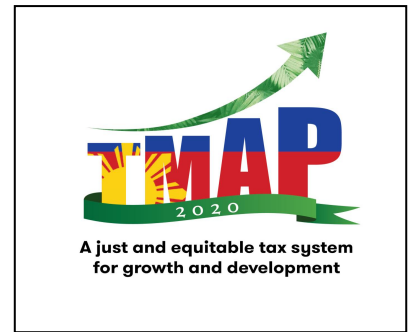




# TMAP TAX UPDATES

JANUARY 16-FEBRUARY 15, 2020

Prepared by:



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## **COURT OF TAX APPEALS EN BANC DECISIONS**

*CIR v. Coral Bay Nickel Corporation; Coral Bay Nickel Corporation v. CIR* (CTA EB No. 1909 and 1910 dated January 20, 2020)

**SALE OF SERVICES MADE BY A VAT -REGISTERED ENTERPRISE FROM THE CUSTOMS TERRITORY TO A PEZA-REGISTERED ENTERPRISE OPERATING WITHIN THE ECOZONE IS SUBJECT TO EFFECTIVELY ZERO-RATED VAT.**

**REPORTING AND REMITTANCE OF THE VAT PAID TO THE BIR REMAINED TO BE THE SELLER/SUPPLIER'S OBLIGATION. HENCE, THE PROPER PARTY TO SEEK THE TAX REFUND OR CREDIT SHOULD BE THE SUPPLIERS, NOT THE BUYER.**

*CIR v. DGA Ilijan B.V.* (CTA EB No. 2008 dated January 20, 2020)

**PRIOR APPLICATION FOR TAX TREATY RELIEF IS NOT REQUIRED BEFORE A TAXPAYER CAN AVAIL OF THE PREFERENTIAL TAX TREATMENT UNDER THE VARIOUS PHILIPPINE TAX TREATIES.** The State's compliance with tax treaty obligations must take precedence over the objective of a mere administrative issuance.

**WRONGFUL PAYMENT OF TAXES WHICH MAY BE A SUBJECT OF A CLAIM FOR REFUND MAY LIKEWISE PERTAIN TO ONE LEVIED WITHOUT STATUTORY AUTHORITY.**

*CIR v. Chevron Holdings, Inc* (CTA EB No. 1886 dated January 21, 2020)

**THE NON-SUBMISSION OF COMPLETE SUPPORTING DOCUMENTS IN THE ADMINISTRATIVE LEVEL IS NOT FATAL TO THE TAXPAYER'S JUDICIAL CLAIM.** The Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevance, probative value and weight of evidence presented therein become subject to the relevant provisions of the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the grant of a claim for refund lies within the sound discretion and judgment of the Court.

**THE LAW AND JURISPRUDENCE CONTEMPLATES OF TWO (2) SITUATIONS WHEREIN SALES CAN BE REGARDED AS ZERO-RATED FOR VAT PURPOSES, TO WIT:**

- 1) Services were rendered to a person engaged in business conducted outside the Philippines, and the consideration for which is paid for in foreign currency and accounted for in accordance with the rules and regulations of the Banko Sentral ng Pilipinas (BSP); or
- 2) Services were rendered to a non-resident person not engaged in business who is outside the Philippines when the services are performed, and the consideration for which is paid for in foreign currency and accounted for in accordance with the rules and regulations of the BSP.

*Makati City and the City Treasurer of Makati City v. Metro Pacific Holdings, Inc* (CTA EB No. 1934 dated January 22, 2020)

**THE FOLLOWING ARE THE ELEMENTS OF A NON-BANKING FINANCIAL INTERMEDIARIES:**

- 1) The person or entity is authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities;
- 2) The principal functions of the said person or entity include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others; and
- 3) The person or entity must perform any of the following functions on a regular and recurring, not on an isolated, basis:
  - a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;
  - b. Use principally the funds received for acquiring various types of debt or equity securities;
  - c. Borrow against, or lend on, or buy or sell debt or equity securities;
  - d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers; e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds

**THERE ARE TWO OPTIONS TO CHOOSE FROM BY THE TAXPAYER FOR THE RECOVERY OF ERRONEOUSLY PAID AMOUNT: REFUND OR CREDIT.** However, once a tax credit is granted to the taxpayer, the same cannot be refunded in cash, but can only be applied to future taxes.

*Commissioner of Bureau of Customs and District Collector of Bataan v. CTA, First Division and MT Alpine Magnolia* (CTA EB No. 1811 dated January 23, 2020)

**THE COURT MOTU PROPRIO OR UPON MOTION OF THE PARTIES, MAY CONSOLIDATE THE HEARING OF THE MOTION FOR THE SUSPENSION OF THE COLLECTION OF THE TAX WITH THE HEARING ON THE MERITS OF THE CASE.**

*CIR v. MFFI Logistics Co. Inc.* (CTA EB No. 1979 dated January 23, 2020)

**THE WARRANT OF DISTRRAINT AND/OR LEVY CAN BE NULLIFIED IF THE ASSESSMENT ALLEGED TO HAVE BEEN FINAL AND EXECUTORY WAS PROVEN TO HAVE BEEN ISSUED BEYOND THE PRESCRIPTIVE PERIOD TO ASSESS.**

**THE CTA'S JURISDICTION IS NOT LIMITED TO COLLECTION PROCEDURE AFTER THE ASSESSMENT. THE COURT HAS JURISDICTION TO DETERMINE THE VALIDITY OR INVALIDITY OF AN ASSESSMENT TO DETERMINE WHETHER THE RIGHT OF THE GOVERNMENT TO ASSESS AND COLLECT TAXES HAS PRESCRIBED.**

*Philip Morris Philippines Manufacturing Inc. v. CIR* (CTA EB No. 1893 dated January 23, 2020)

**CLAIMS FOR REFUND ARE CONSTRUED STRICTLY AGAINST THE CLAIMANT FOR THE SAME PARTAKE THE NATURE OF EXEMPTION FROM TAXATION AND AS SUCH, THEY ARE LOOKED UPON WITH DISFAVOR.** Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of the sovereign authority and are to be construed in *strictissimi juris* against the person or entity claiming the exemption. All told, petitioner's claim for refund has no bases in fact and in law

*CIR v. Nes Global Talent Limited* (CTA EB No. 1903 dated January 23, 2020)

**IN AN ACTION FOR REFUND OF TAXES ALLEGEDLY ERRONEOUSLY PAID, THE CTA MAY DETERMINE WHETHER THERE ARE TAXES THAT SHOULD HAVE BEEN PAID IN LIEU OF THE TAXES PAID.** Determining the proper category of tax that should have been paid is not an assessment. It is incidental to determining whether there should be a refund. The determination of the proper category of tax that petitioner should have paid is an incidental matter necessary for the resolution of the principal issue, which is whether petitioner was entitled to refund.

**ONCE THE REQUIREMENTS LAID DOWN BY THE NIRC HAVE BEEN MET, A CLAIMANT SHOULD BE CONSIDERED SUCCESSFUL IN DISCHARGING ITS BURDEN OF PROVING ITS RIGHT TO REFUND.** Thereafter, the burden of going forward with the evidence, as distinct from general proof, shifts to the opposing party, that is, the CIR.

*Oceanagold (Philippines), Inc. v. CIR* (CTA EB No. 1904 dated January 23, 2020)

**UNDER THE FTAA AND THE IMPLEMENTING RULES AND REGULATIONS OF THE PHILIPPINE MINING ACT, PETITIONER IS ALLOWED TO RECOVER ITS PRE-OPERATING EXPENSES BEFORE THE GOVERNMENT COLLECTS ITS SHARE BUT SUBJECT TO CERTAIN CONDITIONS. AMONG OTHERS, THESE CONDITIONS INCLUDE:**

- a) Maximum of five years recovery period, or at a date when the aggregate of the Net Cash Flow from the Mining Operations is equal to the aggregate of its Pre-operating expenses, reckoned from the Date of Commencement of Commercial Production, whichever comes first;
- b) Approval of pre-operating expenses by the Secretary of the DENR, upon recommendation of the Director of the Mines and Geosciences Bureau; and
- c) Verification of actual expenditure by an independent audit recognized by the Government and chargeable against the Contractor.

*CIR v. Splash Corporation* (CTA EB No. 1882 dated January 30, 2020)

**IF THE BASIC TAX INVOLVED EXCEEDS ONE MILLION PESOS OR THE SETTLEMENT OFFERED IS LESS THAN THE PRESCRIBED MINIMUM RATES, THE COMPROMISE SHALL BE SUBJECT TO THE APPROVAL OF THE NATIONAL EVALUATION BOARD (NEB) COMPOSED OF THE CIR AND FOUR DEPUTY COMMISSIONERS.**

*Hedcor v. CIR* (CTA EB No. 1836 dated February 3, 2020)

**ACTIONS FOR TAX REFUND OR CREDIT ARE IN THE NATURE OF A CLAIM FOR TAX EXEMPTION WHICH IS CONSTRUED IN STRICTISSIMI JURIS AGAINST THE TAXPAYER. THE BURDEN IS ON THE TAXPAYER TO SHOW THAT HE HAS STRICTLY COMPLIED WITH THE CONDITIONS FOR THE GRANT OF TAX REFUND OR CREDIT.** Failure on the part of the taxpayer claimant to discharge said burden and to show strict compliance with legal requirements will necessarily result in the denial of its claim.

*CIR vs. Foseco Philippines, Inc* (CTA EB No. 1842 dated February 3, 2020)

**WHERE THE TAXPAYER IS ENGAGED IN ZERO-RATED OR EFFECTIVELY ZERO-RATED SALE AND ALSO IN TAXABLE OR EXEMPT SALE OF GOODS OR PROPERTIES OR SERVICES. AND THE AMOUNT OF CREDITABLE INPUT TAX DUE OR PAID CANNOT BE DIRECTLY AND ENTIRELY ATTRIBUTED TO ANY ONE OF THE TRANSACTIONS. IT SHALL BE ALLOCATED PROPORTIONATELY ON THE BASIS OF THE VOLUME OF SALES.**

*CIR vs. Univation Motor Philippines, Inc.* (CTA EB No. 1822 dated February 3, 2020)

**PRESENTATION OF CERTIFICATES OF CREDITABLE TAX WITHHELD AT SOURCE ARE COMPETENT AND SUFFICIENT PROOF TO ESTABLISH THE WITHHOLDING OF TAXES WITHOUT NEED OF PROVING ACTUAL REMITTANCE THEREOF TO THE BIR.** Upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly.

### **COURT OF TAX APPEALS DECISIONS**

*Ten-Four Readymix Concrete, Inc. v. CIR* (CTA Case No. 10081 dated January 16, 2020)

**THE ISSUANCE OF PRELIMINARY COLLECTION LETTER AND FINAL NOTICE BEFORE SEIZURE IS TANTAMOUNT TO DENIAL OF PROTEST.** When taxpayers receive a notice or letter other than the Final Decision on Disputed Assessment (FDDA) demanding payment of the alleged tax deficiency assessment after the taxpayer filed its protest letter, the same is deemed a denial of such protest. Accordingly, the period to file the appeal to the CTA shall be within 30 days after the receipt of the PCL and FNBS.

*Financial Times Electronic Publishing Philippines, Inc. v. CIR* (CTA Case No. 9631 dated January 16, 2020)

**THE ABSENCE OF A CORPORATION'S LOCAL REGISTRATION OR ITS REGISTRATION ABROAD DOES NOT CONCLUSIVELY PROVE THAT IT IS NOT CONDUCTING BUSINESS WITHIN THE PHILIPPINES.**

*Lynard Allan Bigcas v. Commissioner of Customs, Manila* (CTA Case No. 8717 dated January 16, 2020)

**FAILURE TO PAY THE CUSTOMS FEES BY AFFIXING THE DOCUMENTARY CUSTOMS STAMP WILL NOT CONFER JURISDICTION TO THE COMMISSIONER OF CUSTOMS TO TAKE COGNIZANCE OF THE APPEAL.** The appeal to the Commissioner of Customs shall only be perfected upon: (1) Filing of a written notice of appeal within 15 days from notification, as stated in Section 2313 of TCCP, and (2) payment of pertinent fee in accordance with the prescribed rates as required by Section 3303 of TCCP.

*Lepanto Consolidated Mining Company v. CIR* (CTA Case No. 9649 dated January 17, 2020)

**TAXPAYER IS NOT REQUIRED TO PROVE WHICH OF ITS PURCHASES ARE DIRECTLY ATTRIBUTABLE TO ITS ZERO-RATED TRANSACTIONS AND WHICH ARE DIRECTLY ATTRIBUTABLE TO ITS TAXABLE TRANSACTIONS.** Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for a situation where the taxpayer is engaged in zero-rated or effectively zero-rated sales and in taxable or exempt sales, and the input taxes cannot be directly and entirely attributed to any of the sales, in which case, the input taxes shall be allocated proportionately on the basis of the volume of sales.

*Getz Pharma (Phils.), Inc. v. CIR* (CTA Case No. 8922 dated January 17, 2020)

**THE ISSUANCE OF THE FLD/FAN PRIOR TO THE LAPSE OF THE PERIOD TO RESPOND TO THE PAN IS NOT CURED BY THE FACT THAT THE TAXPAYER WAS ABLE TO PROTEST THE FLD/FAN.** The PAN is an important part of due process. Procedural due process is not satisfied with the mere issuance of a PAN without any intention on the part of the BIR to actually consider the taxpayer's position on the proposed assessment. The non-compliance with statutory and procedural due process renders the final assessment notice as null and void.

*Nueva Ecija II Electric Cooperative, Inc. – Area 2 v. CIR* (CTA Case No. 9605 dated January 17, 2020 )

**THERE IS ONLY ONE 180-DAY PERIOD WHICH IS COUNTED FROM THE DATE OF SUBMISSION OF THE RELEVANT OF SUPPORTING DOCUMENTS AND NOT FROM THE DATE WHEN THE DECISION OF THE CIR'S AUTHORIZED REPRESENTATIVE WAS APPEALED TO THE CIR.** A taxpayer has four (4) options after the filing of a protest to the FLO and FAN, depending on whether there was action or inaction on the part of the CIR or his authorized representative, viz.:

1. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR or the CTA within thirty (30) days from receipt of the whole or partial denial of the protest;
2. If the protest is wholly or partially denied by the CIR himself, the taxpayer may appeal to the CTA within thirty (30) days from receipt of the whole or partial denial of the protest;
3. If the CIR's authorized representative fails to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within thirty (30) days from the lapse of the 180-day period; or,
4. If the CIR's authorized representative wholly or partially denies the protest within 180 days and the taxpayer (instead of appealing to the CTA) appeals to the CIR, the CIR has the remaining of the 180 days within which to act, failing which, the taxpayer may either await the decision of the CIR or elevate the inaction to the CTA, within thirty (30) days from receipt of the CIR's decision or from the lapse of the submission of the required supporting documents in support of the protest.

*People of the Philippines vs. Ritchie Barriga* (CTA Crim Case No. O-266, O-267, O-268, O-269) dated January 21, 2020)

THE FOLLOWING ARE THE ELEMENTS FOR THE OFFENSES UNDER SECTION 255 (FAILURE TO FILE RETURN, SUPPLY CORRECT AND ACCURATE INFORMATION, PAY TAX WITHHOLD AND REMIT TAX AND REFUND EXCESS TAXES WITHHELD ON COMPENSATION) TO BE CONSIDERED COMMITTED OR CONSUMMATED, TO WIT:

1. The offender is required under the 1997 NIRC, as amended, or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information;
2. The offender fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; and
3. Such failure was willful.

*CIR v. George A. Talamayan, Jr.* (CTA OC No. 021 dated January 23, 2020)

**A REVENUE DISTRICT OFFICER IS BEREFT OF ANY POWER TO AUTHORIZE THE EXAMINATION OF TAXPAYERS OR TO EFFECT ANY MODIFICATION OR AMENDMENT TO A PREVIOUSLY ISSUED LETTER OF AUTHORITY.** Only the CIR or his duly authorized representatives are granted such power. The CTA stands by its ruling that the Reference Slip issued by Revenue District Officer Gaze of RDO No. 9 - La Trinidad, Benguet cannot validly clothe Revenue Officer with the requisite authority to conduct the examination pursuant to a LOA.

*PNOC v. CIR* (CTA Cas No. 9373 dated January 23, 2020)

TO HARMONIZE SECTION 4 OF 1997 NIRC AND PD 242, THE FOLLOWING INTERPRETATION HAS BEEN ADOPTED:

1. As regards private entities and the BIR, the decision of the CIR is subject to the exclusive appellate jurisdiction of the CTA, in accordance with Section 4 of the NIRC; and



2. Where the disputing parties are all public entities, the case shall be governed by PD No. 242 (which is now embodied in Chapter 14, Book IV of the Administrative Code of 1987), where the dispute shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.

*IBM Plaza Condominium Association, Inc. v. CIR (CTA Case No. 8740 dated January 24, 2020)*

**FAILURE OF THE CIR TO PROVE ACTUAL RECEIPT OF THE NOTICE OF ASSESSMENT RENDERS THE ASSESSMENT VOID FOR FAILURE TO ACCORD THE TAXPAYER DUE PROCESS.**

*Pilipinas Kyohritsu Inc. v. CIR (CTA Case No. 9557 dated January 28, 2020)*

**THE TAXPAYER MUST COMPLY WITH THE REQUISITES FOR A VALID REFUND.** The following are the requisites:

*Timeliness of the filing of the administrative and judicial claims:*

1. The claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made
2. In case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;

*Taxpayer's registration with the BIR:*

3. The taxpayer is a VAT-registered person;

*Taxpayer's zero-rated sales:*

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;
5. For zero-rated sales under Sections 106(A)(2)(1) and (2); 106(8); and 108(8)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;

*Taxpayer's input VAT claim:*

6. The input taxes are not transitional input taxes;
7. The input taxes are due or paid;
8. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;
9. The input taxes have not been applied against output taxes during and in the succeeding quarters.

*WPP Marketing Communications, Inc. v. CIR* (CTA Case No. 9704 dated January 29, 2020)

**THE DENIAL BY THE CIR OF THE REQUEST FOR RECONSIDERATION OF THE DENIED APPLICATION FOR COMPROMISE SETTLEMENT IS APPEALABLE WITH THE CTA.** The appellate jurisdiction of the Court of Tax Appeals is not limited to cases which involve decisions of CIR on matters relating to assessments or refunds. The second part of Sec. 7 (a) (1) of RA 1125, as amended by RA 9282 covers other cases that arise out of the NIRC or related laws administered by the BIR.

*Denso Philippines Corporation vs. CIR* (CTA Case No 10046 dated January 31, 2020)

**CLAIMANT FOR REFUND OF EXCESS/UNUTILIZED INPUT VALUE ADDED TAXES (VAT) HAS 30 DAYS TO SUBMIT ITS COMPLETE DOCUMENTARY REQUIREMENTS SUFFICIENT TO SUPPORT HIS CLAIM. UNLESS GIVEN AN EXTENSION OF TIME BY THE RESPONDENT. UPON FILING BY THE TAXPAYER OF HIS COMPLETE DOCUMENT TO SUPPORT HIS APPLICATION, OR UPON EXPIRATION OF THE PERIOD GIVEN, THE CIR HAS 120 DAYS WITHIN WHICH TO DECIDE THE CLAIM FOR TAX CREDIT OR REFUND.**

*Taihei Alltech Construction (Phil.), Inc. v. CIR* (CTA Case No. 10108 dated February 3, 2020)

**THE 30-DAY PERIOD PROVIDED BY LAW SHOULD BE RECKONED AFTER THE RECEIPT OF RESPONDENT'S DECISION/RULING OR AFTER THE EXPIRATION OF THE 120-DAY PERIOD, WHICHEVER IS SOONER.** In addition, it is clear that any judicial claim filed in a period less than or beyond the said 120+30- day period is outside the jurisdiction of this Court.

*National Food Authority vs Province of Nueva Vizcaya* (CTA AC Case No. 192 dated February 3, 2020)

**A CLAIM FOR EXEMPTION FROM THE PAYMENT OF REAL PROPERTY TAXES DOES NOT ACTUALLY QUESTION THE ASSESSOR'S AUTHORITY TO ASSESS AND COLLECT SUCH TAXES, BUT PERTAINS TO THE REASONABLENESS OR CORRECTNESS OF THE ASSESSMENT BY THE LOCAL ASSESSOR, A QUESTION OF FACT WHICH SHOULD BE RESOLVED, AT THE VERY FIRST INSTANCE, BY THE LBAA.** The taxpayer must first pay the tax then file a protest with the Local Treasurer within thirty (30) days from date of payment of tax. If protest is denied or upon the lapse of the sixty (60)-day period to decide the protest, the taxpayer may appeal to the LBAA within sixty (60) days from the denial of the protest or the lapse of the sixty (60)-day period to decide the protest. The LBAA has 120 days to decide the appeal. If the taxpayer is unsatisfied with the Local Board's decision, the taxpayer may appeal before the CBAA within thirty (30) days from receipt of the Local Board's decision. The decision of the CBAA is appealable before the Court of Tax Appeals En Banc.

**NOTICE OF DELINQUENCY IN THE PAYMENT OF THE REAL PROPERTY SHOULD BE:**

(1) posted at the main entrance of the provincial capitol, or city or municipal hall and in a publicly accessible and conspicuous place in each barangay of the local government unit concerned;

(2) published once a week for two (2) consecutive weeks, in a newspaper of general circulation in the province, city, or municipality. (3) sent to the registered owner of the property subject of a possible tax sale.

*Toledo Power Company v. CIR* (CTA Case No. 9307 dated February 3, 2020)

**IT IS THE FAN WHICH CREATE THE LIABILITY TO PAY TAX ON THE PART OF A TAXPAYER.** A taxpayer's liability to pay the assessed tax arises only upon a notice and demand from respondent or his duly authorized representative - which is in the form of an assessment that fixes and determines the tax liability of a taxpayer. And, as soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded.

*Oceanagold (Philippines), Inc v. CIR* (CTA Case No. 9517 and 9559 dated February 3, 2020)

**A TAXPAYER HAS 2 YEARS FROM THE DATE OF PAYMENT OF TAX ALLEGED TO HAVE BEEN ERRONEOUSLY OR ILLEGALLY COLLECTED, WITHIN WHICH TO FILE ITS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND OR CREDIT.**

**ANY REVOCATION, MODIFICATION OR REVERSAL OF ANY OF THE RULES AND REGULATIONS PROMULGATED IN ACCORDANCE WITH THE PROVISIONS OF THE NIRC OR ANY OF THE RULINGS OR CIRCULARS PROMULGATED BY THE COMMISSIONER SHALL NOT BE GIVEN RETROACTIVE APPLICATION IF THE REVOCATION, MODIFICATION OR REVERSAL WILL BE PREJUDICIAL TO THE TAXPAYERS, EXCEPT IN THE FOLLOWING CASES:**

- (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
- (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
- (c) Where the taxpayer acted in bad faith.

*Orica Philippines, Inc v. CIR* (CTA Case No. 9717 dated February 4, 2020)

**NO VALUE IS GIVEN TO DOCUMENTARY EVIDENCE SUBMITTED IN THE BUREAU OF INTERNAL REVENUE UNLESS IT IS FORMALLY OFFERED IN THE COURT OF TAX APPEALS.** Thus, the review of the Court of Tax Appeals is not limited to whether or not the Commissioner committed gross abuse of discretion, fraud or error of law, as contended by the Commissioner. As evidence is considered and evaluated again, the scope of the Court of Tax Appeals' review covers factual findings.

**WHILE ADMINISTRATIVE AGENCIES, SUCH AS THE BIR, ARE NOT BOUND BY TECHNICAL RULES OF EVIDENCE, IT MAY, NEVERTHELESS, CHOOSE TO GIVE WEIGHT OR IGNORE EVIDENCE SUBMITTED TO IT, DEPENDING ON ITS TRUSTWORTHINESS. SUCH BEING THE CASE, THE BIR, AS AN ADMINISTRATIVE AGENCY, IS GIVEN LEEWAY TO DECIDE WHETHER TO GIVE WEIGHT OR IGNORE ANY EVIDENCE SUBMITTED TO IT, DEPENDING ON ITS TRUSTWORTHINESS.**

*Dole Fresh Fruit Company v. CIR* (CTA Case No. 9012 dated February 5, 2020)

**THE BASIS FOR DETERMINING THE COMPOSITION OF A COMPANY'S ASSETS SHALL BE THE VALUE OF ALL THE ASSETS OF THE SUBJECT CORPORATION, BOTH REAL AND PERSONAL, AS APPEARING IN ITS FINANCIAL STATEMENT ON THE DATE OF THE SALE OF THE SHARE OR INTEREST AND AS VERIFIED BY THE BIR.**

**PRONOUNCEMENTS AS TO THE EXEMPTION OF SHARES FROM CGT UNDER THE RP-US TAX TREATY:**

- (1) capital gains derived by residents of other Contracting States from the disposition of shares or interests in a Philippine corporation are taxable in the Philippines only if the assets of the corporation consist principally of real property interest located in the Philippines;
- (2) real property interests are interests on properties enumerated in RR 4-86, including real properties as defined under Philippine law;
- (3) principally means more than fifty percent (50%) of the entire assets in terms of value; and,
- (4) the value of the assets shall be determined from the financial statements as of the date of the sale, as verified by the BIR.

*Sunnyphil Incorporated v. CIR* (CTA Case No. 9421 dated February 6, 2020)

**THE COURT MAY NOT LIMIT ITSELF TO THE ISSUES STIPULATED BY THE PARTIES BUT MAY ALSO RULE UPON RELATED ISSUES NECESSARY TO ACHIEVE AN ORDERLY DISPOSITION OF THE CASE.** The Supreme Court did not only affirm this Court's authority to rule upon related issues necessary to achieve an orderly disposition of the case; but also specifically states that this Court may consider the question on the scope of authority of revenue officers who were named in the LOA, which impliedly covers the issue of whether an RO is authorized through an LOA in the first place.

*Taganito HPAL Nickel Corporation v. CIR* (CTA Case No. 9128 dated February 6, 2020)

**THE TERM "INPUT TAX" MEANS THE VALUE-ADDED TAX DUE FROM OR PAID BY A VAT-REGISTERED PERSON IN THE COURSE OF HIS TRADE OR BUSINESS ON IMPORTATION OF GOODS OR LOCAL PURCHASE OF GOODS OR SERVICES, INCLUDING LEASE OR USE OF PROPERTY, FROM A VAT-REGISTERED PERSON.** Section 112(A) of the NIRC provides that the law merely requires that the creditable input VAT should be "attributable" to the zero-rated or effectively zero-rated sales. Simply stated, the law does not specifically require that the refundable creditable input tax should be "directly attributable" to such sales. That where the amount of the allowable input tax paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately to each category of transaction.

*Genebra San Miguel, Inc v. CIR* (CTA Case No. 9059 dated February 6, 2020)

**CTA HAS JURISDICTION TO DETERMINE THE VALIDITY OF AN ADMINISTRATIVE ISSUANCE AS OTHER MATTERS OR ISSUES ANCILLARY TO THE MAIN ACTION OF REFUND.**

**THE FURTHER IMPOSITION OF EXCISE TAXES ON THE FINISHED LIQUOR PRODUCTS OF PETITIONER PRODUCED EXCLUSIVELY FROM ITS INVENTORY OF ETHYL ALCOHOL ON WHICH EXCISE TAXES HAD ALREADY BEEN PAID IS CONTRARY TO THE MANDATE OF SECTION 170 OF THE NIRC AND CONSTITUTES DOUBLE TAXATION.**

*Honda Cars Kalookan, Inc v. CIR* (CTA Case No. 9552 dated February 7, 2020)

**WHERE THE BASIC TAX INVOLVED EXCEEDS ONE MILLION PESOS (1,000,000.00) OR WHERE THE SETTLEMENT OFFERED IS LESS THAN THE PRESCRIBED MINIMUM RATES, THE COMPROMISE SHALL BE SUBJECT TO THE APPROVAL OF THE EVALUATION BOARD WHICH SHALL BE COMPOSED OF THE COMMISSIONER AND THE FOUR (4) DEPUTY COMMISSIONERS.** To stress, all decisions of the NEB, granting the request of the taxpayer or favorable to the taxpayer, shall have the concurrence of the Commissioner.

*Geniographics Incorporation v. CIR* (CTA Case No. 9712 dated February 10, 2020)

**AN AUTHORIZATION FROM THE CIR OR FROM HIS DULY AUTHORIZED REPRESENTATIVE IS NEEDED IN ORDER TO EXAMINE ANY TAXPAYER.** In relation to Sections 10 and 13 of the NIRC of 1997, as amended, the authorization needed to examine any taxpayer is the "Letter of Authority" (LOA) and the duly authorized representative referred is the Revenue Regional Director.

**THE AUDIT PROCESS COMMENCES WITH THE SERVICE OF A DULY ISSUED LOA TO A TAXPAYER WHO HAS BEEN SELECTED FOR AUDIT.** A Letter of Authority is the authority given to the appropriate revenue officer assigned to perform assessment functions. Before any revenue officer can conduct an examination or assessment, there must be grant of authority. It serves to authorize the revenue officer assigned to examine the taxpayers' books and records for a particular period. Also, an audit and examination should be in accordance with the procedures prescribed by law.

**THE FOLLOWING DIFFERENCES BETWEEN AN LOA AND LN ARE CRUCIAL:**

1. LOA addressed to a revenue officer is specifically required under the NIRC before an examination of a taxpayer may be had while an LN is not found in the NIRC and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's RELIEF System.
2. LOA is valid only for 30 days from date of issue while an LN has no such limitation.
3. LOA gives the revenue officer a definite period to conduct his examination of the taxpayer whereas an LN does not contain such a limitation.

Simply put, LN is entirely different and serves a different purpose than an LOA. Due process demands, as recognized under RMO No. 32-2005, that after an LN has served its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner.

*Market Strategic Firm, Inc v. CIR* (CTA Case No. 9280 dated February 10, 2020)

**IN ALL TAX ASSESSMENTS, THE AUDIT INVESTIGATION MUST BE CONDUCTED BY A DULY DESIGNATED RO TASKED TO PERFORM AUDIT AND EXAMINATION OF TAXPAYERS' BOOKS, PURSUANT TO A LOA ISSUED BY THE REGIONAL DIRECTOR. IN CASE OF RE-ASSIGNMENT OR TRANSFER OF CASES TO ANOTHER RO, A NEW LOA WITH A CORRESPONDING NOTATION THERETO, SIGNED BY AN AUTHORIZED OFFICER TO ISSUE AN LOA, MUST BE CERTAIN.**

*People of the Philippines v. Kamisari Sulit Shopping Stores, Inc* (CTA Crim Case No. O-749 dated February 12, 2020)

**A TAX AMNESTY OPERATES AS A GENERAL PARDON OR INTENTIONAL OVERLOOKING BY THE STATE OF ITS AUTHORITY TO IMPOSE PENALTIES ON PERSONS OTHERWISE GUILTY OF EVASION OR VIOLATION OF A REVENUE OR TAX LAW. IT IS AN ABSOLUTE FORGIVENESS OR WAIVER BY THE GOVERNMENT OF ITS RIGHT TO COLLECT WHAT IS DUE AND TO GIVE TAX EVADERS WHO WISH TO RELENT A CHANCE TO START WITH A CLEAN SLATE.**

**IN ORDER TO AVAIL THE TAX AMNESTY ON DELINQUENCIES (TAD), THE FOLLOWING DOCUMENTARY REQUIREMENTS MUST BE SECURED AND SUBMITTED BEFORE THE BIR. TO WIT:**

1. Tax Amnesty Return (TAR) (BIR Form No. 2118-DA);
2. Acceptance Payment Form (APF) (BIR Form No. 0621 - DA), which must be either duly validated by the Authorized Agent Banks (AABs) or duly stamped "received", with the accompanying bank deposit slip duly validated by the concerned AABs or accompanied with Revenue Official Receipt (ROR) issued by the Revenue Collection Officers (RCOs);
3. Certificate of Tax Delinquencies/Tax Liabilities issued by the concerned BIR office; and
4. If applicable, in case of withholding tax liabilities arising from failure of the withholding agent to remit the tax withheld, a copy of the assessment found in either the Final Assessment Notice (FAN)/Final Decision on Disputed Assessment (FDDA), Preliminary Assessment Notice (PAN), Notice of Informal Conference (NIC) or equivalent document.

*Fonterra Brands Philippines, Inc. v. CIR* (CTA Case No. 9230 dated February 14, 2020)

**A WAIVER OF THE DEFENSE OF PRESCRIPTION IS A BILATERAL AGREEMENT BETWEEN A TAXPAYER AND THE BIR TO EXTEND THE PERIOD OF ASSESSMENT AND COLLECTION TO A CERTAIN DATE.** However, it is likewise a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed. The Waiver must faithfully comply with the provisions of Revenue

Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 in order to be valid and binding.

**AN ASSESSMENT MUST CONTAIN NOT ONLY A COMPUTATION OF TAX LIABILITIES, BUT ALSO A DEMAND FOR PAYMENT WITHIN A PRESCRIBED PERIOD.** Thus, absent a specific date or period within which the alleged tax deficiencies must be settled or paid by petitioner, the FLD/FAN is fatally infirm. Consequently, the FDDA which rooted from the said FLD/FAN is likewise void, the deficiency tax assessments contained in the former are of no consequence as a void assessment bears no fruit.

*First Philippine Power Systems, Inc. v. CIR* (CTA Case No. 9067 dated February 14, 2020)

**THE POWER TO AUTHORIZE EXAMINATION OF A TAXPAYER AND ISSUE ASSESSMENTS IS PRIMARILY LODGED WITH THE CIR.** However, the said power may be delegated in accordance with Section 7, in relation to Sections 10 and 13 of the NIRC of 1997, as amended. Hence, while the power to make assessments is primarily lodged with respondent CIR, the power to issue a LOA in relation thereto may be expressly delegated to the Revenue Regional Director, or in this case, to the Assistant Commissioner/Head Revenue Executive Assistant.

**THE WAIVER MUST BE EXECUTED PRIOR TO THE LAPSE OF THE PERIOD PRESCRIBED BY LAW FOR THE ASSESSMENT OF THE TAX.** In relation thereto, RMO No. 20-90 provides that both the date of execution by the taxpayer and date of acceptance by the Bureau of Internal Revenue should be before the expiration of the period of prescription.

*Deutsche Knowledge Services Pte. Ltd. v. CIR* (CTA Case No. 9154 dated February 14, 2020)

**THE FOLLOWING ELEMENTS MUST BE PRESENT FOR A TRANSACTION TO BE TREATED AS SUBJECT TO THE ZERO PERCENT (0%) VAT UNDER SECTION 108(B)(2) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, TO WIT:**

- 1) the subject services must be performed in the Philippines;
- 2) the recipient of such services is doing business outside the Philippines;
- 3) the services must be other than processing, manufacturing or repacking of goods, and
- 4) the consideration for the services is paid for in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

## **REVENUE ISSUANCES**

**Revenue Regulations No. 3-2020** (29 January 2020)

Amends certain provisions of RR No. 13-2011, Implement the Tax Provisions of Republic Act No. 9856, otherwise known as “The Real Estate Investment Trust (REIT) Act of 2009”.

| RR No. 13-11   | RR No. 3-2020  |
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| <p>SECTION 3. Definition of Terms.</p> <p>xxx</p> <p>(s) "Public Company" means a company listed with the Exchange which has, upon and after listing, at least one thousand (1,000) public shareholders each owning at least fifty (50) shares of any class and who in the aggregate own at least forty percent (40%) of the outstanding capital stock of the REIT at the initial year; provided, that the minimum ownership shall be increased to sixty seven percent (67%) within three (3) years from its listing.</p> <p>xxx</p> | <p>SECTION 3. Definition of Terms.</p> <p>xxx</p> <p>(s) "Public Company" means a company listed with the Exchange and which, upon and after listing, have at least one thousand (1,000) public shareholders each owning at least fifty (50) shares of any class and who, in the aggregate, own at least one-third (1/3) of the outstanding capital stock of the REIT.</p> <p>xxx</p> <p>(w) "Reinvestment Plan" refers to a sworn statement, duly received by the Exchange and the Commission, signed by the Sponsor/Promoter and Principal Shareholder of the REIT firmly undertaking the following:</p> <p>(1) to reinvest (i) any proceeds realized by the Sponsor/Promoter from the sale of REIT shares or other securities issued in exchange for income-generating Real Estate transferred to the REIT and (ii) any money raised by the Sponsor/Promoter from the sale of any of its income-generating Real Estate to the REIT, in any Real Estate, including any redevelopment thereof, and/or Infrastructure PAGE 2 OF 7 Projects as defined in Republic Act No. 6975, as amended, and its relevant implementing guidelines, in the Philippines.</p> <p>(2) Reinvestment shall be made within one (1) year from the date of receipt of proceeds or money by the Sponsor/Promoter.</p> |
| <p>SECTION 4. Registration and Classification of REIT. — A REIT including its branches, shall register once with LTRAD 3, on or before the commencement of its business, in accordance with the provisions of Chapter</p>  | <p>SECTION 4. Registration and Classification of REIT. — A REIT including its branches, shall register once with LTRAD 3, on or before the commencement of its business, in accordance with the provisions of Chapter</p>  |



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| <p>II of Title IX of the NIRC and its implementing revenue regulations.</p> <p>Upon registration, a REIT shall submit, together with other documents that the Commissioner may require, certified true copies of its constitutive documents and the REIT Plan, a list of its shareholders, their Tax Identification Number, number of shares held and percentage of holding.</p>   | <p>II of Title IX of the NIRC and its implementing revenue regulations.</p> <p>Upon registration, a REIT shall submit, together with other documents that the Commissioner may require, certified true copies of its constitutive documents and the REIT Plan, <u>Reinvestment Plan</u>, a list of its shareholders, their Tax Identification Number, number of shares held and percentage of holding.</p>  |
| <p>SECTION 5. Documentary Stamp Tax on the Transfer of Real Property. —<br/>xxx</p> <p>Where the transfer involves shares of stocks representing interest in the real property, the DST imposed on the sale or transfer of shares of stocks under Section 175 of the NIRC shall be at the reduced rate of Thirty Seven and a-half centavos (P0.375) on each Two Hundred pesos (Php200.00), or fractional part thereof, of the par value of such stock. In case the stock transferred is without par value, the amount of the DST prescribed shall be equivalent to Twelve and one half percent (12 1/2%) of the DST paid upon original issuance of said stock.</p> <p>On the other hand, the DST on the assignment of mortgage or pledge, unless exempt under Section 199 (f) of the NIRC, shall be based on the outstanding balance of the original loan at the time of the transfer or assignment at the following rate:</p> <p>(a) When the amount secured does not exceed Five thousand pesos (P5,000.00), ten pesos (P10.00).<br/>(b) On each Five thousand pesos (P5,000), or fractional part thereof in excess of Five Thousand pesos (P5,000.00), an additional tax of five pesos (P5.00).</p> | <p>SECTION 5. Documentary Stamp Tax on the Transfer of Real Property. —<br/>xxx</p> <p>Where the transfer involves shares of stocks representing interest in the real property, the DST imposed on the sale or transfer of shares of stocks under Section 175 of the NIRC shall be at the reduced rate of <u>Seventy-five centavos (P0.75)</u> on each Two Hundred pesos (Php200.00), or fractional part thereof, of the par value of such stock. In case the stock transferred is without par value, the amount of the DST prescribed shall be equivalent to <u>twenty-five percent (25%)</u> of the DST paid upon original issuance of said stock.</p> <p>On the other hand, the DST on the assignment of mortgage or pledge, unless exempt under Section 199 (f) of the NIRC, shall be based on the outstanding balance of the original loan at the time of the transfer or assignment at the following rate:</p> <p>(a) When the amount secured does not exceed Five thousand pesos (P5,000.00), <u>Twenty pesos (P20.00)</u>.<br/>(b) On each Five thousand pesos (P5,000), or fractional part thereof in excess of Five thousand pesos (P5,000.00), an additional tax of <u>Ten pesos (P10.00)</u>.</p> |

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| <p>In the event the sale or transfer of real property to REITs shall occur prior to its listing, the REIT, in addition to all other presently existing requirements for the issuance of a CAR, shall (a) execute an undertaking that it shall list within two (2) years from the date of its initial availment of the incentive, and (b) place, for the benefit of the Bureau, in escrow the fifty percent (50%) DST given herein as an incentive in an Authorized Agent Bank acceptable to the Bureau.</p> <p>xxx</p> | <p>In the event the sale or transfer of real property to REITs shall occur prior to its listing, the REIT, in addition to all other presently existing requirements for the issuance of a CAR, <u>shall execute an Affidavit of Undertaking that it shall list within two (2) years from the date of its initial availment of the incentive.</u></p> <p>xxx</p>  |
| <p>SECTION 7. Transfer of Real Property Pursuant to Section 40 (c) (2) of the NIRC. –</p> <p>(a) Transfers or exchanges of real property for shares of stock in a REIT falling under Section 40 (C) (2) of the NIRC shall have the following tax consequences: xxx</p> <p>ii. VAT. The Transferor is subject to VAT on the transfer of property classified as ordinary asset based on the fair market value of the property transferred. xxx</p>   | <p>SECTION 7. Transfer of Real Property Pursuant to Section 40 (c) (2) of the NIRC. (a) Transfers or exchanges of real property for shares of stock in a REIT falling under Section 40 (C) (2) of the NIRC shall have the following tax consequences: xxx</p> <p>ii. VAT. <u>The transfer of property to a REIT in exchange for its shares is exempt from VAT as provided under Section 109 (X) of the NIRC.</u> Xxx</p>   |
| <p>SECTION 8. Guidelines for the Availment of DST Incentive and the Issuance of CAR. –</p> <p>(a) Parties availing of the DST incentive under Section 5 of these Regulations shall, together with the applicable documents as enumerated under Revenue Memorandum Order No. 15-2003 , submit the following to the concerned Revenue District Office issuing the CAR/TCL: xxx</p> <p>iii. Two certified true copies of the Certificate that REIT is listed with the Exchange (for listed REITs) or an</p>               | <p>SECTION 8. Guidelines for the Availment of DST Incentive and the Issuance of CAR.</p> <p>(a) Parties availing of the DST incentive under Section 5 of these Regulations shall, together with the applicable documents as enumerated under Revenue Memorandum Order No. 15-2003, submit the following to the concerned Revenue District Office issuing the CAR/TCL: xxx</p> <p>iii. Two certified true copies of the Certificate that REIT is listed with the Exchange (for listed REITs) <u>or an Affidavit of Undertaking that the REIT shall be</u></p> |

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| <p>undertaking that the REIT shall be listed within two (2) years from the date of its initial availment of the incentive and the escrow agreement referred to in Section 5 hereof (for unlisted REITS).</p> <p>xxx</p> <p>(e) An unlisted REIT must submit to the concerned RDO the original or certified true copy of the Listing Circular issued by the Exchange, or its equivalent document, within two years from the date of its initial availment of this incentive. Failure to comply with this requirement shall result in the release of the amount deposited in escrow in favor of the Bureau (representing payment for the basic DST due) and in making the unlisted REIT liable for interest and penalties under the NIRC. The imposition of the applicable DST, interest and penalties shall be without prejudice to the administrative, civil and criminal liabilities of the parties under the applicable provisions of the Act and the NIRC.</p> | <p><u>listed within two (2) years from the date of its initial availment of the incentive (for unlisted REITS); and</u></p> <p><u>iv. Two copies of the Reinvestment Plan duly received by the BIR.</u></p> <p>xxx</p> <p>(e) An unlisted REIT must submit to the concerned RDO the original or certified true copy of the Listing Circular issued by the Exchange, or its equivalent document, within two years from the date of its initial availment of this incentive. <u>Otherwise, the previously reduced fifty percent (50%) of the applicable DST on transfer of the above property shall immediately become due and demandable together with the applicable surcharge, penalties thereon from the date the taxes should have been paid.</u> The imposition of the applicable DST, interest and penalties shall be without prejudice to the administrative, civil and criminal liabilities of the parties under the applicable provisions of the Act and the NIRC."</p> |
| <p>SECTION 9. Taxation of the Issuance and Transfer of Investor Securities. – The following rules shall apply in the issuance and transfer of investor securities:</p> <p>xxx</p> <p>(d) Any sale, barter, exchange or other disposition of investor securities outside of the Exchange shall be subject to capital gains tax imposed under Sections 24 (C) , 25 (3) , 27 (D) (2) , 28 (A) (C) and (B) (5) (C) of the NIRC;</p> <p>xxx"</p>   | <p>"SECTION 9. Taxation of the Issuance and Transfer of Investor Securities. – The following rules shall apply in the issuance and transfer of investor securities:</p> <p>xxx</p> <p>(d) Any sale, barter, exchange or other disposition of investor securities outside of the Exchange shall be subject to capital gains tax imposed under Sections 24 (C), 25 (3), 27 (D) (2), <u>28 (A) (7) (c)</u> and (B) (5) (C) of the NIRC;</p> <p>xxx"</p>  |
| <p>SECTION 10. Income Taxation of REIT. –</p> <p>xxx</p>  | <p>SECTION 10. Income Taxation of REIT.</p> <p>xxx</p>  |

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| <p>For purposes of this section, the dividends allowed as deductions during the taxable year shall pertain to dividends actually distributed out of the REITs's distributable income at any time after the close of but not later than the last day of the fifth (5th) month from the close of the taxable year.</p> <p>Any dividends distributed within this prescribed period shall be considered as paid on the last day of REIT's taxable year.</p> <p>xxx</p> <p>A REIT is required to submit to LTRAD 3 quarterly a sworn statement containing the list of its shareholders, their Tax Identification Number, their shareholdings, and the percentage that their shareholding represents. Prior to any declaration of any dividends, and for said dividends to be deducted from its income for tax purposes, the REIT shall in addition submit a sworn statement that the minimum ownership requirements for the relevant years – forty percent (40%) for the first two (2) years and sixty seven percent (67%) on or before the end of the third year and thereafter – were maintained at all times.</p> | <p>For purposes of this section, the dividends allowed as deductions during the taxable year shall pertain to dividends actually distributed out of the REITs's distributable income at any time after the close of but not later than the last day of the fifth (5th) month from the close of the taxable year. Any dividends distributed within this prescribed period shall be considered as paid on the last day of REIT's taxable year.</p> <p><u>From the year of its listing, at the latest and thereafter, the REIT shall maintain its status as a public company as defined herein, and shall comply with the provisions of its submitted Reinvestment Plan as certified by the Commission under Section 11 (4) of the RR. Otherwise, dividend payment shall not be allowed as a deduction from its taxable income.</u></p> <p>It is also required to submit to LTRAD 3 quarterly a sworn statement containing the list of its shareholders, their Tax Identification Number, their shareholdings, and the percentage that their shareholding represents. Prior to any declaration of any dividends, and for said dividends to be deducted from its income for tax purposes, the <u>REIT shall in addition submit a sworn statement that the minimum ownership requirement was maintained at all times."</u></p> |
| <p>SECTION 11. General Conditions for the Availment of Tax Incentives. – In order to qualify for the tax incentives under</p> <p>Sections 5 and 10 of these Regulations, a REIT must:</p> <p>xxx</p> <p>2. For the DST incentive on transfer of real property provided for under Section 6, enlist with an Exchange within two (2)</p>  | <p>SECTION 11. General Conditions for the Availment of Tax Incentives. – In order to qualify for the tax incentives under</p> <p>Sections 5 and 10 of these Regulations, a REIT must:</p> <p>xxx</p> <p>2. For the DST incentive on transfer of real property provided for under Section 6, enlist with an Exchange within two (2)</p>  |

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| <p>years from date of initial availment of DST incentive and maintain the listed status of the investor securities on the Exchange and the registration of the investor securities by the SEC; and</p> <p>3. Distribute at least ninety percent (90%) of its distributable income as required under the Act and its IRR, as revised.</p> <p>xxx</p>  | <p>years from date of initial availment of DST incentive and maintain the listed status of the investor securities on the Exchange and the registration of the investor securities by the SEC;</p> <p>3. Distribute at least ninety percent (90%) of its distributable income as required under the Act and its IRR, as revised; and</p> <p><u>4. Comply with its Reinvestment Plan, as certified by the Commission. The Certification from the Commission that the REIT is compliant with its Reinvestment Plan must be submitted by the REIT as an attachment to its annual income tax return and audited financial statements on or before April 15 (or on the 15th day of the 4th month following the close of the fiscal year).</u></p>  |
| <p>SECTION 16. Withdrawal of Tax Incentives. – (a) A REIT shall be subject to the applicable taxes, plus interests and surcharges, under the NIRC upon the occurrence of any of the following events, subject to the rule on curing period where applicable:</p> <p>xxx</p> <p>iv. Failure of a REIT to list with an Exchange within the two-year period from date of initial availment of DST incentive; and</p> <p>v. Revocation or cancellation of the registration of the securities of a REIT;</p> <p>(b) The recovery of the applicable deficiency income tax and DST from a REIT shall be subject to the following rules:</p> <p>i. For deficiency income tax, an assessment shall be issued by LTRAD 3 against a REIT in accordance with Section 228 of the NIRC and its implementing revenue regulations;</p> | <p>SECTION 16. Withdrawal of Tax Incentives. - (a) A REIT shall be subject to the applicable taxes, plus interests and surcharges, under the NIRC upon the occurrence of any of the following events, subject to the rule on curing period where applicable:</p> <p>xxx</p> <p>iv. Failure of a REIT to list with an Exchange within the two-year period from date of initial availment of DST incentive;</p> <p>v. Revocation or cancellation of the registration of the securities of a REIT; and</p> <p><u>vi. Failure of a REIT to comply with the Certification requirement under Section 11 (4) of the RR.</u></p> <p>(b) The recovery of the applicable deficiency income tax and DST from a REIT shall be subject to the following rules:</p> <p>i. For deficiency income tax, an assessment shall be issued by LTRAD 3 against a REIT in accordance with Section 228 of the NIRC and its implementing revenue regulations;</p> |

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| <p>ii. The deficiency income tax of a REIT shall be computed based on its gross income as defined under Section 32 of the NIRC less the deductions under Section 34 of the same Code. The dividends distributed shall not be allowed as deduction from the taxable income;</p> <p>iii. The income tax escrowed for the first and second year mentioned in Section 8 of these Revenue Regulations shall be released in favor of the government which shall be applied against the deficiency income tax computation made by LTRAD 3;</p> <p>iv. On the other hand, the deficiency DST equivalent to 50% of the applicable DST, together with the applicable interest, surcharges and penalties, shall immediately become due and demandable, without need of an assessment, reckoned from the date of its initial avilment of the DST incentives. For this purpose, a Formal Letter of Demand showing the details of the tax due shall be issued by LTRAD 3 against a REIT and collection of the tax shall be enforced in accordance with Chapter II, Title VIII of the NIRC.</p> | <p>ii. The deficiency income tax of a REIT shall be computed based on its gross income as defined under Section 32 of the NIRC less the deductions under Section 34 of the same Code. The dividends distributed shall not be allowed as deduction from the taxable income; and</p> <p><u>iii. On the other hand, the deficiency DST equivalent to 50% of the applicable DST, together with the applicable interest, surcharges and penalties, shall immediately become due and demandable, without need of an assessment, reckoned from the date of its initial avilment of the DST incentives. For this purpose, a Formal Letter of Demand showing the details of the tax due shall be issued by LTRAD 3 against a REIT and collection of the tax shall be enforced in accordance with Chapter II, Title VIII of the NIRC."</u></p> |
| <p>SECTION 18. Reports/Documents to be Submitted by a REIT. — A REIT shall, in addition to the existing requirements under the NIRC and its implementing regulations, and the requirements contained in the previous paragraphs, submit to LTRAD 3 the following:</p> <p>xxx</p> <p>(g) Quarterly written report on the performance of the REIT's funds and properties;</p> <p>(i) Copy of the Valuation Report prepared by the REIT appointed Property Valuer.</p>  | <p>SECTION 18. Reports/Documents to be Submitted by a REIT. — A REIT shall, in addition to the existing requirements under the NIRC and its implementing regulations, and the requirements contained in the previous paragraphs, submit to LTRAD 3 <u>annually on or before April 15 (or on the 15th day of the 4th month following the close of the fiscal year) the following:</u></p> <p>Xxx</p> <p>(g) Written report on the performance of the REIT's funds and properties;</p>   |

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|  | (i) Copy of the Valuation Report prepared by the REIT appointed Property Valuer;<br><u>(j) Original/Certified True Copy of the Certification from the Commission that the REIT is compliant with its Reinvestment Plan, duly received by the BIR, as required under Section 11 (4) of the RR.</u> |
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**Revenue Memorandum Order No. 6-2020** (6 February 2020)

Modifies the Alphanumeric Tax Code for Value-Added Tax pursuant to Revenue Regulations No. 10-2004

**Revenue Memorandum Circular No. 5-2020** (22 January 2020)

Publishes the Daily Minimum Wage Rates in Cordillera Administrative Region (CAR) under Wage No. RB-CAR-20

**Revenue Memorandum Circular No. 7-2020** (23 January 2020)

Suspends the deadlines in the acceptance of tax returns and payment of Internal Revenue Taxes of Taxpayers in the province of Batangas

**Revenue Memorandum Circular No. 10-2020** (6 February 2020)

Suspends the requirement for Permit to Use (PTU) Computerized Accounting System (CAS), Computerized Books of Accounts (CBA) and/or Component(s) thereof and allowing their use subject to compliance requirement

All taxpayers with pending applications for Permit to Use CAS, CBA, and/or Components thereof which were filed with the National Accreditation Board (NAB) and were assigned to the Technical Working Group (TWG) for evaluation, shall be allowed to use such CAS, CBA, and/or components thereof, in the absence of the required PTU, provided that the documents under this RMC are submitted by the taxpayer to the TWG Secretariat of the RDO/LT Office where they are registered created under Revenue Memorandum Circular (RMC) No. 49-2019:

In the absence of the required PTU, an "Acknowledgement Certificate" shall be prepared and issued by the TWG Secretariat of the RDO/LT Office where the taxpayer is registered. The said Certificate with a Control Number which shall be indicated or reflected on the face of the principal and/or supplementary receipts/invoices to be generated from the systems in order to authorize the use of such receipts/invoices.

In case the taxpayer opted to maintain Loose-leaf Books of Accounts, the application of such shall be continuously processed by the RDO having jurisdiction over such taxpayer pursuant to RMC No. 68-2017.

All CAS, CBA, and/or Components thereof used sans the required PTU shall be subject to post-evaluation to check compliance with existing revenue issuances. Such evaluation may be done simultaneous with the audit of the books of accounts and other accounting records of the taxpayer pursuant to a Letter of Authority (LOA).

All pending applications for PTU CAS/CBA, and/or Components thereof that have undergone system demonstration are covered under this RMC. Hence, the dockets including the findings, shall be turned over by NAB to the respective TWG of the RDO/LT Office having jurisdiction over the taxpayer's place of business for validation during post-evaluation.

In case of any system enhancement/modification and/or upgrade of CAS/CBA and/or Components thereof and if such will result in the change of version number and/or systems release, the taxpayer shall inform in writing the TWG Secretariat of the RDO/LT Office where they are registered.

**Revenue Memorandum Circular No. 11-2020** (6 February 2020)

Further clarifies certain issues on Tax Amnesty on Delinquencies thereby amending and supplementing Revenue Memorandum Circular No. 57-2019 Digest

**Revenue Memorandum Circular No. 12-2020** (7 February 2020)

Circularizes the availability of the revised BIR Form No. 2552 [Percentage Tax Return (For Transactions Involving Shares of Stocks Listed and Traded Through the Local Stock Exchange (LSE) or Through Initial and/or Secondary Public Offering)] January 2018 (ENCS)

**Revenue Memorandum Circular No. 12-2020** (7 February 2020)

Circularizes the availability of BIR Form Nos. 1600-VT and 1600-PT January 2018 Version



**A just and equitable tax system  
for growth and development**