TMAP TAX UPDATES

May 16 to June 15, 2021

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Bureau of Internal Revenue - Revenue Regulations ("RR")

1. **RR 7-2021– Rules and Regulations Implementing the Provisions of Republic Act Nos. 11346 and 11467, relative to the Excise Tax on Alcohol Products, Tobacco Products, Heated Tobacco Products, Vapor Products and Disposition of Excise Tax Collection**
   May 18, 2021

These regulations implement the amendment of excise tax on alcohol and tobacco products, and the imposition of excise tax on heated tobacco products and vapor products as provided under R.A. No. 11346 and R.A. No. 11467.

Salient features include: the revised rated and bases of excise tax on alcohol products, tobacco products, heated tobacco products, and vapor products; the labels and/or packages of products to be complied with; the posting of export and transfer bond upon removal of tobacco products, heated tobacco product, or vapor products manufactured in the Philippines and produced for export, from their place of manufacture; the posting of bond for tobacco products, heated tobacco products, or vapor products imported into the Philippines and destined for foreign countries; the payment of inspection fee; the giving of information by manufacturers, indentors, wholesalers and importers to the CIR; and the setting of floor prices or minimum prices of cigarette, heated and vapor tobacco products.

A written permit from the CIR/Authorized Representative for importing, manufacturing or selling of apparatus or mechanical contrivance specially for the manufacture of articles subject to excise tax, cigarette paper in bobbins or rolls, cigarette tipping paper or cigarette filter tips is required before any person shall engage in the importation, manufacture or sale of the said articles.

Bureau of Internal Revenue – Revenue Memorandum Circulars ("RMC")

2. **RMC 60-2021 – Publishing the Full Text of the "Amended Rules and Regulations to Implement Republic Act No. 9335, otherwise knows as the 'Attrition Act of 2005"**
   May 17, 2021

3. **RMC 61-2021 – Publishing the Full Text of the Memorandum of Agreement between the BIR and Department of Trade and Industry**
   May 17, 2021

4. **RMC 62-2021 – Clarifications on Certain Provisions of RR 5-2021 Relative to Corporate Income Tax**
   May 17, 2021

This issuance addresses the following concerns and issues:

   a. To satisfy the condition that the total assets shall not be more than P100,000,000 to qualify for the reduced corporate income tax rate of 20%, the total assets shall be net of depreciation and

allowance for bad debts and exclusive of the value, as reflected in the financial statements, of the land where the business entity's office, plant and equipment are situated.

b. The percentage of the floor area devoted to the entity's office shall be multiplied with the total value of the land, as reflected in the financial statements in order to determine the value of the land that shall be excluded in the computation of the total assets.
c. The value of the land being used as banana plantation or being leased should not be excluded in the determination of the total assets for purposed of qualification to the 20% corporate income tax.
d. Private educational institutions distributing dividends to shareholders are taxable at the regular corporate income tax rate.
e. The CREATE law did not prescribe new tax treatment for proprietary educational institutions and private hospitals. It merely reduced the tax rate, from 10% to 1%, effective July 1, 2020 to June 30, 2023 for such institutions which are non-profit.
f. Unutilized dividends shall be declared as taxable income, and the corresponding tax due shall be subject to interest, surcharges and penalties.
g. The law provides no distinction as to which type of industry can claim the additional allowable deduction of one-half (1/2) of the value of labor training expenses. The training expenses which pertain to training/s of employees under supervisory, managerial, administrative and support functions should not be included in the computation of the additional allowable deduction.

5. **RMC 63-2021 – Circularizing Republic Act No. 115171 entitled "An Act Authorizing the President to Expedite the Processing and Issuance of National and Local Permits, Licenses and Certifications in Times of National Emergency"**
   May 18, 2021

6. **RMC 64-2021 – Expanding the Electronic Tax Software Provider Certification System**
   May 21, 2021

The BIR is expanding the scope of Tax Software Providers (TSP) to include other electronic or online services, such as online taxpayer registration, online tax clearance processing, online application and processing of certificate authorizing registration for real property transactions, and electronic invoicing/receipting, among others.

The Bureau shall issue separate policies, guidelines and procedures for each electronic service which shall contain TSP accreditation requirements and testing and certification processes.

7. **RMC 65-2021 – Guidelines in the Filing of Quarterly Percentage Tax Return (BIR Form No. 2551Q) Starting on the Quarter Ending July 31, 2020**
   May 24, 2021

The percentage tax rate has been decreased from 3% to 1% starting July 1, 2020 to June 30, 2023 pursuant to Republic Act No. 11534, also known as the "Corporate Recovery and Tax Incentives for Enterprises Act" (CREATE).

In view of this, taxpayers who are going to amend their filed quarterly returns to reflect the excess percentage tax payment made and to be carried forward to the succeeding taxable quarter/s shall follow the following guidelines prescribed by this Circular:

1. For manual and eBIRForms filers/users, the taxpayer shall specify in BIR Form 2551Q January 2018 (ENCS) in the space provided in Line 17 – *Other Tax Credit/Payment* the "Carry-Over Excess Percentage Tax (PT) Paid from Previous Quarter/s" and the amount of overpayment from previous quarters.

2. For eFPS filer/users, the taxpayer shall specify in BIR Form 2551 February 2002 (ENCS) in the space provided in Line 20A –*Creditable Percentage Tax Withheld per BIR Form No. 2307* where the amount of Carry-Over Excess Percentage Tax Paid from Previous Quarter/s will be reflected.

3. To validate the return in eFPS and eBIRForms, filer shall mark the option "To be issued a Tax Credit Certificate" which is presumed that the taxpayer will carry over the overpaid tax to the succeeding taxable quarter/s once the said option was chose. For manual filer, neither of the options "To be Refunded" or "To be Issued a Tax Credit Certificate" shall be marked in the said tax return but rather write the phrase "To be Carried Over" on the return. The same procedure shall be undertaken, whether the return was filed manually or electronically, by the taxpayer subject to percentage tax until the overpaid amount has been fully utilized.

8. **RMC 66-2021 – Availability of BIR Form Nos. 1702Q January 2018 (ENCS) in the Electronic Filing and Payment System (eFPS) and 1702QV2008C in the Electronic BIR Forms (eBIRFORMS)**
May 24, 2021

This disseminates the availability of the following versions of BIR Form No. 1702Q, to wit:

a. BIR Form No. 1702Q January 2018 (ENCS). This form is already available in eFPS and the reduced rates pursuant to Republic Act (R.A.) No. 11534 also known as Corporate Recovery and Tax Incentives for Enterprises Act or CREATE Act are already included/updated.

b. BIR Form No. 1702Qv2008C. The January 2008 version of the form is not yet available in the Offline eBIRForms Package. Instead, the 2008 version has been modified.

9. **RMC 67-2021 – Clarifies Issues Relative to the Temporary Reduction of Percentage Tax Rate Imposed under Section 116 of the NIRC by Sec. 13 OF R.A. No. 11534, OTHERWISE KNOWN AS THE CREATE**
May 24, 2021

This Circular provides frequently asked questions and clarifications relative to the amendments made to Percentage Tax pursuant to Section 13 of R.A. No. 11534, otherwise known as the CREATE, as implemented by RR 4-2021.

a. The decrease of Percentage Tax rate from three percent (3%) to one percent (1%) apples to both corporate taxpayers and self-employed individuals and professionals whose gross sales or gross receipts are not exceeding the three million pesos (P3,000,000.00) threshold, except for cooperatives and self-employed individuals and professionals availing the 8% income tax rate.
b. Non-VAT-Registered taxpayers are required to amend their Percentage Tax returns (BIR Form No. 2551Q) for the third (3rd) and fourth (4th) quarters of 2020 up to the effectivity of RR No.4-2021 by using the 1% rate.
c. The amendment of the Percentage Tax returns is not subject to penalty for affected taxpayers which/who will carry over the overpaid percentage taxes.

d. The carry-over is intended for Percentage Taxpayers who are regularly filing the returns and are expected to have overpaid taxes as a result of the retroactive application of CREATE starting July 1, 2020. The taxpayer is already precluded from claiming tax refund for the overpayment.
e. Percentage taxpayers who have overpaid taxes as a result of the decrease of tax rate are allowed for a refund in the event that: (a) the taxpayer shifted from non-VAT to VAT-registered status; or (b) the taxpayer has opted to avail the eight percent (8%) income tax rate at the beginning of TY 2021.
f. If the percentage taxpayer will carry over the overpayment but has inadvertently marked either tax refund or issuance of tax credit certificate (TCC) on the return, the Bureau will presume that the overpaid amount will be carried over. Once the overpayment has been carried forward, the option initially chosen shall automatically be superseded.
g. In case a percentage taxpayer carries over the alleged overpayment without amending the affected Percentage Tax returns to any quarter/s starting 2021, the carried over percentage tax will be disallowed. The amended Percentage tax returns showing the overpayment shall be the basis for the carry over.
h. The withholding agent/government agency shall be responsible in refunding the overpaid taxes of Individuals under Job Order or Service Contract Agreement, who availed of substituted filing on Percentage Tax pursuant to RMC No. 51-2018.
i. The government, its instrumentalities, local government units, state universities and colleges, including government-owned and/or –controlled corporations and government financial institutions shall amend previously filed returns including the respective Alphalists, if any, but the reduction or resulting overpayment shall only be to the extent of the amount to be refunded.
j. If the whole amount of 3% percentage tax has been claimed as deductible expense for purposes of computing the income tax due, the taxpayer can no longer be allowed as carry over or apply for tax refund/TCC the alleged overpaid percentage tax.
k. In order to qualify for the carry-over or refund of the overpaid percentage taxes, the Annual Income Tax Return (ITR) for TY 2020 for taxpayers under the calendar year period or quarterly ITR for fiscal year will also be amended if a return has been filed reflecting the 3% percentage taxes paid. The Audited Financial Statements (AFS) may also be amended, but if the AFS will not be amended, the overpaid percentage tax shall be reflected as a reconciling item in the amended ITR/s.

10. **RMC 68-2021 – Guidelines in the Filing of BIR Form No. 1702Q JANUARY 2018 (ENCS) in the Electronic Filing and Payment System (eFPS) by Taxpayers with Fiscal Year Accounting Period.**
    May 28, 2021

eFPS filers with fiscal year accounting period who cannot proceed in the filing of the BIR Form No. 1702Q are advised to do the following: (a) file the BIR Form No. 1702Q using Offline eBIRForms Package v7.9.1; and (b) pay the taxes due thereon, if any, thru eFPS.

11. **RMC 72-2021 – Availability of BIR Single Hotline Number and Use of Chatbox**.
    June 2, 2021

This Circular announces the availability of the BIR Customer Assistance Division single Hotline No. (02) 8538-3200 and the use of Chatbot, named Revie, to assist taxpayers with their general inquiries on tax related matters. Tax inquiries may also be sent via e-mail at contact-us@bir.gov.ph.

12. **RMC 73-2021 – Availability of the New Business Registration (NewBizReg) Portal**
    June 3, 2021

The NewBizReg Portal is a gateway in the electronic submission of application for registration through e-mail which is available to individual and non-individual business taxpayers (Head Office and Branches).

13. **RMC 74-2021 – Announces the Placement of Intro Page in the BIR Website**
    June 7, 2021

The BIR Website is enhanced by initially placing an Intro Page in the website. Starting June 8, 2021, users of the BIR Website shall see the Intro Page (instead of home page) when they type www.bir.gov.ph. Through the placement of Intro Page in the BIR Website, users can directly access their desired content without having to go through the home page of the BIR Website.

14. **RMC 75-2021 – Standard Policy and Guidelines for the Use of BIR Form No. 0605 for Excise Tax Purposes**
    June 7, 2021

This Circular amends RMC 97-2020. All concerned are advised on the proper filling up of BIR Form 0605:

a. Excise Taxpayers making advance payment for export products availing the Product Replenishment Scheme pursuant to Revenue Regulations (RR) No. 3-2008, should tick the "Tax Deposit/Advance Payment" box under the Voluntary Payment of the Manner of Payment (Field No. 17) of the BIR Form No. 0605.
b. Excise Taxpayers under the Non-Essential Services for Cosmetic Procedures should use BIR Form 2200-C.
c. Excise Taxpayers using BIR Form 0605 paying Deficiency Tax should tick the "Preliminary/Final Assessment/Deficiency Tax" box under the Per Audit/Delinquent Account under Manner of Payment (Field No. 17) of the BIR Form No. 0605.
d. Payment for Administrative Penalties must tick the "Others (Specify)" box under the Voluntary Payment of the Manner of Payment (Field No. 17) of the BIR Form No. 0605, and indicate in the box provided "Administrative Penalties".

In view thereof, all other excise tax payments on domestic removals of excisable articles shall use their corresponding excise tax returns (BIR Form 2200 series).

Bureau of Internal Revenue – Revenue Memorandum Orders ("RMO")

15. **RMO 16-2021 – Amending Provisions of RMO 44-2020 on the Establishment of Standard Taxpayer Feedback System to Include Online Survey**
    May 20, 2021

Frontliners shall encourage taxpayers to answer the online survey form. The Revenue District Offices (RDO) shall dedicate a Personal Computer (PC) in the eLounge of the RDO, which shall be manned by a Client Support Service employee, and make available the link for the Online Survey Form in the said PC. A Quick Response (QR) Code shall also be provided which is recommended to be made available at each counter for easy reference by taxpayers. Manual survey forms shall still be available in case where taxpayer opted to use such.

The Client Support Unit (CSU) shall receive the results of the online survey forms from the Taxpayer Service Programs and Monitoring Division. The results of the manual survey forms shall be consolidated with that of the online survey forms. The results of the online survey shall also be emailed to the CSU Head.

16. **RMCO 19-2021 – Amending Annex A OF RMO Nos. 31-2014 and 15-2017 Relative to the Content of the BIR Website and BIR Employees Portal**
    June 3, 2021

This updates the list of contents/information posted in the BIR Website and Employees Portal and the corresponding owner of said information in charge of regular updating of contents. Heads and Assistant Heads of BIR offices identified as content owners shall ensure the regular and timely posting of updates on their assigned/owned information/contents in the BIR Website and/or BIR Portal.

Court of Tax Appeals Decisions

17. **People of the Philippines v. Sixta Lee Go**
    CTA EB Crim. Case No. 083, May 17, 2021
    (CTA Crim. Case No. O-659)

The Court En Banc affirmed the CTA Division's decision, to wit:

> In this case, the prosecution failed to present proof that the subject assessment notices were actually received by accused Lee Go. While the prosecution presented Registry Receipt No. 909108, the same was not identified with particularity as the specific Registry Receipt issued for the mailing of the PAN to accused Lee Go, as there were other folded and illegible registry receipts present in the subject document.
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> Finally, even if we consider the same as sufficient proof of mailing of the PAN, and give credence to the fact of mailing of Formal Letter of Demand dated November 8, 2012 by virtue of Registry Receipt No. 913426, it is still necessary for the prosecution to further prove that the subject documents were in fact received by accused Lee Go, considering that she directly denied having received said mail matters. As held in the GJM case, the CIR should have, at the very least, submitted to the Court a certification issued by the Bureau of Posts and any other pertinent document executed with its intervention.

Petitioner's evidence miserably failed to satisfactorily prove that respondent actually received the PAN, Assessment Notices and the corresponding FLD. Hence, the failure of petitioner to prove actual receipt of the assessment notices by respondent leads to the conclusion that no assessment was validly issued.

18. **Bangko Sentral Ng Pilipinas v. Hon. Fernando M. Fandiño, in his capacity as City Assessor, Pasay City, Local Board of Assessment Appeals, and Central Board of Assessment Appeals**
    CTA EB Case No. 2201, May 18, 2021
    CBAA Case No. L-138-2017 LBTAA Case No. 013-6

    Hon. Fernando M. Fandiño, in his capacity as City Assessor, Pasay City, v. Bangko Sentral Ng Pilipinas
    CTA EB Case No. 2205, May 18, 2021

CBAA Case No. L-138-2017 LBTAA Case No. 013-6

Considering that there is no indication that BSP has complied with the 30-day period under Section 206 of the LGC of 1997 in the submission of sufficient documentary evidence to prove its real property tax exemption, the City Assessor of Pasay was initially justified in issuing the pertinent Tax Declarations, classifying the PICC properties as "commercial," in the name of BSP. However, since the real property tax exemption of the BSP, a government instrumentality, being the owner of the PICC properties, and insofar as or to the extent that the beneficial use of the portions thereof is not granted to a taxable person, has been established in this case, the City Assessor is duty bound to drop the said portions from the assessment roll.

19. **Mindanao Mineral Processing Refining Corporation v. Commissioner of Internal Revenue**
CTA Case No. 9643, May 19, 2021

The power to cancel Petitioner's BOI registration on the supposed ground of misrepresentation and on the basis of the principle of piercing the veil of corporate fiction, or on any ground for that matter, has not been vested, by law, on Respondent. There is no law which grants such power to Respondent, even when it comes to assessing internal revenue taxes. Before a registered enterprise is deprived of its ITH incentive, it is the BOI who must first exercise its quasi-judicial or administrative adjudicatory power over the case. In this case, not only was there an encroachment of the quasi-judicial or administrative adjudicatory power vested on the BOI, petitioner was likewise deprived of due process, since it was not given an opportunity to be heard before its registration was cancelled and its ITH voided. Thus, the subject income tax assessments must be cancelled for lack of legal basis. There being no showing that the BOI cancelled the BOI registration of petitioner, itis still entitled to ITH on 100% of its net taxable income for FY ended 2012.

20. **Coca-Cola Beverages Philippines, Inc. (formerly Coca-Cola Femsa Philippines, Inc./Coca-Cola Bottlers Philippines, Inc.) v. City Treasurer of Manila**
CTA EB Case No. 2173, May 19, 2021
(CBAA Case No. L-142-2018), (LBAA Case No. 13-4258)

The CTA En Banc discussed the nature of the protest of RPT assessment and the remedy of claim for refund of RPT, as follows:

a. The protest contemplated under Section 252 of the Local Government Code (“LGC”) is needed when there is a question as to the reasonableness of the amount assessed or, stated differently, when it involves an erroneous assessment. An erroneous assessment presupposes that the taxpayer is subject to the tax but is disputing the correctness of the amount assessed. With an erroneous assessment, the taxpayer claims that the local assessor erred in determining any of the items for computing the real property tax, i.e., the value of the real property or the portion thereof subject to tax and the proper assessment levels. 41(746) By way of example, it may be noted that the Supreme Court had ruled in *Olivarez* that the following issues are questions of fact involving the correctness or reasonableness of an assessment, to wit: (1) some of the taxes being collected have already prescribed and may no longer be collected as provided in Section 194 of the Local Government Code of 1991; (2) some properties have been doubly taxed/assessed; (3) some properties being taxed are no longer existent; (4) some properties are exempt from taxation as they are being used exclusively for educational purposes; and (5) some errors are made in the assessment and collection of taxes due on petitioners' properties.

b. On the other hand, the claim for refund under Section 253 of the LGC is the prescribed administrative procedure for obtaining refund of overpaid RPT, on the basis of illegal or erroneous RPT assessments.

The records of the present case clearly show that the subject of the present Petition for Review is the appeal of respondent's inaction on petitioner's claim for refund. As such, it is primarily governed by Section 253 in relation to the provisions of Chapter 3, Title II, Book II of the LGC.

Held: Petitioner grievously erred when it alleged that the protest it filed under Section 252 has nothing to do with its claim for refund subject of the present case. It likewise erred in asserting that a finding by the respondent in the pending protest that the RPT was illegally or erroneously collected is not a requirement for filing a separate claim under Section 253. The very text of Section 253 of the LGC belies such assertions. The said provision expressly requires a prior finding that the RPT assessment is either illegal or erroneous and that the taxpayer is entitled to a reduction or adjustment of the RPT it previously paid. In fact, the two-year period within which the written claim for refund must be filed before the local treasurer is unequivocally reckoned from the date when the taxpayer becomes legally entitled to the RPT reduction or adjustment.

As correctly pointed out by the CBAA, there is yet no concrete finding that the RPT levied by the respondent is either illegal or erroneous at the time the claim for refund was filed because petitioner's protest was then still pending. The Notice of Realty Tax Delinquency dated September 11, 2012 and Statement of Account dated September 18, 2012 issued by respondent assessing petitioner for RPT for the years 2000 to 2012 in the total amount of P14,414,611.84 still subsist at that time. Accordingly, there is no basis, factual or legal, for the grant of petitioner's claim for refund. To be sure, the two-year period prescribed by Section 253 has not even commenced because it was never established that petitioner is entitled to the reduction or adjustment of the RPT it previously paid.

21. **Rex Chua Co Ho v. People of the Philippines**
CTA EB Crim. Case No. 072, May 27, 2021
(C.T.A. Crim. Case Nos. O-287, O-288, O-289, O-290 and O-291)

The *Majority Opinion*[1] penned by Presiding Justice R. Del Rosario granted the Petition for Review filed by petitioner and reversed the Amended Decision of the CTA Division, to wit:

a. Petitioner may not file another Motion for Reconsideration to assail the Amended Decision which already passed upon his arguments. A motion for reconsideration of the CTA Third Division's Amended Decision — by insisting again of his innocence and the deletion of his civil liability — would be in the nature of a second motion for reconsideration, the filing of which is prohibited under Section 7, Rule 15 of the RRCTA.

[1] Four Justices (comprising the majority of the CTA En Banc) voted to take cognizance of the Petition for Review, and grant the same on the ground that the CTA Third Division is without jurisdiction to impose civil liability against the accused. On the other hand, three Justices voted for the dismissal of the Petition for Review for lack of jurisdiction for petitioner's failure to file a Motion for Reconsideration of the assailed Amended Decision in violation of the doctrine laid down in *Asiatrust*; and that the assailed Amended Decision must be affirmed as the CTA Third Division committed no reversible error as to warrant the reversal thereof.

b. Criminal proceedings may not be converted into an Assessment Proceeding under the NIRC, unless the Information pertains to an accused's failure to pay a final and executory assessment. The CTA En Banc finds that no civil liability consisting of the deficiency taxes contained in the disputed FLD dated October 30, 2013, plus interests and penalties, may be adjudged against petitioner in the subject criminal cases.

Notwithstanding the foregoing Majority Opinion, considering that the required affirmative votes of five (5) members of the CTA En Banc were not obtained to reverse the assailed Amended Decision rendered by the CTA Third Division in CTA Crim. Case Nos. O-287, O-288, O-289, O-290 and O-291, , the Petition for Review filed by Rex Chua Co Ho in CTA EB No. 072 was perforce dismissed.

22. **Masagana Management Services Corporation v. Commissioner of Internal Revenue and BIR Regional Director, Region 7, Quezon City**
CTA Case No. 10071, May 28, 2021

A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA. A whole or partial denial by the CIR may be appealed to the CTA. The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.

Facts: Petitioner's protest to the FLD was filed with the Regional Director, who denied the same through the FDDA. Petitioner then filed a request for reconsideration (administrative appeal assailing the validity of the FDDA) with the Regional Director and not with the CIR.

Held: The proper remedy for petitioner should have been to file an appeal before CIR himself (since the denial was issued by the CIR's authorized representative) or a Petition for Review before the CTA within 30 days from receipt of the FDDA. Thus, a resort to an
administrative appeal with the CIR's authorized representative did not then toll the running of the reglementary period within which petitioner's appeal must be elevated to the CTA or to CIR. As such, the assessments have become final, executory and demandable pursuant to Section 228 of the NIRC, and as implemented by RR 12-99, as amended. Consequently, the CTA no longer has jurisdiction to act on the instant Petition for Review.

23. **Kuwait Airways Corporation v. Commissioner of Internal Revenue**
CTA Case No. 9874, May 28, 2021

Facts: On June 5, 2015, petitioner filed an Application for Relief from Double Taxation on Shipping and Air Transport (BIR Form No. 0901-T) with the BIR's International Tax Affairs Division (ITAD), relative to the availment of the preferential tax rate of 1 1/2%. While the foregoing application was still pending, petitioner filed its Quarterly Income Tax Returns (Quarterly ITRs) for the first three (3) quarters of the FY ending March 31, 2016, and its Annual Income Tax Return (Annual ITR) for the same FY, as well as paid the corresponding income taxes due thereon. Thereafter, respondent issued BIR Ruling No. ITAD 034-17 dated November 6, 2017 ruling that since the Philippines, as of the said date, has not granted a most-favored-treatment to any international air carrier of a third country, petitioner is subject to income tax of 1 1/2% on its GPBs earned beginning January 1, 2014, pursuant to Article 8 of the Philippines-Kuwait tax treaty. Subsequently, on March 21, 2018, petitioner filed with the BIR its Amended Annual ITR for FY ending March 31, 2016, to reflect the application of the 1 1/2% preferential income tax rate.

Held: The two-year prescriptive period to file a refund claim should be reckoned from the date the petitioner's Annual ITR was amended on March 21, 2018 considering that it is only in the said petitioner's Amended Annual ITR that an overpayment of income tax was shown, upon application of the 1 1/2% preferential tax rate. Thus, counting two (2) years from March 21, 2018, petitioner had until March 21, 2020, within which to file its claim both in the administrative and judicial levels. Since petitioner filed its administrative claim on May 16, 2018, and the judicial claim on July 11, 2018, the same were filed within the two-year prescriptive period.

J. Bacorro-Villena dissents. Under Section 229 of the NIRC, the 2-year period shall be reckoned from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment. Hence, it is clear that the 2-year period should have been reckoned from the payment of tax on July 14, 2016 despite the supervening cause that arose after payment, such as the issuance of BIR Ruling No. ITAD 034-17 and the filing of Amended Annual ITR. At any rate, petitioner's administrative and judicial claims were still timely filed even if the same is counted from the filing and payment of the Annual ITR on July 14, 2016. Records reveal that petitioner filed its administrative claim on 16 May 2018 6(125) and the judicial claim on 11 July 2018, 7(126) both within the 2-year prescriptive period under Section 229 of the NIRC of 1997, as amended.

24. **Fruits & Dairy Sommelier v. Commissioner of Internal Revenue**
CTA Case No. 9720, May 28, 2021

a. The Court may rule on the validity or scope of the authority of the revenue examiners to conduct the audit leading to the subject tax assessments, and such other issues necessary to achieve an orderly disposition of the case, even when not specifically raised by the parties.

b. The issuance of a Letter of Authority is a delegable power which the CIR may devolve to Revenue Regional Directors under Section 10 of the NIRC. A MOA referring or re-assigning the docket to another revenue officer for the continuation of the audit/investigation to replace the previously assigned revenue officers shall likewise be signed by the Regional Director. In the instant case however, the MOA was only signed by Revenue District Officer Florante R. Aninag. Therefore, the revenue officers who recommended the issuance of the assessments had no valid authority to conduct tax audit/investigation against petitioner. Not having the authority to examine petitioner in the first place, the subject tax assessments are therefore void.

c. The subject tax assessments are void as respondent failed to prove the service of the subject PAN before the issuance of the subject FAN, in violation of the due process requirement. While a mailed letter is deemed received by the addressee in the course of the mail, this is merely a disputable presumption subject to rebuttal. Consequently, the direct denial thereof shifts the burden to the sender to prove that the said letter was actually received by the addressee. Furthermore, to prove the fact of mailing, Respondent must present the Registry Receipt issued by the Bureau of Posts or the Registry Return card which would have been signed by the taxpayer or its authorized representative. In the absence of the said documents, a Certification issued by the said Bureau of Posts, and any other pertinent document executed with its intervention, must be presented to establish the fact of mailing. The “Transmittal Letter dated December 28, 2018 issued by Philpost” is insufficient to show that the same PAN was in fact received by petitioner.

25. **SM Synergy Properties Holdings Corporation v. Commissioner of Internal Revenue**
CTA Case No. 9397, May 28, 2021

The Revenue Officer who examined petitioner's books of accounts for taxable year 2009 was not authorized, and thus, all of the subject tax assessments are void.

The LOA No. LOA-125-2010-00000121 dated May 14, 2010 was issued authorizing RO Abdul Jalal Hilal and Group Supervisor ("GS") Sohailey Pandapatan to examine Petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2009 to December 31, 2009. However, records reveal that RO Aniceto B. Luna and GS Fe F. Caling were the ones who recommended the issuance of the PAN, FLD/FAN and FDDA. RO Luna and GS Caling who conducted the examination of petitioner's books of accounts may be deemed authorized to do so without need for a new LOA, only if said letter or notice or memorandum was signed by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service pursuant to RMO No. 29-07. Since the Memorandum of Assignment dated February 18, 2011 was only signed by OIC-Chief, LTRAD 2 Edwin T. Guzman, RO Luna and GS Caling were not authorized to conduct any tax audit/investigation against Petitioner. The PAN, FLD, FANs, and FDDA, which were issued as a result of RO Luna and GS Caling's tax audit/investigation, are inescapably void.

26. **Fluor Daniel, Inc. v. Commissioner of Internal Revenue**
CTA Case No. 9267, May 28, 2021

The lack of revalidation of the LOA, despite the lapse of the 120-day period, does not nullify the same pursuant to RMC 23-2009.

However, the issuance of the FLD/FAN, without consideration and evaluation of the defenses contained in the request for reconsideration of the PAN, violated petitioner's right to due process. In this case, the Court finds that in issuing the FLD/FAN, the BIR never addressed or delved into the arguments raised by Petitioner in its request for reconsideration of the PAN. This is clear when respondent issued a FAN which as a complete replica of the PAN, without even stating and explaining the demerits of petitioner's contentions. Consequently, the subject assessment is rendered void due for lack of due process.

27. **Yan An Cargo Corporation v. Commissioner of Internal Revenue**
CTA Case No. 9865, June 1, 2021

An assessment made without a Letter of Authority (“LOA) is void. It is well-settled in our jurisprudence that the absence of an LOA is a violation of the taxpayer's right to due process, which renders the assessment null and void. Moreover, a Letter Notice (“LN”) is different from an LOA and the issuance of the former does not equate to the issuance of the latter to validate an otherwise void assessment.

28. **Commissioner of Internal Revenue v. Kokoloko Network Corporation**
CTA EB No. 2197 (CTA Case No. 9574) June 3, 2021

A Memorandum of Assignment transferring authority to audit to another revenue officer need not be in the form of an LOA but must be signed by the Regional Director or Assistant Commissioner/Head Revenue Executive Assistant (“ACIR/HREA”) of the Large Taxpayers Service (“LTS”). The power of the Commissioner of Internal Revenue (“CIR”) to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to revenue officers who were originally named in the LOA may be revoked,

transferred and reassigned to another for continuance of audit. Said document where such authority is transferred may be equivalent to an LOA. If the LOA is reassigned to other revenue officers, the said revenue officers who conducted the examination of a taxpayer's records pursuant to an LOA may be deemed authorized to do so without need for a new LOA, if the letter or notice or memorandum of assignment was signed by the Regional Director or ACIR/HREA of the LTS, who under RMO No. 29-07, is the equivalent of a Regional Director authorized to issue an LOA.

In this case, the Memorandum of Assignment signed by a Revenue District Officer ("RDO") is not a proper source of authority of revenue officers to conduct an audit because the RDO has no power to authorize the examination of a taxpayer's accounts.

The failure to serve a Preliminary Assessment Notice ("PAN") prior to the service of the Formal Letter of Demand ("FLD") renders the assessment void. The service of FLD prior to the service of the PAN violates a taxpayer's right to due process.

29. **Republic of the Philippines v. Amira C Foods International DMCC**
CTA EB No. 2210 (CTA Case No. 8557), June 3, 2021

The temporary storage of goods, not classified as prohibited commodity within the Subic Special Economic and Freeport Zone ("SSEZ"), which is outside the Philippine customs territory, is not considered importation that would warrant the seizure of goods by the Bureau of Customs.

Facts: Due to being prevented by the Indonesian government from unloading Indian White Rice at the Jakarta, Indonesia port, Amira Foods was compelled to temporarily store the same within the SSEZ to avoid mounting demurrage charges and for transshipment purposes. The District Collector of the Port of Subic issued a Warrant of Seizure and Detention ("WSD") against the 420,000 bags of Indian White Rice for possible violation of the Tariff and Customs Code of the Philippines, as amended ("TCCP"). The District Collector thereafter rendered a decision ordering the forfeiture of the subject shipment. Amira Foods appealed to the Commissioner of Customs, who dismissed the same. Amira Foods thereafter filed a Petition for Review with the Court of Tax Appeals ("CTA"). A day after the filing of the Petition, the Republic proceeded with the sale of forfeited shipment by public auction. The Court in Division rendered a decision granting the Petition and ordering the release of the bid price of its Indian White Rice, including all interest earned on the amount from the time of deposit until satisfaction of judgment.

Held:

a. *As to whether the mere intent to unload is sufficient to commence importation, and therefore a taxable event; and that Amira Food's insistence that the goods were sent to the Philippines only for temporary warehousing pending determination of its final destination is belied by its shipping documents and its failure to file an admission entry of Transit and Admission Permit ("T/AP"):* The SSEZ shall be regarded as a separate customs territory. As a foreign territory, importations into SSEZ are exempted from customs duties and taxes. It goes without saying however that the right of investors in SSEZ to import goods and articles is not absolute but subject to the limitation that goods or articles which are absolutely prohibited by law cannot be allowed entry into the SSEZ.

b. *As to whether the subject goods were ever imported into Philippines customs jurisdiction considering that they were seized while in freeport:* While the Supreme Court has ruled that mere intent to unload is sufficient to commence importation, the same was followed by the statement "[a]nd intent, being

a state of mind, is rarely susceptible of direct proof, but must ordinarily be inferred from the facts, and therefore can only be proven by unguarded expressions, conduct and circumstances generally". Further, unlike in *Feeder International Line*, MV Vinalines Mighty carrying the Indian White Rice never entered the Philippine Customs Territory as it remained within the SSEZ. In any case, even the Republic's witness, District Collector Albano, testified that unless the shipping documents are amended to indicate "Port of Subic" as the new port of discharge, the rice cargo would not have been allowed to be unloaded within the SSEZ.

c. *As to whether the inclusion of trucking charges in the Memorandum of Agreement (MOA) dated March 26, 2021 between Metro Eastern and Amira Foods were indicative of "intent to import":* The possibility of Amira Foods importing to Philippine Customs Territory remained open if negotiations with local buyers who has NFA licenses materialized. This, however, remained to be a contingency in the event that transshipment did not push through. Preparation for a contingency should not be penalized, much less taxed, since the taxable event has not yet come to pass.

d. *As to whether Amira Foods' failure to file an admission entry or T/AP "negates any intent to export thereafter":* An exception to Section 1202 of the TCCP is transit cargo for immediate exportation. If the goods were intended merely as transit goods, Amira Foods, through its consignee, should have complied with the Joint Memorandum Order dated August 21, 2008 which requires the filing of an admission entry or T/AP. It should have likewise complied with the requisites for transit cargo as laid down in *Commissioner of Customs vs. Court of Tax Appeals, et al*. However, the Republic's reliance on the said case is misplaced because transit cargo entered for immediate exportation presupposes that the goods had been entered or imported into Philippine Customs Territory first. Clearly, this is not the case here as the bags of Indian White Rice stayed within the SSEZ until its seizure. As for the failure to file an admission entry or T/AP, the consignee is allowed at least thirty (30) days to file an entry before the goods can be considered unclaimed and abandonment mechanism initiated. Two days before the lapse of the 30-day period to file an admission entry, petitioner received the WSD seizing its Indian White Rice. Thus, petitioner cannot be faulted for failing to file an admission entry since the Indian White Rice was already seized prior to the lapse of the prescribed period to do so.

e. There was no legal basis for the seizure of the shipment. While rice requires an import permit from NFA prior to importation of rice into the country, such requirement is inapplicable to Amira Foods. The SSEZ is considered as a separate customs territory or by legal fiction, as foreign territory, so as to ensure free flow or movement of goods and capital within, into and out of SSEZ. Thus, the subject shipment, which entered and were stored in two SMBA warehouses in the SSEZ, may not be considered as imported into Philippine customs territory. Otherwise stated, petitioner was not required to secure import permit from NFA upon entry of the cargo into the SSEZ. The requirement to secure and present import permit from NFA becomes indispensable only when the 420,000 bags of Indian White Rice is withdrawn from the SSEZ and introduced into the Philippines customs territory, for it is only at that point that said shipment is considered imported into the country for purposes of applying the provisions of CMO No. 20-2001.

30. **Empress Dental Laboratories, Inc. v. Commissioner of Internal Revenue**
CTA Case No. 10186, June 7, 2021

Petitioner made erroneous multiple payments or remittance of withholding tax on compensation in the total amount of P562,007.96 on October 17, 2017, when petitioner's Accounting Supervisor approved all

pending payment instructions lodged in its BPI Expresslink online banking facility and thereafter filed a claim for the refund of erroneously paid taxes.

The CTA granted the refund claim and held that counting two (2) years from October 17, 2017, petitioner had until October 17, 2019, within which to file both its administrative and judicial claims for refund. Considering that petitioner filed its letter-claim dated January 30, 2018 and Application for Tax Credits/Refunds (BIR Form No. 1914), for alleged erroneously paid taxes with the BIR on February 21, 2018, and that the instant Petition for Review was filed on October 14, 2019, it has jurisdiction to entertain the appeal. The refund is warranted since the erroneous payment has been proved, and the BIR failed to dispute the claim.

31. **Ernesto Tamparong, Jr. v. Commissioner of Internal Revenue, Venerando M. Homez, Revenue District Officer (OIC) and Atty. Glen A. Geraldino, Regional Director-BIR Revenue Region 16**
CTA Case No. 9520, June 8, 2021

Facts: In this case, petitioner filed a Petition for Review before the CTA seeking the annulment of the Notice of Auction Sale and estate tax assessment against the estate of Briccio Tamparong, Sr. It also seeks the exclusion of a property from the list of properties subject to the auction sale for the satisfaction of the estate tax liability of Briccio on the ground that such property belongs to the estate of petitioner's grandmother, Felisa, whose estate is being settled before the Regional Trial Court (RTC).

Held: The CTA's authority is confined to matters clearly falling within its limited jurisdiction. The main issue in the case at bar does not involve the interpretation and application of the National Internal Revenue Code of 1997, as amended ("NIRC"), and other related laws administered by the BIR. Tackling the merits of this case behooves upon the CTA to delve on the ownership of the subject property. Such power does not belong to the CTA, hence, it is bereft of any authority to grant relief to petitioner.

The assessment against Briccio's estate has not been disputed and has attained finality and even assuming that the estate tax assessment has not attained finality, petitioner cannot be considered a real party in interest to appeal a "disputed assessment" against Briccio's estate. In tax assessments, it is the taxpayer who disputes the same. Here, petitioner is neither the taxpayer nor acting for and in behalf of the estate of Briccio.

The crux of the controversy rests on the propriety of the inclusion of Felisa's property in Briccio's estate (which property is set to be sold for auction). To date, the probate of Felisa's will is still pending before the RTC. Ascertaining rights over the subject property and those entitled thereto is clearly outside the CTA's jurisdiction and to exercise the same will be impinging upon the authority of the probate court to do so. The settlement of estate of a deceased person lies with the latter court, to the exclusion of other courts. It is within the probate court's power to issue orders ancillary to the administration of the estate including the injunctive relief being sought.

32. **People of the Philippines v. Jose Delgado, Delbros, Inc.**
CTA EB Crim No. 077 (CTA Crim. Case No. O-660), June 9, 2021

The People seeks the review of the Assailed Decision and Resolution of the CTA Division insofar as it imposed no civil liabilities on the respondent who was acquitted from criminal liability.

Section 205 of the National Internal Revenue Code of 1997, as amended, mandates that before the civil liability for the payment of taxes may be included in the judgment, there must be a final determination of such liability by the CIR. This determination of civil liability for the payment of taxes by the CIR refers to a formal assessment. In this case, the CTA found that petitioner's evidence miserably failed to satisfactorily prove that respondent actually received the PAN, FLD and Assessment Notices. Hence, the failure of petitioner to prove actual receipt of the assessment notices by respondents leads to the conclusion that no assessment was validly issued.

33. **Commissioner of Internal Revenue v. Lanao Del Norte Electric Cooperative (LANECO)**
CTA EB No. 2236 (CTA Case No. 8769), June 9, 2021

A judgment that has become final and executory can no longer be modified in any respect.

In CTA EB No. 1452, the Court En Banc ruled that the Court in Division had jurisdiction over CTA Case No. 8769 under the term "other matters," pursuant to Section 7(a)(1) of R.A. No. 1125 and Section 3(a)(1), Rule 4 of the RRCTA. The case was then remanded to the Court in Division for determination of the merits of LANECO's appeal seeking the cancellation of the deficiency VAT assessment for taxable year 2008. In its appeal on the decision of the merits of the case, petitioner asserts that while the CTA En Banc has rendered a decision on the issue of jurisdiction, petitioner maintains that respondent's belated filing of administrative protest and petition for review made the subject assessment final, unappealable and demandable.

The CTA held that there being no motion for reconsideration or appeal interposed by the parties in CTA EB No. 1452, the decision dated April 5, 2017 became final and executory on May 19, 2017. Having attained finality, the subject judgment is binding upon the parties, and can no longer be modified or contested anew before this Court insofar as the jurisdictional issue is concerned.

34. **Commissioner of Internal Revenue v. Lanao Del Norte Electric Cooperative (LANECO)**
CTA EB No. 2236 (CTA Case No. 8769), June 9, 2021

The CIR or his duly authorized representative, is duty bound to wait for the expiration of the fifteen (15)-day period, reckoned from the date of receipt of the PAN, before he can issue the FLD and assessment notice.

Facts: The taxpayer received the PAN on February 20, 2012. Ideally, it had until March 6, 2012, within which to file its protest. On March 9, 2012, however, the taxpayer received the FLD dated February 29, 2012.

Held: It is clear that even prior to the lapse of the 15-day period for the taxpayer to file its protest as stated under Section 3.1.2 of RR No. 12-99, the CIR already issued the FLD on February 29, 2012. It must be noted that the date of receipt of the FLD on March 9, 2012 by respondent is not significant. Instead, it is the date when the FLD was issued that is of importance because it shows petitioner's non-observance of the 15-day period given to respondent to file a protest and be heard on its defenses, before the final assessment was issued against it. Thus, failure to observe the fifteen (15) day period to lapse before issuing the FLD is a clear violation of respondent's right to due process. Consequently, the subject FLD and assessment notice are void, and bears no valid fruit.

35. **Commissioner of Internal Revenue v. PAL, CTA EB No. 2256,**
CTA Case No. 8220, June 9, 2021

In the determination of whether imported fuel of Philippine Airlines were not locally available in reasonable quantity, the domestic petroleum products should exclude imported products following the Supreme Court's ruling in *Philippine Airlines, Inc. v. Commissioner of Internal Revenue, 700 SCRA 322 (2013)*. The term "purchase of domestic petroleum products for use in its domestic operations" as used in LOI 1483 could only refer to "goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition," and not to "things imported." If locally available Jet A-1 fuel includes both local production and imports, there will never be an instance when the fuel available is insufficient to meet the demands of the domestic market. Consumers of Jet A-1 fuel will always import the same to meet their needs if no other Jet A-1 fuel is locally available in reasonable quantity, quality, and price.

36. **Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corp.**
CTA EB No. 2182 (CTA Case No. 9127), June 10, 2021

In claims for refund of input taxes attributable to zero-rated sales, it is not required that there is direct attributability of the purchases or input VAT to the finished product whose sale is zero-rated.

37. **Rio Tuba Nickel Mining Corp. v. CIR**
CTA EB No. 2180 (CTA Case No. 9127), June 10, 2021

No output VAT should be passed on to BOI-registered entities. Should input taxes be passed on to them, the passed-on VAT should not be recognized as input taxes.

Revenue Memorandum Order (RMO) No. 9-00 is categorical in stating that all BOI-registered entities are entitled to zero-rated VAT on their purchases from local suppliers. Accordingly, no output VAT should have been shifted to or passed-on to said entities from its local suppliers. In the same vein, it is not correct for a BOI-registered entity to recognize said erroneously passed-on VAT as input taxes. While it is true that the BOI-registered entity should not have been liable for the VAT inadvertently passed on to it by its supplier since such is a zero-rated sale on the part of the supplier, there was erroneous payment of VAT. However, the BOI-registered entity is not the proper party to claim such VAT refund. Applying the Supreme Court cases of *Contex Corporation v. CIR and Coral Bay Nickel Corporation v. CIR*, the local suppliers are the proper parties to claim the tax credit and accordingly refund the BOI-registered entity of the VAT erroneously passed on to the latter.

38. **Makati City and Hon. Jesusa E. Cuneta, in her capacity as City Treasurer v. Metro Pacific Tollways Corporation**
CTA Case EB 2217, June 14, 2021

A local government unit may not impose local business taxes on the dividend income of a holding company (which is not a bank or other financial institutions), the same being in the nature of income tax.

39. **Makati City and Hon. Jesusa E. Cuneta, in her capacity as City Treasurer v. Metro Pacific Tollways Corporation**
CTA Case EB 2217, June 14, 2021

A taxpayer that was issued notices of assessment by the local treasurer should file a written protest with said local treasurer within sixty (60) days from the receipt thereof even if such taxpayer decides to pay the assessment and subsequently file a claim for refund.

Because the taxpayer failed to do so on the wrong premise that what applies to it is Section 196 of the Local Government Code ("LGC") of 1991, as amended, the assessment consequently became final and executory. It must be noted that the pertinent legal issue under consideration has already been laid to rest in *Cosmos* where the Supreme Court ruled that once an assessment is made or issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund at any time within the full period of two (2) years from the date of payment as Section 196 of LGC of 1991, as amended, may suggest. The reason being that the taxpayer must administratively question the validity or correctness of the assessment within sixty (60) days from receipt of the notice of assessment. In the same case, the Supreme Court lengthily discussed the correct procedure whenever a notice of assessment is issued to the taxpayer.

To stress, where an assessment is issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund at any time within the full period of two years from the date of payment as Section 196 may suggest. If refund is pursued, the taxpayer must administratively question the validity or correctness of the assessment in the letter-claim for refund within sixty (60) days from receipt of the notice of assessment, and thereafter bring suit in court within thirty (30) days from either decision or inaction by the local treasurer.

Section 195 of the LGC of 1991, as amended, requiring the filing of a protest would still apply even if the taxpayer opts to pay the amount assessed within the same period of sixty (60) days and subsequently claims for refund under Section 196 of the same law. Section 196 of the LGC of 1991, as amended, would apply, without requiring prior compliance with Section 195, if no notice of assessment was issued to the taxpayer. Based on the guidelines enunciated above, since the Billing Assessment Forms were issued to respondent and they qualify as the notices of assessment contemplated by law, it could not follow Section 196 of the LGC of 1991, as amended, without complying with the requirement of filing a protest under Section 195 of the same law.

40. **Commissioner of Internal Revenue v. Premiumleisure and Amusement, Inc. (PLAI)**
CTA EB No. 2226 (CTA Case No. 9572), June 14, 2021

Under PAGCOR's Charter, it is not only PAGCOR that is exempt from paying income taxes, whether local or national, but also PAGCOR's licensees and franchisees. In *Bloomberry Resorts and Hotels, Inc. vs. BIR* the Supreme Court held that since Bloomberry is a licensee of PAGCOR and has already paid 5% of its franchise tax on its gaming revenue, it is exempt from tax on its income generated from its gaming operations.

41. **Commissioner of Internal Revenue v. Lepanto Consolidated Mining Company**
CTA EB No. 2230 (CTA Case No. 9649), June 14, 2021

A taxpayer does not have to prove that the input taxes sought to be refunded are directly attributable to its zero-rated sales. Section 112 of the NIRC does not absolutely require that input taxes subject of a

refund/TCC claim be directly attributable to zero-rated sales. In fact, the said provision allows the allocation of input VAT that cannot be directly attributed to any of the taxpayer's sales (i.e., zero-rated sales, taxable sales or exempt sales).

42. **Dennis M. Yap v. Bureau of Internal Revenue**
CTA EB No. 2272 (CTA Case No. 10020), June 15, 2021

The receipt of Preliminary Collection Letter ("PCL"), and not the Warrant of Distraint and/or Levy ("WDL"), triggers the 30-day period for the taxpayer to elevate the matter on appeal to the CTA.

A careful scrutiny of the subject PCL led the CTA to conclude that the same is the final decision that could be the subject of an appeal. While the subject PCL does not contain the words "final decision", the tenor is unmistakably one that warned petitioner to settle or pay his tax liabilities; otherwise, respondent would proceed with his administrative summary remedies to ensure collection of the tax liabilities and protect the interest of the government. The "finality" of the latter's decision can also be inferred from the fact that petitioner was similarly warned that his failure to pay the same will result in the accumulation of interest and surcharges.

As also explained by the Supreme Court in *Commissioner of Internal Revenue v. Isabela Cultural Corporation*, a final demand letter from the BIR, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration. Such letter amounts to a Final Decision on Disputed Assessment ("FDDA") and is thus appealable to the Court in Division.

43. **Axelum Resources Corp. v. Commissioner of Internal Revenue**
CTA Case No. 9969, June 15, 2021

Any VAT-registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit:

a) the sales invoice as proof of sale of goods;
b) the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and
c) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

Only export sales supported by these documents qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC.

Securities and Exchange Commission ("SEC") Issuances

44. **SEC Notice posted on May 28, 2021**

Deadline to file mandatory declarations under Sections 6 and 7 of SEC Memorandum Circular No. 01, series of 2021, or "The Beneficial Ownership Transparency Guidelines", has been extended to July 31, 2021. Declarations under Section 6 and 7 pertain to disclosure of the person on whose behalf the corporation is registered and disclosure of nominator principal of shareholders, directors or trustees, respectively.

45. **SEC Notice posted on May 19, 2021**

Deadline for the submission of annual reports for the calendar year ended December 31, 2020 and quarterly reports as of March 31, 2021 extended from May 17, 2021 to June 1, 2021.

46. **SEC Notice posted on May 18, 2021**

Deadline for corporations, associations, partnerships, and Individuals under the jurisdiction and supervision of the SEC to comply with SEC Memorandum Circular No. 28, series of 2020 (i.e. creation/designation of e-mail account addresses and mobile numbers for transactions with SEC), has been extended, without penalty, until June 30, 2021. A penalty of P10,000.00 shall be imposed for non-compliance. Forms/notices may be filed online through the email platform MC28_S2020@sec.gov.ph.

47. **SEC Notice posted on May 25, 2021**

Deadline for publicly-listed companies to file Integrated Annual Corporate Governance Report (I-ACGR) extended from May 30 to June 30, 2021.

48. **SEC-OGC Opinion No. 21-08 dated May 17, 2021**

The nationality of directors elected to the Board of a corporation are limited by: (1) additional qualifications set for the in the corporation's By-Laws; and (2) requirements under the 1987 Constitution, special laws such as the Anti-Dummy Law, and/or special rules implemented by the regulatory authority of the industry. Foreigners can be elected as directors in proportion to their allowable participation or share in the capital of corporations engaged in activities reserved to Filipinos, but are prohibited from being elected as officers of the corporation, such as President, Treasurer and Secretary. In determining the representation of alien stockholders in the Board of Directors of corporations engaged in partially nationalized activities, the basis should be the actual share of the alien stockholder in the capital of the corporation which share, however, should not exceed the foreign equity ceiling prescribed by law for a particular corporation.