TMAP TAX UPDATES
(March 16, 2022 – April 15, 2022)

DECISION / ISSUANCE	DATE ISSUED	SUBJECT	PAGE NO.
COURT OF TAX APPEALS ("CTA") DECISIONS			
1. Maxima Machineries, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9453 (Resolution)	March 16, 2022	In VAT refund claims arising from sales to non-resident foreign corporations doing business outside the Philippines, the seller must present as evidence, at the very least, both the buyer's Securities and Exchange Commission ("**SEC**") Certificate of Non-Registration of Corporation/Partnership and proof of incorporation, association, or registration in a foreign country to prove that the sale is indeed zero rated.	**5**
2. Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc., CTA EB Case No. 2313 (CTA Case No. 9367)	March 16, 2022	When the taxpayer directly denies receipt of the notices of assessment, it becomes the duty of the Bureau of Internal Revenue ("**BIR**") to prove not merely the service thereof by registered mail, but more so the taxpayer's actual receipt thereof. For this purpose, the BIR must present not only the registry receipts but also the affidavit of the person mailing.	**5-6**
3. National Food Authority v. City Assessor and City Treasurer, Malolos, Bulacan, CTA AC No. 241	March 16, 2022	The National Food Authority ("**NFA**") is exempt from real property taxes.	**6**
4. Lapanday Agricultural and Development Corp. v. Commissioner of Internal Revenue, CTA EB Case No. 2300 (CTA Case No. 10072)	March 16, 2022	The Commissioner of Internal Revenue ("**CIR**") is not estopped from pleading prescription on the ground that the CIR acted on an administrative claim notwithstanding the lapse of the 120-day period for him to decide when in fact the CIR's motion to dismiss was anchored on the CTA's lack of jurisdiction over the subject matter of the controversy.	**6-7**
5. Commissioner of Internal Revenue v. Oñate, CTA EB Case No. 2370 (CTA Case No. 9498)	March 18, 2022	The origin and character of the claim with respect to which an expense was incurred, rather than its potential consequences upon the fortunes of the taxpayer, is the controlling basic test of whether the expense was business or personal and, hence, whether or not it is deductible under Section 23(a)(2) of the National Internal Revenue Code of 1997, as amended ("**NIRC**").	**7**
6. First Philippine Industrial Park, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9018	March 18, 2022	Issuing a Letter of Authority ("**LOA**") is a delegable power which the CIR may devolve to Revenue Regional Directors. However, under Revenue Memorandum Order ("**RMO**") No. 29-07, the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants. Hence, the LOA issued by the Chief	**7-8**

		of the Regular LT Audit Division 1 of the BIR is void for lack of authority.	
7. Maxima Machineries, Inc. v. Commissioner of Internal Revenue, CTA EB Case No. 2282 (CTA Case No. 9598) (Resolution)	March 18, 2022	A foreign corporation that has a Philippine branch is deemed to be doing business within the Philippines through the said branch. Therefore, sales to a foreign corporation that maintains a branch office in the Philippines, regardless of the latter's participation in the transaction, cannot be considered a zero-rated sale of services under Section 108(B)(2) of the NIRC.	**8**
8. Commissioner of Internal Revenue v. Standard Insurance Co., Inc., CTA EB Case No. 2090 (CTA Case No. 9550) (Resolution)	March 18, 2022	There is no law forbidding the BIR from enforcing the collection of taxes by distraint or levy on the sole basis of a mere plea from the taxpayer to hold in abeyance the collection of tax.	**8-9**
9. Commissioner of Internal Revenue v. S & Woo Construction Philippines, Inc., CTA EB Case No. 2420 (CTA Case No. 9533)	March 22, 2022	Section 112(A) of the NIRC does not require that the input value-added tax ("**VAT**") subject of a claim for refund be directly attributable to zero-rated sales; the law merely states that the creditable input VAT should be attributable to zero-rated or effectively zero-rated sales.	**9**
10. Commissioner of Internal Revenue v. Agusan del Norte Electric Cooperative, Inc., CTA EB Case No. 2225 (CTA Case No. 9376)	March 22, 2022	Considering that Agusan del Norte Electric Cooperative, Inc. ("**ANECO**") is exempt from income tax by provision of the law, it is likewise exempted from payment of Minimum Corporate Income Tax ("**MCIT**"), it being in the nature of an income tax.	**10**
11. MTI Advanced Test Development Corp. v. Commissioner of Internal Revenue, CTA Case No. 10112 (Resolution)	March 22, 2022	While it is true that claims for VAT refund filed prior to the issuance of RMC No. 54-2014 shall continue to be processed administratively, this did not, in any way, mean that all claims during the said period shall already disregard the mandatory 120/30-day (now, 90/30-day) rule for the refund of unutilized input VAT attributable to zero-rate sales under Section 112(C) of the NIRC.	**10-11**
12. AB Leisure Exponent, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9620 (Resolution)	March 23, 2022	The tax exemption granted to casino operators by virtue of Section 13(2)(b) of Presidential Decree No. 1869 does not extend to an operator of bingo gaming activities.	**11**
13. City of Makati v. Casop Atlas Corp., CTA EB Case No. 2328 (CTA AC No. 208)	March 30, 2022	A City Treasurer is duly empowered by the Local Government Code ("**LGC**") to institute judicial actions for purposes of assessing and collecting local taxes without need of a prior ordinance or resolution or any authorization from the City Mayor. Accordingly, a Local Treasurer is similarly authorized to sign Verifications and Certifications of Non-Forum Shopping in relation to suits which he or she filed in accordance with his or her duty to collect local taxes.	**11-12**
14. Atlas Precision Environment Corp. v. Commissioner of	March 30, 2022	In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side,	**12**

Internal Revenue, CTA Case No. 9043		and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill or Rights under the Constitution.	
15. Victorias Agricultural District Multi-Purpose Cooperative v. Commissioner of Internal Revenue, CTA EB No. 2380 (CTA Case No. 9828)	April 8, 2022	A duplicate original or certified true copy of the decision appealed from shall be attached to the petition before the CTA En Banc. Non-compliance with such mandatory requirement is sufficient ground to dismiss the petition.	**12**
16. Hemisphere – Leo Burnett, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2371	April 11, 2022	What is required to be issued within the three (3)-year or the extended period provided in Sections 203 and 222 of the NIRC, as amended, is the Final Assessment Notice ("**FAN**").	**12-13**
17. Commissioner of Internal Revenue. Gulf Air Company PH Branch, CTA EB No. 2439	April 12, 2022	A plain reading of Republic Act No. 10378 shows that for purposes of availing the exemption from income tax under the rule on reciprocity, it is sufficient that the international carrier's home country grants an income tax exemption to Philippine carriers.	**13**
REVENUE REGULATIONS ("RRs")[1]			
1. RR No. 2-2022	April 5, 2022	Prescribes additional guidelines for implementing the tax provisions of the PERA Act of 2008 effectively amending pertinent provisions of RR No. 17-2011 and revising the provisions of RR No. 6-2021	**13-14**
2. RR No. 3-2022	April 8, 2022	Implements the provisions of RA No. 11635, titled "An Act Amending Section 27(B) of the NIRC of 1997, as Amended, and for Other Purposes" on the income taxation of proprietary educational institutions and hospitals which are non-profit	**14**
REVENUE MEMORANDUM CIRCULARS ("RMCs")[2]			
1. RMC No. 27-2022	March 16, 2022	Circularizes the lists of withholding agents required to deduct and remit the 1% or 2% Creditable Withholding Tax for the purchase of goods and services under Revenue Regulations No. 31-2020	**14**
2. RMC No. 28-2022	March 16, 2022	Prescribes the guidelines in the submission of Certificate of Entitlement to Tax Incentives (CETI) under RA No. 11534 (Corporate Recovery and Tax Incentives for Enterprises Act or "CREATE" Law)	**14-15**
3. RMC No. 32-2022	March 30, 2022	Clarifies the tax treatment of the Philippine Amusement and Gaming Corporation (PAGCOR), its licensees and contractees	**15**
4. RMC No. 37-2022	April 6, 2022	Clarifies the guidelines on the submission of Certificate of Entitlement to Tax Incentives pursuant to RMC No. 28-2022	**15-16**

[1] Digests reproduced from the BIR website
[2] Digests reproduced from the BIR website

5. RMC No. 38-2022	April 6, 2022	Clarifies the Transitory Provision for the non-income related tax incentives granted to registered export enterprises under Investment Promotion Agencies	**16**
6. RMC No. 39-2022	April 6, 2022	Prescribes the manner of payment of penalty relative to violations incurred by Registered Business Enterprises under the Information Technology-Business Process Management sector on the conditions prescribed regarding Work-From-Home arrangement	**16**
7. RMC No. 40-2022	April 6, 2022	Provides clarifications and guidelines on the use of Electronic Audited Financial Statement (eAFS) System	**16**
8. RMC No. 42-2022	April 12, 2022	Clarifies the deadline for filing of Annual Income Tax Returns for TY ending December 31, 2021; providing guidelines in the manner of filing and payment thereof; and non-imposition of surcharge on amended returns	**16-17**
9. RMC No. 43-2022	April 12, 2022	Prescribes the non-imposition of surcharge on amended tax returns	**17**
10. RMC No. 44-2022	April 12, 2022	Prescribes guidelines in the filing of Annual Income Tax Returns and payment of tax due thereon for TY 2021	**17**
11. RMC No. 45-2022	April 13, 2022	Revises the requirements on the manner of remittance of penalties of 5% and 20% for early withdrawal of qualified contribution under Personal Equity and Retirement Account (PERA) Act of 2008	**17**

DISCUSSION

A. COURT OF TAX APPEALS DECISIONS

1. In VAT refund claims arising from sales to non-resident foreign corporations doing business outside the Philippines, the seller must present as evidence, at the very least, both the buyer's SEC Certificate of Non-Registration of Corporation/Partnership and proof of incorporation, association, or registration in a foreign country to prove that the sale is indeed zero rated.

The CTA's First Division denied Maxima Machineries, Inc.'s ("**Maxima**") claim for issuance of tax credit certificates ("**TCCs**") representing unutilized excess input VAT which are allocable and directly attributable to its VAT zero-rated transactions, for the period January 1 to March 31, 2014, of fiscal year ("**FY**") ending March 31, 2014. This resolves the Motion for Reconsideration ("**MR**") filed by the Maxima seeking reconsideration of the adverse decision.

The First Division reiterated its ruling that Maxima's alleged export sales to Marubeni Corporation failed to qualify for zero percent VAT due to Maxima's failure to prove that Marubeni Corporation is a non-resident foreign corporation doing business outside the Philippines. Maxima only presented proof of Marubeni Corporation's incorporation but failed to present the SEC Certificate of Non-Registration of Corporation/Partnership.

The Court discussed that to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both a SEC Certificate of Non-Registration of Corporation/Partnership and proof of incorporation, association, or registration in a foreign country. The first document proves that the entity is not doing business in the Philippines, while the latter document shows that the entity is doing business outside the Philippines. Taken together, the said documents establish that the entity is a non-resident foreign corporation not engaged in business in the Philippines. *[Maxima Machineries, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9453 (Resolution), March 16, 2022]*

2. When the taxpayer directly denies receipt of the notices of assessment, it becomes the duty of the BIR to prove not merely the service thereof by registered mail, but more so the taxpayer's actual receipt thereof. For this purpose, the BIR must present not only the registry receipts but also the affidavit of the person mailing.

The BIR served on V.Y. Domingo Jewellers, Inc. ("**V.Y. Domingo**") via registered mail a Preliminary Assessment Notice ("**PAN**") for deficiency income taxes and deficiency VAT at V.Y. Domingo's old address in Sampaloc, Manila. Subsequently, the BIR served on V.Y. Domingo via registered mail a Formal Letter of Demand and Final Assessment Notice ("**FLD/FAN**") still at the taxpayer's old address. This is despite the fact that the BIR was aware of V.Y. Domingo's new address in Quezon City.

Hence, the Court ruled that the PAN and the FLD/FAN were void because they were not validly served on V.Y. Domingo.

Meanwhile, V.Y. Domingo directly denied receipt of the PAN and FLD/FAN. It thus became the BIR's duty to prove actual receipt by the taxpayer of the PAN and FLD/FAN.

Under Section 3(v), Rule 131 of the Rules of Court, there exists a disputable presumption that "a letter duly directed and mailed was received in the regular course of the mail." In *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*,[3] the Supreme Court ("**SC**") held that the facts to be proved in order to raise this presumption are (1) that the letter was properly addressed with postage prepaid, and (2) that it was mailed.

However, once the taxpayer-addressee directly denies receipt of the notices of assessment allegedly sent via registered mail, the BIR can no longer rely on the presumption and must therefore present evidence that the taxpayer-addressee received the notices of assessment.

In turn, the SC in *Republic v. Resins, Inc.*[4] stated that "[r]eceipts for registered letters and return receipts do not prove themselves, they must be properly authenticated in order to serve as proof of receipt of the letters."

[3] G.R. No. 157064, August 7, 2006.
[4] G.R. No. 175891, January 12, 2011.

The CTA therefore held that, in case the taxpayer-addressee directly denies receipt of the notices of assessment, the BIR must present not only the registry receipts but also the affidavit of the person mailing, in order to prove actual receipt by the taxpayer-addressee of such notices of assessment.

Consequently, in this case, the BIR failed to prove actual receipt by V.Y. Domingo of the PAN and FLD/FAN because the BIR presented only the registry receipts. *[Commissioner of Internal Revenue v. V.Y. Domingo Jewellers, Inc., CTA EB Case No. 2313 (CTA Case No. 9367), March 16, 2022]*

3. The NFA is exempt from real property taxes.

NFA is the registered owner of real properties consisting of land and buildings located at Brgy. Tikay, City of Malolos. The NFA Legal Affairs Department received Notices of Realty Tax Delinquency issued by the City Assessor and City Treasurer of Malolos, Bulacan for unpaid real property taxes ("**RPT**") for the years 2008 to 2019 pertaining to the said properties. The NFA filed a petition for prohibition with the Regional Trial Court ("**RTC**") but was dismissed. The NFA filed a petition for review before the CTA after its MR was denied by the RTC.

The CTA resolved the issue of whether the RTC erred in dismissing the NFA's petition for prohibition. In answering this question, the CTA determined whether the NFA is a government owned and controlled corporation ("**GOCC**") or a government instrumentality, and whether the NFA failed to prove its right to be exempt from RPT.

Pursuant to the ruling in *Manila International Airport Authority v. Court of Appeals*[5] and Section 3(n) of Republic Act No. 10149, to be classified as a government instrumentality, the government entity must:

1. not be a stock or non-stock corporation;
2. not integrated within the department framework;
3. be vested with special functions or jurisdiction by law;
4. be endowed with some if not all corporate powers;
5. administer special funds;
6. enjoy operational autonomy, usually through a charter; and
7. perform essential public services for the common good, services that every modern State must provide its citizens.

To be considered a GOCC, the government entity must be a stock or non-stock corporation and must pass the twin tests of common good and economic viability.

The CTA scrutinized the NFA Charter and Republic Act No. 11203, vis-à-vis the pronouncements in *MIAA*. Viewed in the light of the NFA's powers and responsibilities, it led the CTA to the conclusion that the NFA is a government instrumentality as it does essential public services for the common good, services that every modern State must provide its citizens. Pursuant to the exemption of the NFA from payment of all taxes under its Charter and the provisions of the LGC, the act of the City Assessor and City Treasurer of Bulacan in demanding payment of RPT from the NFA was ultra vires. There was nothing on record to show that beneficial use of the subject property has been granted to a taxable person. Consequently, the Notices of Realty Tax Delinquency issued against the NFA are void ab initio and the collection of the amount therein thereof may not be justified. *[NFA v. City Assessor and City Treasurer, Malolos, Bulacan, CTA AC No. 241, March 16, 2022]*

4. The CIR is not estopped from pleading prescription on the ground that the CIR acted on an administrative claim notwithstanding the lapse of the 120-day period for him to decide when in fact the CIR's motion to dismiss was anchored on the CTA's lack of jurisdiction over the subject matter of the controversy.

The CTA's legal competence involving cases of input VAT refund cases is strictly confined on two occasions: first, when the CIR renders an adverse decision within 120 days, and such decision was appealed by the taxpayer within thirty (30) days from receipt thereof; or second, the taxpayer elevates its input VAT refund claim with the CTA, within thirty (30) days reckoned from the lapse of the one hundred twenty (120)-day period.

Here, the CTA ruled that the Petition for Review belatedly filed by Lapanday Agricultural and Development Corp. ("**Lapanday**") on April 16, 2019 deprived the CTA of the requisite competence to hear the case. Lapanday filed this MR arguing that the BIR was estopped from pleading prescription since it acted on its administrative claim despite the lapse of the one hundred twenty (120)-day period.

[5] G.R. No. 155650, July 20, 2006.

The CTA ruled that it is misleading for Lapanday to claim that the CIR is estopped from pleading prescription since he took action on its administrative claim notwithstanding the lapse of the 120-day period for him to decide the same prescribed under Section 112(C) of the NIRC. The CIR sought the dismissal of the case not because it had prescribed contrary to Lapanday's position. Rather, the CIR's prayer to jettison the case was anchored on the CTA's lack of jurisdiction over the subject matter of the controversy.

Jurisprudence has it that in law, nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution. When a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action, as any act it performs without jurisdiction is null and void. It is conferred by law and an objection based on this ground cannot be waived by the parties. *[Lapanday Agricultural and Development Corp. v. Commissioner of Internal Revenue, CTA EB Case No. 2300 (CTA Case No. 10072), March 16, 2022]*

5. The origin and character of the claim with respect to which an expense was incurred, rather than its potential consequences upon the fortunes of the taxpayer, is the controlling basic test of whether the expense was business or personal and, hence, whether or not it is deductible under Section 23(a)(2) of the NIRC.

Emmanuel C. Oñate ("**Oñate**") opened and maintained several trust accounts with Land Bank of the Philippines ("**Land Bank**"). Land Bank demanded from Oñate the return of PhP4 million it claimed to have been inadvertently deposited to his trust account. When Oñate refused to return the said amount, Land Bank unilaterally applied the outstanding balance in all of Oñate's trust accounts. Land Bank was able to debit the amount of PhP1,528,583.48 only. To recover the remaining balance, Land Bank filed with the RTC a complaint for sum of money against Oñate. Ultimately, the SC decided in favor of Oñate, ordering Land Bank to pay Oñate a total of PhP62,134,904.63 and USD3,210,222.85 with legal interest. Land Bank paid Oñate the judgment award but it withheld 20% final withholding tax ("**FWT**") on interest from bank deposits. Oñate then filed a written claim for refund or tax credit for the said FWT.

The CTA En Banc ruled that the interest income earned from trust accounts opened and maintained by Oñate with Land Bank, which became the subject of litigation and subsequently awarded by the SC, are exempt from tax on passive income under the express provision of Section 24(B)(1) of the NIRC.

The origin and character of the claim with respect to which an expense was incurred, rather than its potential consequences upon the fortunes of the taxpayer, is the controlling basic test of whether the expense was business or personal and, hence, whether or not it is deductible under Section 23(A)(2) of the NIRC. Applying the origin of the claim test, the payments received by Oñate from winning the case against Land Bank clearly originated from the trust accounts he invested in the bank. Because the SC ordered the bank to return the undocumented withdrawals from the trust accounts, those funds are merely a return of capital to the taxpayer. With respect to the interest that were also awarded with the restored funds, they are in the nature of an indemnity to Oñate for the income he could have earned from the funds had they not been debited to begin with. If the funds that were returned to Oñate had only remained in the trust accounts with Land Bank, they would have earned interest income which are expressly exempted by Section 24(B)(1) of the NIRC. *[Commissioner of Internal Revenue v. Oñate, CTA EB Case No. 2370 (CTA Case No. 9498), March 18, 2022]*

6. Issuing an LOA is a delegable power which the CIR may devolve to Revenue Regional Directors. However, under RMO No. 29-07, the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants. Hence, the LOA issued by the Chief of the Regular LT Audit Division 1 of the BIR is void for lack of authority.

Under LOA No. LOA-116-2010-00000055 dated May 14, 2010 issued by then CIR Joel L. Tan-Torres, the latter had authorized Revenue Officers ("**RO**") Walter Batoon, Reynoso Bravo, Daniella Gabaon, Julieta Tubilla, Maribel Serafica, Olivia Sison, Aileen Grace Parra, Laurel Eleda, and Group Supervisors ("**GS**") Erlinda Ulgado and Ana Marie Perez, all of the LT Regular Audit Division 1 of the BIR, to examine First Philippine Industrial Park, Inc.'s ("**First Philippine's**") books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2009 to December 31, 2009.

In Memorandum of Assignment ("**MOA**") No. LOA 116-2013-0422 dated February 25, 2013 issued by Mr. Cesar D. Escalada, Chief of the Regular LT Audit Division 1 of the BIR, the case/docket of First Philippine for taxable year 2009 was referred to RO Josa C. Gomez and GS Olivia F. Aviles, for continuation of the audit/investigation to replace the previously assigned ROs who resigned/retired/transferred to another district office. By virtue of the said MOA, RO Josa C. Gomez, as noted by GS Olivia F. Aviles, recommended the issuance of the subject PAN, Revised PAN, FLD-FAN, and FDDA, which were all approved.

The CTA ruled that the subject tax assessments issued against First Philippine is void, for lack of authority of RO Josa C. Gomez and GS Olivia F. Aviles to examine the Company's books. Being a void assessment, the same bears no fruit.

In ruling so, the CTA discussed that issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Section 10 of the NIRC. Moreover, under RMO No. 29-07, the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants, for they are the ones authorized to issue an LOA.

In this case, however, the MOA was signed by Mr. Cesar D. Escalada, Chief of the Regular LT Audit Division 1 of the BIR. As such, Mr. Escalada has no power to authorize the examination of taxpayer's accounts. Accordingly, RO Josa C. Gomez and GS Olivia F. Aviles were without authority to continue the audit. There must be a grant of authority before any RO can conduct an examination or assessment. Equally important is that the RO so authorized must not go beyond the authority given. In the absence of such authority, the assessment or examination is a nullity. *[First Philippine Industrial Park, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9018, March 18, 2022]*

7. A foreign corporation that has a Philippine branch is deemed to be doing business within the Philippines through the said branch. Therefore, sales to a foreign corporation that maintains a branch office in the Philippines, regardless of the latter's participation in the transaction, cannot be considered a zero-rated sale of services under Section 108(B)(2) of the NIRC.

One of the requisites for a successful zero-rating of the supply of services under Section 108(B)(2) of the NIRC is that the recipient of the services must be a foreign corporation not doing business within the Philippines.

Thus, Maxima Machineries, Inc. ("**Maxima**") alleged that its sales of services to Marubeni Corporation – Japan ("**Marubeni**") is zero-rated because the latter is a foreign corporation not doing business within the Philippines. Consequently, Maxima claimed a refund of its unutilized input VAT which were allegedly attributable to its supply of services to Marubeni.

To be considered as a non-resident foreign corporation not doing business within the Philippines, each client-entity must be supported at the very least by both: (1) SEC Certification of Non-Registration of Corporation/Partnership (to prove that the entity is not doing business within the Philippines); and (2) Proof of Certificate/Articles of Foreign Incorporation/Association (to prove that the entity is a foreign corporation).

While MMI was able to present evidence that Marubeni was a foreign corporation, MMI was unable to present evidence that Marubeni was not doing business within the Philippines. Indeed, the Certification of Non-Registration from the SEC that MMI presented explicitly stated that there was a "Marubeni Corporation" registered with the SEC. Moreover, MMI itself admitted that this "Marubeni Corporation" was the Philippine branch of Marubeni.

The CTA ruled that a foreign corporation that has a Philippine branch is deemed to be doing business within the Philippines through the said branch. Therefore, sales to a foreign corporation that maintains a branch office in the Philippines, regardless of the latter's participation in the transaction, would suffice to remove the transaction within the ambit of Section 108(B)(2) of the NIRC (*i.e.*, such transaction cannot be considered a zero-rated sale of services).

Thus, MMI's sale of services to Marubeni cannot be considered zero-rated sales. Therefore, MMI cannot claim a refund of the unutilized input VAT attributable to its sale of services to Marubeni. *[Maxima Machineries, Inc. v. Commissioner of Internal Revenue, CTA EB Case No. 2282 (CTA Case No. 9598) (Resolution), March 18, 2022]*

8. There is no law forbidding the BIR from enforcing the collection of taxes by distraint or levy on the sole basis of a mere plea from the taxpayer to hold in abeyance the collection of tax.

Standard Insurance Co., Inc. ("**Standard Insurance**") received a FAN dated May 5, 2004 finding Standard Insurance liable for deficiency documentary stamp taxes ("**DST**") for taxable year 2001. The enforcement of collection was allegedly held in abeyance pursuant to the Memorandum dated January 24, 2005 which granted the request of Standard Insurance to hold in abeyance the service and execution of the warrants of distraint/levy and garnishment. Standard Insurance alleged that it did not hear from the BIR until February 15, 2017, when it received the decision dated January 31, 2017 affirming the denial of its protest and ordering it to pay the deficiency DST for taxable year 2001. Because of this, Standard Insurance believed that the BIR's right to collect had already prescribed since the BIR did not exercise its right to collect within the prescriptive period of five (5) years.

The CIR believed that Standard Insurance's request to hold in abeyance the service and execution of the warrants of distraint/levy and garnishment which was duly granted by the BIR clearly demonstrated a positive act on the part of Standard Insurance which would then justify the suspension of the prescriptive period for collection.

In its decision, the CTA En Banc stated that there is no law forbidding the BIR from enforcing the collection of taxes by distraint or levy on the sole basis of a mere plea from the taxpayer to hold in abeyance the collection of tax. Accordingly, Standard Insurance's request cannot validly toll the running of the prescriptive period for collection.

The request to hold in abeyance the service and execution of the warrants of distraint/levy does not also amount to a waiver of the prescriptive period to collect the assessed deficiency tax. A waiver of the statute of limitations under the NIRC is an agreement between the taxpayer and the BIR that the period to collect the taxes due is extended to a date certain. Further, such waiver does not mean that the taxpayer relinquishes the right to invoke prescription where the language of the document is equivocal. It must therefore be carefully and strictly construed as it is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations.

Upon examination of Standard Insurance's request, there is no categorical nor unequivocal statement therein to the effect that Standard Insurance waived the statute of limitations under the NIRC, as amended. At the very least, it is a mere plea to the BIR to restrain from collecting taxes. *[Commissioner of Internal Revenue v. Standard Insurance Co., Inc., CTA EB Case No. 2090 (CTA Case No. 9550) (Resolution), March 18, 2022]*

9. Section 112(A) of the NIRC does not require that the input VAT subject of a claim for refund be directly attributable to zero-rated sales; the law merely states that the creditable input VAT should be attributable to zero-rated or effectively zero-rated sales.

S & Woo Construction Philippines, Inc. ("**S & Woo**") filed with the BIR claims for refund and/or issuance of TCC representing its unutilized input VAT attributable to its zero-rated sales to Samsung Electro-Mechanics Philippines Corporation ("**SEMPHIL**"), an entity registered with the Philippine Economic Zone Authority ("**PEZA**"). The CIR, however, argued that input VAT must be directly attributable to a taxpayer's zero-rated sales i.e., that the input VAT must come from purchases of goods that either (a) form part of the finished product of the taxpayer or (b) are directly used in the chain of production.

The relevant portion of Section 112(A) of the NIRC provides:

> Section 112. *Refunds or Tax Credits of Input Tax*. —
>
> (A) Zero-rated or Effectively Zero-rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of **creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax:
>
> xxx xxx
>
> *Provided, further*, That 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. *(Emphasis supplied.)*

Consequently, the CTA En Banc rejected the CIR's position and held that Section 112(A) of the NIRC does not require that the input VAT subject of a claim for refund be *directly attributable* to zero-rated sales. The law merely states that the creditable input VAT should be *attributable* to zero-rated or effectively zero-rated sales. The use of the phrase "directly attributable" strictly relates to a situation involving taxpayers having both zero-rated or effectively zero-rated sales as well as taxable or exempt sale of goods, properties or services and the creditable input VAT cannot be directly attributed to any of such transactions. In such cases, the input taxes shall be allocated proportionately on the basis of the volume of sales.

Hence, the CTA En Banc affirmed the CTA 3rd Division's decision granting S & Woo's claim for refund and/or issuance of TCC. *[Commissioner of Internal Revenue v. S & Woo Construction Philippines, Inc., CTA EB Case No. 2420 (CTA Case No. 9533), March 22, 2022]*

10. Considering that ANECO is exempt from income tax by provision of the law, it is likewise exempted from payment of MCIT it being in the nature of an income tax.

ANECO is a non-stock, non-profit electric cooperative duly organized, registered, and existing in accordance with the provisions of Presidential Decree No. 269 or The National Electrification Administration ("**NEA**") Decree and a holder of a Certificate of Franchise to operate an electric light and power service, as a distribution facility, in Butuan City and the Municipalities of Agusan del Norte.

ANECO was assessed by the BIR with deficiency taxes for calendar year (CY) 2012. ANECO filed a Petition for Review with the CTA. The CTA First Division granted ANECO's petition and cancelled the deficiency income tax and VAT assessments against it. Aggrieved, the CIR filed a Petition for Review before the CTA En Banc and prayed for the reversal of the appealed decision.

The CIR alleged that ANECO cannot claim perpetual exemption from income tax under Presidential Decree No. 269. The CIR claims that an electric cooperative is granted tax exemption provided it shall operate in conformity with the provisions thereof, the exemption is for 30 years or when the cooperative is completely free from indebtedness incurred by borrowing, whichever comes first.

The CTA En Banc did not agree with the CIC and ruled that electric cooperatives registered under the NEA are clearly exempt from payment of income tax. The BIR's contention that the exemption is merely for a period of thirty (30) years or until the cooperative becomes completely free from indebtedness incurred from borrowing, whichever comes first, is specious. The limit of thirty (30) years pertains to taxes other than income tax. Considering that ANECO is exempt from income tax by provision of the law, it is likewise exempted from payment of MCIT, it being in the nature of an income tax. *[Commissioner of Internal Revenue v. Agusan del Norte Electric Cooperative, Inc., CTA EB Case No. 2225 (CTA Case No. 9376), March 22, 2022]*

11. While it is true that claims for VAT refund filed prior to the issuance of RMC No. 54-2014 shall continue to be processed administratively, this did not, in any way, mean that all claims during the said period shall already disregard the mandatory 120/30-day (now, 90/30-day) rule for the refund of unutilized input VAT attributable to zero-rate sales under Section 112(C) of the NIRC.

Section 112(C) of the NIRC gives the CIR a period of one hundred twenty (120) days [now, ninety (90) days] from the date of submission of complete documents in support of an application for refund of input VAT attributable to zero-rated sales within which to decide on such claim. RMC No. 49-2003 dated August 15, 2003 gave the taxpayer a period of thirty (30) days from the filing of the administrative claim within which to submit the required documents in support of its claim for refund, unless further extension is given by the BIR. It is then only upon the complete submission of such documents that the one hundred twenty (120)-day [now, ninety (90)-day] period for the CIR to decide shall begin to run.

However, the BIR subsequently issued RMC No. 54-2014 on June 11, 2014 which provided that the one hundred twenty (120)-day period [now, ninety (90) day period] for the CIR to decide on a claim for input VAT refund begins to run on the date of filing of the administrative claim, since the taxpayer must already completely submit all the supporting documents at the time of filing of the administrative claim. Nevertheless, the SC in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[6] held that RMC No. 54-2014 **cannot be given retroactive effect** i.e., the one hundred twenty (120)-day [now, ninety (90) day] period given to the CIR to decide in relation to claims pending before the said RMC shall begin to run only upon the complete submission of the documentary requirements, and not from the date of filing of the administrative claim.

In light of the SC's decision, the Secretary of Finance issued RR No. 1-2017 which states, under Section 2 thereof, that claims filed prior to RMC No. 54-2014 "*shall continue to be processed administratively*."

In the present case, MTI Advanced Test Development Corp. ("**MTI**") filed its administrative claim for refund of its unutilized input VAT for the four quarters of its fiscal year ending March 31, 2012 on March 20, 2013 and its judicial claim with the CTA on July 12, 2019. The CTA 2nd Division found that MTI filed its administrative claim on time but ruled that MTI's judicial claim was filed out of time, as it should have filed the same by August 17, 2013 at the latest, or within thirty (30) days after the expiration of the one hundred twenty (120) day period [now, ninety (90) day period] given to the CIR to decide on the claim. Thus, the CTA 2nd Division dismissed MTI's claim.

In its MR, MTI now invoked Section 2 of RR No. 1-2017 in arguing that, because it filed its administrative claim before the issuance of RMC No. 54-2014, the BIR continued to process its claim administratively and, therefore, the thirty (30)-

[6] G.R. No. 207112, December 8, 2015.

day period within which it should file its judicial claim began to run only upon its receipt of the CIR's decision on the administrative claim. Because MTI received the CIR's decision only on June 13, 2019, MTI argued that the last day for the filing of tis judicial claim was July 13, 2019. It therefore argued that it timely filed its judicial claim on July 12, 2019.

The CTA 2nd Division rejected MTI's argument by ruling that, while it is true that claims for VAT refund filed prior to the issuance of RMC No. 54-2014 shall continue to be processed administratively, this did not, in any way, mean that all claims during the said period shall already disregard the mandatory 120/30-day (now, 90/30-day) rule under Section 112(C) of the NIRC. The CTA 2nd Division thus affirmed its dismissal of MTI's claim. *[MTI Advanced Test Development Corp. v. Commissioner of Internal Revenue, CTA Case No. 10112 (Resolution), March 22, 2022]*

12. The tax exemption granted to casino operators by virtue of Section 13(2)(b) of Presidential Decree No. 1869 does not extend to an operator of bingo gaming activities.

The CTA First Division promulgated a decision finding that the tax privileges of the Philippine Amusement and Gaming Corporation (PAGCOR) under Presidential Decree (PD) No. 1869 do not extend to AB Leisure Exponent, Inc. ("**AB Leisure")** since its contractual relations with PAGCOR are not in connection with the operations of casino(s). AB Leisure thus filed this MR.

The First Division reiterated its ruling that Section 13(2)(a) and (2)(b) of Presidential Decree No. 1869 which consolidated laws governing PAGCOR, provides that PAGCOR is exempt from the payment of any tax, whether national or local, except for a franchise tax at the rate of five percent (5%) of the gross revenue or earning derived by it from its operation under the said law. Furthermore, the said tax exemption inures to the benefit of, and extend to corporations, associations, agencies, or individuals with whom PAGCOR or operator has any contractual relationship in connection with operation of casino(s) authorized under Presidential Decree No. 1869.

Clearly, while the said tax exemption inures to the benefit of entities with whom PAGCOR has a contractual relationship with, the law adds a qualification that the contractual relationship must be in connection with the operations of the casino(s) authorized to be conducted under the franchise.

It must be recalled that AB Leisure has been given by PAGCOR a Renewal of the Term of the Authority to Operate Traditional and Electric Bingo Games in certain malls in Metro Manila covering the year 2013. Unfortunately, this does not equate to an authority to operate a casino or casinos. Consequently, the subject deficiency VAT and DST assessments by the CIR must be sustained. *[AB Leisure Exponent, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9620 (Resolution), March 23, 2022]*

13. A City Treasurer is duly empowered by the LGC to institute judicial actions for purposes of assessing and collecting local taxes without need of a prior ordinance or resolution or any authorization from the City Mayor. Accordingly, a Local Treasurer is similarly authorized to sign Verifications and Certifications of Non-Forum Shopping in relation to suits which he or she filed in accordance with his or her duty to collect local taxes.

The City of Makati assessed Casop Atlas Corporation ("**Casop**") for deficiency local business taxes for taxable years 2011 and 2012. Casop then filed a written protest with the City of Makati contesting the assessment and requesting its cancellation. Because Casop did not receive any decision from the Makati City Treasurer within the sixty (60) day period given to the Makati City Treasurer to decide the protest, Casop filed its Petition to Annul Assessment with the RTC of Makati. Thereafter, the RTC of Makati ruled in Casop's favor and cancelled the assessment against Casop.

The City of Makati appealed before the CTA 1st Division but the latter, in its Decision and Resolution, affirmed the decision of the RTC of Makati and dismissed the Petition for Review of the City of Makati on the ground that the Makati City Treasurer had no authority to file the said petition and sign the corresponding Certificate of Non-Forum Shopping.

However, the CTA En Banc reversed the CTA 1st Division.

One of the duties of a Local Treasurer under Section 470(d) of the LGC is to perform the duties provided for under Book II of the LGC. In turn, pursuant to Section 170, Chapter III, Book II of the LGC, a Local Treasurer is duty bound to collect all local taxes levied under the jurisdiction of the local government unit ("**LGU**"). Further, to collect local taxes, Section 174, Chapter IV, Book II of the LGC authorizes the use of civil remedies, which include the institution of judicial action.

Thus, a Local Treasurer has the requisite authority to institute judicial actions to perform his or her duty to collect local taxes. It is therefore superfluous to require a prior ordinance, resolution, or other authorization from the LGU before a Local Treasurer can file a suit with the courts since the authority to institute such judicial action is already vested with

the Local Treasurer by law. Accordingly, a Local Treasurer is similarly authorized to sign Verifications and Certifications of Non-Forum Shopping in relation to suits which he or she filed in accordance with his or her duty to collect local taxes.

Consequently, the CTA En Banc ruled that the Makati City Treasurer had authority to file the Petition for Review before the CTA 1st Division and CTA En Banc and, therefore, had the requisite authority to sign the Verification and Certifications of Non-Forum Shopping required in the said petitions. *[City of Makati v. Casop Atlas Corp., CTA EB Case No. 2328 (CTA AC No. 208), March 30, 2022]*

14. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill or Rights under the Constitution.

Atlas Precision Environment Corp. ("**Atlas**") received a LOA on October 14, 2013. On May 19, 2014, Atlas received a PAN to which Atlas protested. On June 30, 2014, Atlas received a FLD/FAN. Atlas also contested the FLD/FAN by filing a protest letter. The VAT assessment in the said FLD/FAN is exactly the same as those stated in the PAN dated May 19, 2014. The only difference between the said PAN and the subject FLD/FAN is that the amounts of interest were adjusted. The basic tax due remained the same. The BIR merely reiterated the same findings as stated in the said PAN, without giving any reason for rejecting the above-stated refutations and explanations made by Atlas in its letter-protest dated May 30, 2014. Consequently, Atlas was left unaware on how the CIR appreciated the explanations or defenses Atlas raised against the subject PAN, in clear violation of its right to administrative due process, thereby rendering the subject VAT assessment void.

The CTA held that it is an elementary rule enshrined in the 1987 Constitution that no person shall be deprived of property without due process of law. In balancing the scales between the power of the State to tax and its inherent right to prosecute perceived transgressors of the law on one side, and the constitutional rights of a citizen to due process of law and the equal protection of the laws on the other, the scales must tilt in favor of the individual, for a citizen's right is amply protected by the Bill or Rights under the Constitution. The subject VAT assessment is invalid for violation of Atlas Precision's right to due process, and thus, bears no valid fruit. *[Atlas Precision Environment Corp. v. Commissioner of Internal Revenue, CTA Case No. 9043, March 30, 2022]*

15. A duplicate original or certified true copy of the decision appealed from shall be attached to the petition before the CTA En Banc. Non-compliance with such mandatory requirement is sufficient ground to dismiss the petition.

Victorias Agricultural District Multi-Purpose Cooperative ("**Victorias**") filed a Petition before the CTA En Banc assailing the Resolution and Order rendered by the First Division of the CTA in CTA Case No. 9828.

However, upon review, the Court noted that the copies of the assailed Resolution that was attached with the petition are mere photocopies and not the original or certified true copies thereof.

The CTA dismissed the petition and ruled that based on Rule 43, Sections 6 and 7 of the Revised Rules of Court, a clearly legible duplicate original or certified true copy of the decision appealed from shall be attached to the petition; and that non-compliance with such mandatory requirement is sufficient ground to dismiss the petition.

Accordingly, Victorias' failure to submit the certified true copies of the assailed Resolution and Order, despite the opportunity to do so, warrants the outright dismissal of the petition. *[Victorias Agricultural District Multi-Purpose Cooperative v. Commissioner of Internal Revenue, CTA EB No. 2380 (CTA Case No. 9828), April 8, 2022]*

16. What is required to be issued within the three (3)-year or the extended period provided in Sections 203 and 222 of the NIRC, as amended, is the FAN.

On December 13, 2017, Hemisphere – Leo Burnett, Inc. ("**Hemisphere**") received a LOA which authorized the BIR to examine the books of accounts and other accounting records of Hemisphere for all internal revenue taxes for the taxable year 2012. Hemisphere insisted that the BIR's right to assess and collect any internal revenue tax for taxable year 2012 had already prescribed since the instant case does not fall under any of the exceptions to the three (3)-year prescriptive period provided under Section 222 of the NIRC, as amended. The BIR argued that the issuance of a LOA is not governed by the prescriptive periods under Sections 203 and 222 of the NIRC, as amended; but rather, it is the issuance of the tax assessment or the filing of an action in court without an assessment for the collection of taxes, which are governed by the said provisions.

A cursory reading of Sections 203 and 222 of the NIRC, as amended, reveals that what is being contemplated is the issuance of a tax assessment or the filing of an action in court without an assessment for the collection of taxes, and not the issuance of a LOA. A LOA is not akin to a tax assessment. An assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed. It also signals the time when penalties and interests begin to accrue against the taxpayer. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time, it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period. The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment.

In *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc.*,[7] the SC clarified that what is required to be issued within the three (3)-year or extended period under Sections 203 and 222 of the NIRC, as amended, is the FAN. Therefore, the "assessment" referred thereto is the service of the FAN.

Considering that the issuance of the LOA is not subject to the periods of limitation or prescriptive periods under Sections 203 and 222 of the NIRC, as amended, the subject LOA was validly issued. *[Hemisphere-Leo Burnett, Inc. v. Commissioner of Internal Revenue, CTA EB Case No. 2371 (CTA Case No. 9749), April 11, 2022]*

17. A plain reading of Republic Act No. 10378 shows that for purposes of availing the exemption from income tax under the rule on reciprocity, it is sufficient that the international carrier's home country grants an income tax exemption to Philippine carriers.

The CTA En Banc ruled that an international air carrier doing business in the Philippines shall pay a tax of 2.5% on its Gross Philippine Billings ("**GPB**"). However, such international air carrier may, inter alia, avail of a tax exemption on the basis of reciprocity.

Reciprocity in tax exemption means that the international air carrier's country of registry also exempts from similar taxes the gross revenue (derived from the carriage of persons and their excess baggage) by Philippine carriers in their country. Consequently, the claimant must prove that its home country does not impose income taxes on air carriers of Philippine origin.

The BIR however alleges that there must be proof of actual enjoyment by Philippine carriers of income tax exemption in Bahrain based on Section 4.2(B) of RR No. 15 2013.

The CTA disagreed and ruled that under Republic Act No. 10378, the clear legislative intent is that, for an international carrier to be excused from imposition of Philippine income tax on its GPB, Section 28(A)(3)(a) of the NIRC decrees that the income tax law of the international carrier's home country exempts carriers of Philippine origin from such country's income taxes. This is the sole requirement. There are no conditions.

In view of the foregoing, the 3rd paragraph of Section 4.2(B) of RR No. 15-2013 unduly expands Section 28(A)(3)(a) of the NIRC. Said provision in the regulation must be invalidated. *[Commissioner of Internal Revenue v. Gulf Air Company Philippine Branch, CTA EB Case No. 2439 (CTA Case No. 9334), April 12, 2022]*

B. REVENUE REGULATIONS

1. REVENUE REGULATIONS NO. 2-2022 [April 5, 2022] - Prescribes additional guidelines for implementing the tax provisions of the PERA Act of 2008

This RR prescribes additional guidelines for implementing the tax provisions of the Personal Equity and Retirement Account ("**PERA**") Act of 2008, effectively amending pertinent provisions of RR No. 17-2011, and revising the provisions of RR No. 6-2021.

The PERA – Tax Credit Certificate ("**PERA-TCC**") refers to the document evidencing the amount of tax credit equivalent to five percent (5%) of the total amount of qualified PERA contributions made in a year. The application for PERA-TCC shall be filed online through the PERASys by the PERA Administrator within sixty days (60) days from the close of the calendar year. The application shall be processed by the PERA – Processing Office and recommended for issuance of the corresponding PERA-TCC using the format in Annex "E" of the Regulations. Once approved, the PERA-TCC shall be generated through the facilities of the ePERA System.

[7] G.R. No. 227544, November 22, 2017.

The generated PERA-TCC shall be readily accessible at the PERASys by the PERA Administrator, for issuance to their respective contributors upon request for utilization. In case of partial utilization, the serial number of the PERA-TCC to be printed shall have a suffix after the original generated serial number. It shall either be printed by the PERA Administrator and issued physically to the contributor or to his/her authorized representative or sent in a PDF file to the official email address of the contributor, for the latter to print.

The PERA-TCC shall be used only for the payment of income tax liabilities of qualified employee and self-employed contributors, while for qualified overseas Filipino contributor, the PERA-TCC can be used in the payment of any internal revenue taxes. In both cases, the PERA-TCC shall reflect such demarcations.

In the case of an employee contributor, the PERA-TCC shall be submitted to the employer to apply the gross amount of the PERA-TCC in the annual year-end adjustments for computing the net withholding tax due of the contributor-employee.

For self-employed and overseas Filipino contributors, if utilized for payment, the PERA-TCC shall be surrendered and attached to the applicable tax returns. The duly received copies of the tax returns, together with copy/ies of the PERA-TCC and the other prescribed attachments, shall be submitted to the RDO concerned pursuant to the existing revenue guidelines and procedures.

The penalties of five percent (5%) and twenty percent (20%) for early withdrawal of qualified contribution prescribed under RR No. 10-2016 shall be deducted by the PERA Administrator from the PERA account to be withdrawn. It shall be remitted through online filing and payment facilities according to the provisions of a revenue issuance to be issued for this purpose. Early withdrawal, as defined in Section 2(d) of RR No. 17-2011, is the "withdrawal of PERA Assets, whether in full or in part, in such manner and at such time as to make the receipt of such PERA assets not a Qualified PERA Distribution." Any premature termination shall be treated as an early withdrawal under Section 11 of Republic Act No. 9505.

This RR repeals RR No. 6-2021.

2. **REVENUE REGULATIONS NO. 3-2022** [April 8, 2022] - Implements the provisions of RA No. 11635, titled "An Act Amending Section 27 (B) of the NIRC of 1997, as Amended, and for Other Purposes" on the income taxation of proprietary educational institutions and hospitals which are non-profit

This RR serves as a guide on the tax treatment of proprietary educational institutions and non-profit hospitals in relation to the amendment provided under Republic Act No. 11635. It provides that the preferential tax rate of ten percent (10%) corporate income tax applies to: 1) proprietary educational institutions; 2) non-profit hospitals; and 3) non-stock, non-profit education institutions whose net income or assets accrue/inure to or benefit any member or specific person. As a relief for the effects brought about by the COVID-19 pandemic, the rate of one percent (1%) applies to these institutions from July 1, 2022 until June 30, 2023. However, twenty-five percent (25%) regular corporate income tax is imposed on the entire taxable income of the institutions mentioned if their gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income they derived from all sources. A similar rate of twenty-five percent (25%) also applies to non-stock, non-profit educational institutions with respect to the portion of its revenues or assets not used actually, directly, and exclusively for educational purposes.

C. REVENUE MEMORANDUM CIRCULARS

1. **REVENUE MEMORANDUM CIRCULAR NO. 27-2022** [March 16, 2022] - Circularizes the lists of withholding agents required to deduct and remit the 1% or 2% Creditable Withholding Tax for the purchase of goods and services under Revenue Regulations No. 31-2020

This RMC is issued to circularize the recently published list of Top Withholding Agents ("**TWA**") of each RDO. Accordingly, the obligation to deduct and remit to the BIR the one percent (1%) and two percent (2%) creditable withholding tax ("**CWT**") for these additional TWAs shall commence effective April 1, 2022. Any taxpayer not included in the published list of TWAs is not required to deduct and remit the one percent (1%) or two percent (2%) CWT pursuant to RR No. 31-2020.

2. **REVENUE MEMORANDUM CIRCULAR NO. 28-2022** [March 16, 2022] - Prescribes the guidelines in the submission of Certificate of Entitlement to Tax Incentives (CETI) under RA No. 11534 (Corporate Recovery and Tax Incentives for Enterprises Act or "CREATE" Law)

Pursuant to Rule 8, Section 3 of the Implementing Rules and Regulations ("**IRR**") of Republic Act No.11534 ("**CREATE Law**"), all Registered Business Enterprises ("**RBE**") shall apply for a Certificate of Entitlement to Tax Incentive ("**CETI**") with their concerned Investment Promotion Agency ("**IPA**") prior to the filing of Annual Income Tax Return ("**AITR**"). The CETI shall then be attached to the AITR filed with the BIR as provided by Rule 8, Section 4 Rule 8 of the aforementioned IRR.

The CETI is a requirement for all RBEs in order to avail of the Income Tax Holiday or preferential rate granted by the CREATE Law.

This Circular repeals the provisions stated in RMC No. 14-2012, which required the submission of the Certificate for Entitlement to Income Tax Holiday (now CETI), within thirty (30) days from filing of the RBE's AITR.

3. REVENUE MEMORANDUM CIRCULAR NO. 32-2022 [March 30, 2022] - Clarifies the tax treatment of the Philippine Amusement and Gaming Corporation (PAGCOR), its licensees and contractees

This Circular seeks to clarify the franchise tax, income tax, and VAT due from PAGCOR, its licenses, and contractees based on current laws and recent jurisprudence.

Tax Treatment of PAGCOR

PAGCOR's income is classified into two: (1) income from its operations conducted under its Franchise ("**income from gaming operations**"); and (2) income from its operation of necessary and related services (**"income from other related services**"). Income from gaming operations include, among others, income from its casino, dollar put, bingo, including all its variations, and mobile bingo operated by it, with agents on commission basis. Income from other related services include regulatory/license fees from licensed private casinos, private bingo operations, private internet casino gaming, internet sports betting, and private mobile gaming, among others.

PAGCOR's income from its gaming operations shall be subject to the five percent (5%) franchise tax in lieu of all taxes while its income from other related services shall be subject to the regular corporate income tax rate, VAT, and other applicable taxes under the NIRC.

Tax Treatment of PAGCOR's Licensees and Contractees

Like PAGCOR, the income from gaming operation of its contractees and licensees shall be subject to five percent (5%) franchise tax. Therefore, its contractees and licensees are exempt from the payment of corporate income tax realized from the operation of casinos since the PAGCOR Charter is clear that said exemption inures and extends to their benefit. However, for VAT purposes, the revenues from gaming operations of the contractees and licensees, involving sale of goods and/or services in the course of trade or business, are generally subject to twelve percent (12%) VAT except those rendered in favor of PAGCOR in connection with the latter's gaming operations which are subject to zero percent (0%) VAT pursuant to Sections 106(A)(2)(b) and 108(B)(3) of the NIRC, as amended. On the other hand, the income realized by PAGCOR's contractees and licensees from other related services/operations shall be subject to the regular corporate income tax rate, VAT, and other applicable taxes under the NIRC.

Tax Treatment of PAGCOR's Licensees Located in Ecozones/Freeports

The income from gaming operations of licensees, even if located in ecozones/freeports, remains subject to five percent (5%) franchise tax and may be subject to either twelve percent (12%) or zero percent (0%) VAT, subject to the same rules above. The tax regime applicable to said licensees is only material with respect to their income from other related services that are covered by their registered activity with the concerned Investment Promotion Agency ("**IPA**"). If they are under 5% Gross Income Tax, they are exempt from regular corporate income tax and VAT. If they are under Income Tax Holiday, they are also exempt from the regular corporate income tax. They are, however, subject to VAT. On their income realized from related services which are not covered with their registered activity or activities with the concerned IPA, the same shall be subject to the regular corporate income tax, VAT, and other applicable taxes under the NIRC.

4. REVENUE MEMORANDUM CIRCULAR NO. 37-2022 [April 6, 2022] - Clarifies the guidelines on the submission of Certificate of Entitlement to Tax Incentives pursuant to RMC No. 28-2022

This Circular was issued to clarify the coverage of the provisions stated in RMC No. 28-2022.

All RBEs enjoying tax incentives under the transitory provisions in Section 311 of Title XIII of the CREATE Law and all business enterprises registered under the said law shall apply for a CETI with their respective Investment Promotion

Agency ("**IPA**") through the Fiscal Incentives Registration and Monitoring System ("**FIRMS**") prior to the filing of the AITRs.

However, RMEs already issued with a certificate of entitlement to tax incentives in a template/format previously prescribed by the IPA, such as, certificate of entitlement to income tax holiday, certificate of available incentives, certificate of registration and tax exemption, or any similar certificate, as proof of the RBEs entitlement to fiscal incentives, shall be allowed to attach the same in their AITR for taxable year 2021, in lieu of the Fiscal Incentives Review Board ("**FIRB**")-prescribed CETI.

5. **REVENUE MEMORANDUM CIRCULAR NO. 38-2022** [April 6, 2022] - Clarifies the Transitory Provision for the non-income related tax incentives granted to registered export enterprises under Investment Promotion Agencies

This Circular was issued to clarify the transitory provisions for the non-income related tax incentives pursuant to Rule 18, Section 5 of the IRR of the CREATE Law, in relation to Section 311 of the CREATE Law .

All registered export enterprises ("**REEs**") that have been existing prior to the effectivity of the CREATE Law, and that will continue to avail of their existing income tax incentives, may continue to enjoy the VAT zero-rating on local purchases that are directly attributable and exclusively used in the registered project or activity until the expiration of the transitory period, as follows:

(a) For REEs which are granted only an Income Tax Holiday ("**ITH**") - until the remaining period of the ITH.

(b) For REEs which are granted an ITH and/or five percent (5%) tax on gross income earned - until the expiration of the ten (10) year limit

The extent for the availment of VAT zero-rating on local purchases is anchored on the transitory period stated above. Thus, if the income tax incentive of an REE has already expired prior to the effectivity of the CREATE Law, then the VAT zero-rating on local purchases could no longer be availed by the REE.

6. **REVENUE MEMORANDUM CIRCULAR NO. 39-2022** [April 6, 2022] - Prescribes the manner of payment of penalty relative to violations incurred by Registered Business Enterprises under the Information Technology-Business Process Management sector on the conditions prescribed regarding Work-From-Home arrangement

The FIRB adopted Resolution No. 19-21 granted all RBEs in the Information Technology-Business Process Management sector to continue implementing work-from-home arrangements upon compliance with certain conditions, otherwise, the tax incentives given to them shall be suspended. The BIR issued RMC No. 23-2022 which imposed a regular income tax at the rate of twenty (20%) or twenty-five (25%) percent on the taxable net income during the months of non-compliance if the RBE committed a violation. BIR Form No. 1702-MX shall be used for the voluntary payment of the income tax due on the months with reported violation.

This circular is then issued to mandate the uniform manner of payment of the said penalty using BIR Form No. 0605, instead of BIR Form No. 1702-MX by choosing the radio button pertaining to 'Others', under 'Voluntary Payment' and by indicating in the field provided the phrase "Penalty pursuant to FIRB Res. No. l9-2021". The tax type code shall still be "IT" and the ATC to be indicated is "MC 200". The RBEs shall continue to file their Annual Income Tax Return using either BIR Forms No. 1702-EX or 1702-MX, whichever is applicable.

7. **REVENUE MEMORANDUM CIRCULAR NO. 40-2022** [April 6, 2022] - Provides clarifications and guidelines on the use of Electronic Audited Financial Statement (eAFS) System

This Circular was issued to clarify the use of the eAFS System.

In order to provide ease to taxpayers, the submission of eFiled AITR and its attachments to eAFS is applicable to any taxable year and all succeeding fiscal and/or taxable years. The existing procedures on submission of filed AITR and its attachments to eAFS system shall be observed.

Likewise, the use of Electronic Signature applies to all tax returns, attachments and documents required to submit AITR and returns.

8. **REVENUE MEMORANDUM CIRCULAR NO. 42-2022** [April 12, 2022] - Clarifies the deadline for filing of Annual Income Tax Returns for taxable year ending December 31, 2021; providing guidelines in the manner of filing and payment thereof; and non-imposition of surcharge on amended returns

The deadline for filing of the AITR for Calendar Year 2021 as well as the payment of the corresponding taxes due thereon is on April 18, 2022, Monday, since April 15, 2022 falls on a regular holiday.

Further, to alleviate the difficulties in beating the deadline on a holiday and considering the challenges encountered in the hybrid working arrangement adopted by most taxpayers, a tentative AITR may be filed on or before April 18, 2022. The return may be amended on or before May 16, 2022, without imposition of interest, surcharge, and penalties. Moreover, a taxpayer whose amended returns will result in overpayment of taxes paid can opt to (a) carry over the overpaid tax as credit against the tax due for the same tax type in the succeeding period or (b) file for refund.

9. **REVENUE MEMORANDUM CIRCULAR NO. 43-2022** [April 12, 2022] - Prescribes the non-imposition of surcharge on amended tax returns

Prior to RMC No. 43-2022, the twenty-five percent (25%) surcharge is imposed based on the additional tax due on the amended tax return, but no similar surcharge is imposed in computing for the deficiency tax assessment as a result of tax audit. Accordingly, this discourages taxpayers from amending their tax returns to voluntarily pay the correct tax due. This circular is then issued to rectify the application of the twenty-five percent (25%) surcharge wherein a surcharge shall not be imposed to an amendment of a tax return, provided the taxpayer was able to file the initial tax return on or before the prescribed due date for its filing. A surcharge shall only be imposed on a tax deficiency found during audit if the particular tax return being audited was found to have been filed beyond the prescribed period or due date.

10. **REVENUE MEMORANDUM CIRCULAR NO. 44-2022** [April 12, 2022] - Prescribes guidelines in the filing of Annual Income Tax Returns and payment of tax due thereon for TY 2021

This Circular was issued to prescribe guidelines in the filing of AITRs and payment of the corresponding taxes due thereon for Taxable Year 2021 and to inform the Electronic Filing and Payment System ("**eFPS**") users/filers that BIR Form No. 1702-RT January 2018 (ENCS) is now available in the eFPS.

Taxpayers who are manual filers or mandated to use the Offline eBIR Forms Package/eFPS under existing issuances, shall file and pay in accordance with the guidelines prescribed in its Annex A.

11. **REVENUE MEMORANDUM CIRCULAR NO. 45-2022** [April 13, 2022] - Revises the requirements on the manner of remittance of penalties of 5% and 20% for early withdrawal of qualified contribution under Personal Equity and Retirement Account (PERA) Act of 2008

This Circular is being issued pursuant to the provisions of Section 5 of RR No. 2-2022, more particularly, the manner of remittance of penalties of five percent (5%) and twenty percent (20%) for early withdrawal of qualified contributions.

Accordingly, the said penalties shall be remitted by the PERA Administrator through the online filing and payment facilities of the BIR on or before the last day of the month following the close of the calendar quarter during which the deduction was made. The Payment Form (BIR Form No. 0605) shall be duly accomplished under the name of the PERA Administrator by providing all the prescribed information, more particularly under "line item no. 17" of the said form, by marking with an "X" the box provided for "Others", as well as indicating the phrase "PERA Early Withdrawal Penalty" in the separate box provided for "Specify".

The amount of penalties shall be based on the aggregate respective totals of the five percent (5%) and twenty percent (20%) penalties as reflected in the Quarterly Report on PERA Distributions/Early Withdrawals/Terminations. The documentary proofs of payment (i.e., duly filed BIR Form No. 0605, Filing Reference Number, Confirmation/Acknowledgement Receipt, etc.) shall be submitted to the PERA Processing Office – Audit Information Tax Exemption and Incentives Division, through its official email address at aiteid_mos@bir.gov.ph, within five (5) days from the date of payment of the penalties.