TMAP TAX UPDATES
(November 16, 2022 – December 15, 2022)

DECISION / ISSUANCE	DATE ISSUED	SUBJECT	PAGE NO.
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Maibarara Geothermal, Inc. v. Commissioner of Internal Revenue, G.R. No. 250479	July 18, 2022 [Date Uploaded: November 23, 2022]	The refund or tax credit of unutilized input value-added tax ("**VAT**") under Section 112(A) of the National Internal Revenue Code ("**NIRC**") is premised on the existence of zero-rated or effectively zero-rated sales. Thus, the phrase "when the relevant sales were made pertaining to the input VAT," as stated by the SC in the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*[1] ("***Mirant***"), simply means that the input VAT incurred must be regarded as being related to such "relevant sales," which should be zero-rated or effectively zero-rated. In other words, there must be a direct relation or attributability of the purchases that incurred input VAT to the "relevant sales" that were made.	**4**
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Commissioner of Internal Revenue v. Chevron Services Philippines, Inc., C.T.A. EB Case No. 2452 (C.T.A. Case No. 9571)	November 24, 2022	Compared to substituted service of official notices, service by registered mail is superior in terms of evidentiary value as it involves the use of the government's postal services.	**5**
Commissioner of Internal Revenue v. Chevron Services Philippines, Inc., C.T.A. EB Case No. 2452 (C.T.A. Case No. 9571)	November 24, 2022	Pursuant to SC Administrative Circular ("**AC**") Nos. 43-2020 and 43A-2020—which suspended the reglementary periods for the filing of petitions, appeals, complaints, motions, pleadings, and other court submissions before the courts from August 4, 2020 to August 18, 2020 (or for fifteen (15) days)—litigants having court submissions whose periods for filing include the period of suspension have an additional fifteen (15) days within which to file the same, corresponding to the number of days of the suspension.	**5-6**

[1] G.R. No. 172129, Sept. 12, 2008.

Casas+ Architects v. City of Makati, C.T.A. AC No. 259	November 24, 2022	In order for Section 195[2] of the Local Government Code ("**LGC**") to apply, (a) there must first be a Letter of Authority ("**LOA**") issued by the local treasurer authorizing the examination of the taxpayer's books, (b) the local treasurer or his duly authorized representatives must conduct an examination of the books of the taxpayer, (c) there must be a finding by the local treasurer or his duly authorized representatives that deficiency taxes are due, and (d) the local treasurer must thereafter issue a Notice of Assessment. Without any of these steps being undertaken by the LGU, the taxpayer's remedy for the refund of taxes it alleges it had erroneously paid, is strictly governed by Section 196[3] of the LGC.	**6**
Ecossential Foods Corp. v. Hon. Emmanuel F. Piñol, in his capacity as Secretary of the Department of Agriculture, et. al., C.T.A Case No. 9929	December 1, 2022	The issuance of Department Order ("**DO**") No. 06was not a quasi-judicial act or a result of the performance of a quasi-judicial power of the Department of Agriculture ("**DA**") or function that is within the exclusive appellate jurisdiction of the CTA.	**7**
Cagayan De Oro Doctors, Inc. (Madonna and Child Hospital) v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2234 (C.T.A. Case No. 9260) (Resolution)	December 6, 2022	There is a violation of non-forum shopping when the taxpayer applied for a tax amnesty with the BIR while a taxpayer's offer of compromise with the BIR is still pending before the National Evaluation Board ("**NEB**"), during the pendency of a Petition for Review for deficiency assessment against the taxpayer before the CTA.	**7-8**
Philippine Geothermal Production Company, Inc. v. Commissioner of Internal Revenue, C.T.A. EB No. 2478 (C.T.A. Case Nos. 9208 and 9274)	December 13, 2022	Certificate of Endorsement ("**COE**") by the Department of Energy ("**DOE**") is not a requirement to accord VAT zero-rating on a renewable energy ("**RE**") developer's sales of RE. It is only required for duty-free importation of RE machinery, equipment, materials, and parts thereof.	**8**
REVENUE REGULATIONS ("RRs")[4]			

[2] Section 195. *Protest of Assessment*. — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

[3] Section 196. *Claim for Refund of Tax Credit*. — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

[4] Digests reproduced from the BIR website

RR No. 15-2022	December 9, 2022	This RR further amends certain provisions of RR No. 2-98 as amended by RR No. 11-2018, which implemented the provisions of Republic Act ("**RA**") No. 10963 (Tax Reform for Acceleration and Inclusion ["**TRAIN"**] Law), relative to some changes in the rate of Creditable Withholding Tax under Section 57 of the NIRC which provided that "beginning January 1, 2019, the rate of Withholding shall not be less than one percent (1%) but not more than fifteen percent (15%) of the income payment".	**8-9**
REVENUE MEMORANDUM CIRCULARS ("RMCs")[5]			
RMC No. 148-2022	November 22, 2022	This Circular lifts the suspension on all field operations and other field operations of the BIR effective immediately. All field audit, field operations, or any form of business visitation in execution of LOA/Audit Notices or Mission Orders ("**MOs**") can be already conducted and new LOAs/MOs can be further issued.	**9**
RMC No. 152-2022	December 7, 2022	This Circular clarifies further the transitory provisions for the VAT Zero-Rate incentives under Sections 294(E) and 295(D), Title XIII of the NIRC, as amended, and as implemented by Section 5, Rule 2 and Section 5, Rule 18 of the Corporate Recovery and Tax Incentives for Enterprises Act ("**CREATE Act**") Implementing Rules and Regulations ("**IRR**").	**9-10**
RMC No. 153-2022	December 12, 2022	This Circular announces the availability of the BIR Online Registration and Update System ("**ORUS**") through the BIR website (www.bir.gov.ph) under the eServices icon or thru URL https://orus.bir.gov.ph. The ORUS is a web-based system that gives taxpayers a convenient and alternative facility for end-to-end processing of their registration with the BIR. Its features will be available to taxpayers of covered Revenue Regions or Revenue District Offices ("**RDOs**") from December 12, 2022 to January 16, 2023.	**10**

[5] Digests reproduced from the BIR website

DISCUSSION

A. SUPREME COURT DECISIONS

1. The refund or tax credit of unutilized input VAT under Section 112(A) of the NIRC is premised on the existence of zero-rated or effectively zero-rated sales. Thus, the phrase "when the relevant sales were made pertaining to the input VAT," as stated by the SC in the case of *Mirant*, simply means that the input VAT incurred must be regarded as being related to such "relevant sales," which should be zero-rated or effectively zero-rated. In other words, there must be a direct relation or attributability of the purchases that incurred input VAT to the "relevant sales" that were made.

Maibarara Geothermal, Inc. ("**MGI**") filed with the BIR its administrative claims for refund of its unutilized input VAT for the first, second, third, and fourth quarters of taxable year 2011. Due to the BIR's failure to act upon these administrative claims within the then-120-day period (now, 90-day period), MGI filed its Petitions for Review with the CTA. However, the CTA First Division and the CTA En Banc both denied MGI's claim for refund, on the ground that MGI had no zero-rated or effectively zero-rated sales throughout the entire taxable year 2011 to which its unutilized input VAT may be attributable.

In its appeal before the SC, MGI invoked the SC's ruling in the case of *Mirant*, which reads as follows:

> "The above proviso [pertaining to Section 112(A) of the NIRC] clearly provides in no uncertain terms that unutilized input VAT payments not otherwise used for any internal revenue tax due the taxpayer must be claimed within two years reckoned from the close of the taxable quarter **when the relevant sales were made pertaining to the input VAT** regardless of whether said tax was paid or not." *(Emphasis supplied.)*

Citing *Mirant*, MGI argued that the phrase "relevant sales" pertains to the sales made by a supplier to the taxpayer—which, corollarily, is the taxpayer's purchase of goods and services from which input VAT is incurred—and not from the time that zero-rated or effectively zero-rated sales were generated. Specifically, MGI claimed that it had "relevant sales" in taxable year 2011—that is, it indeed had purchases in 2011 from which it incurred input VAT—and was therefore entitled to a refund of its unutilized input VAT notwithstanding its lack of zero-rated or effectively zero-rated sales throughout the same year.

From the outset, the SC reiterated that the refund or tax credit of unutilized input VAT under Section 112(A) of the NIRC is premised on the existence of zero-rated or effectively zero-rated sales. Thus, in rejecting MGI's contention, the SC held that the phrase "when the relevant sales were made pertaining to the input VAT," as stated in its ruling in *Mirant*, simply means that the input VAT incurred must be regarded as being related to such "relevant sales," which should be zero-rated or effectively zero-rated. In other words, there must be a direct relation or attributability of the purchases that incurred input VAT to the "relevant sales" that were made. *(Maibarara Geothermal, Inc. v. Commissioner of Internal Revenue, G.R. No. 250479, July 18, 2022 [Date Uploaded: November 23, 2022])*

B. COURT OF TAX APPEALS DECISIONS

1. The authority of LGUs to impose LBT is not dependent on the procedural requirement of filing an *Application for Retirement of Business* but is conditioned on the business transactions conducted within their territorial jurisdiction.

Sometime in the third quarter of 2015, Lazada E-Services Philippines, Inc. ("**Lazada**") decided to transfer its principal office from Makati City to Taguig City. Despite this transfer, Lazada still paid LBT to Makati City for the taxable years 2016 and 2017.

On August 31, 2017, Lazada's lease contract over its office in Makati City was terminated. Thereafter, Lazada filed on February 12, 2018 an *Application for Retirement of Business* before the Business Tax Division of Makati City. Subsequently, the City Treasurer of Makati City assessed Lazada for deficiency LBT for taxable years 2015, 2016, and 2017. The City Treasurer's theory was that Lazada continued to be liable to Makati City for LBT, even after Lazada had transferred its principal office to Taguig City, until Lazada filed its *Application for Retirement of Business*.

Lazada filed before the City Treasurer of Makati City (1) its letter-protest contesting the assessment for taxable years 2016 and 2017 only, and (2) its claim for refund of the LBT it paid in 2017, which were both denied by the City Treasurer.

Lazada thereafter filed its (1) *Petition for Cancellation of Tax Assessment*, and (2) *Complaint for Recovery of Tax Erroneously Collected* with the Regional Trial Court ("**RTC**") of Makati City. The RTC dismissed the two cases and denied Lazada's Motion for Reconsideration ("**MR**"). The RTC held that Lazada ceased to be liable to pay LBT to Makati City only upon the filing of its *Application for Retirement of Business*. Thus, because Lazada filed its *Application for Retirement of Business* only on February 12, 2018, the RTC ruled that Lazada continued to be liable to pay LBT to Makati City for the taxable years 2016 and 2017. This prompted Lazada to file a Petition for Review with the CTA.

The CTA Special Third Division held that business taxes are due in the city where the trade or commercial activity is conducted, pursuant to Section 150(a)[6] of the LGC. In other words, in order for a city to validly impose LBT, the situs of the trade or commercial activity—which may either be the principal place of business or the branch/sales office—must be in that city.

Thus, contrary to the ruling of the RTC, the authority of LGUs to impose LBT is not dependent on the procedural requirement of filing an *Application for Retirement of Business* but is conditioned on the business transactions conducted within their territorial jurisdiction.

The CTA Special Third Division found that Lazada continued to conduct business and generate revenues in Makati City during the taxable years 2016 and 2017 despite the transfer of its office to Taguig City. Moreover, Lazada religiously declared gross sales/receipts relating to its Makati City office as shown in the payments of LBT to Makati City for the taxable years 2016 and 2017. Consequently, the CTA Special Third Division held that the City Treasurer of Makati City was justified in imposing LBT against Lazada for taxable years 2016 and 2017. Ultimately, the CTA Special Third Division upheld the assessment against Lazada for LBT issued by the City Treasurer of Makati City for the taxable year 2017, but cancelled the one for taxable year 2016 for lack of sufficient factual basis. *(Lazada E-Services Philippines, Inc. v. City of Makati, C.T.A. AC No. 261, November 23, 2022)*

2. Compared to substituted service of official notices, service by registered mail is superior in terms of evidentiary value as it involves the use of the government's postal services.

On January 31, 2013, Chevron Services Philippines, Inc. ("**CSPI**") received a Letter Notice ("**LN**") from the BIR stating that, based on a computerized matching of information/data provided by third party sources, CSPI had undeclared sales and purchases in the amounts of PhP50,565,677.81 and PhP3,633,350.12, respectively, for taxable year 2011.

Thereafter, CSPI received a Preliminary Assessment Notice ("**PAN**") from the BIR on November 24, 2016 assessing CSPI for deficiency income tax and VAT for taxable year 2011. CSPI then filed its Reply to the PAN on December 9, 2016, while the BIR issued a Final Assessment Notice/Formal Letter of Demand ("**FAN/FLD**") on December 20, 2016. The BIR served on CSPI the FAN/FLD via two modes of service: (a) by substituted service effected on December 22, 2016; and (b) by registered mail, which was received by CSPI on January 3, 2017.

Subsequently, CSPI filed its Protest to the FAN on February 2, 2017, reckoning the 30-day period to file the same from its receipt of the FAN/FLD via registered mail (i.e., January 3, 2017) and not from the date of substituted service through Mr. Richard Intalan at CSPI's registered business address (i.e., December 22, 2016). On March 10, 2017, CSPI received the denial of its Protest to the FAN, in which the BIR ruled that CSPI had filed its protest beyond 30 days from its receipt of the FAN/FLD. Thereafter, CSPI timely filed its Petition for Review before the CTA.

The CTA Third Division held, and the CTA En Banc affirmed, that, between the two modes of service of the FAN/FLD, it is the one via registered mail which is more reliable. The CTA En Banc also held that the fact that the BIR had to resort to service via registered mail of the FAN/FLD to CSPI after having served the same by substituted service raised doubts as to the latter's validity. Further, the CTA En Banc ruled that, compared to substituted service of official notices, service by registered mail is superior in terms of evidentiary value as it involves the use of the government's postal services. Hence, the Court leaned on the more reliable mode of service by registered mail; consequently, the CTA En Banc ruled that CSPI timely filed its Protest to the FAN. *(Commissioner of Internal Revenue v. Chevron Services Philippines, Inc., C.T.A. EB Case No. 2452 (C.T.A. Case No. 9571), November 24, 2022)*

3. Pursuant to SC AC Nos. 43-2020 and 43A-2020—which suspended the reglementary periods for the filing of petitions, appeals, complaints, motions, pleadings, and other court submissions before the courts from

[6] Section 150. *Situs of the Tax*. — (a) For purposes of collection of the taxes under Section 143 of this Code, manufacturers, assemblers, repackers, brewers, distillers, rectifiers and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers, contractors, banks and other financial institutions, and other businesses, maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality.

August 4, 2020 to August 18, 2020 (or for 15 days)—litigants having court submissions whose periods for filing include the period of suspension have an additional 15 days within which to file the same, corresponding to the number of days of the suspension.

In the same case of *Commissioner of Internal Revenue v. Chevron Services Philippines, Inc.*,[7] the BIR received on July 29, 2020 the decision rendered by the CTA Third Division granting CSPI's Petition for Review and cancelling the FAN/FLD issued against CSPI by the BIR. The BIR then filed its MR with the CTA Third Division on August 28, 2020, which was denied by the CTA Third Division primarily on the ground that the said motion was filed out of time.

In its Petition for Review before the CTA En Banc, the BIR argued that it had timely filed its MR, invoking the suspension of the reglementary periods for the filing of motions from August 4, 2020 to August 18, 2020—or for 15 days—pursuant to SC AC Nos. 43-2020 and 43A-2020. The BIR averred that its 15-day period to file its MR, as prescribed under the Revised Rules of the Court of Tax Appeals ("**RRCTA**"), was well within the abovementioned period of suspension. Thus, according to the BIR, it had an additional 15-day period within which to file its MR—corresponding to the number of days of suspension under the ACs—reckoned from the original deadline of August 13, 2020, or until August 28, 2020. Because it filed its MR on August 28, 2020, the BIR claimed that it had timely filed the same.

Contrary to the BIR's position, the CTA Third Division, in denying the BIR's MR, held that it filed its motion out of time because it should have filed the same on the date the CTA resumed its operations on August 19, 2020.

Reversing the CTA Third Division, the CTA En Banc held that the BIR timely filed its MR, and upheld the BIR's interpretation of the ACs and its calculation of the reglementary periods. *(Commissioner of Internal Revenue v. Chevron Services Philippines, Inc., C.T.A. EB Case No. 2452 (C.T.A. Case No. 9571), November 24, 2022)*

4. In order for Section 195 of the LGC to apply, (a) there must first be a LOA issued by the local treasurer authorizing the examination of the taxpayer's books, (b) the local treasurer or his duly authorized representatives must conduct an examination of the books of the taxpayer, (c) there must be a finding by the local treasurer or his duly authorized representatives that deficiency taxes are due, and (d) the local treasurer must thereafter issue a Notice of Assessment. Without any of these steps being undertaken by the LGU, the taxpayer's remedy for the refund of taxes it alleges it had erroneously paid, is strictly governed by Section 196 of the LGC.

Makati City sent billing statements for LBT to Casas+ Architects ("**Casas**") for the second quarter of 2014 to the fourth quarter of 2015, which were issued in relation to Casas's application for renewal of its business permits. Casas paid the LBT indicated in the billing statements in order for its business permits to be issued by Makati City.

On March 15, 2016, or within two (2) years from the payment by Casas of the LBT for the second quarter of 2014 to the fourth quarter of 2015, Casas filed its administrative claim for refund with the City Treasurer of Makati City. However, the City Treasurer of Makati City denied the administrative claim on May 29, 2017, prompting Casas to file its judicial claim with the RTC of Makati City on July 18, 2017.

Initially, the RTC ruled in favor of Casas and ordered a partial refund of the LBT, but subsequently reversed itself after Makati City filed its MR. The RTC held that what the City Treasurer of Makati City issued were assessments. The RTC thus applied Section 195 of the LGC and ruled that Casas failed to file its letter-protest within sixty (60) days from the assessment and to bring the action in court within thirty (30) days from the local treasurer's denial of the claim. Casas thereafter filed its Petition for Review before the CTA Special Second Division.

Ruling in favor of Casas, the CTA Special Second Division held that the billing statements issued by Makati City were not the "notice of assessments" contemplated under Section 195[8] of the LGC and which would trigger the applicability of the said provision. The court found that (a) there was no LOA authorizing the examination of Casas's books before the billing statements were issued; and (b) there was no prior investigation or examination of Casas's books of accounts

[7] C.T.A. EB Case No. 2452 (C.T.A. Case No. 9571), Nov. 24, 2022.

[8] Section 195. *Protest of Assessment*. — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

that resulted in a "finding" of deficiency taxes. In sum, the issuance of the billing statements was not preceded by a "finding" of deficiency or incorrect tax payments by the local treasurer after an examination of Casas's books was conducted. Thus, the CTA Special Second Division ruled that the remedy of Casas was entirely governed by Section 196[9] of the LGC.

Pursuant to Section 196 of the LGC, the CTA Special Second Division found that Casas had timely filed its judicial claim with the RTC on July 18, 2017, but only for the LBT that it paid for the third and fourth quarters of 2015 on May 25, 2015 and July 20, 2015, respectively. Consequently, the court ordered the refund of the LBT that Casas paid for these two (2) quarters. On the more substantive ground, the court ordered the refund of the LBT that Casas paid because Casas cannot be subject to LBT as it was purely engaged in the practice of its profession. *(Casas+ Architects v. City of Makati, C.T.A. AC No. 259, November 24, 2022)*

5. The DA's issuance of DO No. 06was not a quasi-judicial act or a result of the performance of a quasi-judicial power or function of the DA that is within the exclusive appellate jurisdiction of the CTA.

On March 16, 2018, the DA issued DO No. 06 which imposed special safeguard ("**SSG**") duties on certain imported commodities (coffee products, among them) pursuant to the provisions of Republic Act No. 8800 ("**RA No. 8800**"). Pursuant thereto, the Commissioner of Customs issued Customs Memorandum Circular ("**CMC**") No. 76-2018, reiterating the contents of DO No. 06, and CMC No. 156-2018, specifying SSG-eligible products and their trigger prices.

Ecossential Foods Corp. ("**EFC**") received an Assessment Notice for the payment of SSG on their Kopiko 3-in-1 products. As such, EFC filed a Petition for Review before the CTA against the DA Secretary. In the Answer of the DA Secretary, he raised that, among others, the CTA has no jurisdiction over the case. EFC argued that the CTA has jurisdiction based on Section 29 of RA No. 8800.

In a Resolution dated October 28, 2020, the CTA made a preliminary finding of its jurisdiction over the controversy. However, the CTA abandoned its previous finding and ruled that the CTA has no jurisdiction over the Petition for Review filed by EFC.

The CTA ruled that in filing an appeal before the CTA, it is essential that the appealed action has been done in the exercise of judicial or quasi-judicial powers, and not in the exercise of legislative or quasi-legislative functions of an administrative agency. In determining whether the act of an administrative agency refers to its quasi-judicial or quasi-legislative function, the CTA relied on the SC's ruling in *Chairman, Palawan Council for Sustainable Development v. Lim*,[10] where the SC ruled that the quasi-legislative or the rule-making power is the power to make rules and regulations that results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers while the quasi-judicial or the administrative adjudicatory power is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law.

The CTA noted that EFC based its Petition for Review on Section 3(a)(6), Rule 4 of the RRCTA in assailing the validity of DO No. 06 issued pursuant to RA No. 8800. DO No. 06 was issued pursuant to Section 21 of RA No. 8800 and it empowered the DA Secretary to impose SSG duties if the actual cost, insurance, and freight import price is less than its trigger price subject to the conditions stated under Section 24 of RA No. 8800. Section 21 of RA No. 8800 used the word "shall" in directing the DA Secretary to impose SSG measures when the conditions set forth in Section 24 are availing. The CTA ruled that the term "shall" is a word of command and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory. Considering that a quasi-judicial act requires the use of the administrative body's exercise of discretion, it can be said that in issuing DO No. 06, the DA Secretary did not exercise a quasi-judicial function.

The CTA further stated that a cursory reading of the provisions of RA No. 8800 would show that the imposition of general safeguard measures requires the DA Secretary to first hear and determine the factual basis (*i.e.*, the existence of serious injury or threat to the local industry) for the imposition of said measures, while in imposing SSG measures, the mere existence of the conditions for its imposition triggers the duty of the DA Secretary to impose the same. Considering the foregoing, DO No. 06's issuance was not a quasi-judicial act or a result of the performance of a quasi-judicial power or function. Thus, the CTA ruled that it has no jurisdiction over the Petition for Review filed by EFC.

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[9] Section 196. *Claim for Refund of Tax Credit*. — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

[10] G.R. No. 183173, August 24, 2016.

(*Ecossential Foods Corp. v. Hon. Emmanuel F. Piñol, in his capacity as Secretary of the Department of Agriculture, et. al., C.T.A Case No. 9929, December 1, 2022)*

6. There is a violation of non-forum shopping when a taxpayer's offer of compromise with the BIR is still pending before the NEB while the taxpayer also prayed for the BIR to act favorably on its availments of tax amnesty, during the pendency of a Petition for Review for deficiency assessment against the taxpayer before the CTA.

Cagayan De Oro Doctors, Inc. ("**CDI**") filed a petition for review before the CTA Third Division, assailing the BIR's assessment for taxable year 2010 covering deficiency VAT and expanded withholding tax ("**EWT**"). The CTA Third Division found CDI's assessment to be valid and held it liable for VAT and EWT deficiencies and interest. CDI filed a petition for review to the CTA En Banc. However, the CTA En Banc denied CDI's petition for violation of the rules on forum-shopping.

While the proceedings before the CTA Third Division is pending, CDI sent an Offer of Compromise Agreement to the BIR, which offer was forwarded to the NEB for approval. CDI also applied for tax amnesty under Republic Act No. 11213. CDI never disclosed the pending Offer of Compromise Agreement and Tax Amnesty application in its Certification against Forum Shopping before the CTA Third Division and the CTA En Banc. The CTA En Banc found that the taxes over which CDI made its offer of compromise and availments of tax amnesty are the ones being disputed before it.

The CTA En Banc, in its Resolution, found that CDI clearly violated the rules on forum shopping. In ruling against CDI, the CTA En Banc relied on the SC's pronouncements in *Heirs of Marcelo Sotto, et al. v. Matilde S. Palicte*[11] where the SC ruled that forum shopping is committed when one files multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*). In this case, CDI's offer of compromise filed with the BIR is still pending before the NEB while CDI prayed for the BIR to act favorably on its availments of tax amnesty. CDI resorted to three (3) separate remedies in the hopes of getting a favorable outcome or at the very least a mitigation of its tax liability. Thus, the CTA Third Division's ruling, if the same would have attained finality, would have constituted on res judicata on the actions of the NEB and the BIR. (*Cagayan De Oro Doctors, Inc. (Madonna and Child Hospital) v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2234 (C.T.A. Case No. 9260) (Resolution), December 6, 2022)*

7. COE by the DOE is not a requirement to accord VAT zero-rating on RE developer's sales of RE. It is only required for duty-free importation of RE machinery, equipment, materials, and parts thereof.

Philippine Geothermal Production Company, Inc. ("**PGPCI**") filed with the BIR an application for refund of excess and unutilized input VAT attributable to zero-rated sales for the second and third quarters of taxable year 2013 based on Section 108(B)(7) of the NIRC, in relation to Section 15 of Republic Act No. 9513 ("**RA No. 9513**") or the "Renewable Energy Act". The BIR denied PGPCI's refund application. This denial was affirmed by the CTA Third Division and the CTA En Banc. The CTA En Banc denied PGPCI's refund application because PGPCI failed to present the DOE Certificate of Endorsement, pursuant to Section 18(C), Rule 5, Part III of the IRR of RA No. 9513.

PGPCI filed an MR with the CTA En Banc, claiming that the COE by the DOE is not required by RA No. 9513, to claim VAT zero-rating on its sales of RE. PGPCI countered that its DOE Certificates of Registration ("**COR**") from the DOE are sufficient to accord VAT zero-rating on its sales of RE. As such, by mandating the COE as a precondition for conferment of VAT zero-rating on its sales of RE, the DOE added a requirement not found in RA No. 9513, which should not be countenanced. Since PGPCI presented its COR, it satisfactorily demonstrated that its sales of RE were subject to VAT at zero rate. Thus, PGPCI argued that it is entitled to refund its excess and unutilized input VAT.

The CTA En Banc reconsidered stating that reading Section 18(C), Rule 5, Part III of the IRR, with Section 15(b) of RA No. 9513, it is clear that the COE by the DOE is indispensable only when the incentive sought to be claimed is the duty-free importation of RE machinery, equipment, materials, and parts thereof, as well as the tax and duty-free exemption in the event the same was subsequently sold, transferred, or disposed. The DOE went past the metes and bounds of Section 15(g) of RA No. 9513 by inserting the COE as a requirement to claim the incentive of VAT zero-rating. An administrative agency issuing regulations may not enlarge, alter, or restrict the provisions of the law it administers, and it cannot engraft additional requirements not contemplated by the legislature.

While the CTA En Banc affirmed PGPCI's view on the COE requirement, the CTA En Banc still denied PGPCI's refund application for the latter's failure to submit its COR from the Board of Investments, which is also required under the IRR

[11] G.R. No. 159691, February 17, 2014.

of RA No. 9513. (*Philippine Geothermal Production Company, Inc. v. Commissioner of Internal Revenue, C.T.A. EB No. 2478 (C.T.A. Case Nos. 9208 and 9274), December 13, 2022*)

C. REVENUE REGULATIONS

1. REVENUE REGULATIONS NO. 15-2022 [December 9, 2022] – Further Amending Certain Provisions of RR No. 11-2018, Which Implemented the Provisions of RA No. 10963, Otherwise Known as TRAIN Law, Relative to Some Changes in the Rate of Creditable Withholding Tax on Certain Income Payments.

This RR further amends Section 2 of RR 11-2018 which amended Section 2.57.2 of RR 2-98, specifically:

(1) A fifteen percent (15%) creditable withholding tax is imposed on the gross amount of refund given by MERALCO arising from the Energy Regulatory Commission ("**ERC**") Case No. 2020-043 RC Order promulgated on February 19, 2021 and ERC Case Nos. 2010-069 RC, 2011-088 RC, 2012-054 RC, 2013-056 RC, and 2014-029 RC Orders promulgated on April 29, 2022.

(2) The gross amount of interest paid directly to the customers or applied against the customer's billings representing interest income on the refund of meter deposits determined, computed and paid in accordance with the "Rules to Govern Refund of Meter Deposits to Residential and Non-Residential Customers," as approved by the ERC under Resolution No. 12, Series of 2016, dated April 5, 2016 implementing Article 8 of the Magna Carta for Residential Electricity Customers and ERC Resolution No. 2005-10 RM dated January 18, 2006, otherwise known as the Distribution Services and Open Access Rules ("**DSOAR**"), exempting all electricity consumers from the payment of meter deposit is subject to the following creditable withholding taxes:

   a. Ten percent (10%) for Residential and General Service customers whose monthly electricity exceeds two hundred (200) kwh as classified by MERALCO; and
   b. Fifteen percent (15%) for Non-Residential Customers.

(3) The gross amount of interest paid directly to the customers or applied against the customer's billings representing interest income on the refund paid through direct payment or application against customer's billings by other electric Distribution Utilities ("**DUs**") in accordance with the rules embodied in ERC Resolution No. 12, Series of 2016, dated April 5, 2016, governing the refund of meter deposits which was approved and adopted by ERC in compliance with the mandate of Article 8 of the Magna Carta for Residential Electricity Customers and Article 3.4.2 of DSOAR, exempting all electricity consumers, whether residential or non-residential, from the payment of meter deposit is subject to the following creditable withholding taxes:

   a. Ten percent (10%) for Residential and General Service customers whose monthly electricity consumption exceeds 200 kwh as classified by the concerned DU; and
   b. Fifteen percent (15%) for Non-Residential Customers.

D. REVENUE MEMORANDUM CIRCULARS

1. REVENUE MEMORANDUM CIRCULAR NO. 148-2022 [November 21, 2022] – Lifting the Suspension on All Field Operations and Other Field Operations of the BIR.

On May 30, 2022, RMC No. 77-2022 was issued ordering the suspension of all field operations and other field operations of the BIR.

This Circular orders the immediate lifting of the suspension. Thus, all field audits, field operations, or any form of business visitation in execution of LOAs or MOs can be already conducted, and new LOAs/MOs can be further issued.

2. REVENUE MEMORANDUM CIRCULAR NO. 152-2022 [December 7, 2022] – Clarifies Further the Transitory Provisions for the VAT Zero-Rate Incentives under Sections 294 (E) and 295 (D), Title XIII of the NIRC, as Amended, and as Implemented by Section 5, Rule 2 and Section 5, Rule 18 of the CREATE IRR.

This Circular is issued to provide further clarification and guidelines to several issues raised in the implementation of the transitory provisions of RR No. 21-2021 and as explained in RMC Nos. 24-2022 and 49-2022, specifically:

(1) Considering that RMC No. 24-2022 was issued only on March 9, 2022, confirming that the local purchases of Registered Export Enterprises ("**REEs**") whose incentives period have already expired are already subject to twelve percent (12%) VAT:

a. The local purchases of the said REEs which were made from the effectivity of RR No. 21-2021 on December 10, 2021 up to the day before the effectivity of RMC No. 24-2022 on March 8, 2022, shall remain as VAT zero-rated.

b. In case the purchaser is qualified for VAT zero-rate, but was imposed 12% VAT by the seller for the said transitory period, the buyer and the seller may pursue any of the following:

i. Retain the transaction as subject to twelve percent (12%) VAT. The seller shall still declare the sales as subject to twelve percent (12%) VAT. Consequently, the purchaser, if VAT-registered, can utilize the passed-on VAT as input tax and shall be deducted from output tax, if any. Should the purchaser be engaged in zero-rated activities, the same can be recovered through VAT refund pursuant to Section 112(A) of the NIRC, as amended. If the purchaser is not a VAT-registered taxpayer, the VAT paid shall be claimed as part of the cost of sales or expenses.

ii. Revert the transaction from VAT at 12 twelve percent (12%) to VAT zero-rated. Where the transactions have already been declared in the VAT return/s, the seller may amend the same after reimbursing/returning the VAT paid by the buyer that is an REE. The adjustment to sales shall only be to the extent of the reimbursed VAT to the REE. The resulting overpayment due to unutilized input tax credits, if any, may be recovered through VAT refund pursuant to Section 112(A) of the NIRC, as amended, since the corresponding sale is reverted to VAT zero-rated. On the part of the VAT-registered REE purchaser, the VAT return/s filed shall likewise be amended to reflect the reduced input VAT it previously declared in the VAT return/s. In this regard, the seller shall retrieve the VAT Sales Invoice/Official Receipt ("**SI/OR**") originally issued to the REE buyer for cancellation and replacement with a zero-rated SI/OR. The seller shall prepare a list of VAT SI/OR cancelled, together with the corresponding zero-rated SI/OR replacement subject to validation of the BIR.

(2) RMC No. 24-2022, as amended by RMC No. 49-2022, requires REEs who have completed their Income Tax Holiday ("**ITH**") and now under the five percent (5%) gross income tax ("**GIT**")/Special Corporate Income Tax ("**SCIT**") regime or those already enjoying the five percent (5%) GIT/SCIT upon the effectivity of CREATE Act but remained VAT-registered to change their registration to non-VAT within two (2) months from the expiration of the ITH incentive or effectivity of RMC No. 49-2022, whichever is applicable. This Circular further clarifies that:

a. REEs that changed their status from "VAT" to "non-VAT" are not necessarily subject to Percentage Tax ("**PT**"). "PT" tax type should not be registered since these REEs are only subject to GIT/SCIT in lieu of all other internal revenue taxes. These taxpayers are only required to file and pay the corresponding tax due in their respective Annual or Quarterly Income Tax Returns (BIR Form No. 1702/1702Q), subject to regular validation by the RDO or Large Taxpayer Audit Division where the REE is registered in order to verify whether no project or activity other than those that are registered under the five percent (5%) GIT/SCIT is being carried out by the REE. If found to be in violation, a corresponding assessment and penalties shall be imposed accordingly.

b. Since these REEs are required to register as non-VAT taxpayer, these REEs can enjoy their VAT zero-rate incentive on their local purchases until the end of their incentive period. However, as clarified under Q & A No. 26 of RMC No. 24-2022, REEs whose incentive periods have already expired will be subject to twelve percent (12%) VAT on the local purchases.

3. REVENUE MEMORANDUM CIRCULAR NO. 153-2022 [December 7, 2022] – Availability of the BIR ORUS.

This Circular informs the taxpaying public that the BIR ORUS will be available for use of taxpayers by accessing it through the BIR website (www.bir.gov.ph) under the eServices icon or thru URL https://orus.bir.gov.ph.

The ORUS is a web-based system that gives taxpayers a convenient and alternative facility for end-to-end process of their registration with the BIR. Its features will be available to taxpayers of covered Revenue Regions or RDOs from December 12, 2022 to January 16, 2023.

Taxpayers of covered RDOs who will use the said online registration facility of the BIR are required to enroll or create an account in ORUS. To successfully enroll or create an account, taxpayer should provide a valid permanent official

email address, which is required to be updated in the BIR's registration record following the guidelines prescribed under RMC No. 122-2022.