



TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

TMAP TAX UPDATES

July 15, 2021 – August 15, 2021

Prepared by:



	DATE ISSUED	SUBJECT
A. REVENUE REGULATIONS		
Revenue Regulations 14-2021	July 28, 2021	Suspends the implementation of certain provisions of RR No. 5-2021 relative to taxation of proprietary educational institutions
Revenue Regulations 15-2021	July 28, 2021	Defers the implementation of RR No. 9-2021 relative to the imposition of 12% VAT on transactions covered by Section 106(A)(2)(a), Subparagraphs (3),(4) and (5), and Section 108(B), Subparagraphs (1) and (5), both of the National Internal Revenue Code of 1997, as amended
Revenue Regulations 16-2021	August 3, 2021	Further amends pertinent provisions of RR No. 2-2006 and No. RR 11-2013, as amended by RR No. 2-2015, more particularly on the manner of submission of copies of BIR Form Nos. 2307 and 2316
Revenue Regulations 17-2021	August 3, 2021	Amends certain provisions of RR No. 6-2019 to implement the extension of the Estate Tax Amnesty pursuant to RA No. 11569, which amended RA No. 11213 (Tax Amnesty Act)
B. REVENUE MEMORANDUM CIRCULARS		
ISSUANCE	DATE ISSUED	SUBJECT
Revenue Memorandum Circular 88-2021	July 16, 2021	Circularizes the Lists of Withholding Agents required to deduct and remit the 1% or 2% Creditable Withholding Tax for the purchase of goods and services under Revenue Regulations No. 31-2020
Revenue Memorandum Circular 89-2021	July 19, 2021	Circularizes RA No. 11534, titled "An Act Reforming the Corporate Income Tax and Incentives System, Amending for the Purpose Sections 20, 22, 25, 27, 28, 29, 34, 40, 57, 109, 116, 204 and 290 of the National Internal Revenue Code of 1997, as Amended, and Creating Therein New Title XIII, and for Other Purposes", otherwise known as "Corporate Recovery and Tax Incentives for Enterprises Act" or CREATE"
Revenue Memorandum Circular 90-2021	July 28, 2021	Provides specific guidelines and procedures on the utilization of Tax Payment Certificate (TPC) issued under the Comprehensive Automotive Resurgence Strategy (CARS) Program
Revenue Memorandum Circular 91-2021	August 3, 2021	Provides the guidelines in the filing of returns and payment of the corresponding taxes due thereon, and submission of reports and attachments falling within the period from

		August 6 to August 20, 2021 for taxpayers under ECQ and MECQ
Revenue Memorandum Circular 92-2021	August 9, 2021	Extends the deadline for filing of position papers, replies, protests, documents and other similar letters and correspondences in relation to the ongoing BIR audit investigation and filing of VAT Refund with the VAT Credit Audit Division (VCAD) due to the declaration of ECQ and MECQ in the National Capital Region and other areas of the country
Revenue Memorandum Circular 93-2021	August 9, 2021	Suspends the running of the statute of limitations on assessment and collection of taxes pursuant to Section 223 of the NIRC of 1997, as amended, due to the declaration of ECQ and MECQ in the National Capital Region and other areas of the country
Revenue Memorandum Circular 94-2021	August 10, 2021	Clarifies the computation of Donor's Tax in case the heir waves/renounces his share from the specific property forming part of the estate of the decedent
Revenue Memorandum Circular 95-2021	August 10, 2021	Publishes the Agency Accountability Timelines under Section 5.0 of the Inter-Agency Task Force (IATF) Memorandum Circular No. 2021-1 titled "Guidelines on the Grant of the Performance-Based Bonus (PBB) for the Fiscal Year (FY) 2021 under Executive Order No. 80, s. 2012" and published under RMC No. 85-2021
Revenue Memorandum Circular 96-2021	August 13, 2021	Circularizes the Consolidated Price of Sugar at Millsite for the month of June 2021sss

C. REVENUE MEMORANDUM ORDERS

ISSUANCE	DATE ISSUED	SUBJECT
Revenue Memorandum Order 22-2021	August 10, 2021	Prescribes the revised BIR Form No. 0036 (Update Security & Access Matrix Request Form)
Revenue Memorandum Circular 23-2021	August 11, 2021	Prescribes the guidelines and procedures on Digital/Online Learning in the BIR
Revenue Memorandum Circular 24-2021	August 13, 2021	Creates the Alphanumeric Tax Code (ATC) for Excise Taxes on exports of sweetened beverages products paid through payment form - BIR Form No. 0605

D. COURT OF TAX APPEALS

Nature of Case	Date of Promulgation	Case Title
Refund /Issuance of Tax Credit	July 19, 2021	Petron Corporation vs. Commissioner of Internal Revenue, Commissioner of Customs and Collector of Customs (Port of Limay, Bataan) CTA Case No. 8544 (Second Division) Ponente: Justice Jean Marie A. Bacorro-Villena
Assessment	July 19, 2021	Commissioner of Internal Revenue vs. Philippine Communications Satellite Corporation (CTA EB 2209 En Banc) Ponente: Justice Catherine T. Manahan
Refund /Issuance of Tax Credit	July 22, 2021	Procter & Gamble Distributing (Philippines), Inc. v. Commissioner of Internal Revenue CTA Case No. 9946 (Second Division) Ponente: Justice Jean Marie A. Bacorro-Villena
Assessment	July 22, 2021	Rieckermann Philippines, Inc. v. Commissioner of Internal Revenue CTA Case No. 9613 (Third Division) Ponente: Justice Maria Rowena Modesto-San Pedro
Assessment	July 23, 2021	Citiparking Management Corporation v. Commissioner of Internal Revenue CTA Case No. 9451 (Third Division) Ponente: Justice Erlinda P. Uy
Refund /Issuance of Tax Credit	July 29, 2021	Philippine Airlines, Inc. v. Commissioner of Internal Revenue CTA Case No. 9913 (First Division) Ponente: Justice Catherine T. Manahan

DISCUSSION OF UPDATES

A. REVENUE REGULATIONS

Revenue Regulations 14-2021 (July 28, 2021) was issued to effectively suspend the implementation of Revenue Regulations 5-2021 which with taxation among proprietary educational institutions in consideration of the ongoing pandemic and as well as pending bills to amend Section 27(B) of the National Internal Revenue Code of 1997 that would finally clarify the income taxation of schools. In particular, the following provisions have been suspended pending passage of appropriate legislations:

- Section 2(C), on the definition of Proprietary Educational Institutions, insofar as it includes therein the phrase, “*which are non-profit*”;
- Section 2(E), on the definition of Non-Profit, insofar as it applies to “*Proprietary Educational Institutions*”; and
- Section 3(B), which provides illustration on the tax treatment of Proprietary Educational Institutions that are non-profit.

Revenue Regulations 15-2021 (July 28, 2021) was issued to suspend the controversial Revenue Regulations 9-2021 which seeks to impose twelve percent Value-Added Tax (VAT) on certain transactions which, prior to Republic Act 10963 otherwise known as the Tax Reform for Acceleration and Inclusion Law are considered zero-rated, upon compliance with two requirements, as follows:

- Successful establishment and implementation of an enhanced VAT refund system that grants refunds of creditable input tax within ninety (90) days from the filing of VAT application with the BIR;
- All VAT refund claims as of December 31, 2017 must have been paid in cash by December 31, 2019

Revenue Regulations 16-2021 was issued to amend certain provisions of Revenue Regulations 2-2006 and 11-2013 as amended by Revenue Regulations 2-2015 particularly on the manner of submission of copies of BIR Form Nos. 2307 and 2316. Salient changes are as follows:

For BIR Form 2307:

Revenue Regulations 2-2015	Revenue Regulations 16-2021
1. Scan the original copies of BIR Form 2307 through the scanning machine or device	No changes
2. Store the soft copies of BIR Form No. 2307 using the “PDF” file format with the filenames alphabetically arranged in a Digital Versatile Disk Recordable (DVD-R). The filename shall contain the following: a. BIR-registered name of the taxpayer-payor; b. Taxpayer Identification Number (TIN), including the head office code or branch code of the payor, whichever is applicable; and c. Taxable Period	Store the soft copies of BIR Form No. 2307 using the file format and naming conventions prescribed under the available modes or submission facilities of the BIR; and
3. Label the DVD-R containing the soft copies of the said BIR Forms in accordance with	Removed

the format prescribed in Annex “A” of these regulations	
4. Submit the duly accomplished DVD-R to the BIR Office where the taxpayer is duly registered not later than February 28 following the close of the calendar year together with a notarized certification prepared in accordance to the format in Annex “C” of these regulations and duly signed by authorized representative of the taxpayer certifying that the soft copies of the said BIR Form contained in the DVD-R are the complete and exact copies of the original thereof	<p>Submit the soft copies of said BIR Form in accordance with revenue issuances governing the selected modes or submission facilities of the BIR.</p> <p><i>Please note that other than the manner of submission everything remains the same and unaltered.</i></p>

For BIR Form 2307:

Revenue Regulations 2-2015	Revenue Regulations 16-2021
1. Scan the original copies of BIR Form 2307 through the scanning machine or device	No changes
<p>2. Store the soft copies of BIR Form No. 2307 using the “PDF” file format with the filenames alphabetically arranged in a Digital Versatile Disk Recordable (DVD-R). The filename shall contain the following:</p> <ul style="list-style-type: none"> a. Surname of the employee; b. Taxpayer Identification Number of the employee; and c. taxable period. <p>Example: Dela Cruz_131885220000_12312014</p>	Store the soft copies of BIR Form No, 2316 using the file format and naming conventions prescribed under the available modes or submission facilities of the BIR; and
3. Label the DVD-R containing the soft copies of the said BIR Forms in accordance with the format prescribed in Annex “B” of these regulations	Removed
4. Submit the duly accomplished DVD-R to the BIR Office where the taxpayer is duly registered not later than February 28 following the close of the calendar year together with a notarized certification prepared in accordance to the format in Annex “C” of these regulations and duly signed by authorized representative of the taxpayer certifying that the soft copies of the said BIR Form contained in the DVD-R are the	<p>Submit the soft copies of said BIR Form in accordance with revenue issuances governing the selected modes or submission facilities of the BIR.</p> <p><i>Please note that other than the manner of submission everything remains the same and unaltered.</i></p>

complete and exact copies of the original thereof	
---	--

Revenue Regulations 17-2021 was issued pursuant to Republic Act No. 11569 which seeks to extend the availment of Tax Amnesty on Estate Tax. The following are the salient provisions:

- The Estate Tax Amnesty Return (ETAR) shall be filed by the executor, administrator, legal heirs, transferees or beneficiaries who wish to avail Estate Tax Amnesty not later than June 14, 2023;
- ETAR shall be filed with the Revenue District Office having jurisdiction over the last residence of the decedent;
- In case of non-resident decedent, the administrator / executor shall file the ETAR with:
 - The RDO where the administrator / executor is registered
 - In case the administrator / executor is not registered, at his / her legal residence;
- If a non-resident decedent does not have administrator / executor in the Philippines, the ETAR shall be filed with RDO 39 - South Quezon City
- The duly accomplished and sworn ETAR, together with the Acceptance Payment Form (APF-BIR Form 0621-EA) together with the complete requirements as enumerated in the ETAR shall present it with the RDO and within 5 working days from the receipt thereof, the concerned RDO shall either:
 - Endorse the APF for payment of the estate amnesty tax with the Authorized Agent Banks or RCOs or
 - Notify the taxpayer of the deficiency in the application.
- There is no need to accompany the ETAR with proof of settlement of estate whether judicial or extrajudicial if it is not yet available at the time of filing. However, no eCAR shall be issued without such proof being submitted to the concerned RDO.
- The ETAR, APF and proof of payment, together with its complete documentary requirements must be submitted with the RDO in triplicate copies on or before June 14, 2021 otherwise, it will be tantamount to non-availment of the estate tax amnesty. The amount then paid may be applied towards the regular estate tax due inclusive of penalties.
- One eCAR shall be issued per real property, including improvements if any covered by Original Certificate of Title / Transfer Certificate of Title / Condominium Certificate of Title or Tax Declaration for Untitled Properties until the system is capable of issuing one eCAR for all properties. Separate eCAR shall be issued for personal properties.

B. REVENUE MEMORANDUM CIRCULARS

Revenue Memorandum Circular 88-2021 (July 16, 2021) circularizes the list of Withholding Agents required to deduct and remit 1% or 2% Creditable Withholding Tax for the purchases of goods pursuant to new criteria provided under Revenue Regulations 31-2020. The obligation to deduct and remit the 1% or 2% CWT shall continue, commence or cease effective August 1, 2021 and that any taxpayer whose names are not found in the list of TWAs are not required to deduct and remit 1% or 2% CWT.

Finally, written request for certification for being identified as TWA shall be filed and issued by the RDO having jurisdiction over the withholding agent.

Revenue Memorandum Circular 89-2021 (July 19, 2021) was issued by the Bureau of Internal Revenue to circularize the copy of the signed Corporate Recovery and Tax Incentives for Enterprises Act or CREATE.

Revenue Memorandum Circular 90-2021 (July 28, 2021) provides for specific Guidelines and Procedures on the Utilization of Tax Payment Certificate (TPC) Issued Under the Comprehensive Automotive Resurgence Strategy (CARS) Program

Issues	Guidelines or Procedures
Q1. What is a Tax Payment Certificate (TPC)	A1. TPC refers to a non-transferable certificate, which shall be used to defray the tax and duty obligations of the ERPs to the National Government. (Item 2.4 of DOF-DBM-BOI Joint Administrative Order No. 01-2015)
Q2. Who shall request for the issuance of TPC and from what office shall it be requested?	A.2. The ERPs shall request from DTI-BOI for the issuance of TPC based on the statutory deadlines for payment of tax and/or duty. (item 6.3 of DOF-DBM-BOI Joint Administrative Order No. 01-2015)
Q.3. What internal revenue taxes shall be paid by the ERPs using the TPC?	A.3. The TPC shall only be applied against the excise tax, income tax and value-added tax (VAT) liabilities incurred in the course of the ERPs operations, and shall not include any type of withholding taxes of the ERPs. (Item 2.4 under the Definition of Terms of DOF-DBM-BOI Joint Administrative Order No. 01-2015)
Q.4. How will the ERPs accomplish the tax return using the TPC?	A.4. The amount of the TPC shall be indicated in the tax return as deduction from the tax due of the ERPs. Specifically, indicate the phrase "TPC No. (control or serial number)" and its corresponding amount in the boxes provided for in the line item of the tax return which states the phrase "Other Tax Credits/Payments (specify)" located immediately after the line item stating "Tax Due". In case the amount of TPC exceeds the tax due, net of the creditable taxes, the excess shall not be considered or treated as a refundable amount. (Par 2, Section 5 of Revenue Regulations No. 12-2021)
Q5. Where will the tax return be filed and the corresponding tax be paid?	A.5. The accomplished tax return shall be filed using the electronic Filing and Payment System (eFPS) or eBIRForms Package, as the case may be. In case the tax due is more than the amount of the TPC, the tax still due shall be paid using the available modes of payment of the BIR. The printed hard copy of the duly-filed tax returns, together with the BIR copy of the TPC and other prescribed attachments, shall be submitted to the Revenue District Office (RDO), Large Taxpayer Division Office (LTDO), or LT Documents Processing and Quality Assurance Division (LTDPQAD) of the Large Taxpayer Service, where the ERPs are duly registered, pursuant to existing revenue guidelines and procedures. The ERPs' copy of the TPC shall be retained by them. The BIR copy of the TPC shall be used for recording purposes in the collection books of the BIR.

<p>Q6. What is the validity period of TPC?</p>	<p>A6. A TPC shall have a validity period of thirty (30) days counted from date of issue, and can only be used once. The date indicated on the face of the TPC shall be presumed to be the date of issuance. (Item 6.4 of DOF-DBM-BOI Joint Administrative Order No. 01-2015) In the event that a TPC is not presented or utilized for tax payment to the BIR, the ERPs should immediately surrender and return the original copy of the TPC to DTI-BOI for reinstatement in the PCMIA (i.e., Participating Car Maker Incentive Account): Provided, That the surrender thereof is made within the validity period of the TPC, otherwise the same shall be forfeited in favor of the government. (Item 6.7 of DOF-DBM-BOI Joint Administrative Order No. 01-2015)</p>
<p>Q7. How shall the BIR validate the TPC, which was attached by the ERPs to their tax return?</p>	<p>A7. The Collection Section of the RDO and LTDO, as well as the LTDPQAD, where the ERPs are duly registered, can view and validate the TPCs thru an online facility of the DTI-BOI. (Item 4.2.4 and 6.8 of DOF-DBM-BOI Joint Administrative Order No.01-2015) The DTI-BOI shall inform the Assistant Commissioner (ACIR), Collection Service of the BIR of any additional Eligible and Registered Participant. The ACIR, Collection Service, on the other hand, shall inform the DTI-BOI of the name(s) of the revenue officer(s) who shall be duly authorized to access the online facility. The Head of said Offices shall assign a revenue officer who is authorized to access the online facility and validate the TPCs</p>
<p>Q8. How shall the amount of TPC be recorded by the BIR as part of its revenue collection</p>	<p>A8. The BIR copy of the TPC shall be transmitted by the RDO, LTDO, or LTDPQAD, as the case may be, on Tuesday of every week to the Revenue Accounting Division (RAD) which shall record the amount of the TPC in the collection books pursuant to existing procedures. The RAD shall prepare a monthly report (Annex "A") of revenue collection from TPCs for transmittal to the Bureau of Treasury not later than ten (10) days after every calendar month.</p>

Revenue Memorandum Circular 91-2021 (August 3, 2021) was issued to extend deadlines of filing and payment of returns and submission of reports and attachments falling between August 6-20, 2021 on areas placed under Enhanced Community Quarantine (ECQ) and Modified Enhanced Community Quarantine (MECQ) shall be extend for fifteen (15) days from August 20, 2021. In case of extension of ECQ and MECQ beyond August 20, 2021, filing and payment of return and submission of reports and attachments shall be extended fifteen (15) days from the lifting of the ECQ or MECQ.

During this period and within the areas mentioned, the following are allowed:

- Out of district payment of returns as reiterated under Bank Bulletin 2021-10;
- File and pay the corresponding tax due thereon to the RCOs of the nearest RDO, even in areas where there are AABs
 - Provided that payment of internal revenue taxes in cash should not exceed Twenty Thousand Pesos (P20,000.00)

- Payment in checks shall not have limitations if payment will be made with the RCO in the district office.
- Checks shall be made payable to Bureau of Internal Revenue and may or may not contain IFO Name and TIN of the taxpayer including the indication of branch of the receiving AABs.
- Online Payments

Bank/ Payment Gateway	Guidelines
Land Bank of the Philippines	For taxpayers who have ATM account with LBP and/or holders of BANCNET ATM / Debit / Prepaid Card and taxpayer is utilizing PesoNet facility (depositors of RCBC, Robinsons Bank and UnionBank)
Development Bank of the Philippines (DBP) Pay Tax Online	For holders of Visa/Mastercard, Credit Card and/or BANCNET ATM/debit card
UnionBank Online Web and Mobile Payment Facility	For taxpayer who has an account with UnionBank
Mobile Payment (GCash or PayMaya)	

Revenue Memorandum Circular 92-2021 (August 9, 2021) was issued to extend the deadline for filing of position papers, replies, protests, documents and other similar letters and correspondences in relation to the ongoing BIR audit investigation and filing of vat refund with the vat credit audit division (VCAD) due to the declaration of Enhanced Community Quarantine (ECQ) and Modified ECQ (MECQ) in the national capital region (NCR) and other areas of the country in order to provide relief to taxpayers.

Thus, filing of the papers, letters and documents due on August 6, 2021 and during ECQ and MECQ, including extensions thereof, for taxpayers registered with the Revenue District Offices (RDOs) in areas covered by the ECQ and MECQ declaration or for registered taxpayers filing the aforementioned papers, letters, and documents with the appropriate BIR Offices located in areas covered by the ECQ and MECQ declarations are extended as follows:

Letter or Correspondence	Extended Deadlines
Position Paper and Supporting Documents in Response to Notice of Discrepancy	30 days from lifting of the ECQ and/or MECQ
Reply and Supporting Documents in Response to the Preliminary Assessment Notice (PAN)	15 days from lifting of the ECQ and/or MECQ
Protest Letter in Response to the Final Assessment Notice/Formal Letter of Demand (FAN/FLD)	30 days from lifting of the ECQ and/or MECQ
Transmittal Letter and Supporting Documents in relation to Request for Reinvestigation	30 days from lifting of the ECQ and/or MECQ
Request for Reconsideration to the Commissioner of Internal Revenue (CIR) on Final Decision on Disputed Assessment (FDDA)	30 days from lifting of the ECQ and/or MECQ
Submission of Documents in Response to Subpoena Duces Tecum	15 days from lifting of the ECQ and/or MECQ
Submission of Documents in relation to First, Second, and Final Notice	10 days from lifting of the ECQ and/or MECQ
Other Similar Letters and Correspondences	30 days from lifting of the ECQ and/or MECQ

Filing of VAT Refund with VCAD	30 days from lifting of the ECQ and/or MECQ
--------------------------------	---

All face-to-face meetings with BIR officials and employees by taxpayers and/or their authorized representatives in places where ECQ or MECQ is implemented are deferred and rescheduled until its lifting.

In case of any future declarations of ECQ and/or MECQ by the government on any area/s of the country, thereby restricting movement in the said areas, the deadline of submission of the aforementioned papers, letters, and documents falling within the ECQ and/or MECQ period shall likewise be extended, following the extended deadlines identified above. Furthermore, face to face meetings of BIR officials and employees with taxpayers shall likewise be deferred and rescheduled until the lifting of any future declarations of ECQ and/or MECQ.

Revenue Memorandum Circular 93-2021 (August 9, 2021) was issued by the Bureau of Internal Revenue to invoke the suspension of running of statute of limitation under Section 223 of the National Internal Revenue Code of 1997 in relation to the definition of the word “quarantine” under Revenue Regulations 11-2020 in connection with the recent declaration of Enhanced Community Quarantine (ECQ) and Modified Enhanced Community Quarantine (MECQ). The running of the statute of limitations for assessment and collection of deficiency taxes is suspended in the affected jurisdictions while ECQ and/or MECQ is in effect, including any extension/s thereof, and for sixty (60) days thereafter. The suspension of the running of the Statute of Limitations shall apply with respect to the issuance and service of assessment notices, warrants and enforcement, and/or collection of deficiency taxes.

In case of any future declarations of ECQ and/or MECQ by the government on any area/s of the country, thereby restricting movement in the said areas and effectively barring the service of assessment notices, personally or by substituted service, and Warrants of Distrainment and or Levy, as well as Warrants of Garnishment, to enforce collection of deficiency taxes, the running of the statute of limitations for assessment and collection of deficiency taxes shall likewise be suspended in the affected jurisdictions while ECQ and/or MECQ is in effect, and for sixty (60) days thereafter.

Revenue Memorandum Circular 94-2021 (August 10, 2021) was issued to make certain clarifications on the computation of Donor’s Tax in case that the heir repudiates, renounces or waives his share from the specific property that forms part of the estate of the decedent.

This Revenue Memorandum Circular explains that general renunciation is not subject to Donor’s Tax¹. While partial renunciation is subject to Donor’s Tax to the extent of value foregone since the heir is waiving his share to only identified properties but not to the entire properties of the decedent.

Revenue Memorandum Circular 95-2021 (August 10, 2021) was issued to publish the Agency Accountability Timelines under Section 5.0 of the Inter-Agency Task Force (IATF) Memorandum Circular (MC) No.2021-1 dated June 3, 2021, Entitled "Guidelines on the Grant of the Performance-Based Bonus (PBB) for the Fiscal Year (FY) 2021 under Executive Order No. 80, s.2012 and published under Revenue Memorandum Circular No. 85- 2021.

¹ **Author’s note:** Partial or general repudiation is governed by law on accretion under the Civil Code which provides that “the share of the person who repudiates the inheritance shall always accrue to his co-heirs”. With that being said, a general repudiation or renunciation creates no Donor’s Tax liability because the portion that one has over the corpus of the estate has never been transferred to him and immediately accrues to his co-heirs by way of inheritance. Conversely, if the repudiation is partial, it creates the duty to pay donor’s taxes as the foregone value is considered as donation.

Revenue Memorandum Circular 96-2021 (August 13, 2021) was issued in order to consolidate the weekly issuance of Operations Memoranda (OM), more particularly OM Nos. 39-2021, 40-2021, 42-2021, and 43-2021 for the month of June, circularizing the weekly Price of Sugar at Millsite issued by the Sugar Regulatory Administration (SRA) pursuant to Revenue Regulations (RR) No. 13-2015.

While the SRA-issued weekly Price of Sugar at Millsite reflects the comparative prices of sugar between the previous and current years, the consolidated schedule (Annex "A") on the said weekly OMs contains only that of the current year for purposes of imposing the one percent (1%) expanded withholding tax on sugar prescribed under the provisions of RR No. 2- 98, as amended by RR No. 11-2014.

C. REVENUE MEMORANDUM ORDERS

Revenue Memorandum Order 22-2021 (August 10, 2021) was issued to "All Internal Revenue Officials, Employees and Other Concerned" which promulgates minor modifications on BIR Form No. 0036 (Update Security & Access Matrix Request Form/Annex A) relative to revenue personnel and/or revenue officials responsible for accomplishing said BIR form.

The following provision is hereby reiterated:

"Said revision on BIR Form No. 0036 shall not in any way affect the existing policies and procedures in updating the Security & Access Matrix (SAM), as provided for under Revenue Memorandum Order No. 28-2020."

D. COURT OF TAX APPEALS

Petron Corporation vs. Commissioner of Internal Revenue, Commissioner of Customs and Collector of Customs (Port of Limay, Bataan) CTA Case No. 8544, July 19, 2021

Facts: Petitioner Petron Corporation seeks to partially reverse the decision of the Court of Tax Appeals denying its case for refund or issuance of tax credit. Petitioner argued that the Court could not apply the rule on strict interpretation of tax exemptions since the refund was neither based on tax exemption statute nor tax refund statute but rather on an error on the interpretation of the phrase "other products of distillation" as Alkylate is not considered to be a direct product of distillation.

Issue: Whether or not the phrase "other products of distillation" would cover alkylate and therefore subject to excise tax.

Ruling: No. While Alkylate's raw material and its blending components were by-product of distillation, Alkylate itself was not formed through the process of distillation but rather through alkylation. Following the Doctrine of Strict Interpretation as applied by the Supreme Court in the case of Fortune Tobacco, as the congress did not clearly, expressly and unambiguously impose an excise tax on alkylate (or those which are not directly produced by distillation) under Section 148(e) of the NIRC of 1997, as amended, petitioner is thus correct that its claim for refund should have been resolved in its favor.

Commissioner of Internal Revenue vs. Philippine Communications Satellite Corporation CTA EB 2209, July 19, 2021

Facts: On January 20, 2020, Petitioner Commissioner of Internal Revenue filed a Petition for Review before the Court of Tax Appeals *En Banc* seeking to reverse its earlier decision and

resolution dated September 11, 2019 and December 6, 2019 respectively which cancelled Philippine Communications Satellite Corporation (PCSC) VAT assessment in the amount of Php7,336,587.85 on the ground of prescription. Petitioner argued that Section 222(A) of the National Internal Revenue Code of 1997 should be applied considering that the assessment involves falsity and non-filing of VAT returns thereby applying a ten (10) year prescriptive period instead of three (3) years. Also, the CIR states that it did not change his defense in the motion for reconsideration filed before the Court in Division. He states that his argument underscored that besides committing non-filing of VAT return for the sale of property in issue, respondent had also committed falsity for failing to file the correct VAT returns. Finally, the CIR reiterates that the sale of property is subject to VAT and must be assessed for deficiency VAT. He states that respondent erred in considering the subject property as a capital asset, and failed to show proof that the same had not been used in business for more than two (2) years prior to the consummation of the sale. Since respondent was still in operation on taxable years 2008 and 2007, the subject properties were still being used in business.

Issue: Whether or not the returns subject to assessment had already been prescribed.

Ruling: The Court of Tax Appeals *En Banc* uphold the assailed Decision of Court in Division stating that the right of the CIR to assess the allege deficiency VAT which falls within the second quarter of 2007 has already been prescribed. In the instant case, respondent PCSC filed its VAT return for the 2nd quarter of 2007 on July 24, 2007, which is earlier than the last day to file a return on July 25, 2007. Counting three (3) years from July 25, 2007, petitioner CIR had until July 25, 2010 within which to assess deficiency VAT for the 2nd quarter of taxable year 2007. Unfortunately, the subject assessment was received only on July 1, 2011, clearly beyond the 3-year prescriptive period under Section 203 of the NIRC and that the Waiver of the Defense of Prescription Under the Statute of Limitations of the NIRC (Waiver) extended only the right to assess for the fourth quarter of taxable year 2007.

On the issue of application of ten (10) year prescriptive period, the CTA ruled that an issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice, and due process except however when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory, the Court may give due course. The issue raised by the CIR does not fall under exception.

Procter & Gamble Distributing (Philippines), Inc. v. Commissioner of Internal Revenue
CTA Case No. 9946, July 22, 2021

Facts: Petitioner filed a Petition for Review seeking for refund of the total unutilized Creditable Withholding Tax in the total amount of Php. 105,367,282.00 for fiscal year July 1, 2015 to June 30, 2016. The petitioner argued that it has the right for refund since its excess CWTs remain unutilized anchoring it on Sections 58(D) and 76 of the National Internal Revenue Code of 1997 which provides that "If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either xx (C) Be credited or refunded with the excess amount paid, as the case may be.

According to petitioner, since it did not irrevocably opt to carry-over the excess and unutilized CWTs to the succeeding taxable year, it should be properly entitled to a refund thereof.

Issue: Whether or not Petitioner Procter & Gamble Distributing (Philippines), Inc. v. Commissioner of Internal Revenue is entitled to the refund of Php. 105,367,282.00

Ruling: Yes. The Court finds the petition of Procter & Gamble partially meritorious. As noted by the Court, the claim for refund is anchored under Sections 58(D) and 76 of the National Internal Revenue Code of 1997. Following the decision of the Supreme Court in the case of Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation [formerly Mirant (Phils.) Energy Corporation], the CTA noted that there are three requisites that are need to be met in order to be entitled for refund:

1. The claim for refund was filed within the two-year reglementary period pursuant to Section 229 of the NIRC;
2. The fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and income tax withheld from that amount; and,
3. It is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income.

In sum, out of the total claim of P105,367,282.00, petitioner was only able to sufficiently prove its entitlement to the refund or issuance of a TCC representing unutilized excess CWT for FY 2016 in the reduced amount of P84,365,905.35. Thus, the the Petition for Review filed on October 2018 by petitioner Procter & Gamble Distributing (Philippines), Inc. is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED to REFUND** petitioner or **ISSUE a TAX CREDIT CERTIFICATE** in the amount of P84,365,905.35 representing petitioner's excess and unutilized Creditable Withholding Taxes for fiscal year 01 July 2015 to 30 June 2016.

Rieckermann Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9613, July 22, 2021

Facts: Petitioner filed a Petition for Review praying that the Court of Tax Appeals render judgement to set aside and declare null and void respondent's Final Decision on Disputed Assessment (FDDA) which found petitioner liable for deficiency taxes for the taxable year 2006. The petitioner argued that the Revenue Officers did not have the proper authority to conduct the reinvestigation of petitioner.

Issue: Whether or not Memorandum of Assignment and TVN are valid documents to properly transfer and re-assign the examination of petitioner's books of accounts and other accounting records to the revenue officers named therein.

Ruling: No. The Court noted that there was an absence of Letter of Authority that would authorize to newly assigned Revenue Officer to examine the books of accounts of the Corporation. The authority of the reassigned examiner to examine the books of accounts of the petitioner apparently emanates from a Tax Verification Notice (TVN) and a Memorandum of Assignment which were issued by persons not expressly indicated under RMO 43-90. Had the TVN and MOA been signed by the authorized representatives under RMO 43-90, the reassignment would have been valid. Given the facts of the case, the Court has invalidated the assessment against the petitioner.

Citiparking Management Corporation v. Commissioner of Internal Revenue, CTA Case No. 9451, July 23, 2021

Facts: Petitioner filed before the Court of Tax Appeals a Petition for Review seeking the cancellation of Formal Letter of Demand (FLD) and the Warrant of Distraint or Levy (WDL)

dated July 26, 2016 for the Taxable Year 2007. Petitioner argued that subject assessment is null and void for being based upon an unauthorized examination of petitioner's books of account. Further, assuming that the RO was not bereft of any authority to conduct the examination of petitioner's 2007 tax deficiency, respondent still has no right to collect upon the assessments as the same is null and void on the ground of prescription.

Issue: Whether or not Respondent's right to collect upon the deficiency assessment has already prescribed.

Ruling. Yes. The Court ruled in favor of the Petitioner and cancelled and set aside CIR's assessment. The Court noted that the BIR has a period of three (3) years to assess internal revenue taxes, reckoned from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. In case that the BIR issues an assessment within that three (3) year period, it has another three (3) years to collect the taxes. Since FAN/FLD was issued on December 15, 2010, the CIR has until December 15, 2013 to enforce collection of the subject deficiency taxes by distraint or levy or by a proceeding in court. Evidently, prescription had already set in when the subject WDL was issued by the CIR on July 26, 2016. Finally, the contention of the CIR that the Petitioner's motion for reinvestigation did not interrupt or suspend the period to collect. In order to suspend or interrupt prescription to collect, two (2) requisites must concur: (1) there must be a request for reinvestigation; and (2) the CIR must have granted it. In the instant case, while records disclose that a request for reinvestigation was filed by petitioner, there is however, no showing that a reinvestigation was conducted by respondent. In fact, it is apparent from the Decision dated November 2, 2011, issued by the Regional Director, that no additional documents were examined by the revenue officers when they recommended the reiteration of the assessment.

Philippine Airlines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9913 dated July 29, 2021

Facts: On August 28, 2018 Petitioner Philippine Airlines, Inc. a Petition for Review against the respondent Commissioner of Internal Revenue praying that the Court render judgment and ordering respondent to refund or issue tax credit certificate (TCC) in the amount of Php4,492,243.43, representing the excise tax impose on the petitioner's importations which have been illegally collected and paid under protest. Petitioner argues that the PAL's importation of commissary and catering supplies is exempt from all taxes pursuant to its franchise considering that Republic Act (RA) 9334 did not repeal PD No. 1590.

Issue: Whether or not Petitioner Philippine Airlines, Inc. is entitled to the refund of excise tax it has paid for its various importations on August 26, 2016 in the amount of Php4,492,243.43 for its importations of cigarettes, liquor, and wine for its catering and commissary supplies for international consumption.

Ruling: No. The Court of Tax Appeals ruled in favor of the Commissioner of Internal Revenue and denied its Petition for Review. The Court emphasized that Petitioner's tax exemptions are not without conditions. The following are the conditions that the Petitioner needs to comply:

- (1) payment of the corporate income tax;
- (2) the said supplies are imported for the use of the franchisee in its transport/non-transport operations and other incidental activities; and
- (3) they are not locally available in reasonable quantity, quality or price.

The Court noted compliance to the first two conditions. However, with regard to the third condition, i.e. the non-availability of the subject imported alcohol products at reasonable

quantity, quality or price in the local market, the Petitioner fell short of proving compliance therewith. For failure satisfy the conditions, the Court finds no erroneous or illegal taxes that are refundable in favor of the Petitioner.

*****Nothing Follows*****