TMAP TAX UPDATES

(February 16, 2022 - March 15, 2022)

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DISCUSSION

A. COURT OF TAX APPEALS DECISIONS

1. The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund.

The BIR issued Revenue Memorandum Circular (RMC) No. 90-2012, which provides for the revised tax rates of alcohol and tobacco products, the BIR allegedly required to pay excise taxes at the tax rate of P20.57 when it should have only paid P20.00 and P15.00 per liter, respectively, under the express provisions of the second and third paragraphs of Section 143 of NIRC of 1997, as amended.

San Miguel Brewery, Inc. (SMBI) filed with the BIR a Claim for Refund representing its erroneously and excessively paid excise taxes. Alleging inaction on its administrative claim for refund/tax credit, SMBI filed a Petition for Review in which the jurisdiction of the Court was assailed by CIR saying that SMBI primarily seeks to nullify a provision of RMC No. 90-2012 and the alleged action for refund of erroneously collected excise taxes is merely consequential thereto. Absent the nullification of RMC No. 90-2012, petitioner's cause of action has no leg to stand on. However, the authority to declare void an administrative issuance rest upon courts of general jurisdiction and not on courts of special jurisdiction such as the Court of Tax Appeals (CTA). Further, collateral attack on presumably valid administrative issuance is not allowed. In conclusion, CIR states that claims for refund are construed strictly against the taxpayer and in favor of the government.

The Court ruled that the Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. *(San Miguel Brewery, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case Nos. 2320 & 2327 (C.T.A. Case No. 9223), [February 21, 2022])*

2. Once receipt is denied, the CIR must prove through a preponderance of evidence that the assessment notices were indeed received by the taxpayer.

Jopauen Realty Corp (JPC) received Letter of Authority (LOA) dated December 29, 2009, together with the First Request for Presentation of Records. Allegedly, CIR issued and sent a Preliminary Assessment Notice (PAN) to JPC via registered mail. Subsequently, as there was no reply to the PAN, CIR issued a Formal Letter of Demand (FLD) dated January 12, 2012, demanding payment of alleged deficiency taxes for the taxable year 2008. Respondent alleges that the Final Assessment Notices were attached to the FLD. JPC filed a protest on February 28, 2012. JPC received an Amended Preliminary Assessment Notice (the Amended PAN), demanding payment for alleged deficiency taxes for the taxable year 2008. Petitioner claims that the Amended PAN was received on February 10, 2014.

Petitioner then received on November 5, 2015, the Final Decision on Disputed Assessment (FDDA) dated September 25, 2014, holding the Petitioner liable for alleged deficiency tax assessments representing alleged deficiency Income Tax, Value-Added Tax (VAT), Expanded Withholding Tax (EWT), and compromise penalties. On 4 December 2014, JPC filed a Petition for Review before the Court in Division to question the validity of the deficiency tax assessments. On 13 September 2019, the Court in Division GRANTED the Petition for Review and ordered CANCELLED and SET ASIDE the assessment notices issued by CIR for the taxable year 2008, particularly, the Preliminary Assessment Notice dated December 22, 2011, Formal Letter of Demand dated January 12, 2012, Amended Preliminary Assessment Notice received by petitioner on February 10, 2014 and Final Decision on Disputed Assessment dated September 25, 2014.

CIR argues that the Court in Division erred in ruling that CIR failed to prove that respondent indeed received the subject assessment notices; and that it erred when it ruled the present assessment void for lack of a valid Letter of Authority ("LOA").

The Court ruled that service of the PAN or the FAN to the taxpayer may be made by registered mail. Under *Section 3(v), Rule 131 of the Rules of Court*, there is a disputable presumption that 'a letter duly directed and mailed was received in the regular course of the mail.' However***, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee***.

In view of JPC's categorical denial of due receipt of the PAN and the FAN, the burden was shifted to the CIR to prove that the mailed assessment notices were indeed received by respondent or by its authorized representative. In the present case, JPC has unequivocally denied receipt of the PAN. Accordingly, the burden to prove that the PAN was received by JPC is shifted to CIR. As examined by the Court in Division and as verified by the Court En Banc, CIR failed to provide convincing proof that the PAN was received by the respondent. The receiving signature of the registry return receipt card for the PAN is blank. Consequently, there is no evidence that the PAN was actually received by respondent or its authorized representative.

Failure to prove that the PAN was indeed received by the JPC renders the instant assessment null and void. Without proof of receipt, the PAN is deemed not received by JPC. Hence, JPC's right to be informed of the assessments issued against it has been violated. *(Commissioner of Internal Revenue v. Jopauen Realty Corp., C.T.A. EB Case No. 2206 (C.T.A. Case No. 8943), [February 21, 2022]).*

3. The CTA Division has jurisdiction to review CIR's Notice of Denial of application for compromise.

Commissioner of Internal Revenue prays that the Decision rendered by the CTA Division be set aside which cancelled and set aside the assessments issued against Tridharma Marketing Corp. (Tridharma) for deficiency income tax, value-added tax (VAT) and compromise penalty for taxable year 2009. The CIR contends that the Court in Division does not have jurisdiction over Tridharma's Petition for Review. Allegedly, the jurisdiction of this court on "other matters" under Section 7 (a) (1) of R.A. No. 1125 should be understood as matters of the same kind as disputed assessment and claim for refund pertained to in the same provision.

The Court ruled that jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy. It is conferred by law and not by the parties' action or conduct. Specifically, this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.

R.A. No. 1125 as amended states the CTA shall exercise *Exclusive appellate jurisdiction to review by appeal,* Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or ***other matters arising under the National Internal Revenue Code*** or other laws administered by the Bureau of Internal Revenue." *(Emphasis supplied.)*

A plain reading of the provision reveal that the appellate jurisdiction of the Court of Tax Appeals is not limited to cases that involve the decisions of the petitioner on matters relating to assessments or refunds. Rather, the second part of the provision specifically covers other cases that arise out of the NIRC or other related laws administered by the BIR. The wording of the provision is clear and simple.

In other words, aside from the decisions of the CIR pertaining to assessments or refunds, decisions of the CIR relating to "***other matters***" may be taken cognizance of by the CTA, if such "**other matters**" arose from the NIRC or other laws administered by the BIR.

In this case, the *Notice of Denial* of respondent's application for compromise settlement is a matter which arose from the provisions of the NIRC of 1997, as amended. To be specific, the power of the CIR to enter into a compromise is granted under Section 204 (A) of the NIRC of 1997, as amended, it states that the Commissioner may —Compromise the payment of any internal revenue tax, when: (1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or (2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

With regard to the exercise of the CIR's authority to compromise, abate, and refund or credit taxes, it is generally true that purely administrative and discretionary functions may not be interfered with by the courts; but when the exercise of such functions by the administrative officer is tainted by a failure to abide by the command of the law, then it is incumbent on the courts to set matters right, with the Supreme Court having the last say on the matter. Hence, in the instant case, the Court in Division did not err in exercising jurisdiction to review by appeal, CIR's *Notice of Denial* of Tridharma's application for compromise settlement. *(Commissioner of Internal Revenue v. Tridharma Marketing Corp., C.T.A. EB Case No. 2250 (C.T.A. Case No. 9155), [February 24, 2022]).*

4. For purposes of zero-rating under Section 108 (B) (2) of the Tax Code, two (2) components must be established by the claimant, namely: that the claimant's client is a non-resident foreign corporation (or NRFC); and that said client is not engaged in trade or business in the Philippines.

Financial Times Electronic Publishing Philippines (FTEPP) allegedly rendered services to Financial Times Limited (FTL), a non-resident foreign corporation not engaged in business with the Philippines. During the same period, petitioner incurred input taxes from its purchases of goods and services. On March 30, 2016, petitioner filed with the BIR an Application for Tax Credits/Refunds for its excess and unutilized input VAT in the total amount of P1,999,768.88.
For alleged failure of respondent to act on its administrative claim, petitioner filed a Petition for Review before the Court in Division. FTEPP argues that the Court in Division committed a reversible error in holding that FTEPP failed to prove that its client, FTL, is a non-resident foreign corporation doing business outside the Philippines. According to FTEPP, there must be continuity of conduct and intention to establish a continuous business before a foreign corporation is treated as doing business in the Philippines. Allegedly, FTL did not have a continuous business in the Philippine because it merely entered into a Service Agreement with petitioner. Moreover, petitioner asserts that considering that it has presented evidence as to the status of FTL as a non-resident foreign corporation not doing business in the Philippines, respondent now has the burden to prove otherwise.

CTA En Banc ruled that FTEPP failed to discharge the burden of proving that FTL is a non-resident foreign corporation not doing business in the Philippines. For purposes of zero-rating under the Tax Code, the claimant must establish the two components of a client's NRFC status, (1) **that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation**; and (2) **that it is not engaged in trade or business in the Philippines**. To be sure, there must be sufficient proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines. (*Financial Times Electronic Publishing Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2333 (C.T.A. Case No. 9434), [February 24, 2022]).*

5. **Only decisions of the Supreme Court and not the decisions of the CA or CTA, constitute as binding precedents and establish jurisprudence or doctrines in this jurisdiction.**

The Court in Division applied retroactively the doctrine laid down in the *Filinvest* case which held that instructional letters and journal and cash vouchers evidencing advances extended to affiliates qualify as loan agreements which is subject to DST. According to the Court in Division, judicial interpretations of a statute constitute a part of the law as of the date it was originally passed. EAGLE I, however, contends that the decision in the *Filinvest* case promulgated by the Supreme Court should not be given any retroactive effect. Citing the *Co* case, EAGLE I submits that the principle of prospectivity applies not only to statutes, administrative rulings and circulars but also to judicial decisions.

Based on *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*, it is clear that a judicial interpretation placed upon a law by the Supreme Court becomes a **part of the law interpreted as of the date when the law was originally passed because it establishes the contemporaneous legislative intent of the law**. The only exception is that when there is already a prevailing doctrine or interpretation of the Supreme Court, and the High Court overrules or reverses the said doctrine, then the new doctrine must be applied prospectively. Considering however that there was no prevailing doctrine or interpretation of the Supreme Court that was reversed or overturned by the High Court in the Filinvest case, then the said exception cannot be applied in the instant case.

The *Filinvest* case, where the Supreme Court interpreted Section 180 of the Tax Code particularly on the scope of the word 'loan agreements,' as being subject to DST. Thus, considering that there was no previously established doctrine or ruling that was overturned by the Filinvest case, the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997), as amended, **is deemed constituted as part of the NIRC as of December 23, 1994 up to the present time.**

EAGLE I's reliance on the ruling of the Court of Appeals in the CA *Filinvest* case, which affirmed the decision of the CTA in the CTA Filinvest case, that instructional letters and vouchers were not loan agreements and are thus not subject to DST, **is misplaced.**

In *Commissioner of Internal Revenue v. San Roque Power Corporation*, the Supreme Court has declared, in no uncertain terms, that CTA decisions do not constitute as binding precedents. **Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant.** Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system." *(Eagle I Landholdings, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case Nos. 2222 & 2227 (C.T.A. Case No. 9638), [March 1, 2022]).*

6. **Section 2307 of the Tariff and Customs Code of the Philippines precludes settlement of the case when there is fraud.**

For petitioner's failure to inform the customs officers that she had high value jewelry in her luggage and for her failure to offer any plausible explanation why said pieces of jewelry in commercial quantity were in her possession, the 259 pieces of jewelry were confiscated under Held Baggage in violation of Tariff and Customs Code of the Philippines ("TCCP"). The Office of the District Collector, NAIA-BOC filed forfeiture proceedings against petitioner. With the recommendation of the BOC-CIIS, District Collector Edgar Z. Macabeo issued a Warrant of Seizure and Detention dated 25 September 2015 ordering the seizure of the subject 259 pieces of assorted jewelry.

Petitioner argues that the Court in Division erred in finding fraudulent intent on the part of petitioner and, consequently, in denying her offer of settlement pursuant to Section 2307 of the TCCP. She points out that from the narration of the District Collector in its Decision, dated 9 June 2016, which was affirmed in the COC's Decision, dated 19 January 2017, it is clear that she was pre-judged as being guilty of fraud on the basis alone of her negative response when asked by Customs Examiners whether or not she had anything to declare while she was exiting the airport. According to petitioner, fraud was also presumed when the customs officers relied on the alleged tip from the CIIS Officers containing general instructions nowhere linking the tip to her.

Fraud on the part of petitioner was sufficiently established by the factual findings of the Court in Division. While it is true that fraud cannot be presumed, it can be inferred from attendant circumstances and need not be proven by direct evidence.

Section 2307 of the TCCP allows settlement of any seizure case, subject to approval of the COC, *except when there is fraud*. The provision reads: subject to approval of the Commissioner, the district collector may, while the case is still pending, **except when there is fraud,** accept the settlement of any seizure case provided that the owner, importer, exporter, or consignee or his agent shall offer to pay to the collector a fine imposed by him upon the property, or in case of forfeiture, the owner, exporter, importer or consignee or his agent shall offer to pay for the domestic market value of the seized article. The Commissioner may accept the settlement of any seizure case on appeal in the same manner. With the finding of fraud, the Court in Division did not err in affirming the Decision of COC which refused petitioner's offer of settlement on the ground that she committed fraud. *(Clemente v. Republic, C.T.A. EB Case No. 2288 (C.T.A. Case No. 9545), [March 2, 2022])*

7. The reassignment or transfer of a revenue officer requires the issuance of a new or amended LOA for the substitute or replacement Revenue Officer to continue the audit or investigation.

Commissioner of Internal Revenue (CIR) prays for the reversal of the Decision which cancelled and set aside the assessments against Liberty Flour Mills, Inc. (Liberty Flour) for taxable year 2009.The CIR argues that the head of the investigating office, like the Chief of the Regular Large Taxpayers Audit Division I (RLTAD I), may validly reassign the case to another revenue officer through the issuance of a Memorandum of Assignment (MOA). Thus, the revenue officers to whom the case was reassigned was properly clothed with the authority to continue the audit examinations, and accordingly, the assessments made by the revenue officers are valid.

The Court of Tax Appeals En Banc, through this decision, ***hereby puts an end to this practice*** of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting or replacing them with new revenue officers who do not have a new or amended LOA issued in their name. The reassignment or transfer of a revenue officer requires the issuance of a new or amended LOA for the substitute or replacement Revenue Officer to continue the audit or investigation.

Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.

The practice of reassigning or transferring revenue officers, who are the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, **is in effect a usurpation of the statutory**

power of the CIR or his duly authorized representative. The memorandum of assignment, referral memorandum, or such other equivalent internal document of the BIR directing the reassignment or transfer of revenue officers, is typically signed by the revenue district officer or other subordinate official, and not signed or issued by the CIR of his duly authorized representative under Sections 6, 10(c) and 13 of the NIRC.

Hence, the issuance of such memorandum of assignment, and its subsequent use as a proof of authority to continue the audit or investigation, is in effect, supplanting the functions of the LOA, since it seeks to exercise a power that belongs exclusively to the CIR himself or his duly authorized representatives. *(Commissioner of Internal Revenue v. Liberty Flour Mills, Inc., C.T.A. EB Case No. 2321 (C.T.A. Case No. 9603), [March 2, 2022]).*

8. A claimant has the burden of proof to establish the factual basis of the claim for tax credit or refund.

Petitioner Ibex Philippines, Inc. (IBEX), filed with the BIR for the refund of its excess and unutilized input VAT attributable to its zero-rated sales in the aggregate amount of P13,480,821.26. With no action from respondent since the filing of its claim, petitioner claimed that the mandatory 120-day period for processing the subject administrative claim expired on 28 January 2017. Within thirty (30) days from the lapse of the aforesaid 120-day period (for respondent to act on its administrative claim), petitioner filed its prior Petition for Review before the Court in Division to appeal the "deemed denial due to inaction" on its administrative claim.
After being granted an extension of time by the Third Division, CIR filed his Answer alleging, inter alia, that petitioner's claim for refund is subject to BIR's administrative investigation or examination. According to him, the taxes paid and collected are presumed to have been paid in accordance with law and regulation, hence, not refundable.

The CTA ruled that it is indispensable that a claimant of tax refund must prove that the services it rendered to its foreign affiliates must have been performed or rendered in the Philippines and not abroad.

Petitioner's reliance on the ICPA Report stating that its sales of services (for the period 01 July 2015 to 30 June 2015) were qualified for VAT zero-rating does not constitute sufficient proof that would meet the requirement of the law. To reiterate, the Court is not bound to accept the ICPA's findings as it has a duty to independently verify such findings. A perusal of petitioner's Authenticated Service Agreement with Lovercius would show that nothing therein can be construed that the qualifying services are to be rendered and performed by petitioner only in the Philippines.

A claimant has the burden of proof to establish the factual basis of the claim for tax credit or refund. Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven. *(Ibex Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2337 (C.T.A. Case No. 9546), [March 3, 2022]).*

9. The issuance of an FLD/FAN is not tantamount to double demand since without the said issuance, there is no demand nor an established tax liability to speak of.

In this case, CIR insists that the assessment issued against respondent Toledo Power Company (Toledo) is valid, explaining that respondent's sale of electricity to Carmen Copper Corporation ("CCC") is subject to value-added tax ("VAT"), considering that it was for the latter's general and administrative use. He argues that Toledo's act of paying the assessed deficiency VAT signifies its concurrence with the validity of the assessment and that since the said payment was made during the Preliminary Assessment Notice ("PAN") stage, the issuance of the Final Letter of Demand and Assessment Notices ("FLD/FAN") is deemed superfluous.

Toledo however opines that the tax payments were erroneous since the BIR did not issue an FLD/FAN, which is mandatory in all assessment cases. After careful review of the foregoing contentions, the Court of Tax Appeals En Banc finds the Motion filed by CIR bereft of merit.

The issuance of an FLD/FAN, in this case, is not tantamount to double demand since without the said issuance, there is no demand nor an established tax liability to speak of. **The payment of Toledo does not forego the need for an FLD/FAN**. No law or regulations support this assertion. Furthermore, there are instances where the taxpayer settles the assessment in advance in order to stop the continuous accrual of interest charges. **In this case, the Court still upheld the need to issue an FLD/FAN**. *(COMMISSIONER OF INTERNAL REVENUE, petitioner, vs. TOLEDO POWER COMPANY, respondent., C.T.A. EB Case No. 2237 (C.T.A. Case No. 9307) (Resolution), [March 4, 2022]).*

B. REVENUE MEMORANDUM CIRCULARS

1. REVENUE MEMORANDUM CIRCULAR NO. 20-2022, [February 17, 2022] - Guidance on the Filing of Requests for Confirmation, Tax Treaty Relief Applications and Tax Sparing Applications

This Circular is issued to clarify that taxpayers who were already issued with Certificate of Entitlement to Treaty Benefit (COEs), the tenor thereof allows the ruling to be applied to subsequent or future income payments, shall no longer file a Request for Confirmation||| (RFC) or Tax Treaty Relief Application (TTRA) every time an income of similar nature is paid to the same nonresident.

In applying the confirmed treaty benefit to future income payments, the income payor or withholding agent shall always be guided by the requisites mentioned in the COE. Thus, if the COE mentions tax residency as a requisite for continuous enjoyment of treaty benefit, the income payor must require the nonresident to submit first a Tax Residency Certificate (TRC) for such relevant year before making any payment.

A new RFC, TTRA or tax sparing application shall only be filed if any of the requisites mentioned in the certificate is absent. During a tax audit, the income payor shall submit or present a copy of the duly issued COE and proof of satisfaction of the requisites cited therein. The tax auditor, on the other hand, shall ensure the authenticity of the submitted documents. In case of doubt, the tax auditor may seek the assistance of ITAD.

2. REVENUE MEMORANDUM CIRCULAR NO. 23-2022, [February 18, 2022] - Suspension of the Income Tax Incentives Granted to Registered Business Enterprises (RBEs) for Violating the Work-From-Home (WFH) Threshold as Prescribed by the Fiscal Incentives Review Board

This Circular covers all registered business enterprises (RBEs) in the Information Technology-Business Process Management (IT-BPM) sector who opted to continue implementing work-from-home (WFH) arrangements amidst COVID-19 pandemic. The non-compliance with all the conditions prescribed under FIRB Resolution Nos. 19-21 and 23-21 shall be meted with suspension of the income tax incentive on the revenue corresponding to the months of non-compliance. Hence, RBE shall pay the income tax using the regular rate of either twenty-five percent (25%) or twenty percent (20%) based on the taxable net income corresponding to the months the RBE has violation. For RBEs with no existing transactions subject to the regular income tax rate, BIR Form 1702-MX shall be used for the voluntary payment of the income tax due on the months with reported violation. However, for RBEs which have existing transactions subject to regular income tax rate, the voluntary payment shall be made through BIR Form 0605 and bank-validated copy of which shall be attached in AITR to be filed.

In the absence of voluntary payment by RBEs or the voluntary payments made is not sufficient, the RBE shall be subjected to an audit pursuant to a Letter of Authority (LOA).

For uniform understanding of the term "total workforce," this Circular likewise clarifies that it shall refer to the total employees that are directly or indirectly engaged in the registered project or activity of the RBE, but excludes third-party contractors, if any, such as service contractors rendering janitorial or security services and other similar services. This Circular shall take effect immediately until March 31, 2022 pursuant to FIRB Resolution No. 19-2021.

3. REVENUE MEMORANDUM CIRCULAR NO. 22-2022 [February 21, 2022] - Tax Compliance Reminders for the May 09, 2022 National and Local Elections

All candidates, political parties/party list groups and campaign contributors, are required to register with the BIR, issue official receipts and withhold taxes pursuant to RR No. 8-2009, as amended by RR No. 7-2011 and other related revenue issuances. The registration of political parties or party list groups shall be made with the Revenue District Office (RDO) having jurisdiction over their Head Office or principal office.

It shall be the duty of every individual candidate and political parties/party list groups, upon the filing of the certificate of candidacy, whether for local or national position to register, or to update their registration with the BIR for those who have previously registered as Withholding Agents pursuant to RR No. 8-2009.

All political parties/party list groups and candidates shall be responsible for the preservation of records and contributions and expenditures, together with all pertinent documents, shall be retained in accordance with the rules on preservation of books of accounts and other accounting records provided in Section 235 in relation to Sections 203 and 222 of the NIRC of 1997.

Every candidate and Treasurer of the political parties/party list groups shall submit the Statement of Contributions and Expenditures to COMELEC and RDO where the candidates/political parties/party list groups are registered within thirty (30) days after the election.

All candidates, political parties and party list groups who failed to register and comply with the requirements of the BIR will be subjected to penalties under the Revised Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code (NIRC) of 1997, as amended (RMO No. 7-2015).

4. **REVENUE MEMORANDUM CIRCULAR NO. 24-2022 [March 9, 2022]) - Clarifies issues relative to RR No. 21-2021 implementing the amendments to the Value-Added Tax (VAT) zero rating provisions under Sections 106 and 108 of the National Internal Revenue Code of 1997 (Tax Code), in relation to Sections 294(E) and 295(D), Title XIII of the Tax Code, introduced by RA No. 11534 (CREATE Act), and Section 5, Rule 2 and Section 5, Rule 18 of the CREATE Act Implementing Rules and Regulation.**

This Circular was issued to clarify the transitory provisions under RR No. 21-2021 and certain issues pertaining to the effectivity and VAT treatment of transactions by registered business enterprises (RBEs) particularly the registered export enterprises.

The "cross border doctrine" as applied to Ecozones or Freeport zones has been rendered ineffectual and inoperative for VAT purposes with the passage of CREATE Act. Business enterprises duly registered with the concerned Investment Promotion Agencies (IPAs) under the CREATE Act shall now be governed by the CREATE provisions with respect to their availment of tax incentives, including VAT exemption of RBEs enjoying the 5% Gross Income Earned (GIE) or Special Corporate Income Tax (SCIT), VAT exemption on importation and VAT zero-rating on local purchases of goods and services by registered export enterprises. With the CREATE Act already in place, business enterprises duly registered with the concerned IPA pursuant to the CREATE Act shall only be accorded VAT zero-rating on their local purchases of goods and/or services that are directly and exclusively used in the registered project or activity of the registered export enterprises.

For sale of goods and services that transpired during the effectivity of RR No. 9-2021 or from June 27, 2021 to June 30, 2021, the seller should declare the same as subject to 12% VAT. Consequently, the purchaser, if VAT-registered, can utilize the passed-on VAT as Input Tax and shall be deducted from the Output Tax, if any, or should the purchaser be engaged in zero-rated activities, the same can be recovered through VAT refund pursuant to Section 112(A) of the Tax Code, as amended. If the purchaser is not a VAT-registered taxpayer, the VAT paid may be claimed as part of the cost of sales or expenses. For sale of goods and services where the VAT has already been billed and/or collected during the effectivity of RR No. 9-2021 from July 1, 2021 to July 27, 2021, the seller and the buyer can either **Retain the transaction as subject to VAT** or **Revert the transaction from VATable to zero-rated**.

Business enterprises duly registered with the concerned Investment Promotion Agencies (IPAs) under the CREATE Act shall now be governed by the CREATE provisions with respect to their availment of tax incentives, including VAT exemption of RBEs enjoying the 5% Gross Income Earned (GIE) or Special Corporate Income Tax (SCIT), VAT exemption on importation and VAT zero-rating on local purchases of goods and services by registered export enterprises. All IPAs are required to submit to the BIR the list of RBEs which are categorized as export enterprise, for purposes of VAT zero-rating. Prior to the transaction, the registered export enterprise buyers shall provide their suppliers with a photocopy of the BIR - Certificate of Registration (BIR Form No. 2303), Certificate of Registration and VAT certification issued by the concerned IPA containing the information or specifications required under Q&A No. 34 of the Circular. In addition, the registered export enterprises shall provide their suppliers a sworn declaration stating that the goods and/or services being purchased shall be used directly and exclusively in the registered project.