**TMAP TAX UPDATES**

**October 16, 2020 to November 15, 2020**

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**Court of Tax Appeals Decision Highlights**

**A bare invocation of "in the interest of substantial justice" is not some magic wand that will automatically compel courts to suspend procedural rules.**

BIR did not attach a Motion for Extension of Time to its Petition for Review with the Department of Justice (DOJ); thus, the latter denied its petition. On this basis, the BIR filed a Petition for Certiorari before the CTA which was also denied for lack of merit. The BIR claims that its alleged procedural lapses should not be allowed to overshadow the fact that the taxpayer committed grave injustice in depriving the Government of the taxes due to it. It also posits that the strict adherence to the rules on the period for filing the appeal/motion for reconsideration with the DOJ may be relaxed, to give way to substantial justice.

The CTA ruled that a bare invocation of "in the interest of substantial justice" is not some magic wand that will automatically compel courts to suspend procedural rules. The CTA reminded the BIR that its Petition for Certiorari is anchored on the purported grave abuse of discretion committed by the DOJ. Consequently, it is behooved to prove not merely reversible error but grave abuse of discretion committed by the latter, absence of which the Petition for Certiorari cannot prosper. The CTA maintains that no grave abuse of discretion can be attributed to the Secretary of Justice in dismissing BIR's appeal as his actions are consistent with the DOJ's pertinent rules. *(Bureau of Internal Revenue vs. Hon. Menardo I. Guevarra, CTA Case no. 10101, October 15, 2020)*

**The perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional**

The CIR moves for reconsideration of the assailed Decision which he claims he received on July 15, 2020. However, a perusal of the records, particularly the Notice of Decision, shows that the CIR received the assailed Decision on July 14, 2020. The CIR posted his MR only on July 30, 2020, or one (1) day late.

The CTA ruled that although appeal is an essential part of our judicial process, the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory. *(Autostrada Motore, Inc. vs. CIR, CTA Case No. 9624, October 15, 2020)*

**The CTA's power of review over CIR's decisions is limited to those that have not yet become final**

The taxpayer’s Petition for Review was denied on the ground that the BIR's assessment against it had already lapsed into finality. The taxpayer urged the CTA to reconsider its decision on account of necessary hindrances inherent in the corporate structure such as the fact that its actions can only be exercised through its board of directors.

The CTA found the taxpayer’s reason insufficient to disregard established principles on jurisdiction. Jurisdiction is provided for by law, and this Court's power of review over CIR's decisions is limited to those that have not yet become final. The fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal. *(Red Fox Group, Inc. vs. CIR, CTA Case No. 9752, October 16, 2020)*

**Nothing in the law and jurisprudence would suggest that the arraignment of a corporation is a condition sine qua non for the Court to acquire jurisdiction over the accused corporation**

The taxpayer contends that the Decision of the CTA in Division is null and void for failure to arraign the accused corporation. The taxpayer also alleges that there is newly discovered evidence, which shows that the BIR initially acknowledged that the sources of money for the acquisition of bus units did not come from unreported revenue.

The CTA En Banc ruled that the requirement that a corporation be charged and prosecuted for a crime, only means that a suit must be brought against the corporation in court, or that a criminal suit be brought against the corporation, by indictment or information. The taxpayer failed to point out any law, jurisprudence, rules, and regulations that would require the arraignment of a corporation.

The CTA also noted that the subject document constitutes "forgotten" evidence, or evidence already in existence or available before or during a trial. The presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, and only serves to delay the proceedings. *(Kingsam Express Incorporation and Samuel S. Santos vs. People of the Philippines, CTA EB Crim. No. 054, October 16, 2020)*

**The phrase 'you are requested to pay your aforesaid deficiency tax liabilities' does not constitute as the demand for a valid formal assessment notice**

In its MR, the taxpayer argues that the CTA erred in ruling that the assailed waivers were invalid; and that the subject assessment did not indicate a definite due tax.

The CTA reiterated that the subject waivers reveal that they do not indicate the kind and amount of the taxes to be assessed or collected. It is required inter alia that the Waiver, must indicate the nature and the amount of the tax due, to be valid, and would have the effect of extending the three-year prescriptive period to assess. These details are material as there can be no true and valid agreement between the taxpayer and the BIR absent these information.

On the second ground raised by taxpayer, the CTA discussed that the amounts assessed are still indefinite, since the same are subject to further adjustment after the payment thereof. The mutability or changeableness of the amount due constitutes failure to comply with the mandatory requirement of stating a definite amount of liability and that there must be a clear demand to pay. An examination of the FLD would reveal that there is no demand or requirement for the taxpayer to pay the taxes due. The phrase 'you are requested to pay your aforesaid deficiency tax liabilities' negates the imperative nature and assertion of a legal right of an assessment. *(Panay Electric Company, Inc. vs. CIR, CTA Case Nos. 9523, October 16, 2020)*

**There is nothing in the law that requires submission of the complete documents enumerated in RMO No. 53-98 and RR No. 2-26 before being entitled to a refund**

The CIR claims that the taxpayer must clearly show in its tax return that the income from which the withholding tax was withheld formed part of its gross income. Thus, the CIR insists that by failing to provide supporting documents that would show the income was indeed declared in the Annual Income Tax Return (AITR), there is no direct linkage between the CWT and the income as reflected in the AITR.

The CTA ruled that that there is nothing in the law that requires submission of the complete documents enumerated in the “Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities” under RMO No. 53-98 before being entitled to a refund. There is also nothing in RR No. 2-06 that states that the mandatory attachments (i.e. Summary of Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns with claimed Tax Credits due to Creditable Tax Withheld At Source and the Monthly Alphalist of Payees (MAP) whose Income Received have been subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments) are required to be submitted in order to grant a refund or credit. *(Tullett Prebon Philippines, Inc. vs. CIR, CTA Case No. 9804, October 20, 2020)*

**The doctrinal precept in the Next Mobile case finds application when factual circumstances display that the parties to the execution of the waiver are in pari delicto irrespective of the number of waiver/s accomplished or executed**

At the administrative level, the taxpayer admitted that its signatory in the waiver of statute of limitation was duly authorized. On the other hand, the BIR's representative, who is presumed to know that the delegation must be in writing and duly notarized, required from the taxpayer's representative such written and notarized authorization/delegation before accepting the subject Waiver. The taxpayer's authorized representative also received the Waiver without requiring that the date of acceptance be indicated therein.

The CTA En Banc ruled that the exception crafted by the Supreme Court in the Next Mobile case, i.e., a defectively executed waiver may result in an extension of CIR's period to assess internal revenue taxes, was not solely hinged on the execution of five (5) separate infirmed waivers which remained unrectified as taxpayer suggests. Rather, the doctrinal precept finds application when factual circumstances display that the parties to the execution of the waiver are in pari delicto, or at equal fault irrespective of the number of waiver/s accomplished or executed. Thus, the CTA En Banc applied the Next Mobile case, although there is only one defective waiver in this case. Both parties are estopped from questioning the validity of the subject Waiver because they performed contributory acts in the invalidity thereof. *(M. Tech Products Philippines, Inc. vs. CIR, CTA EB No. 2114, October 21, 2020)*

**An amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration before an appeal to the CTA En Banc can be filed**

The taxpayer submits that the revisions made in the CTA Division’s Amended Decision were revisions on the civil aspect of the case and not on the alleged errors set forth by the taxpayer as to his conviction as compared to the Asiatrust case, relied upon by the CTA En Banc in denying the taxpayer’s Petition for Review. In the Asiatrust case, the assignment of errors alleged in the MR are factual matters which were taken by the court for reconsideration resulting to an amended decision. Thus, there is no need to file an MR of the CTA Division’s Amended Decision.

The CTA En Banc ruled that an appeal to the CTA En Banc must be preceded by the filing of a timely motion for reconsideration or new trial with the CTA Division. An amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration. *(Benedicto P. Caguimbal vs. CIR, CTA EB Crim. No. 065, October 21, 2020)*

**A party should not presume that a motion for extension would be granted, much less, that the extension that may be granted should be counted only from his receipt of the Court's Resolution**

Taxpayer filed a "Motion for Extension of Time to File Petition for Review" praying that the CTA En Banc grant an additional period of thirty (30) days. The Court En Banc granted the taxpayer a final and non-extendible period of fifteen (15) days, or until August 1, 2020. The taxpayer, however, filed a "Motion to Admit Petition for Review" only on August 24, 2020 stating that the counsel for taxpayer received the Resolution of the Court en banc granting the motion of the taxpayer for an extension of time for fifteen (15) days only on August 18, 2020 and that the reason for the delay was beyond the control of taxpayer and his undersigned counsel.

The CTA en banc held that the taxpayer’s reason for the delay in filing, i.e. because the Court En Banc 's Resolution granting the motion for extension was received only on August 18, 2020, is not a valid excuse to file the Petition for Review beyond the allowable period. The counsel for taxpayer should not presume that the motion for extension would be granted, much less, that the extension that may be granted should be counted only from his receipt of the Court En Banc's Resolution. Although the taxpayer pleads for liberal interpretation of the rules on procedure, the same, however, should not be ignored to suit the convenience of a party. *(CIR vs. Lotte Confectionery Pilipinas Corporation, CTA EB No. 2291, October 21, 2020)*

**So long as the process of distillation is employed, whether directly or indirectly, the resulting product thereon may fall within the ambit of "other similar products of distillation", subject to excise tax under Section 148(e) of the Tax Code of 1997**

Taxpayer mainly argues that the products subject to excise tax under Section 148 of the Tax Code of 1997 are limited to fractions or distillation products primarily derived from distillation of crude oil; and thus, the subject alkylate which is not produced by the primary distillation of crude oil, but by the primary process of alkylation, should not be included in the category of "other similar products of distillation."

The CTA ruled that Sections 129, 131, and 148 (e) of the Tax Code of 1997 clearly state that excise tax shall attach, inter alia, to mineral oils or motor fuels like naphtha, regular gasoline and other similar products of distillation, as soon as they come into existence. A closer look at the provisions of Section 148 readily shows that the word "distillation" is only found in the phrase "other similar products of distillation". There is nothing therein that suggests that distillation should be the primary or direct process through which the product is formed in order to fall within the scope of the proviso. The absence of such qualification leads to the conclusion that so long as the process of distillation is employed, whether directly or indirectly, the resulting product thereon may fall within the ambit of "other similar products of distillation". Where the law does not distinguish, the Court should not distinguish. *(Petron Corporation vs. CIR, Commissioner of Customs and Collector of Customs, CTA Case No. 8544, October 21, 2020)*

**When one of the parties to the taxable transaction is exempt from the DST, the other party who is not exempt shall be the one directly liable therefor, in which case, the DST shall be paid and remitted by the said non-exempt party.**

The International Finance Corporation (IFC) itself and its transactions authorized by the IFC Articles of Agreement, to which the Philippines is a signatory, are indeed exempt from all taxation including necessarily the exemption from the payment of DST. In this connection, the taxpayer claims that IFC's immunity from taxation extends to their Loan Agreement; thus, the taxpayer is entitled to refund the erroneously paid DST.

The Court of Tax Appeals (CTA) ruled that for the claim for refund to prosper, the taxpayer must also prove that the subject DST paid is an "erroneous or illegal tax". However, no exhibit or evidence has been offered by the taxpayer to prove that the subject transaction was authorized by the IFC Articles of Agreement. The parties to the Loan Agreement intended or contemplated that all taxes, which include specifically, DST or "stamp taxes" due on the transaction, must be paid by the Borrowers, which include the taxpayer. Thus, if IFC contemplated that the subject transaction fall under the category of a transaction authorized under the IFC Articles of Agreement, which is clearly immune from taxation, the Loan Agreement should not have provided for the stipulation that all taxes, including the DST, shall be payable by the taxpayer (and the other co-borrowers).

The CTA emphasized the liability for the DST rests on the parties to the taxable document. However, when one of the parties to the taxable transaction is exempt from the DST, the other party who is not exempt shall be the one directly liable therefor, in which case, the DST shall be paid and remitted by the said non-exempt party. Thus, the CTA finds that the subject DST paid by the taxpayer is not an "erroneous or illegal tax". *(San Carlos Biopower, Inc. vs. Commissioner of Internal Revenue CTA Case No. 9919, November 4, 2020)*

**A letter from the CIR containing a warning that should the taxpayer fail to pay, the CIR would be constrained to resort to administrative summary remedies to enforce collection of the deficiency taxes without further notice, certainly indicates that it was the CIR's final action subject of an appeal to the CTA**

The taxpayer received a Preliminary Collection Letter reiterating the tax deficiency assessment and requested for the payment thereof with the warning that should the taxpayer fail to pay, the CIR would be constrained to resort to administrative summary remedies to enforce collection of the deficiency taxes without further notice.

The CTA ruled that it has no jurisdiction over the present case since the Petition for Review was filed out of time. The tenor and language of the Preliminary Collection Letter suggests a character of finality and thus, constitutes a final decision on the disputed assessment which is a proper subject of an appeal to the CTA. The said letter certainly indicates that it was the CIR's final action regarding petitioner's request for reinvestigation. As the Supreme Court had fittingly stated in one case, with similar issue, "How then could it have been made to believe that its request for reconsideration was still pending determination, despite the actual threat of seizure of its properties?” *(JTKC Land, Inc. vs. CIR, CTA Case No. 9597, October 26, 2020)*

**The situs of taxation for franchise tax is the place where the privilege is exercised regardless of the place where the taxpayer’s services or products are delivered.**

The City of Digos calculated the taxpayer's liabilities based on its gross receipts from an electric cooperative. The fact that taxpayer has no branch or sales outlet in respondent City is not in question since the taxpayer only supplies energy in bulk to the electric cooperative while the electric cooperative, in turn, delivers the same to its end-users. But as to whether taxpayer exercised its franchise inside respondent City when it supplied power to the electric cooperative, the RTC answered this question in the affirmative when it applied Section 150 of the Local Government Code (LGC) on the Situs of Tax. Thus, the only point of contention in this case is whether respondent City properly claimed the situs of taxation.

The CTA held that respondent City could not collect local franchise taxes from the taxpayer. The CTA cited the case of Casureco III where the City therein seeks to collect a franchise tax, which as defined, is a tax on the exercise of a privilege. As Section 137 of the LGC provides, franchise tax shall be based on gross receipts precisely because it is a tax on business, rather than on persons or property. Since it partakes of the nature of an excise tax, the situs of taxation is the place where the privilege is exercised which is the City where Casureco III has its principal office and from where it operates, regardless of the place where its services or products are delivered. Following this principle, the taxpayer in the case at bar cannot be held liable for local franchise taxes by respondent City even if it caters its services within the latter's territory. *(National Transmission Commission vs. City of Digos, CTA AC No. 220, November 4, 2020)*

**Taxpayer must no longer wait for CIR to render a decision before filing an appeal to the CTA after the taxpayer’s administrative claim for input VAT refund is deemed denied.**

From the filing of taxpayer's administrative claim on April 30, 2007, the CIR had one hundred twenty (120) days, or until August 28, 2007, within which to render a decision on the said claim. There was no full or partial denial of the claim within the 120-day period but rather, the 120-day period lapsed without a decision or ruling from the CIR. Considering that the CIR did not act on taxpayer's claim on or before August 28, 2007, the taxpayer had thirty (30) days, or until September 27, 2007, within which to file its judicial claim before the CTA. The taxpayer, however, filed its judicial claim on November 9, 2015, or beyond the thirty (30) day period to appeal.

The CTA held that the taxpayer’s judicial claim was filed out of time. It is clear that the 30-day period provided by law should be reckoned from the receipt of CIR's decision/ruling, or after the expiration of the 120-day period from the submission of complete documents, whichever is sooner. Consequently, any judicial claim filed in a period less than or beyond the said 120+30-day periods, is outside the jurisdiction of this Court. *(Luzon Hydro Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9187, November 6, 2020)*

***Note: Under the Train Law, the Commissioner is now given 90 days to decide to deny/grant a refund and any partial or full denial of claim, the taxpayer affected may, within 30 days from the receipt of the denial, appeal the decision with the CTA. The deemed denial provision was no longer explicitly stated under the Train Law.***

**In case of discrepancy between the WTO Agreement (the basic law) and the NFA Memorandum Circular of 2013 (the rules and regulations implementing the said basic law), the former prevails.**

Taxpayer argues that since the subject shipment was covered by an import permit, the excess rice shipment is not "undeclared", but merely "misdeclared" as to quantity which merits, at most, the imposition of a surcharge but not seizure. On the other hand, the Bureau of Customs (BOC) argues that since the subject containers of rice are in excess of the quantity allowed in its import permit and beyond the rice allocation authorized by the NFA, it is a prohibited importation liable for forfeiture under Section 2530(f) of the Tariff and Customs Code of the Philippines (TCCP).

The CTA ruled that the rice importations are not illegal and subject to forfeiture but merely subject to ordinary customs duties and surcharge. The WTO Agreement became part of Philippine laws through the Incorporation clause and the Treaty Clauses. As between the WTO Agreement entered into by the Philippines and became part of domestic law as early as 1994, and the NFA Memorandum Circular of 2013, there is no dispute that in case of discrepancy between the former (the basic law) and the latter (the rules and regulations implementing the said basic law), the former prevails. The Special Treatment provisions of the WTO Agreement applies during the time of taxpayer’s rice importations on November 26, 2013. Thus, at the time the taxpayer imported the rice shipments, there was no need to secure an import permit from the NFA. *(Universal Pacific Food Corporation vs. Commissioner of Internal Revenue, Bureau of Customs, CTA Case No. 9151, November 11, 2020)*

**Absent the Certificate of Endorsement, the Court cannot treat Petitioner’s gross receipts, representing its sales to RE Developer, as subject to VAT zero-rating under the law.**

According to the taxpayer, its sales to the RE developer are considered zero-rated sales pursuant to Section 15(G) of Republic Act (RA) No. 9513 the Renewable Energy Act of 2008. The taxpayer alleges that the RE developer registered with the DOE and BOI, and as such its sales thereto are considered zero-rated sales.

The Court ruled that the taxpayer failed to establish that its sales transaction with the RE developer are subject to zero-rated VAT. Based on the law, RE developers shall be entitled to zero-rated VAT on its *purchases* of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities. It is likewise provided that the services performed by subcontractors and/or contractors in the exploration and development of RE sources up to its conversion into power is subject to zero percent VAT. However, for purposes of availment of the zero percent VAT on these transactions, the following documents must be secured: (1) Certificate of Registration issued by the DOE; (2) Registration with BOI; and (3) Certificate of Endorsement issued by the DOE, on a per transaction basis. Here, the taxpayer failed to present the requisite Certificate of Endorsement issued to the RE developer by the DOE, on a per transaction basis. Hence, the denial of the claim for a credit/refund of input VAT. *(Vestas Services Philippines vs. Commissioner of Internal Revenue, CTA Case No. 9544, November 11, 2020).*

**BIR’s failure to give any reason for rejecting the explanations made by a taxpayer in its Reply to PAN is a clear violation of taxpayer's right to administrative due process.**

A Preliminary Assessment Notice (PAN) was issued finding deficiency internal revenue taxes due from taxpayer. Taxpayer then filed with the BIR its Reply to the same PAN, giving explanations against the above-stated findings and offering certain documents/schedules. However, in the FAN which assessed taxpayer with deficiency internal revenue taxes, the BIR merely reiterated the same findings as stated in the said PAN, without giving any reason for rejecting the explanations made by taxpayer in its Reply.

The CTA held that the taxpayer was left unaware on how the BIR appreciated the explanations or defenses raised against the subject PAN, in clear violation of taxpayer's right to administrative due process, thereby rendering the subject tax assessments void. Under Section 228 of the NIRC of 1997, the BIR is mandated to inform taxpayers, in writing, of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. *(Titanium Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9644, November 11, 2020).*

**A Revenue District Officer has no power or authority to issue an LOA, much less to effect any modification or amendment to the previously issued LOA by the Regional Director.**

The authority to conduct an examination and assessment of taxpayer's books of accounts emanated from a LOA issued by the Regional Director. The said LOA authorized the first revenue officer (RO) to examine taxpayer's books of accounts and other accounting records. The first RO's Memorandum led to the issuance of the PAN and FAN. Taxpayer protested the FAN after which it received an undated letter from the BIR informing it that the tax audit investigation was re-assigned to the second RO through a Memorandum issued by the Revenue District Officer (RDO). The second RO proceeded with the reinvestigation of taxpayer's tax case and, thereafter, prepared a Memorandum Report which became the basis for the issuance of the FDDA.

The CTA held that the subject assessments are void for having been issued pursuant to audit examination conducted by an RO other than those specifically named under the LOA. The second RO’s authority to examine or conduct a reinvestigation of taxpayer's tax liabilities was based on the Memorandum of Assignment issued by Revenue District Officer, who has no power or authority to issue an LOA, much less to effect any modification or amendment to the previously issued LOA by the Regional Director. *(Titanium Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9644, November 11, 2020)*

**A Stock Transaction Tax is a percentage tax and not an income tax.**

From September 20, 2013 to September 3, 2013, respondent traded its listed BDO shares in the Philippine Stock Exchange through the assistance of two trading companies, and the stockholders were instructed to remit the proceeds of the sale to respondent’s custodian banks in the Philippines. The stockbrokers withheld stock transaction tax (“STT”) of ½ of 1% from the proceeds of the sale of respondent’s listed BDO shares. Asserting exemption from STT, respondent filed with the BIR a claim for refund of the supposed erroneously withheld STT. But since the two-year statutory period was about to lapse, respondent filed its Petition for Review.

The Court in Division granted the Petition. The *En Banc*, however, reversed the same. The CTA *En Banc* ruled that CIR did not belatedly raise the issue on the characterization of STT, since it has timely denied in his Answer the allegation of respondent that it is exempt from STT. Section 32(B)(7)(a) extends only to income taxes under Title II, and not to STT under Section 127(A) found in Title V of the NIRC of 1997, as amended. This can be gleaned from a pure reading of the provisions of law and from the deliberations of the Congress in enacting RA No. 7717. *(Commissioner of Internal Revenue vs. IFC Capitalization Equity Fund, LP, CTA EB No. 2083, CTA Case No. 9148, November 5, 2020)*

**The Local Government Code expressly provides that the taxing power of local governments do not extend to the levy of income tax, except when levied on banks and other financial institutions.**

The revenue officers of the City Treasurer’s Office of Makati City audited the financial statements of respondent. As a consequence, it was assessed for deficiency local business tax (LBT) for taxable years 2009, 2010, and 2011. Respondent filed a letter protest to the assessment. In the letter denying the protest, respondent was re-classified as a “holding company” and is subject to business tax either under Section 3A.02 (p) in relation to Section 3A.02 (h) of Revised Makati Revenue Code (“RMRC”). Respondent then appealed it to the Makati RTC, which eventually dismissed it, ruling that a “holding company” need not be a contractor nor an owner or operator of banks and other financial institutions, and that “holding company” shall be taxed at the rate prescribed under either subsection (g) or (h) on its gross sales and/or receipts during the preceding year.

The CTA in Division reversed the decision of Makati RTC. The CTA *En Banc* affirmed the decision of the Court in Division, holding that respondent’s gain on sale of investment, interest income, and dividend income are not subject to LBT. The power to tax by provinces, cities and municipalities is limited by the law that granted it. The 1991 LGC expressly provides that the taxing power of local governments do not extend to the levy of income tax, except when levied on banks and other financial institutions under Section 143(f) of the 1991 LGC. The imposition of LBT on dividend and interest income of a holding company violates the limits set by Section 133(a) of the LGC. Section 3A.02 (p) in relation to Section 3A.02(h) likewise violates Section 27(D)(4) of the 1997 NIRC, as amended, because it subjects the intercorporate dividends to tax, when it should not actually be subject to tax. *(Office of the City Treasurer and/or Makati City vs. South China Resources, Inc., CTA EB No. 2154, CTA AC No. 197, November 11, 2020)*

**Evidence not previously offered, can be admitted if the following requirements are fulfilled: 1) the evidence must have been duly identified by testimony duly recorded; and 2) the evidence must have been incorporated in the records of the case.**

Taxpayer is assessed by the BIR for alleged deficiency income tax and VAT for taxable year 2010. It requested for reinvestigation, but BIR issued an FLD and

Assessment Notices. Taxpayer then filed its written protest to the FLD on September 2, 2014. The BIR issued on March 24, 2015 its FDDA, maintaining the assessment for taxpayer’s failure to submit the relevant supporting documents, and the case will be forwarded to the Collection Division. Taxpayer then received a Preliminary Collection Letter (“PCL”), but it insisted to file its protest. On September 22, 2015, it received a letter from the BIR denying its protest and the assessment has become final.

The CTA in Division denied the Petition for Review for lack of jurisdiction, as it was filed out of time. The CTA En Banc affirmed the denial, because Taxpayer received the FDDA on April 6, 2015. It then had until May 6, 2015 within which to appeal. This can be seen from the letter protest sent by C.M. Ilagan & Associates, stating that the receipt of the FDDA by the taxpayer was on April 6, 2015.

Admittedly, the undated protest was not formally offered in evidence. While it is true that as a general rule, the Court shall not consider any evidence not formally offered, the same admits of an exception. The instant case clearly falls within the exception. Although the undated protest was not attached to the Judicial Affidavit of the Revenue Officer, the same was still presented in Court during the re-cross examination, and the RO identified the same and such testimony forms part of the records of the case. *(Loadstar International Shipping, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 2011, CTA Case No. 9176, November 11, 2020)*

**Actions for tax refund or credit are in the nature of a claim for exemption, hence the burden is on the taxpayer to show that he has strictly complied with the conditions for the tax refund or credit.**

The taxpayer is a special purpose trust with a special purpose vehicle status under RA No. 9267. The taxpayer filed a claim for tax refund of the final withholding taxes paid on the interest income from its asset-backed securities (ABS). The taxpayer claims that the interest earned by the holders of its notes, being income from low cost and socialized housing-related ABS, is exempt from income and withholding tax under Sec. 33 of RA 9267. However, the CIR claims that the taxpayer is not entitled to refund since it has no legal personality to file the same, and it failed to prove its entitlement thereto.

The Court ruled that the taxpayer, as a withholding agent, has the legal personality to file the claim for refund since he is considered a ‘taxpayer’ under the NIRC. He is also considered as an agent of the taxpayer whose taxes were withheld, hence, his authority to file the return also includes the authority to file a claim for refund.

As to the taxability of the income derived by the ABS, the taxpayer failed to prove its entitlement to the tax exemption. A careful examination of the taxpayer’s evidence reveals that it miserably failed to prove that the subject ABS was issued pursuant to a plan of securitization as approved by the SEC. In fact, the supposed plan of securitization was never presented in court. Neither is there any indication that a securitization took place. Such being the case, this Court cannot treat the subject ABS as not falling under the term "deposit substitutes", pursuant to Section 31 of RA No. 9267. Moreover, even assuming that the said ABS should not be considered as deposit substitutes under the same provision, there is likewise no indication that the yield/s from the same ABS is/are held by tax-exempt investors. Thus, the exemption from the 20% final withholding tax cannot be applied. *(Bahay Bonds 2 Special Purpose Trust vs. Commissioner of Internal Revenue, CTA Case No. 9916, November 9,2020)*

**The rule against forum shopping is not limited only to suits or actions pending in courts but applies as well to administrative proceedings.**

The Company was assessed for its taxable year 2008. After Commissioner Jacinto-Henares denied the Company’s appeal to the FDDA, the Company sent out letters dated July 11,2016 and July 21,2016 to the newly-appointed Commissioner Dulay, requesting him to take a second look on CIR’s position on the issues involved in the FDDA. Thereafter, on July 29, 2016, the Company filed a Petitioner for Review before the CTA division asking for the nullification and cancellation of the FDDA and Final Decision of the Commissioner Jacinto-Henares. After the Company received an amended FDDA from Commissioner Dulay, it paid the indicated deficiency taxes and sought the withdrawal of petition before the CTA division. The CTA division granted the withdrawal, however, it ruled that the amended FDDA was illegally infirm. The Company contends that there was no forum shopping when it sent out the letters since were merely informal requests, and CIR is not a “forum” within the contemplation of the rule on forum shopping.

The Court ruled that there was forum shopping in this case. Forum shopping exists when, as a result of an adverse judgment in one forum, a party seeks another in possibly favorable judgment in another forum other than by appeal or certiorari. There is also forum shopping when a party institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other court would make a favorable disposition. *(Cosmos Bottling Corporation vs. Commissioner of Internal Revenue, CTA EB No. 2081 (CTA Case No. 9405), November 10,2020)*

**The CTA may allow taxpayers to assail the authority of the Revenue Officers to issue the assessments for the first time on appeal.**

The Cooperative was assessed for deficiency taxes for its calendar year 2013. However, the protest letters filed by the Cooperative did not assail the authority of the revenue officers who conducted the assessment, and such issue was first raised by the Cooperative on appeal before the CTA.

The Court established that it may, for the first time on appeal, allow Cooperative to assail the validity of the Waiver and the lack of authority of the ROs to conduct the examination of its books of accounts and other accounting records. The Court of Tax Appeals has the authority to determine issues raised by the parties even if these were not raised in the administrative level to achieve a judicious administration of justice.

The Court also stated that there was no valid assessment on the part of the ROs who conducted the examination. According to the facts of the case, the original LOA authorized RO De Torres and GS Malang to conduct the examination, however, after they were transferred, the Regional District Officer merely issued an MOA to the examiners who issued the assessment. Considering that the issued MOAs do not constitute a valid LOA, the assessments subsequently issued were void. *(Misamis Oriental Rural Cooperative Inc. (MORESCO-II) vs. Commissioner of Internal Revenue, CTA Case No. 9732, November 11,2020)*

**BIR Issuances**

**RR No. 28-2020, October 15, 2020**

The importation from June 25, 2020 to December 19, 2020 of the goods enumerated in the Regulations and identified as critical products, essential goods, equipment or supplies needed to contain and mitigate COVID-19, subject to the limitations and restrictions specified in the Regulations, shall be exempted from VAT, excise tax and other fees.

1. The taxpayer availing of the exemption must present a certification from the DTI that the equipment and supplies being imported are not locally available or of insufficient quality and preference.
2. The importation hereof shall not be subject to the issuance of ATRIG.
3. Donations of said imported articles to or for the use of the National Government or any entity created by any of its agencies which is not conducted for profit or to any political subdivision of the government are exempt from Donor's Tax and subject to the ordinary rules of deductibility under existing rules and issuances.

The grant of exemption for the importation of goods enumerated in the Regulations is deemed to be in effect beginning June 25, 2020. The VAT on all covered and qualified shipments/ importations that may have been paid from June 25, 2020 up to September 14, 2020 shall be refunded pursuant to Section 204(C) of the Tax Code, in accordance with the existing procedures for refund of VAT on importation, provided that the input tax on the imported items have not been reported and claimed as input tax credit in the monthly and/or quarterly VAT returns. The same shall not be allowed as input tax credit pursuant to Section 110 of the Tax Code for purposes of computing the VAT payable of the concerned taxpayer/s for the said period.

Inputs, raw materials and equipment necessary for the manufacture of essential goods of medical grade related to containment and mitigation of COVID-19, as determined by Food and Drug Administration — Department of Health (FDA-DOH), whether locally sourced or imported by the registered manufacturer, shall be exempt from VAT.

The sale of finished goods/products, whether locally-manufactured or imported, is subject to VAT. The sale of inputs, raw materials and equipment to a non-holder of "License to Operate" issued by the FDA-DOH is likewise subject to VAT.

**RR No. 29-2020, October 15, 2020**

The following income payments shall be excluded from gross income and shall not be subject to Income Tax:

1. Retirement benefits received by officials and employees of private firms, whether individual or corporate, from June 5, 2020 to December 31, 2020, provided that the amount received is in accordance with a retirement plan duly-registered with the BIR. Provided further, that any re-employment of such official or employee in the same firm and its related parties within the succeeding twelve (12)-month period shall be considered as proof of non-retirement.

If the re-employment happens within calendar year 2020, the employer shall include the said retirement benefits in the gross income of the concerned official or employee for 2020. However, if the re-employment will occur in 2021 and within the twelve-month period, the concerned employee shall pay the taxes due on the retirement benefits received within thirty (30) days from date of re-employment, or on the due date for the payment of the second installment payment of 2020 Income Tax, whichever comes later, without penalties.

1. COVID-19 Special Risk Allowance given to public and private health workers.
2. Actual Hazard Duty Pay given to Human Resources for Health (“HRH”).
3. Compensation paid to private and public health workers who have contracted COVID-19 in the line of duty or dies while fighting COVID 19, amounting to:
* ₱1,000,000.00 in case of death; or
* ₱100,000.00 in case of severe or critical sickness; or
* ₱15,000.00) in case of mild or moderate sickness.

Provided that, such amount is given or to be given from February 1, 2020 and during state of national emergency due to COVID-19 as declared by the President; Provided further, that the compensation provided herein shall be given to the beneficiaries not later than three (3) months after the date of confinement or death; Provided finally, that the required supporting documents are submitted.

For compensation in case of death, the said amount shall not also be included as part of the gross estate of the decedent subject to Estate Tax.

**RMO No. 36-2020, October 15, 2020**

The guidelines and procedures for the refund of erroneously paid VAT on imported drugs for diabetes, high cholesterol and hypertension are as follows:

* 1. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty under Section 204(C) of the Tax Code of 1997, as amended.
	2. Claims for refund of erroneously paid VAT on importation of drugs prescribed for diabetes, high cholesterol and hypertension included in the DOH-FDA approved list from January 23, 2020 up to July 9, 2020 shall be filed and processed at the respective RDOs or at the LTAD under the LTS where the taxpayer-claimant is registered.
	3. The ROs assigned to receive the documents pertaining to the VAT refund shall ensure that the required documents specified in the Order are complete.
	4. The result of the evaluation of the VAT refund/credit claim, approved or otherwise, shall be communicated in writing to the taxpayer immediately after approval of the report by the designated approving BIR Official.

**RMC No. 111-2020, October 15, 2020**

This circular provides clarification on certain issues relative to the VAPP as follows:

• All persons, natural and juridical, including estates and trusts, are qualified to avail of the VAPP. The Program covers calendar year 2018 and fiscal year 2018 ending in July, August, September, October and November 2018, as well as those ending in January, February, March, April, May and June 2019.

• For ONETT of individuals and taxpayers on a calendar year basis, the VAPP covers all transactions from January to December 2018. For taxpayers on a fiscal year basis, the covered ONETT are those within their fiscal year 2018.

• Availment of the VAPP should cover all the tax types to which the taxpayer is registered, including Withholding Taxes, except when the taxpayer is pursuing a claim for tax credit/refund, in which case, he can leave out the tax type for such claim.

• Taxpayers shall use BIR Form No. 2119 for the application and BIR Form No. 0622 for the payment of the corresponding voluntary tax.

• If a business taxpayer wants to avail of the benefit of VAPP, his availment should cover both Sections 9.a. and 9.b. If availment will also cover Section 9.c, a separate application and payment form should be prepared.

• For availment under Section 9.a for Income Tax, VAT, Percentage Tax, Excise Tax and DST other than for ONETT, the ATC is MC341. For availment under Section 9.b for Final and Creditable Withholding Taxes, the ATC is MC342 and for availment for taxes on ONETT, the ATC is MC343.

• Payment by check is acceptable, provided that check payments conform to the payment requirements of the BIR. Payment through Tax Remittance Advice (TRA) is not acceptable.

• If there is no increase or decrease in the total taxes due for all tax types in 2018 compared to all taxes due in 2017, as in the case of enterprises enjoying tax exemptions and incentives, the voluntary tax payment shall be computed based on the "net increase of not more than 10%".

• If the taxpayer is only in its first year of operation for 2018 and there are taxes due for the year per tax returns filed, the taxpayer can avail of the VAPP.

• IAET paid by a taxpayer should be included in the total taxes due for the purpose of computing the increase/decrease since it can be considered as Income Tax.

• In case the taxpayer paid MCIT in 2017 and paid the normal Income Tax in 2018, the MCIT shall be the Income Tax due for 2017 while the annual corporate Income Tax due computed under the normal Income Tax before deducting any tax credits/payments shall be considered as the Income Tax due for 2018.

• Excess tax credits from prior period/taxable year shall be considered in determining the Net VAT due. If the net VAT due is a negative amount, then the total taxes due for the year will not be reduced by the negative VAT amount.

• A taxpayer who paid Percentage Tax or availed of the eight percent (8%) Income Tax rate despite having exceeded the threshold of Three Million Pesos (₱3,000,000.00) can apply for the VAPP, provided that the VAT return will be filed and the VAT will be paid with the corresponding penalties after deducting the total Percentage Tax payments.

• The waiver of refund in Section 12 of the Regulations is applicable only to claims for refund on erroneous payment.

• If the taxpayer would like to apply for the VAPP but declines to waive his right to claim for refund, he can leave out from the availment the tax type for said refund.

• A taxpayer with a pending claim for tax credit/refund can avail of the VAPP, provided that the claim is not on erroneous payment for which the taxpayer has not waived his right to such claim.

• A taxpayer who failed to withhold and remit withheld taxes in 2018 is qualified to avail of the VAPP under the condition that the amount not withheld and not remitted has to be paid first and the same shall form part of the total taxes remitted for 2018, which shall be the taxable base in determining the five percent (5%) required amount to be paid to avail of the benefits under the VAPP.

• The CGT and DST shall be computed based on the highest value among the selling price, zonal value and fair market value.

• The exception in Section 3.d of the Regulations “with pending cases” does not include those who failed to comply with an issued Subpoena Duces Tecum (SDT) if no criminal case has been filed in court yet for failure to comply with the SDT.

• If a taxpayer is currently under audit/investigation for 2018 and he/she availed of the VAPP, the conduct of audit shall be suspended while the availment of the VAPP is under evaluation. Upon issuance of a Certificate of Availment, the electronic LA and other related notices shall be withdrawn and cancelled.

• A taxpayer with an on-going investigation or a duly issued but protested FAN for 2017 and/or 2018 can avail of the VAPP, but the availment will not cover taxable year 2017. The amount on the FAN for the 2018 audit case will, in no way, affect the computation of the voluntary payment for VAPP.

• Taxpayers with duly issued but protested FANs can avail of the VAPP provided the FANs are for taxable year 2018, are still under protest on or before the effectivity of the Regulations and all tax types of the taxpayer are covered in the availment.

• If the taxpayer with FAN has a duly issued CA after availing of the VAPP, the assessment shall be cancelled through issuance of an ATCA by the authorized RO.

• A taxpayer who was notified to rectify the deficiencies in the VAPP availment or to pay the additional voluntary tax but fails to do so within ten (10) days from receipt of the notification can no longer qualify for the benefit of the VAPP.

• In case the taxpayer's availment was denied and rendered invalid and the taxpayer was subjected to audit/investigation, upon authorization and approval of the CIR, any voluntary tax paid by the taxpayer per BIR Form No. 0622 shall constitute as payment of the deficiency tax assessments for taxable year 2018, provided, that such payment includes the specific tax types and taxable period covered by the assessment notice.

• If the taxpayer paid the tax for the VAPP on or before December 31, 2020 but submits his/her/its application after the deadline, this can be considered as availment within the deadline.

**RMC No. 113-2020, October 20, 2020**

Per RMC No. 65-2020, the effectivity of RA No. 11467 is January 27, 2020.

It was clarified that that the said Act was made effective upon its complete publication in the website of the Official Gazette. Thus, RA No. 11467 became effective beginning January 23, 2020.

**RMC No. 112-2020, October 6, 2020**

This circular provides the following clarification, to wit:

1. All transactions of affected taxpayers, both Head Office/s and all branches, shall be handled by the RDOs or concerned offices at the LTS where they are registered prior to July 1, 2020;
2. All Certificates of Registration issued by the concerned offices at the LTS/RDOs on or after July 1, 2020 to the affected LT shall be valid and may be posted at the principal place of business; and
3. Principal and supplementary receipts/invoices based on duly approved ATP issued on or after July 1, 2020 shall remain valid.

**RMC No. 117–2020, November 5, 2020**

Consolidates the weekly Price of Sugar at Millsite issued by the Sugar Regulatory Administration (“SRA”) for the month of September pursuant to Revenue Regulations (“RR”) No. 13-2015. The consolidated schedule shall be used for the purpose of imposing the one percent (1%) expanded withholding tax on sugar prescribed under RR No. 2-98, as amended by RR No. 11-2014

**RMC No. 118–2020, November 6, 2020**

Disseminates the availability of Offline eBIRForms Package Version 7.7. The eBIRForms Package Version 7.7 is downloadable from www.bir.gov.ph and www.knowyourtaxes.ph. The package now includes the January 2018 version of BIR Form Nos. 1604-C, 1604-F, and 1604-E.

**RMC No. 120-2020, November 9, 2020.**

Clarifies the exemption from income tax of retirement benefits received by employees of private firms from June 5, 2020 to December 31, 2020. The clarifications made are in the form of a Q&A and are relative to the provisions of Republic Act No. 11494, or the Bayanihan to Recover as One Act, as implemented under Revenue Regulations (“RR”) No. 29-2020.

**SEC Issuances**

**SEC-OGC Opinion No. 20-02, November 3, 2020**

Corporations existing prior to, and which continues to exist after the effectivity of the RCC, are ipso jure granted perpetual existence without any further action on their part. Given this, the Articles of Incorporation of all corporations who satisfies the requirements under Section 11 of the RCC and MC 22 Series of 2020 are deemed amended to the effect that their corporate term is now perpetual. A positive act on the part of corporations is only required if they intend to limit their corporate term to a certain period.

**SEC Memorandum Circular No. 28 s. 2020, October 27, 2020**

The SEC requires that every corporation, association, partnership, and person under its jurisdiction and supervision shall submit a valid official electronic mail (“e-mail”) address and a valid official cellular phone within sixty (60) days from the effectivity of the rules.

In addition to the valid official e-mail address and official cellular phone number, it is also required to submit a valid alternate e-mail address and valid alternate cellular phone number.

A valid official or alternate e-mail address pertains to an existing e-mail address which identifies an e-mail box, with at least One (1) gigabyte of unused memory space at any given time, to which the SEC may deliver e-mail messages through the internet, and from which the SEC may receive e-mail messages through the internet.

A valid official or alternate cellular phone number shall pertain to an existing mobile phone number from any telecommunications company legally operating in the Philippines to which the SEC may call or deliver SMS, and from which the SEC may receive SMS or calls. They shall be under the control of the corporate secretary, the person in charged with the administration and management of the corporation sole, the resident agent of the foreign corporation, the managing partner, the individual, or the duly authorized representative.

Beginning February 23, 2021 onwards, the e-mail addresses and cellphone numbers shall be included in the General Information Sheet (GIS) or Notification Update Form (NUF) regularly filed with the SEC. Failure to include such shall mean that the GIS or NUF incomplete.

Both the official and alternate e-mail addresses shall be where transactions, applications, letters, requests, papers and pleadings under the jurisdiction of, for consideration by, the SEC may be processed, submitted and/or filed online. The official cellphone number to be provided by all entities registered with the SEC is an additional security measure to ensure that the person accessing the e-mails sent by the Commission is the authorized person of the corporation or partnership to receive and retrieve the same. Multi-Factor Authentication (MFA) utilizing mechanisms such as One-Time Personal Identification Number (OTP) scheme or Two-Step Verification by a Software-Based Authenticator will be performed by the SEC to said cellphone number which the authorized person will have to input before the e-mail message can be retrieved.

If there is no internet access available in the location to create an e-mail account, only the official and alternate cellphone numbers shall be required to be submitted to the SEC.

Notice of Change of official e-mail address, alternate e-mail address, official cellphone number, and/or alternate cellphone number, shall be filed within five (5) days from the date of the decision to change the e-mail address and/or cellphone number.

In case of double filing of e-mail addresses and cellphone numbers, the SEC may summon the parties involved to determine the cause, and to determine whether an intra-corporate dispute exists. If such dispute exists and there is double filing, the Commission shall mark the submission of e-mail addresses and cellphone numbers as “DISPUTED”, and can only be unmarked by an order from the appropriate Court.

All corporation, partnership, association, or person who fails to submit the e-mail addresses and cellphone numbers beginning February 23, 2021 shall be administratively penalized in the amount of Ten Thousand Pesos (P10,000.00)

**SEC Memorandum Circular No. 29, Series of 2020, October 13, 2020.**

The Commission, as approved by its *En Banc*, promulgated the 2020 Guidelines on the Submission and Monitoring of the Money Laundering and Terrorist Financing Prevention Program (“MTTP”).

All Covered Persons registered after the effectivity of the 2018 Anti-Money Laundering and Combating the Financing of Terrorism (“AML/CFT”) Guidelines but before the effectivity of this Circular and who have not yet submitted their MTPPs/revised MTPPs shall do so within two (2) months from the effective date of this Circular.

The MTPP shall no longer be included among the documents required to be submitted to the Company Registration and Monitoring Department (“CRMD”) by Covered Persons applying for registration and issuance of a secondary license. In lieu thereof, an applicant Covered Person shall submit, together with its application, a sworn certification signed by the Compliance Officer, Corporate Secretary or Resident Agent that the applicant's MTPP has been prepared, noted, and approved by its Board of Directors or by the country/regional/area head or its equivalent for local branches of foreign covered persons. The applicant shall furnish the Anti-Money Laundering Division of the Enforcement and Investor Protection Department (“AMLD-EIPD”) a copy of said sworn certification which should be stamped received by the AMLD-EIPD before they can be accepted by the CRMD.

Financing Companies (“FCs”) and Lending Companies (“LCs”) whose minimum paid-up capital shall at any time reach Ten Million Pesos (Php10,000,000.00) or whose foreign equity shall reach more than forty percent (40%), must submit hard and soft copies of their MTPPs to the AMLD-EIPD within sixty (60) days from the fact that the foreign ownership threshold or the minimum paid-up capital has been reached.

**SEC Memorandum Circular No. 30, Series of 2020, October 13, 2020**

The Commission issued this Memorandum Circular on the Revision of the General Information Sheet (“GIS”) of Foreign Corporations Include Beneficial Ownership Information.

All SEC registered foreign corporations are required to disclose their beneficial owners in the GIS. For this purpose, the GIS to be submitted by such foreign corporations is hereby revised to include information on their beneficial owners as provided for and defined in SEC Memorandum Circular No. 15, Series of 2019.

**SEC Memorandum Circular No. 31, Series of 2020, November 5, 2020.**

Non-Imposition of Fines and Other Monetary Penalties for Non-Filing, Late Filing and Failure to Comply with Compulsory Notification and Other Reportorial Requirements

The Commission hereby promulgates the following guidelines to implement the above-cited directive from the President:

1. Violations for purposes of this Circular shall refer to non-filing and late filing of General Information Sheet (“GIS”) and Audited Financial Statement (“AFS”) including other reportorial requirements that the Commission may require, and non-compliance with compulsory notification.

2. For violations incurred that will fall due from September 14, 2020 until December 19, 2020, there will be no imposition of fines and other monetary penalties.

3. Corporations may still apply for monitoring from September 2020 until December 2020 to secure monitoring clearance.

4. Accordingly, all other violations that are incurred outside the covered period of September 14, 2020 until December 19, 2020 will result to computation of fines and penalties.

5. This Circular shall also apply to all Foreign Corporations except on matters pertaining to Securities Deposits and Change of Resident Agent whose guidelines shall observe SEC MC No. 24, Series of 2020.

**SEC Notice, November 4, 2020**

Notice on Online and Manual Submission of Forms/Notices Pursuant to Memorandum Circular (“MC”) No. 28, Series of 2020, which requires Corporations, Partnerships, Associations and Individuals to create/and or designate email account address and cell phone numbers for transactions with the Commission, shall be filed through the electronic mail:

MC28\_S2020@sec.gov.ph

Hard copies of said forms/notices must be filed through the Commission’s Electronic Records Management Division (“ERMD”) at the SEC Main Office, Secretariat Building, PICC, Pasay City.

**SEC Notice, November 9, 2020**

Notice to All Lending Companies and Financing Companies.

The Securities and Exchange Commission (“SEC”) is conducting a risk assessment of the Lending Companies and Financing Companies Sector to identify, assess and understand money laundering and terrorist financing (“ML/TF”) risks to which the sector is exposed and to implement the most appropriate mitigation measures.

All lending companies and financing companies are enjoined to accomplish a Survey Questionnaire to assist the SEC in the conduct of the said AML/CFT Sectoral Risk Assessment.

The Survey Questionnaire shall be accomplished and submitted online on or before 16 November 2020, 5:00PM. Said Questionnaire may be accessed through the following link:

https://forms.gle/qiwVE4RZFTZh5mYN7

**BSP Issuances**

**BSP Circular Letter Nos. 2020-047, 2020-048 & 2020-049, October 21, 2020**

This provides the call for the publication/position of Balance sheet, as of 30 September 2020:

|  |  |  |
| --- | --- | --- |
| BSP Issuance | Document to be published | Entity |
| *BSP Circular Letter Nos. 2020-047* | Balance sheet | All trust corporations |
| *BSP Circular Letter Nos. 2020-048* | Balance sheet | All banks |
| *BSP Circular Letter Nos. 2020-049* | Statement of Condition side-by-side with its Consolidated Statement of Condition, if applicable | All Non-Bank Financial Institutions with Quasi-Banking Functions and/or trust authority. |

**BSP Circular Letter Nos. 2020-051, October 27, 2020**

Applicable fees to be paid by importers for Documents Against Acceptance (D/A) or Open Account (O/A) importations reported beyond the prescribed period under item 2.b of Appendix 6 of the FX Manual shall be waived during the period covered by Circular No. 1080 and up to one (1) month thereafter.

**BSP Memorandum No. 2020-081, October 22, 2020**

Under this alternative, On-site Credit Verification activities will be conducted remotely by requiring banks to submit scanned copies of collateral documents through electronic mail (email) or present them on BSP-organized virtual meetings via Microsoft Office (MS)Teams or other similar platform accessible to the bank. The guidelines on the documentary requirements and procedures relative to the implementation of the Off-site Credit Verification are also provided in the memorandum.

**IC Issuances**

**IC Circular Letter CL-2020-101, October 16, 2020**

The PAMD is hereby authorized to conduct mediation/conciliation conferences and other ADR proceedings through the use of videoconferencing during this period of public health emergency. PAMD is hereby provided with software licenses for CISCO WEBEX MEETINGS to host the videoconference proceedings. No other platforms or software shall be used for the videoconference proceedings

**IC Circular Letter CL-2020-102, October 26, 2020**

The amendment extended the validity of temporary licenses, to wit:

"Section 5. Validity. All temporary licenses issued pursuant to this Circular Letter will be valid until 15 November 2020.”

**IC Circular Letter No. 2020-103, October 30, 2020**

1. Section 1 of Circular Letter No. 2020-60 is hereby amended: All insurance companies already compliant with the net worth requirements as of 31 December 2019 under Section 194 of the Insurance Code of the Philippines, as amended by Republic Act No. 10607, that are adversely affected by the crisis are required to comply with CL No. 2016-68 (Amended Risk-Based Capital Framework) and Revised Regulatory Intervention (RBC ratio), as follows:

|  |  |  |
| --- | --- | --- |
| **RBC Ratio (Y)** | **Event** | **Action** |
| 100% and above |  | No regulatory action needed. |
| 75% ≤ Y < 100% | Trend Test | Company shall be required to submit linear extrapolation of the RBC ratio for the next period. If the RBC ration falls below 75%, move to Company Action Event. |
| 50% ≤ Y < 75% | Company Action | Company required to submit RBC plan and financial projections and implement the plan accordingly. |
| 25% ≤ Y < 50% | Regulatory Action | IC authorized to issue Corrective Orders |
| Y < 25% | Authorized and Mandatory Control | IC authorized and required to take control of the company. |

**IC Circular Letter No. 2020-104, November 2, 2020**

Dissemination of AMLC Regulatory Issuance No. 4, Series of 2020, on Freeze Order for Potential Target Matches under the United Nations Security Council Consolidated Lists (Targeted Financial Sanctions)

Attached herewith is a copy of the Anti-Money Laundering Council (“AMLC”)

Regulatory Issuance (“ARI”) No. 4, Series of 2020, on Freeze Order for Potential

Target Matches under the United Nations Security Council Consolidated Lists

(Targeted Financial Sanctions).

**IC Circular Letter No. 2020-105, November 2, 2020.**

The Commission issued this Memorandum Circular on the Revision of the General Information Sheet (“GIS”) of Foreign Corporations Include Beneficial Ownership Information.

All SEC registered foreign corporations are required to disclose their beneficial owners in the GIS. For this purpose, the GIS to be submitted by such foreign corporations is hereby revised to include information on their beneficial owners as provided for and defined in SEC Memorandum Circular No. 15, Series of 2019

**IC Circular Letter No. 2020-106, November 4, 2020**

The following Guidelines Strengthening Typhoon "Rolly"-Related Claims Management Policies are hereby adopted and promulgated.

1. Strengthening of Typhoon "Rolly"-Related Claims Management Policies. — All insurance and reinsurance companies, MBAs, pre-need companies and HMOs are enjoined to adopt and implement claims management policies relative to the processing and/or payment of claims that are related to Super Typhoon "Rolly" with the following objectives, to wit:

a. Relaxation and streamlining of existing company procedures and mechanisms that will facilitate immediate processing and/or payment of claims related to Super Typhoon "Rolly";

b. Relaxation of the notice of claim period and the period for completion of claim requirements; and

c. Enhancement of services that will improve overall customer claims experience.

**IC Circular Letter No. 2020-107, November 8, 2020**

Amends Section 3 of Circular Letter No. 2020-86 is hereby amended to read as follows:

“SECTION 3. NO DISCRIMINATION. — There shall be no outright declination or refusal of any application to be covered by any insurance policy solely on the ground of disability except for insurance policies approved by this Commission offered under a Simplified Underwriting Offer. For purposes of this Circular, the term "Simplified Underwriting Offer" shall mean those approved insurance products that does not allow investigations of further additional risk factors which may require extra or additional premium. For insurance products which allow for further evaluation, a PWD shall be given the opportunity to either accept or decline the adjusted premium or a new suitable insurance plan and/or rider/s that the insurer/s may offer.”

**IC Circular Letter No. 2020-108, November 10, 2020**

Provides the Circular Letter No. 2020-96, as amended by Circular Letter No. 2020-96A or the "Framework for Passenger Personal Accident Insurance for Public Utility Vehicles" is hereby further amended, to wit:

1. Section 1(2) of CL No. 2020-96A on the requirement regarding management companies is hereby amended to read as follows:

“Management Company. - The Management Company of the insurance pool must be duly licensed by this Commission, must have a minimum track-record of five (5) years as a Management Company, must have a minimum Paid-up capitalization of Twenty Million Pesos (Php20,000,000.00), duly registered with the Securities and Exchange Commission and other qualifications as may be determined appropriate in subsequent directive/s.”

**IC Legal Opinion LO-2020-14, October 19, 2020**

The Insurance Commission opined that it must be emphasized that while the GSIS is in the business of insurance, it is not regulated by the Insurance Commission and it does not operate by virtue of Section 193 of Republic Act No. 10607 or the Amended Insurance Code. Instead, the GSIS has its own charter and its governing law is Republic Act No. 829'1 or the Revised Government Service Insurance Act of 1997. As such, the relevant laws, rules, and regulations governing the policies issued by insurance companies do not apply to those issued by the GSIS.