**BUÑAG AND CORTES LAW OFFICE**

**TMAP Tax Updates**

**August 16 to September 15, 2020**

**BIR ISSUANCES**

**REVENUE REGULATIONS NO. 20-2020** issued on August 17, 2020 amends certain provisions of Revenue Regulations (RR) No. 06-2008 (Consolidated Regulations Prescribing the Rules on the Taxation of Sale, Barter, Exchange or Other Disposition of Shares of Stock held as Capital Assets).

In the case of shares of stock not listed and traded in the local stock exchanges, the following rules shall apply:

1. For common shares of stock, the book value based on the latest available financial statements duly certified by an independent public accountant prior to the date of sale, but not earlier than the immediately preceding taxable year, shall be considered as the prima facie fair market value.
2. For preferred shares of stock, the liquidation value, which is equal to the redemption price of the preferred shares as of balance sheet date nearest to the transaction date, including any premium and cumulative preferred dividends in arrears, shall be considered as fair market value.
3. In case there are both common and preferred shares, the book value per common share is computed by deducting the liquidation value of the preferred shares from the total equity of the corporation and dividing the result by the number of outstanding common shares as of balance sheet date nearest to the transaction date.
4. For this purpose, the book value of the common shares of stock or the liquidation value of the preferred shares of stock need not be adjusted to include any appraisal surplus from any property of the corporation not reflected or included in the latest audited financial statements, in order to determine the fair market value of the shares of stock. The latest audited financial statements shall be sufficient in determining the fair market value of the shares of stock subject of the sale, barter, exchange, or other disposition.

**REVENUE REGULATIONS NO. 21-2020** issued on September 4, 2020 prescribes the policies, procedures and guidelines in the implementation of the Voluntary Assessment and Payment Program (VAPP) for Taxable Year 2018 under certain conditions.

The Regulations shall apply to all internal revenue taxes covering the taxable year ending December 31, 2018, and fiscal year 2018 ending on the last day of the months of July 2018 to June 2019, including taxes on One-Time Transactions (ONETT) such as Estate Tax, Donor’s Tax, Capital Gains Tax, as well as ONETT-related Creditable Withholding Tax/Expanded Withholding Tax and Documentary Stamp Tax.

Any person, natural or juridical, including estates and trusts, liable to pay internal revenue taxes for the above specified period/s who, due to inadvertence or otherwise, erroneously paid his/its internal revenue tax liabilities or failed to file tax returns/pay taxes, may avail of the benefits under the Regulations, except those falling under any of the following instances:

1. Those taxpayers who have already been issued a Final Assessment Notice (FAN) that have become final and executory, on or before the effectivity of the Regulations;
2. Persons under investigation as a result of verified information filed by a tax informer under Section 282 of the NIRC of 1997, as amended, with respect to the deficiency taxes that may be due out of such verified information;
3. Those with cases involving tax fraud filed and pending in the Department of Justice or in the courts; and
4. Those with pending cases involving tax evasion and other criminal offenses under Chapter II of Title X of the NIRC of 1997, as amended.

Qualified persons can avail of the benefits of the VAPP until December 31, 2020, unless extended by the Secretary of Finance.

**REVENUE MEMORANDUM ORDER NO. 28-2020** issued on August 17, 2020, prescribes the updated policies and procedures for the granting and revocation of system access.

Users shall accomplish the appropriate Access Request form depending on the type of request, namely: BIR Form No. 0044 for System Access/Access Revocation Request and BIR Form No. 0043 for eFPS Access Request. The appropriate documents to be attached to the Access Request forms are listed in the Order.

**REVENUE MEMORANDUM ORDER NO. 29-2020** issued on September 7, 2020, prescribes the guidelines and procedures in the conduct of pre-repair inspection and inspection and acceptance of delivered goods and services, infrastructure projects and consulting services in the BIR.

**REVENUE MEMORANDUM CIRCULAR NO. 83-2020** issued on August 17, 2020, addresses the issues and concerns of taxpayers regarding the tax implications of measures being implemented to prevent the spread of COVID-19 on cross-border matters.

Under the effective tax treaties of the Philippines with other countries, the residence State has an exclusive right to tax the employment income derived by its resident taxpayers, except when the employment is exercised in another Contracting State, in which case, the latter State may tax the employment income subject to the provision of relief by the former State.

**REVENUE MEMORANDUM CIRCULAR NO. 84-2020** issued on August 27, 2020, circularizes Republic Act (RA) No. 11453 (An Act Further Strengthening the Powers and Functions of the Authority of the Freeport Area of Bataan [AFAB], Amending for this Purpose RA No. 9728, Otherwise known as the 'Freeport Area of Bataan [FAB] Act of 2009) and RA No. 11457 (An Act Creating the Davao International Airport Authority, Transferring Existing Assets of Francisco Bangoy International Airport to the Authority, Vesting the Authority with Power to Administer and Operate the Francisco Bangoy International Airport and Appropriating Funds Therefor).

**REVENUE MEMORANDUM CIRCULAR NO. 85-2020** issued on August 27, 2020, circularizes Republic Act (RA) No. 11321, entitled “An Act Instituting the Farmers and Fisherfolk Enterprise Development Program of the Department of Agriculture”.

Gifts and donations of real and personal properties to accredited farmers and fisherfolk enterprises shall be exempt from Donor’s Tax. The LGUs shall exempt structures, buildings, and warehouses utilized for the storage of farm inputs and outputs from real property tax: Provided, That the assessed value of the property does not exceed Three Million Pesos (₱ 3,000,000.00).

The Land Bank of the Philippines shall provide preferential rates and special window to accredited farmers and fisherfolk enterprises. Exemptions from Income Tax may be provided for income arising from the operations of the enterprise: Provided, That the farmer and the fisherfolk cooperatives and enterprises shall register as barangay micro-business enterprise pursuant to RA No. 9178 (Barangay Micro-Business Enterprises (BMBEs) Act of 2002).

**REVENUE MEMORANDUM CIRCULAR NO. 86-2020** issued on August 27, 2020, circularizes Republic Act (RA) No. 11291, entitled “An Act Providing for a Magna Carta of the Poor”.

Any donation, contribution and grant which may be made to the programs implemented under the National Poverty Reduction Plan shall be exempt from the Donor’s Tax in accordance with the specific provisions of the National Internal Revenue Code of 1997, as amended by RA No. 10963 (TRAIN Law).

**REVENUE MEMORANDUM CIRCULAR NO. 87-2020** issued on August 27, 2020, circularizes Republic Act (RA) No. 11335, entitled "An Act Converting the Guimaras State College in the Province of Guimaras into a State University to be known as the Guimaras State University, and Appropriating Funds Therefor".

The importation of economic, technical and cultural books and publications which are for economic, technical-vocational, scientific, philosophical, historical or cultural purposes made by the University, upon certification by the Commission on Higher Education, shall be exempt from customs duties in accordance with RA No. 10863 (Customs Modernization and Tariff Act).

All grants bequests, endowments, donations and contributions made to the University and used actually, exclusively and directly by it, shall be exempt from the Donor's Tax and the same shall be considered as allowable deduction from the gross income in the computation of the Income Tax of the donor, in accordance with the provisions of the National Internal Revenue Code of1997, as amended.

**REVENUE MEMORANDUM CIRCULAR NO. 88-2020** issued on August 27, 2020, circularizes Republic Act (RA) No. 11334, entitled “An Act Converting the Marinduque State College in the Municipality of Boac, Province of Marinduque into a State University, to be known as the Marinduque State University, and Appropriating Funds Therefor”.

**REVENUE MEMORANDUM CIRCULAR NO. 89-2020** issued on August 27, 2020, circularizes Republic Act (RA) No. 11336, entitled "An Act Converting the Carlos Hilado Memorial State College in the City of Talisay, and all its Satellite Campuses located in the City of Bacolod and in the Municipality of Binalbagan, all in the Province of Negros Occidental, into a State University to be known as The Carios Hilado Memorial State University, and Appropriating Funds Therefor".

**REVENUE MEMORANDUM CIRCULAR NO. 90-2020** issued on August 27, 2020, circularizes the following Republic Acts:

1. Republic Act (RA) No. 11259, entitled “An Act Dividing the Province of Palawan into Three (3) Provinces, namely: Palawan del Norte, Palawan Oriental and Palawan del Sur”;
2. RA No. 11284, entitled “An Act Converting the Northern Bukidnon Community College in the Municipality of Manolo Fortich, Province of Bukidnon, into a State College to be Known as the Northern Bukidnon State College, and Appropriating Funds Therefor”; and
3. RA No. 11283, entitled “An Act Converting the Camarines Sur Polytechnic Colleges in the Municipality of Nabua, Province of Camarines Sur into a State University to be Known as the Polytechnic State University of Bicol, and Appropriating Funds Therefor”.

**REVENUE MEMORANDUM CIRCULAR NO. 91-2020** issued on August 28, 2020, circularizes Republic Act (RA) No. 11328, entitled "An Act Separating the Sitios of Guina-ang, Madopdop, Mallango, Lanlana and San Pablo from Barangay Lacnog, City of Tabuk, Province of Kalinga and Constituting Them into a Separate and Independent Barangay to be known as Barangay Lacnog West".

**REVENUE MEMORANDUM CIRCULAR NO. 92-2020** issued on September 1, 2020, further extends the deadline for business registration of those into digital transactions (under Revenue Memorandum Circular Nos. 60-2020 and 75-2020) from August 31, 2020 to September 30, 2020.

All those engaged in digital or online transactions who will register their business activity on or before the said extended deadline shall not be imposed penalty for late registration. Taxpayers who have prior transactions subject to pertinent taxes are encouraged to voluntarily declare said transactions and pay the taxes due thereon, with no penalty for late filing and late payment, provided the same is done on or before the said extended due date.

All those who will be found later doing business without complying with the registration/update requirements, and those who failed to declare past due taxes/unpaid taxes shall be imposed with the applicable penalties under the law and existing revenue rules and regulations.

**REVENUE MEMORANDUM CIRCULAR NO. 93-2020** issued on September 2, 2020, encourages revenue officials and employees to participate in the celebration of the Development Policy Research Month (DPRM) with the theme "Bouncing Back Together: Innovating Governance for the New Normal" or "Makabagong Pamamahala para sa Sama-samang Pagbangon sa New Normal".

**REVENUE MEMORANDUM CIRCULAR NO. 94-2020** issued on September 4, 2020, circularizes Joint Memorandum Order No. 1-2020 prescribing the implementing guidelines for the collection and disbursement of Fuel Marking Fees pursuant to DOF-DBM-COA Permanent Committee Joint Circular 001.2018.

Pursuant to Section 148 of the National Internal Revenue Code (NIRC), as amended, the BIR shall collect the Fuel Marking Fees (FMF) at the same time as the internal revenue taxes on petroleum product subject to Fuel Marking are collected. ln all instance, the FMF for locally refined or manufactured petroleum products and the internal revenue taxes must be paid by the refiner prior to the marking activities. Hence pre-payment is authorized.

**REVENUE MEMORANDUM CIRCULAR NO. 95-2020** issued on September 4, 2020, publishes the full text of Civil Service Commission (CSC) Memorandum Circular (MC) No. 15, s. 2020, which amends Section 38 of Omnibus Rules on Leave (amended by CSC MC No. 41, s. 1998), to read as follows:

"Section 38. Period within which to claim terminal leave pay. — Request for payment of terminal leave benefits may be brought any time after the official/employee severed his/her connection with his/her employer."

Said amendment shall be applied prospectively.

**REVENUE MEMORANDUM CIRCULAR NO. 97-2020** issued on September 9, 2020, prescribes the policy for the use of BIR Form No. 0605 for Excise Tax purposes. The use of BIR Form No. 0605 is now authorized only for the following:

1. Payment on export products pursuant to Product Replenishment Scheme under Revenue Regulations No. 3-2008;
2. Payment for Excise Tax on Non-Essential Services for Excisable Cosmetic Procedures until such time that BIR Form No. 2200-C will be available for use; and
3. Payment for deficiency Excise Tax.

All other Excise Tax payments on domestic removals of excisable articles shall use their corresponding Excise Tax Returns (BIR Form 2200 series).

**REVENUE MEMORANDUM CIRCULAR NO. 98-2020** issued on September 15, 2020, clarifies the submission of BIR Form No. 1709 or the Related Party Transaction (RPT) Form and its attachments, as prescribed in Revenue Regulations No. 19-2020.

**SEC ISSUANCES**

**MC No. 22 s. 2020**- Guidelines on Corporate Term, 18 August 2020

**MC No. 23 s. 2020**- Rules on Corporate Debt Vehicle, 18 August 2020

**MC No. 24 s. 2020**- Guidelines on Posting of:

* 1. Additional Security Deposit
	2. Substitution of Securities Deposit and
	3. Change of Resident Agent

25 August 2020

**MC No. 25 s. 2020**- Guidelines in the Filing, Investigation and Resolution of Complaints for Violation of the Right to Inspect and/or Reproduce Corporate Records, 9 September 2020

**SUPREME COURT CASES**

**G.R. No. 240729**

**Commissioner of Internal Revenue vs T. Shuttle Services, Inc.**

The Petition for Review on *certiorari* was denied by the Supreme Court and the CTA *En Banc’s* Decision and Resolution were affirmed.

The CTA *En Banc* found that the CIR failed to prove that the PAN and FAN were properly and uly served upon and received by respondent. The CIR failed to identify and authenticate the signatures appearing on registry receipts for the purpose of ascertaining whether such signatures were those of respondent’s authorized representatives.

The CTA En Banc also observed that the assessment notices attached to the FAN did not prescribe a definite period for respondent to pay the alleged deficiency taxes.

**COURT OF TAX APPEAL CASES**

August 24, 2020

CTA Case No. 9565, 9606 & 9645

**Petron Corporation vs CIR**

Although petitioner’s refund claims were timely failed within the 2 year period, their importations of alkylate are subject to excise tax. According to the NIRC, excise taxes shall apply to goods which are imported here. In addition to this, excise tax shall attach to naphtha, regular gasoline and other similar products of distillation, as soon as they come into existence.

Based on expert testimonies, while alkylate is not directly produced through the process of distillation but by alkylation, it still cannot be denied that its very existence was derived from the utilization of its two raw materials, olefins and isobutane, which are both products of crude oil distillation. Thus, alkylate would not have come into existence without the presence of the said raw materials.

Furthermore, there is no double taxation in this case. Upon importation, there is an excise tax imposition. When the imported goods go through reprocessing, an imposition of tax happens again. There is no double taxation because the two taxes are imposed by two different entities. The first one is upon the importation of goods and the second, upon the manufacturing or production of goods in the Philippines for domestic sale or consumption or for any disposition.

August 26, 2020

CTA Case No. 960

**Integrated Solutions Technology Limited vs CIR**

All audit investigations must be conducted by a designated Revenue Officer, duly authorized to perform audit and examination of taxpayer’s books and accounting records, pursuant to an LOA and that in case of re-assignment or transfer of cases to another RO, it is mandatory that a new LOA shall be issued in favor of the latter.

Moreover, it was held in *CIR vs. Composite Materials, Inc.* that Referral Memorandum does not give authority to the new set of revenue examiners to conduct an examination but rather an LOA validly issued by the Revenue Regional Director.

Furthermore, the NIRC states that the taxpayer shall be required to respond to the PAN within 15 days from receipt before the said taxpayer can be considered in default. After the lapse of the said period, it is only then that the BIR may issue an FLD. In this case, since the subject deficiency tax assessments were issued din violation of petitioner’s due process rights, the same are null and void.

August 26, 2020

CTA Case No. 9436

**Lantro Philippines, Inc. vs CIR**

An appeal for a refund claim of input VAT with the CTA should be made within 30 days either from the receipt of the decision denying the claim or the expiration of the 120-day period given the respondent to decide the claim. Furthermore, it is settled that the 120+30-day periods in Section 112 of the NIRC is not a mere procedural technicality that can be set aside if the claim is otherwise meritorious. It is mandatory and jurisdictional condition imposed by law. However, this rule should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014.

Beginning June 11, 2014, at the time of filing the administrative claim, the taxpayer is already complete his supporting documents and that no other document will be submitted to prove his claim within the 120-day period.

August 26, 2020

CTA Case No. 9005

**Jollibee Worldwide PTE. LTD. vs CIR**

A taxpayer has 15 days from receipt of the PAN to file a protest with the BIR. If during the said period, the taxpayer fails to file a protest to the PAN, it is only then that respondent, or his duly authorized representative, can consider the taxpayer in default, and correspondingly cause the issuance of a FLD and assessment notice, which shall be subsequently served to the said taxpayer. In other words, respondent or his duly authorized representative is duty bound to wait for the expiration of 15 days from the date of receipt of the PAN before issuing the FLD and assessment notice. Such procedure is part and a due process requirement in the issuance of a deficiency tax assessment.

August 26, 2020

CTA Case No. 9767

**Advanced World Systems, Inc. vs CIR**

The 120+30 days periods are conferred by law and, therefore, are mandatory and jurisdictional. It cannot be altered or modified by the Courts, and most especially by the BIR. Moreover, the law is clear that the judicial claim for VAT refund/credit should be made within 30 days from the lapse of the 120-day period or from the receipt of the decision of the BIR, whichever is sooner.

August 26, 2020

**CTA Case No. 9294**

**Morning Star Milling Corporation vs CIR**

In this case, the CTA declares the PAN and FAN as void, as a consequence of the violation of petitioner’s right to due process—because tax assessments issued in violation of the due process rights of a taxpayer are null and void. Furthermore, a void assessment bears no valid fruit. Such being the case, the subject withholding tax assessments cannot be enforced against the petitioner.

“Petitioner avers that a perusal of the undated PAN and the FAN would show that both notices only contain arbitrary figures and did not even contain the facts on which the assessment were made; and that the same PAN and FAN contain no explanation as to where the figures came from and how they were determined.”

The CTA also ruled that as discussed in the *Avon* case the concerned taxpayer must be fully apprised of the factual bases of the assessments, and must not be left unaware on how respondent or his authorized representatives appreciated the explanations or defenses raised in connection with the assessments.

August 27, 2020

**CTA Case No. 9616**

**Sciindustrial Corp vs BIR**

The CTA regards the tax assessment as a nullity absent any prior authority on the part of the revenue officers who conducted the audit examination of taxpayer’s books of accounts and other accounting records, to wit:

“This Court holds that the *Memorandum of Assignment* issued by RDO Barroga cannot validly grant RO Elardo and GS Carsolin the authority to conduct the audit examination pursuant to LOA-052-2014-00000230 dated July 10, 2014. As a Revenue District Officer, Ms. Barroga does not have any power to authorize audit examination of taxpayers or to effect any modification or amendment to a previously-issued LOA because, as mentioned earlier, only the CIR or his duly authorized representatives are granted such power. While it is true that under Section 11 of the 1997 NIRC,52 a Revenue District Officer has the duty "to ensure that all laws, and rules and regulations affecting national internal revenue are faithfully executed and complied with", it does not follow that it may exercise functions which the law has expressly granted to other tax officials such as the CIR and the Revenue Regional Director.”

September 01, 2020

**CTA EB Case No. 2146 (CTA AC No. 195)**

**Makati City and the Office of the City Treasurer vs Allons Holdings, Inc.**

The SC ruled that while local government units, such as petitioners, have the power to create their own sources of revenues and to levy taxes, fees and charges, such power is not absolute. Thus, in the instant case, the taxation of the dividend and interest income of a holding company is not within the powers granted to a local government unit.

September 01, 2020

**CTA EB No. 2014 (CTA Case No. 8907)**

**Commissioner of Internal Revenue vs Manila Medical Services, Inc. (Manila Doctors Hospital)**

In the instant case, considering that the subject WDL is directly related to the assailed assessment, and that the issuance thereof by petitioner is one of the remedies for the collection of delinquent taxes sanctioned under Section 206 of the NIRC of 1997 and BIR rules and regulations, the SC ruled that it did not err in taking cognizance of CTA Case No. 8907 filed by respondent.

Further, the FDDA is void, because by merely notifying the taxpayer of its tax liabilities without elaborating on its details is insufficient. It is also void because there was no valid grant of authority to conduct an examination or assessment.

September 01, 2020

**CTA EB No. 1970 (CTA Case No. 8926)**

**Dedon Manufacturing, Inc. vs Commissioner of Internal Revenue**

The Court denied the petition for failure of the petitioner to observe the 2-year mandatory period within which to elevate the judicial claim for refund at the CTA. The 120-day waiting period before filing a case should commence from the date of the filing of the administrative claims. Likewise, the belated request for additional documents did not toll the running of the said 120-day period.

The CTA in division ruled that:

“Pursuant to the above-quoted portion of the *Pilipinas Total Gas* case, for claims filed before June 11, 2014, or prior to the effectivity of Revenue Memorandum Circular (RMC) No. 54-14, the rules provided under RMC No. 49-2003 in relation to Section 112 of the NIRC of 1997, as amended, shall apply. Thus, petitioner had 30 days from the time of filing of its administrative claim for tax credit or refund to submit all the required supporting documents. If in the course of the investigation, additional documents are required, the BIR must inform petitioner of the need to submit additional documents through a notice, and petitioner shall have 30 days to comply. Upon completion of all required documents, the 120-day period shall commence; but in all cases, all filings and submissions, including the judicial claim, must be completed within the two- year period under Section 112 (A) of the NIRC of 1997, as amended.

September 01, 2020

**CTA EB No. 1938 (CTA Case No. 9318)**

**Parity Packaging Corporation vs CIR**

Based on the pieces of evidence submitted by PPC, none of these would prove that the V A T pertaining to the Tanduay sales were remitted in 2008 and 2009. As pointed out by the Court in Division, PPC should have submitted its proofs of VAT payment. These include its V A T returns, BIR payment confirmations and SLS for the said period. These documents are vital so that the Court can trace and verify if the VAT from the contested transactions have indeed been remitted—without such proof, the general rule that “tax assessments by tax examiners are presumed correct and made in good faith” stands.

But the CIR is incorrect to say that ECC, SSS, Medicare premiums and Pag-ibig fund are not non-taxable compensation. Also, the conclusion of the CIR that the negative balance on the taxpayer's General Ledger is tantamount to undeclared sales is not only illogical but baseless. As correctly ruled by the Court in Division, a negative cash balance in the books of accounts only means that there are more cash disbursements as compared to cash receipts for a certain period. In this case, it shows that the BIR merely presumed that the negative balance on the General Ledger of PPC is in the nature of undeclared sales- it should be noted that although a tax assessment has the presumption of correctness and regularity in its favor, it should be considered void if not supported by sufficient evidence or is based on mere presumptions.

September 02, 2020

CTA EB No. 2131 (CTA AC No. 193)

**Makati City Treasurer and City of Makati vs Mermac, Inc.**

Considering that there is no showing that the *Sangguniang Panlungsod* of petitioner City of Makati issued an ordinance giving authority to petitioner Makati City Treasurer to initiate the filing of the instant Petition for Review, the same must be dismissed.

Further, in order to justify the imposition of LB on dividend income, it is essential to determine whether an entity is performing functions or activities that may be classified as a “bank” or “other financial institution”. Respondent, which a holding company, was conclusively found not to be performing activities akin to a “bank” or other “financial institution”.

But refund or credit on the taxes erroneously paid by way of a *cash* refund may be quite difficult as the funds may not be readily available due to administrative and budgetary constraints which is why the alternative of a tax credit seems to be the more practical and expedient choice.

September 02, 2020

CTA Case No. 9161

**Robinsons Toys, Inc. vs CIR**

It is clear that while it is a general rule that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein, the same admits of certain exceptions, namely, (i) in the interest of justice, *matters of record* having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, and (ii) questions involving *matters of public importance.* Thus, this Court may take up the said matters, at its discretion.

In this case, whether the FDDA, PAN, and FLD are void due to the absence of an eLOA to support the audit investigation are *matters of record,* and *of public importance.* The said issue is a *matter of record,* since the parties submitted their respective evidence, which included the BIR Records of the case, to establish what transpired in the proceedings *a quo,* and thus, could be resolved by simply referring to the same evidence. Furthermore, the same issue can be deemed as *matter of public importance,* simply because a void assessment bears no valid fruit.57 Taxpayers, including Petitioner, must not be held liable under an invalid tax assessment.

The Court then ruled that absence of an eLOA invalidates the subject tax assessments.

September 02, 2020

CTA Case No. 9668

**Gamesa Eolica, SL- Unipersonal Philippine Branch vs CIR**

A review of the records would show that petitioner has complied with these requisites as to qualify it to be entitled to the credit or refund of input VAT. And its petition for review was timely filed:

“In order to satisfy the *first* and *second requisites* o f a VAT refund/credit claim, jurisprudence provides that: (a) the administrative claim must be filed within 2 years from the close of the taxable quarter when the pertinent zero- rated sales were made; and (b) that the judicial claim be made within 30 days either from the receipt of the decision of the CIR or after the lapse of 120 days from the submission of the complete documents in support of the administrative claim, whichever comes first.”

September 02, 2020

CTA Case No. 9506

**Pag-asa Steel Works, Inc. vs BIR**

The Court upheld the BIR’s assessment. It ruled that, “it is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence. Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed.

September 02, 2020

CTA Case No. 9798

**Premium Leisure and Amusement, Inc. (PLAI) vs CIR**

It is clear that for corporate income taxes, the reckoning of the two-year prescriptive period is *"from the time the Final Adjustment Return or the Annual Income Tax Return was filed";* and that the quarterly tax payments are *"mere advance payments of the annual corporate income tax".*

In *Bloomberry Resort* case, the Supreme Court categorically ruled that "it is without a doubt that, like PAGCOR, its contractees and licensees remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit." Likely the *Bloomberry Resort,* petitioner is also a PAGCOR’s contractee and licensee, hence, the Supreme Court decision likewise applies to petitioner.

September 03, 2020

CTA EB No. 1937 (CTA Case No. 8678)

**CIR vs Sabre Travel Network (Philippines) (formerly Abacus Distribution Systems Philippine, Inc.)**

The allegation of the CIR that Sabre Philippines' VAT Zero-Rated Revenues are subject to VAT is without basis since it has sufficiently satisfied the following requisites:

1. The services must be other than processing, manufacturing, or repacking of goods;

2. The payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulation; and

3. The recipient of such services must be doing business outside the Philippines.

September 03, 2020

CTA EB No. 2057 (CTA Case No. 8691)

**CIR vs Securities Transfer Services, Inc.**

Based on the provisions of RMO 43-90, which, to this day, remains a good law, it is clear that a new LOA must be issued even if the authority to examine the books of account and other accounting records of the taxpayer is merely assigned to another RO. Thus, notwithstanding the issuance of an MOA, the reassignment would still require the issuance of a new LOA.

September 03, 2020

CTA EB No. 2095 (CTA Case No. 9570)

**BAP Credit Bureau, Inc. vs CIR**

In this case, the petitioner’s failure to properly observe the procedures in the filing and payment of the ITR leaves the CTA *en banc n*o choice, but to affirm the disallowance of its claim for refund or issuance of TCC corresponding to the penalties.

September 03, 2020

CTA EB No. 1972 (CTA Case No. 9057)

**Taganito Mining Corporation vs Commissioner of Internal Revenue**

In this case, the Court in Division did not rule that TMC is not entitled to zero-rated VAT on its local purchases. On the contrary, the Court in Division recognized that TMC's purchases were zero-rated VAT and it should not have paid input taxes on its local purchases. Accordingly, the fact that no VAT should have been passed on to TMC by its suppliers, does not authorize the refund or credit of such input VAT in favor of TMC. As earlier mentioned, in paying for input VAT when none should have been paid, TMC can now seek reimbursement from its suppliers, and not from the government.

September 03, 2020

CTA EB No. 1912 (CTA Case No. 8853)

**8199 Convenience Corporation vs CIR**

This compulsory nature of a subpoena belies petitioner's contention that it is should be excused from compliance with respondent's order (due to the unfounded reason that the BIR had lost some of its documents previously). As can be gleaned from the cited rules, such a reason is no justification for petitioner's non-compliance with the SOT; neither do these rules provide petitioner with the option to elect a manner by which it is to comply with it.

September 03, 2020

CTA AC No. 212 (Civil Case No. 67856)

**Municipal (now City Government of Taguig) vs Veterans Federation of the Philippines**

In this case, the Court ruled that VFP is a government instrumentality. Therefore, it is exempt from paying RPT and assuming *arguendo* that respondent is not a government instrumentality, the Court still finds VFP exempt from paying RPT pursuant to *Section 11 of RA No. 2640* and as reiterated by *RA No. 7291*.

Further, the Veterans Center is owned by the Republic of the Philippines and, as such, is exempted from payment of RPT. But the Court affirms the ruling of the RTC that respondent is not the entity liable to pay the RPT. Instead, it would be the entities who have the actual or beneficial use and possession of the leased out portions of the Veterans Center.

September 07, 2020

CTA EB No. 2071 (Civil Case No. 9100)

**CIR vs AIG Shared Services Corporation (Philippines) (Formerly Chartis Technology and Operations Management Corporation (Philippines)**

In this case, the Court has accepted the printed screenshots to establish respondent’s entitlement to the claim for refund or issuance of TCC for having proven that it rendered services to entities doing business outside of the Philippines:

“Being official government registry of corporations, the Court is inclined to accept the printed screenshots of the official websites of other foreign government's registry of companies as sufficient proof in lieu of the Certificates/Articles of Foreign Incorporation/ Association.”

September 08, 2020

CTA Case No. 9892

**BSM Crew Service Centre Philippines, Inc. vs The Honorable CIR**

The non-submission of complete supporting documents at the administrative level is not necessarily fatal to the claimant’s judicial claim. To reiterate, a taxpayer may present additional documents before the CTA to substantiate its claim for refund, albeit the same were not presented at the administrative level.

Further, in order to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated sales, the claimant must satisfy the following six (6) requisites:

1. The administrative and judicial claims were filed within the prescribed period
2. The taxpayer-claimant must be VAT-registered;
3. There must be zero-rated or effectively zero-rated sales;
4. The input VAT were incurred or paid;
5. The input VAT are attributable to zero-rated or effectively zero-rated sales; and
6. The input VAT were not applied against any output VAT liability.

Petitioner fell short to comply with the **third requisite**, i.e. in showing that its sales are zero-rated. Thus, its failure to offer in evidence valid VAT invoices and/or official receipts, evidencing its purchases of goods and services from which it allegedly generated the input VAT subject of the present claim for refund, is truly fatal to its cause. As compliance with the **fourth requisite** was lacking, it necessarily follows that the **fifth** and **sixth requisites** were likewise absent.

September 08, 2020

CTA Case No. 9769

**Travellers International Hotel Group, Inc vs CIR**

Being a licensee of PAGCOR and having paid the five percent (5%) franchise tax on its gross gaming revenues, petitioner is clearly exempt from tax on its income generated from its gaming operations.

In sum, the payment by petitioner of the five percent (5%) franchise tax on its gaming operations exempts it from the payment of any other taxes, including the corporate income tax imposed under the NIRC of 1997, as amended.

September 09, 2020

CTA Case No. 9703

**Bryan M. Torregosa vs RD of the BIR- Davao City, RR No. 19**

The petition was dismissed by the CTA for petitioner’s failure to file the same within the time prescribed by law, thus:

“Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.”

It is settled that the said 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive this Court of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same. Simply put, the 30-day period to appeal is jurisdictional and non- extendible.

September 09, 2020

CTA Case No. 9835

**Leadway Holdings, Incorporated vs CIR**

The petition was favorably granted by the CTA which ruled that deposit on future subscription is not a loan agreement subject to DST, thus:

“It is well to remember that assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption that since years have passed and the deposit on stock subscription has not yet been converted into stocks, the same is now considered a borrowing transaction subject to DST. Such conclusion is purely conjectural. Thus, the assessment must be nullified for lack of basis.“

Further, the CTA ruled that the advances are subject to DST beginning July 19, 2011 when the Supreme Court promulgated the case of *Filinvest Development Corporation,* the prevailing rule now is that instructional letters, journal and cash vouchers evidencing advances extended to affiliates or inter-corporate advances qualify as loan agreements upon which DST may be imposed.

Lastly, the CTA also discussed the case of *Michael J Lhuillier, Inc. v. Commissioner of Internal Revenue,* wherein the Supreme Court ruled that 'good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest.

September 09, 2020

CTA EB No. 2208 (CTA AC No. 206)

**Kuehne + Nagel, Inc. vs City of Parañaque**

The CTA ruled that below 60-day period is mandatory:

“The inaction of the local treasurer within the 60-day period is tantamount to a "denial due to inaction" by operation of law. It is the law itself which provides for the consequence of the inaction of the local treasurer over the taxpayer's protest within the given period. Such "denial due to inaction" grants the taxpayer the privilege to appeal the same with a court of competent jurisdiction within the 30-day period from the lapse of the 60-day period within which the local treasurer should decide. The taxpayer would lose its statutory privilege to challenge the local treasurer's "denial due to inaction" should he fail to appeal within the prescribed period.”

Thus, considering the finding that petitioner's judicial protest was filed out of time, petitioner cannot anymore raise any question concerning the validity or correctness of the assessment as the sole avenue to assert the same has been effectively shut.

September 10, 2020

CTA Case No. 9204

**Karina, Inc. vs CIR**

In this case, the subject PAN dated January 8, 2015 was received by petitioner on even date.
Section 3.1.1 of RR No. 12-99, as amended, petitioner had fifteen (15) days from such receipt of the said PAN, or until January 23, 2015, within which to respond thereto.

However, respondent issued the subject FLD on January 23, 2015, which was the last day of the said 15-day period for petitioner to respond thereto. RO Nazario testified that the said FLD was sent to petitioner through registered mail on the same day that the said notice was issued, while petitioner claims that it received the subject FLD on the day that it filed its position paper to the PAN on January 23, 2015, respondent did not wait for petitioner to reply to the PAN before issuing the subject FLD and the *Assessment Notices.*

Thus, the said FLD and *Assessment Notices* were clearly issued prematurely, thereby depriving petitioner of the opportunity to be heard on the PAN, in violation of the due process requirement in the issuance of tax assessments.

September 10, 2020

CTA EB No. 9756

**Marily Development Corporation vs CIR**

In the present case, no evidence was presented to prove that an LOA was issued by respondent. Neither were the revenue officers who actually examined petitioner's books and records presented in Court. In other words, there is no indication that the examination and assessment of petitioner sprung from an LOA.

Accordingly, in the absence of proof that an LOA was issued in this case to authorize the examination and audit of petitioner, the subject tax assessment issued by the BIR is inescapably void. And even if there was, the FAN was issued by the BIR more than three (3) years on the allowed period to assess. The BIR has also failed to present evidence of fraud on the part of petitioner. Thus, the subject assessments had already prescribed.

September 10, 2020

CTA Case Nos. 9659

**Carmen Copper Corporation vs CIR**

Under Section 3.4 of RMO 9-00, the said BOI Certification shall serve as authority for the local suppliers of petitioner to avail of the benefits of zero-rating on their sales to petitioner on the year 2015. On the basis of said Certification, no output tax should, therefore, be shifted by the local suppliers to petitioner. It therefore follows that petitioner is not entitled to refund from the said domestic purchases.

In fact, to allow petitioner a refund of input VAT on its domestic purchases of goods and services, where there is no right to demand it against the government, since its purchases are zero-rated, would unduly enrich petitioner at the expense of the government. Under the law, no one shall unjustly enriched himself at the expense of another. *'Niguno non deue enriquecerse tortizamente condano de otr (Ong Yang, et. a/. vs. DavidS. Tiu, et. a!., 375 SCRA 640).* The said ruling is equally true in the field of taxation, particularly in cases involving claims for refunds.

September 10, 2020

CTA AC No. 229 (RTC Civil Case No. 74669)

**Taguig City Government vs Serendra Condominium Corporation (SCC)**

SCC is not considered as engaged in trade or business by reason of its statutory nature as a condominium corporation. There is also no clear and convincing proof duly submitted in the present case that SCC was actually engaged in business for it to be covered by the exception identified by the Supreme Court in the case of *Yamane*- that a condominium corporation should be exempt from LBT. SCC should not also be charged with environment fees for not being engaged in business.

But SCC cannot be awarded with legal interest because the taxes and fees were not shown to have been arbitrarily collected. Basic is the rule that interest may be awarded only when the collection of tax sought to be refunded was attended with arbitrariness. Besides, in the absence of a statutory provision clearly or expressly directing or authorizing payment of interest on the amount to be refunded to taxpayer, the Government cannot be required to pay interest. The CTA also finds that the award of attorney’s fees should be deleted for lack of sufficient factual and legal bases.

September 11, 2020

CTA EB No. 2043 (CTA AC No. 198)

**Swedish Match Philippines, Inc. vs The City Treasurer of the City of Manila**

The CTA dismissed the petition on the ground that the RTC has no jurisdiction over a claim for refund filed by petitioner:

“As clearly pointed out by the Supreme Court, beginning 23 April 2004 or the passage of Republic Act No. 9282,35 the court which has jurisdiction over a claim for refund of local business taxes is dependent on the amount of claim which may fall under the RTC, MTC, Municipal Trial Court, or Municipal Circuit Trial Courts pursuant to *Section 19(8) and 33 of B.P. Blg. 129, as amended,* taking into consideration *Section 5 of Republic Act No. 7691.”*