metallic mining operation that is subject of a mineral agreement or financial or technical assistance agreement shall be treated as a separate taxable entity for tax and royalty reporting and payment. A metallic mining contractor shall be treated as a separate taxpayer with respect to each and evert mineral agreement or financial or technical assistance agreement it holds or is a party to."

Margin	Rate
More than 35% up to 40%	1.00%
More than 40% up to 45%	2.00%
More than 45% up to 50%	3.00%
More than 50% up to 55%	4.00%
More than 55% up to 60%	5.00%
More than 60% up to 65%	6.00%
More than 65% up to 70%	7.00%
More than 70% up to 75%	8.00%
More than 75% up to 80%	9.00%
More than 80%	10.00%

COURT DECISIONS

SUPREME COURT

The City Government of Antipolo and the City of Treasurer of Antipolo v. Transmix Builders & Construction, Inc.
G.R. No. 235484, August 9, 2023
(The City Treasurer must send the required notices to the delinquent registered owner of the property; otherwise, the levy, consequent public auction, and sale of property shall be rendered void.)

Facts: Transmix Builders & Construction, Inc. ("Transmix") bought three (3) parcels of land and obtained new titles in its name; but it failed to have the tax declarations issued in its name. A Notice of Delinquency was published and subsequently Warrants of Levy were issued over the said properties. The City Treasurer of Antipolo then published a Notice of Public Auction and the subject properties were eventually forfeited in favor of the City Government of Antipolo.

Issue/s: Are the levy, sale, and subsequent forfeiture of the subject properties void?

Ruling: Yes. The transfer in the name of City Government of Antipolo is void.

Sec. 258 of the Local Government Code ("LGC") requires sending the notice of levy to the registered owner. Since the subject properties were registered under the Torrens system, the City Treasurer had the constructive notice of the fact of its registration. Hence, the City Treasurer should have sent the required notices to Transmix, being registered owner of the subject lots.

CTA EN BANC

CIR v. iSCALE Solutions, Inc.
CTA EB No. 2626, August 23, 2023
(A Mission Order is required prior to the conduct of surveillance and apprehension of business establishments for non-compliance.)

Facts: Relying on a Letter of Authority ("LOA"), the BIR conducted a surveillance and apprehension of business establishment on iSCALE Solution, Inc. and issued (a) Forty-Eight Notice to reflect its correct taxable sales/receipts and (b) Five (5)-Day Value Added Tax ("VAT") Compliance Notice ("VCN") without first issuing a Mission Order provided for under RMO No. 3-2009.

Issue: Is a Mission Order required before the BIR may conduct a surveillance and apprehension of business establishment?

Ruling: Yes. Item V (A)(2)(2.1) and (2.2) of RMO 3-2009 unequivocally mandates the issuance of Mission Order, prior to the conduct of surveillance and apprehension of business establishments for non-compliance. The BIR had no authority to recommend the closure of ISI's business operations. By issuing the 48 Hour Notice, the 5-day VCN without a valid Mission Order, the BIR agents impermissibly traversed the bound of their discretion, amounting to lack of jurisdiction.

Knutsen Philippines, Inc. v. CIR
CTA EB No. 2581, August 23, 2023
(To qualify for a zero-rating status under Section 108(B) of the Tax Code, the taxpayer must also prove that the recipient of the services are foreign corporations doing business outside the Philippines.)

Facts: To support its claim that its services are rendered to non-resident foreign corporations doing business outside the Philippines and is thus engaged in zero-rated or effectively zero-rated sales, Knutsen Philippines, Inc. ("KPI") presented (1) Certificates of Inward Remittances, (2) bank advices, and (3) passbook pages/bank statements to show that the payments it received from its clients are in acceptable foreign currency accounted for in accordance with rules of the Banko Sentral ng Pilipinas ("BSP").

Issue: Is Knutsen entitled to its claim for zero-rating?

Ruling: No. To be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC Certification of Non-Registration of Corporation/ Partnership and proof of incorporation/ registration in a foreign country (e.g., Articles/ Certificate of Incorporation/ Registration and/ or Tax Residence Certificate), and that there is no other indication which would disqualify said entity in being classified as a non-resident foreign corporation.

While the taxpayer presented documents showing that payments in acceptable foreign currency were made, it failed to present any document or evidence to show that the subject amounts actually correspond to its sales, to its clients which are non-resident foreign corporations doing business outside the Philippines.

CIR v. CTA Second Division and Nippon Express Philippines Corporation
CTA EB No. 2580, August 29, 2023
(The CTA En Banc only has jurisdiction over a final judgment or order, but not over an interlocutory order of the CTA in Division.)

Facts: The taxpayer filed a Petition Review before the CTA, to which the CIR failed to file a hard copy of its Answer. Accordingly, the taxpayer was allowed to present its evidence *ex parte*. Thus, the CIR filed a Petition for Certiorari with the CTA En Banc under Rule 65 assailing the CTA Division's order declaring the CIR in default.

Issue: Does the CTA En Banc have jurisdiction on a Petition for Certiorari under Rule 65?

Ruling: No. The CTA En Banc only has jurisdiction over a final judgment or order, but not over an interlocutory order of the CTA in Division. Section 18 of RA No. 1125, as amended, spells out the specific matters cognizable by the CTA En Banc with respect to the resolutions of the CTA in Division. It states:

> "A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA En Banc."

CIR v. Philusa Corporation
CTA EB No. 2566, September 13, 2023
(The kind and amount of tax are details that are material to the validity of a Waiver of the Defense of Prescription. Without these details, there can be no true and valid agreement between the taxpayer and the CIR.)

Facts: The taxpayer executed a total of three (3) Waivers of Defenses of Prescription in connection with the investigation of all its revenue tax for CY 2009. The waivers however did not indicate the nature and amount of tax due.

Issue:

1. Are waivers executed by the taxpayer valid?

2. Can the Court resolve the issue of prescription that was neither raised by the taxpayer in the petition nor stipulated or tried by the parties?

Ruling:

1. No.

The waivers are not valid for failure to indicate the nature and amount of tax due. Since there are no valid waivers, there was no valid extension on the CIR's right to assess the taxpayer. Accordingly, the deficiency tax assessment is barred by prescription.

2. Yes.

The CTA is not bound to adjudicate cases based solely on issued agreed upon by the parties. Rule 14, Sec 1 of the Revised Rules of the Court of Tax Appeals ("RRCTA"), expressly grants it the latitude to take up related issues necessary to achieve an orderly disposition of the case.

Carmen Copper Corporation v. CIR
CTA EB No. 2568, September 19, 2023
(The filing of a timely motion for reconsideration or new trial with the CTA Division must precede an appeal to the CTA En Banc. This rule likewise applies to amended decisions issued by the CTA Division.)

Facts: The taxpayer filed a Petition for Review in connection to the BIR's denial of its application for tax refund/credit. On February 2, 2021, the CTA Division partially granted the Petition for Review, to which the taxpayer filed a Motion for Reconsideration. Thereafter, on December 16, 2021, the CTA Division issued an Amended Decision. The taxpayer filed a Motion for Extension of Time to File Petition for Review with the CTA En Banc without first filing a Motion for Reconsideration on the Amended Decision.

Issue: Does the CTA En Banc have jurisdiction over the Petition for Review?

Ruling: No. The filing of a timely motion for reconsideration or new trial with the CTA Division must precede an appeal to the CTA En Banc. This rule likewise applies to amended decisions issued by the CTA Division.

The Supreme Court emphasized that failure to move for a reconsideration of the CTA Division's Amended Decision is a ground for the dismissal of its Petition for Review before the CTA En Banc. The perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional.

CTA DIVISION

Golden Donuts, Inc. v. CIR
CTA Case No. 9676, August 30, 2023
(A prior terminated assessment cannot bar the issuance of second LOA for the same taxable period if there is prima facie evidence of fraud.)

Facts: Golden Donuts, Inc. ("GDI") received a LOA for taxable year 2007. GDI did not interpose any objection and agreed to pay. Subsequently, the BIR issued another LOA against GDI pursuant to Run After Tax Evader ("RATE") program.

Issue: Is the issuance of the second LOA pursuant to the RATE program valid?

Ruling: Yes. Section 235 of the Tax Code allows the issuance of a second LOA covering the same taxable period even though the previous investigation had already been concluded in cases of fraud, irregularity or mistake, as determined by the Commissioner.

In this case, the issuance of the RATE LOA was based on the finding of prima facie evidence of fraud, which is sufficient reason to uphold the validity of the second LOA.

Benguet Electric Cooperative Inc. v. CIR
CTA Case No. 9967, September 11, 2023
(When a taxpayer opts to file an administrative appeal, the CIR is not given a fresh or separate 180-day period within which to decide the administrative appeal.)

Facts: On November 6, 2017, Benguet Electric Cooperative Inc. ("BENECO") received the Final Letter of Demand/Final Assessment Notice ("FLD/FAN") from the BIR, this was protested by BENECO on December 5, 2017. On March 15, 2018, or 100 days after the receipt of the protest, the Final Decision on Disputed Assessment ("FDDA") was issued by the Officer-in-Charge Assistant Regional Director which was received by BENECO on March 27, 2018. On April 25, 2018, BENECO elevated the FDDA to the CIR within the 30-day reglementary period.

On the belief that it was granted a fresh period of 180 days from April 15, 2018, BENECO filed a Petition for Review before the CTA on October 30, 2018, claiming that the period lapsed on October 22, 2018.

Issue: Does the CTA have jurisdiction over the case?

Ruling: No. The Petition was filed out of time. In this case, BENECO opted to file an administrative appeal, through an appeal on the FDDA, before the CIR on April 25, 2018.

The 180-day period referred to in Section 228 of the Tax Code and in Section 3.1.4 of RR No. 12-99, as amended by RR No. 18-2013, is confined only to the period within which either the CIR or his or her duly authorized representative may act on the initial protest against the FLD/FAN.

If the taxpayer opts to appeal to the CIR the final decision of the latter's duly authorized representative the taxpayer's remaining option is to wait for the CIR's decision before elevating its case to the CTA. In other words, when a taxpayer opts to file an administrative appeal, the CIR is not given a fresh or separate 180-day period within which to decide the administrative appeal.

Global Cars Phils., Inc. v. CIR
CTA Case No. 10225, September 7, 2023
(*Sales by VAT-registered entities to enterprises duly registered with the Subic Bay Metropolitan Authority ("SBMA") are subject to VAT zero-rating)*

Facts: Global Cars Phils., Inc. was assessed for deficiency VAT, however, the Preliminary Assessment Notice ("PAN") and the FDL/FLD did not contain the necessary annexes that contain the details of the assessment.

Global Cars argued that Westcoast Automotive Corporation ("WAC") is a freeport zone-registered enterprise registered with the SBMA and thus, its sales to WAC are not subject to 12% VAT. The BIR cited Revenue Memorandum Circular ("RMC") No. 50-07 and argued that the sale of automobiles shall be subject to 0% VAT only if the automobiles are to be used exclusively within the subject Special Freeport Zone and that Global Cars failed to show proof that the automobiles it sold to WAC are exclusively used within the Subic Freeport Zone.

Issues:

1. Is the assessment void?

2. Are the sales of Global Cars to WAC subject to VAT zero-rating?

Ruling:

1. Yes.

Section 228 of the Tax Code provides that taxpayers shall be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void. While section 3(v), Rule 131 of the Rules of Court provides for a disputable presumption that a letter duly directed and mailed was received in the regular course of mail, this presumption is subject to controversion and denial and in which case, the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee. Here, Global Cars denied the receipt of the annexes of the PAN and the FLD. However, the CIR failed to present any proof to discharge said burden and thus, Global Cars did not receive the attachments, in violation of its right to due process.

2. Yes.

Section 106(A)(2)(a)(5) of the Tax Code provides that export sales by VAT-registered persons shall be subject to zero percent rate. Implementing this, RR No. 16-2005 as amended by RR No. 4-2007 provides that sales to enterprises duly registered and accredited with the SBMA are considered as constructively exported. Following this, sales by VAT-registered entities, like Global Cars, to enterprises duly registered with the SBMA, like WAC, are subject to VAT zero-rating. In this case, Global Cars was able to present Certificates of Tax Exemption to prove that WAC is an enterprise duly registered with the SBMA. The tax treatment of any subsequent sale between WAC and its customers will then depend on the identity of WAC's customers but have no bearing on Global Cars.

Ammex I-Support Corporation v. CIR
CTA Case No. 10190, September 5, 2023
(*When the Official Receipts ("OR"), relating to VAT zero rating, reveals that it failed to indicate the addresses of its customers, the same will result in the disallowance of the claim for input tax. The address serves as a connection between petitioner's ORs and the foreign registration documents)*

Facts: Ammex I-support Corporation ("Ammex") is engaged in business process outsourcing using computer-based IT enabled systems to service the needs of its global clients.

Ammex filed an administrative claim for refund of unutilized input VAT in the aggregate amount of PhP591,850.45 covering the 2nd quarter of Calendar Year 2017. CIR denied the administrative claim for lack for factual and legal basis. CIR contends that Ammex failed to present sufficient proof that it is entitled to the claim for refund.

Issue: Is Ammex entitled for the claim for refund?

Ruling: No. The foreign currency remittances referred to under Section 108(B)(2) of the Tax Code, the same must not only be duly accounted for in accordance with the BSP's rules and regulations, they must likewise be compliant with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the Tax Code, as implemented by and Sections 4·113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-2005.

RMC No. 42-0399 expressly provides that a taxpayer's failure to comply with the invoicing requirements will result in the disallowance of the claim for input tax,

The City Government of Tayabas v. St. Jude Multi-Purpose Cooperative
CTA Case No. AC-254, September 6, 2023
(All cooperatives, regardless of the amount of accumulated reserves and undivided net savings shall be exempt from payment of local taxes)

Facts: St. Jude Multi-purpose cooperative ("St. Jude"), was assessed for Local Business Tax ("LBT") and real property tax. The Local Government Unit ("LGU") argues that although St. Jude is a duly registered cooperative and is exempt from taxes under the LGC, it cannot be granted an exemption unless and until it secures a Certificate of Tax Exemption in consonance with Joint Rules and Regulations for Articles 60, 61, and 144 of RA No. 9520 and RMO No. 076-2010.

Issue: Is a Certificate of Tax Exemption necessary before a cooperative may be exempted from LBT and real property tax?

Ruling: No. The Joint Rules and RMO No. 76-2010 pertain to the requirement to avail of tax incentives involving national taxes administered by the BIR. Further, RMO No. 76-2010 is an issuance of the BIR, an agency that does not concern itself with the assessment and collection of local taxes by the LGUs. Therefore, reliance on the Joint Rules and RMO No. 76- 2010 to require respondent herein to secure a Certificate of Tax Exemption for purposes of exemption for local tax purposes is utterly misplaced.

British American Tobacco (Philippines), Limited, v. CIR
CTA Case No. 9998, September 12, 2023
(Taxpayer must not only establish that it has timely filed its refund claim, it must likewise prove that the subject excise tax paid is an erroneous or illegal tax.)

Facts: British American Tobacco (Philippines), Limited ("BATPL") head office had passed a resolution for the cessation of all operations and closure of its branch office in the Philippines as of December 31, 2017. As a result, BATPL's remaining deposits with the BIR's Internal Revenue Stamp Integrated System ("IRSIS") and the value of all unused and spoiled stamps, and bad orders (credited back to the IRSIS) remained unutilized. It now seeks a tax refund representing the excise taxes that it paid for on internal revenue stamps requisitioned through the BIR IRSIS, the return of spoiled stamps and bad orders consisting of short deliveries, as well as the unapplied balance of its advance deposit in the IRSIS.

Issue: Is British American Tabacco (Philippines), Limited entitled to a tax refund?

Ruling: Yes. Under the Tax Code, taxpayer must not only establish that it has timely filed its refund claim, but it must also likewise prove that the subject excise tax paid is an erroneous or illegal tax.

Here, BATPL's payment represents erroneous or illegal excise taxes. The IRSIS balance stated in a taxpayer's ledger may be refunded under the Section 229 of the Tax Code, when the said balance may no longer be utilized by the same taxpayer such as when the latter is no longer a going concern (since it may fall under the category of "any sum alleged to have been excessively ... collected"). After all, erroneous or wrongful payment includes excessive payment because they all refer to payment of taxes not legally due.

BATPL was able to show that it has ceased its business operation in the Philippines, and it has already obtained the required tax clearance in connection therewith. Such being the case, any balance reflected on BATPL's ledger relative to internal revenue stamps (as it can no longer be utilized), may be refunded as long as the same has been duly substantiated.

Pioneer Float Glass Manufacturing, Inc. v. Secretary of Trade and Industry, Secretary of Finance, Commissioner of Customs, and The Tariff Commission
CTA Case No.10356, September 15, 2023
(A positive final determination [by the Tarriff Commission ("TC")] clearly antecedes, as a condition precedent, the imposition of a general safeguard measure.)

Facts: Pioner Float Glass Manufacturing, Inc ("PFGMI") filed an application with the Department of Trade and Industry ("DTI") for the imposition of safeguard measures on the importation of float glass.

DTI endorsed the case to TC for a formal investigation. TC found that there was no significant overall impairment in the position of the domestic industry that constitute serious injury in accordance with RA No. 8800 or the Safeguard Measures Act. Thus, the DTI dismissed the application pursuant to the TC's findings.

Issue: May the DTI deny the application pursuant to the findings of the TC?

Ruling: Yes. There are two condition precedents that must be satisfied before the DTI Secretary may impose general safeguard measures. First: there must be a positive final determination by the Tariff Commission that the subject products are being imported into the country in increased quantities, as to be a substantial cause of serios injury to the domestic industry.

Second, in case of non-agricultural products, the DTI-Secretary must establish that the application of such safeguard measures is in the public interest.

The Supreme Court also ruled that the most fundamental restriction of the DTI Secretary's power with respect to the imposition of safeguard measures, is that there should first be a positive determination of the TC.

San Miguel Brewery Inc. v. CIR
CTA Case No. 8955, September 14, 2023
(Prior notice and hearing are required if the regulation substantially increases the burden of those governed, notwithstanding its nomenclature-despite the regulation being called or designated as interpretative.)

Facts: San Miguel Brewery Inc. is questioning the validity of RMC No. 90-2012, considering that it was issued without hearing and prior notice. Annex "A-1" of RMC No. 90-2012 imposes excise tax on San Mig Light ("SML") products in the fixed amount of PhP20.57, regardless of whether the net retail price per liter is less or more than the amount of PhP50.60. This is in contrast with the provisions of the Tax Code which imposes PhP15.00 per liter, in case the net retail price per liter of volume capacity of the fermented liquor is PhP50.60 or less; and the excise tax shall be P20.00 per liter if it is more.

Issue: Is RMC No. 90-2012 valid?

Ruling: No. In prescribing the applicable excise tax rate per liter for SML, the subject matter of the present refund claim, the BIR acted in a legislative capacity and/or has supplemented the Tax Code. In fact, as it imposes additional obligations, at least, on the part of San Miguel in the form of excise tax on the SML, RMO No. 90-2012 vis-a-vis Annex "A-1" thereof, should be considered as a legislative rule. As a legislative rule, the BIR should have complied with the requirements in the Administrative Code on prior notice, hearing, and publication before issuing, RMO No. 90-2012. Its failure to comply with such requirements renders the RMO void.

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