TMAP TAX UPDATES

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Prepared by:

VILLARAZA & ANGANGCO
THE FIRM · EST. 1980

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Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), provides that the period of Appeal shall be within fifteen (15) days from receipt of a copy of the questioned decision or resolution. In this case, Petitioner had 15 days from May 6, 2019 or until May 21, 2019, within which to elevate its case to the Court En Banc. Clearly, its Petition for Review was belatedly filed on June 6, 2019, depriving the Court of competence to determine the same. It must be stressed that perfection of an appeal in the manner and within the period permitted by law is mandatory and jurisdictional such that failure to do so renders the judgment of the court final and executory. The right to appeal is a mere statutory privilege that requires strict compliance with the conditions attached by the statute for its exercise.

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By filing a Petitioner for Review with the CTA-Division, Petitioner recognizes the Court's jurisdiction over the case including all matters raised in its Petition including related issues necessary to achieve an orderly disposition of the case.

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The jurisdiction of the CTA is provided under Section 7(a)(1) of Republic Act No. 1125, as amended by R.A. Nos. 9282 and 9503

The CTA has exclusive appellate jurisdiction to review by appeal all decisions of the Commissioner of Internal Revenue 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. The same is provided under Section 3(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals.

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Under Section 3(a)(1) of Rule 4 of the Revised Rules on the Court of Tax Appeals ("RRCTA"), the Court of Tax Appeals Divisions has exclusive jurisdictions over "[d]ecisions of the Commissioner [on] other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue." The term "other matters" includes the review of the BIR's authority and decision to compromise, prescription of the BIR Commissioner's right to collect taxes, determination of the validity of a warrant of distraint and levy issued by the BIR Commissioner, and the validity of a waiver of the statute of limitations.

In this case, the CTA therefore has jurisdiction to determine the validity of the Warrant of Distraint and/or Levy. Such determination also includes the determination of the validity of the assessments for which the Warrant of Distraint and/ or Levy was based.

Commissioner of Internal Revenue v. Hard Rock Cafe (Makati City), Inc.
CTA EB No. 1960; 1 October 2019

Administrative issuances must be interpreted and implemented in a manner consistent with statutes, jurisprudence and other rules and cannot amend the law they merely seek to interpret. The Court of Tax Appeals (CTA) to determine the validity or constitutionality of tax laws, rules and regulations, and other administrative issuances.

Hence, RMC No. 18-2010 cannot validly change, expand or widen the scope or meaning of the terms "cabarets" and "night and day clubs" as defined under the NIRC of 1997, as amended, and in existing jurisprudence.

Hence, the rulings or opinions of the CIR implementing tax laws, such as RMC No. 18-2010 are reviewable by the CTA as they pertain to "other matters" arising under the NIRC or other laws administered by the BIR.

Commissioner of Internal Revenue v. Spouses De Los Reyes
CTA EB No. 1788; 3 October 2019

The determination of the validity of administrative issuances issued by the BIR, such as a revenue memorandum circulars ("RMC"), falls within the exclusive appellate jurisdiction of the CTA, not the RTC. The RTC is not vested with jurisdiction to declare the invalidity of an RMC.

Republic Act No. 9282 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the CTA.

Further, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner of Internal Revenue under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. The determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424.

Commissioner of Internal Revenue v. The Court of Tax Appeals – First Division and Yi Wine Club, Inc.
CTA EB No. 2127; 7 October 2019

For cases before the CTA, a decision rendered by a division of the CTA is appealable to the CTA En Banc.

Section 3b, Rule 8 of the Revised Rules of the Court of Tax Appeals provides : *"(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution*."

Here, the assailed Decision and Resolution of the First Division similarly disposed of the case in its entirety, and no other issues were left to further rule upon. As such, they were proper subjects of appeal. The Rules are clear that "a decision rendered by a division of the CTA is appealable to the CTA *En Banc.*" The existence and availability of such right of appeal prohibit the resort to Certiorari because one of the requirements for the latter remedy is the unavailability of appeal.

In this case, instead of filing a Petition for Review, petitioner filed a Petition for Certiorari under Rule 65 of the Rules of Court.

East West Banking Corporation v. Commission of Internal Revenue and the Revenue District Officer of Revenue District Office No. 57 – City of Biñan
CTA Case No. 9762; 8 October 2019

In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably by assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction.

Demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.

This case involves Petitioner's entitlement to refund its alleged erroneously paid taxes. Nonetheless, incidental in resolving the crux of the controversy is also determining the applicability of RMC No. 105-2016. Henceforth, being mindful of Section 4 of the 1997 NIRC, as amended, the CTA shall not pass upon the validity of constitutionality of RMC 76-2007, but will determine whether RMC 105-2016 may indeed to applied considering that the former has been superseded by the latter.

Tridharma Marketing Corporation v. Commissioner of Internal Revenue
CTA Case No. 9155; 9 October 2019

The Court of Tax Appeals is a court of special jurisdiction and, as such, can only take cognizance of such matters as are clearly within its jurisdiction. The jurisdiction of the CTA is conferred by Republic Act No. 1125, as amended by Republic Act No. 9282 provides that the CTA has Exclusive Appellate Jurisdiction to review by appeal "other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue." Further, Section 11 of R.A. No. 1125, as amended by R.A. Nos. 9282 and 9503, expresses that any party adversely affected by a decision or ruling of the Commissioner of Internal Revenue may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling.

In this case, the Petitioner filed within the 30-day prescriptive period. Thus, the CTA has jurisdiction to hear and determine the instant case.

There must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity. Before an examination of the taxpayer may be validly done, there must first be a LOA issued to the concerned revenue officers authorizing the conduct of an examination. Without such a LOA, the resulting assessment or examination is a nullity. A perusal of the records would show that no Letter of Authority was issued authorizing the Revenue Officer to examine petitioner.

Commissioner of Internal Revenue v. Herbalife International Philippines, Inc.
CTA CASE No. 8478; 11 October 2019

Pursuant to Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals, the affirmative votes of five (5) members of this Court sitting En Banc are necessary to reverse a Decision of a Division thereof. If the said votes are not had, the Petition for review shall be dismissed.

Light Rail Transit Authority v. Bureau of Internal Revenue
CTA EB No. 1874; 11 October 2019

If the disputing parties are all public entities (covers disputes between the BIR and other government entities), the case shall be governed by PD 242. All public entities (which covers disputes between the BIR and other government entities). Thus, disputes regarding assessments made by the CIR against government agencies and offices, including government-owned or controlled corporations, which are under the executive control and supervision of the President, shall be governed by PD 242 as embodied in Chapter 14, Book IV of E.O. 292.

In this case Petitioner is a government instrumentality organized and existing by virtue of Executive Order No. 603. A government instrumentality that disputes the Final Decision on Disputed Assessment (FDDA) made by the Commissioner of the Bureau of Internal Revenue, an agency of the National Government. Both offices are under the executive branch under the executive control and supervision of the President of the Philippines.

Dennis Yap vs. Bureau of Internal Revenue
CTA CASE No. 10020; 14 October 2019

The period to appeal to the Court of Tax Appeals in a protest of an assessment is within thirty (30) days from the receipt of the decision or inaction by the Commissioner or his duly authorized representative over the administrative appeal.

The Preliminary Collection Notice ("PCL") is found the same as the final decision which could be subject of an appeal. A final demand letter from the BIR reiterating to the taxpayer immediate payment of tax deficiency assessment previously made is tantamount to a denial of request for reconsideration. Thus, in this case, the Court had no jurisdiction over the claim since the appeal was filed beyond the 30-day period, counted from the time of receipt of the PCL, under Section 11 of Republic Act No. 1125, as amended by Republic Act No. 9282.

B. Assessment

Commissioner of Internal Revenue v. Sabre Travel Network
CTA EB No. 1806; 16 September 2019

It is elementary that an appeal may only be taken from a judgment or final order that completely disposes of the case.

The Amended Decision dated 15 February 2018 had not yet attained finality in view of the motion for partial reconsideration filed by Petitioner with the Second Division. Hence, the Amended Decision cannot be subject of an appeal to the Court En Banc. Furthermore, under Section 4, Rule 15 of the Revised Rules of Court of Tax Appeals (RRCTA), the filing of a motion for reconsideration shall suspend

the running of the period within which an appeal may be perfected. Simply put, the motion must be resolved first before an appeal can be made.

In this case, considering the Petition for Review is filed without waiting for the resolution by the court of the Parties' motions for partial reconsideration, the result is a multiplicity of suits and piece-meal appeal which is discourage in our jurisdiction.

B. Nevalga Enterprises Corporation v. Bureau of Internal Revenue
CTA Case No.10159; 17 September 2019

The CIR's representative issues the denial to the taxpayer's protest, the latter has an option to either: (1) appeal to the CTA within thirty (30) days from date of receipt of the decision; or (2) elevate the protest through a request for reconsideration to the CIR within thirty (30) days from date of receipt of the decision. However, if it is the CIR himself/herself who denied the protest, appeal can only be made to the CTA within thirty (30) days from date of receipt of the decision. Otherwise, the assessment shall become final, executory and demandable.

In this case, Petitioner received the undated Final Decision on Disputed Assessments (FDDA) on 20 July 2016. CIR then denied Petitioner's protest. Therefore, Petitioner had thirty (30) days from 2 July 2016 or until 19 August 2016 to elevate its protest with the CTA. However, Petitioner filed a Motion for Reconsideration with the CIR on 02 August 2016 awaited the CIR's decision and only then did it file an appeal before the CTA on 03 September 2019. Thus, the Petition should be dismissed for lack of jurisdiction over the subject matter.

Barrio Fiesta Manufacturing Corporation v. Commissioner of Internal Revenue
CTA Case No. 9880; 18 September 2019

Section 228 of the NIRC, as amended by RR No. 12-99 prescribe the due process requirement to be observed in issuing deficiency tax assessments, such as the issuance of a Notice of Informal Conference, Preliminary Assessment Notice ("PAN"), Final Assessment Notice ("FAN") and Formal Letter of Demand by the BIR. Strict compliance with the due process requirement is mandatory to make assessment valid.

In this case, Respondent failed to discharge the burden to prove that Petitioner received the PAN and FAN. The Supreme Court has consistently nullified tax assessments that were issued in violation of the taxpayer's right to due process.

Compania De Garay, Inc. v. Commissioner of Internal Revenue
CTA Case No. 9540; 24 September 2019

In the case of Medicard Philippines, Inc. v. Commissioner of Internal Revenue, the Supreme Court comprehensively discussed the nature of a Letter of Notice and Letter of Authority. The Letter of Notice cannot be converted into a Letter of Authority. In the absence of authority to conduct an examination or assessment, such assessment or examination is a nullity.

It is clear that unless authorized by the CIR himself or by his duly authorized representative, through a LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence,

unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

RMO No. 30-2003 lays down the "no-contact-audit approach" policies and guidelines once its then incipient centralized Data Warehouse (DW) becomes fully operational in conjunction with its Reconciliation of Listing for Enforcement System (RELIEF System). This system can detect tax leaks by matching the data available under the BIR's Integrated Tax System (ITS) with data gathered from third-party sources. Through the consolidation and cross-referencing of third-party information, discrepancy reports on sales and purchases can be generated to uncover under declared income and over claimed purchases of goods and services. Under this RMO, several offices of the BIR are tasked with specific functions relative to the RELIEF System, particularly with regard to Letter of Notices.

Under this policy, even without conducting a detailed examination of taxpayer's books and records, if the computerized/manual matching of sales and purchases/expenses appears to reveal discrepancies, the same shall be communicated to the concerned taxpayer through the issuance of LN. The LN shall serve as a discrepancy notice to taxpayer similar to a Notice for Informal Conference to the concerned taxpayer. Thus, under the RELIEF System, a revenue officer may begin an examination of the taxpayer even prior to the issuance of an LN or even in the absence of a LOA with the aid of a computerized/manual matching of taxpayers' documents/records. Accordingly, under the RELIEF System, the presumption that the tax returns are in accordance with law and are presumed correct since these are filed under the penalty of perjury are easily rebutted and the taxpayer becomes instantly burdened to explain a purported discrepancy.

Indra Verhomal Menghrajani v. Hon. Kim Jacinto-Henares
in her capacity as Commissioner of Internal Revenue
CTA Case No. 9269; 24 September 2019

There is a presumption that a letter duly directed and mailed is received in the regular course of the mail, such presumption, however is a disputable one, When a taxpayer denies receipt of the notice, the burden shifts to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee.

In addition, the presentation of proof of actual receipt of the assessment by the taxpayer is required in order to establish that the right of the taxpayer to be informed of the assessment has not been violated. Thus, it is clear that it is incumbent upon the BIR to prove that the assessment notices were actually received by the taxpayer.

In this case, the presentation of the transmittal letter and registry receipts merely shows that the PAN and FAN were mailed by respondent. However, the Respondent failed to show that the registry return card was signed by Petitioner or her authorized representative. At the very least, a certification from the Bureau of Posts stating that the said notices were indeed received by petitioner should have been presented by respondent. It readily shows that Respondent failed to discharge the burden of disproving Petitioner's claim that it did not receive the assessment notices. The fact that Respondent failed to prove that Petitioner received PAN and FAN, Petitioner's right to due process was indeed violated, rendering the assessments void.

Fort 1 Global City Center, Inc. v. Hon. Caesar R. Dulay as Commissioner of the Bureau of Internal Revenue
CTA Case Nos. 9490 and 9503; 24 September 2019

Pursuant to jurisprudence, there are only two (2) modes by which the FLD and FAN may be sent to the taxpayer which are the following: (1) through registered mail or (2) by personal service.
Personal service requires that the taxpayer or his duly authorized representative shall acknowledge receipt of the said FLD and FAN in the duplicate copy thereof, showing the following: (a) His name, (b) signature, (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself, and (d) the date of receipt thereof.

In this case, Respondent BIR failed to show evidence to prove that the addresses indicated in the notices are the registered address or known address of petitioner. In addition, a perusal of the records would show that Respondent did not comply with Section 3.1.4 of RR No. 12-99, concerning personal service of the PAN, FAN and FDDA for taxable year 2009. Respondent BIR's witnesses themselves eve admitted in open court that they have not confirmed or even required into the authority of the person who allegedly received the notices.

UPS SCS PHILIPPINES, Inc. V. Commissioner of Internal Revenue
CTA CASE No. 9462; 24 September 2019

A Letter of Authority (LOA) is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.

A LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 7 of the 1997 NIRC limits on which powers of the CIR may be delegated by him and which powers are to be exercised exclusively by him. The issuance of a LOA is not one of the non-delegable powers of the CIR. A LOA is, in essence, a contract of agency. Article 1868 of the Civil Code defines agency as a contract where "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." In a LOA, the CIR is the principal and the Revenue Regional Director is the agent. While the power to make assessments is primarily lodged with the Respondent, the power to issue LOA in relation thereto may be expressly delegated to the Revenue Regional Director.

Article 1892 of the Civil Code states that an agent may appoint a sub-agent. The power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to Revenue Officer (RO) Arnold M. Magay and Group Supervisor (GS) Lina Inductivo who were originally named in the LOA, may be revoked, transferred and reassigned to RO Magay and GS Bernard U. Urbano. In this case, RO Flores and GS Urbano acted without authority when they performed the audit of petitioner and, subsequently, recommended the issuance of the assailed assessment. An assessment issued without valid authority is a nullity.

Commissioner of Internal Revenue v. Mindanao Sanitarium and Hospital, Inc.
CTA EB No. 1807; 24 September 2019

It is well-settled that if the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the alter to prove by competent evidence that such notice was indeed received by the addressee.

Thus, the *onus probandi* shifts to the BIR to show evidence that the taxpayer received the assessment in due course. The receipt of the taxpayer of the PAN from the BIR forms part of due process since the former and the CIR have the opportunity to settle the case at the earliest possible time without the issuance of the FAN.

In this case, the CIR failed to prove the receipt of the PAN by respondent, thus, due process was not complied with.

Commissioner of Internal Revenue v. Great Holiday Entertainment Services, Inc.
CTA EB No. 1843; 24 September 2019

A Letter of Assessment is the authority given to the Revenue Officer assigned to perform assessment functions. It empowers the said Revenue Officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.

A LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. There must a grant of this authority before any Revenue Officer can conduct the examination or assessment.

In this case, a perusal of the records reveals that the assessment was precipitated by a mere Tax Verification Notice (TVN) instead of a valid Letter of Authority. It is apparent that the authority relied upon by the Revenue Officer was erroneous and invalid. "An invalid assessment bears no valid fruit. As held in ***CIR v. BASF Coating + Inks Philippines, Inc.,*** the law imposes a substantive, not merely a formal, requirement."

SR Metals, Inc. v. Commissioner of Internal Revenue
CTA EB No. 1922; 24 September 2019

In this case, Respondent's deficiency income tax assessment for taxable year 2011 was the withdrawal or revocation by the BOI of Petitioner's ITH incentive entitlement. However, on 03 October 2018, the Supreme Court already pronounced in the case of Board of Investments v. SR Metals, Inc. held that withdrawal by the BOI of Respondent's ITH incentive was without any basis. Thus, the deficiency income tax assessment issued by the Respondent against Petitioner for taxable year 2011 is cancelled.

Wellform Trading Corporation v. Commissioner of Internal Revenue
CTA EB No. 1827; 24 September 2019

In determining the validity of the assessment and the liability on the alleged deficiency value-added tax, the proper allowance or disallowance of claimed input tax other than those cited in the FAN are related issued necessary to achieve an orderly disposition of the case. Being a court of record, cases filed are litigate de novo and party litigants should prove every minute of their case.

Sales invoices or receipts issued by the supplier are necessary to substantiate the actual amount or quantity of goods sold and their selling price and taken collectively are the best means to prove the input VAT payments. Thus, Petitioner's submission if mere supporting documents or substantial compliance with the invoicing requirements cannot be considered as "proper substantiation" as required by law.

Kokoloko Network Corporation v. Commissioner of Internal Revenue
CTA Case No. 9574; 24 September 2019

A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue. Otherwise, it becomes null and void unless revalidated.

In this case, it appears that the LOA was issued beyond the 30th day from the date of issuance. Accordingly, the said LOA is considered null and void.

Only the CIR or his duly authorized representatives who can authorize the examination of taxpayers for purposes of assessment of any deficiency taxes. Thus, unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.

Considering that only the above officials are given the power to authorize examination of taxpayers for assessment purposes through the issuance of a LOA, logically speaking, it is only them who can effect any modification or amendment to a previously issued LOA, should the need therefor arises. In this case, the Revenue Officers were different from those who examined petitioner's books of account and other accounting records. A Revenue District Officer has no authority to effect any modification or amendment made to an issued LOA.

Primeline Products Philippines, Inc. v. Hon. Arlberto D. Lina Commissioner of Customs
CTA Case No. 9281; 26 September 2019

The prohibition of used vehicle importations under Executive Order Nos. 156 and 877-A applied to importation of all types of used motor vehicles and not only limited to importation made by those in the car manufacturing business.

The whereas clauses of Executive Order No. 156 states that declared policy of the government is to "ban importation of all types of used motor vehicles and parts and components, except those that may be allowed under certain conditions" in order "to accelerate the sound development of the motor vehicle industry in the Philippines," while one of the whereas clauses of Executive Order No. 877-A provides that "there is a need to strengthen the used vehicle importation prohibition under E.O. 156". Hence, the prohibition of used vehicles importation applies to petitioner's importation of the subject vehicle. This is to protect the domestic motor vehicle industry and limiting the used vehicle importation prohibition to those in the car manufacturing business would defeat the purpose of EO Nos. 156 and 877-A.

Commissioner of Internal Revenue v. Alpha245, Incorporated (Formerly, Arc Worldwide Philippines Co. Inc.)
CTA EB No. 1875; 1 October 2019

As a general rule, there is a prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. However, the prima facie correctness of a tax assessment does not apply upon proof that an

assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment" i.e., without any foundation character, the determination of the tax due is without rational basis.

In this case, the BIR imputes an undeclared income on the part of respondent, i.e. deficiency income tax, based on a mere presumption that since there are undeclared expenses, there are corresponding undeclared sources of income. Here, the CTA ruled that the assessment itself should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.

New Coast Hotel, Inc. v. Commissioner of Internal Revenue
CTA EB NO. 1758, 1 October 2019

Section 228(b) of the 1997 NIRC, as amended, in relation to Section 3.1.3(ii) of RR No. 12-99, is an exception to the taxpayer's right to receive a PAN, and is available to respondent as a defense should a questions arise vis-à-vis the non-issuance of a PAN. It is not part of petitioner's right to due process, i.e., not to receive a PAN and instead be automatically issued a FAN.

The general rule is that in the observance of a taxpayer's right to due process, the taxpayer is initially entitled to the prior receipt of a Preliminary Assessment Notice (PAN). However, such taxpayer loses this right, and a formal assessment notice for the payment of the taxpayer's deficiency tax liability shall be sufficient, when a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent.

In this case, the CIR contended that the New Coast Hotel, Inc. was not entitled to receive PAN by necessarily admitting that there was a discrepancy between the taxes withheld and the amount it actually remitted to the BIR. Considering such discrepancy, the CIR suggested that the corporation must be penalized under the circumstances, i.e. respondent should immediately issue a FAN without affording it the benefit of a PAN.

San Miguel Foods v. Commissioner of Internal Revenue
(CTA Case No. 9241; 2 October 2019)

In order for a tax assessment to stand the test of validity, it must contain not only a computation of tax liabilities but also a demand for payment within a prescribed period.

In this case, the "DUE DATE" portion of the respective of Assessment Notices are all left blank and the FLD and Details of Discrepancies shows that there is no fixed date when payment of the subject tax assessments should be made. Hence, the subject tax assessments cannot be considered as valid, since the same do not contain a demand for payment within a prescribed period.

Metro Rail Transit Corporation v. Commissioner of Internal Revenue
CTA Case No. 9016; 2 October 2019

There must be a grant of authority, through a LOA issued in favor of a revenue officer assigned to perform assessment functions, before said officer can conduct a tax audit or examination. In the absence of such an authority, the assessment or examination is a nullity. A referral memorandum granting another revenue officer the authority to continue the conduct of the audit investigation is permissible, provided that it is signed by the Assistant Commissioner/Head Revenue Executive Assistant.

In this case, the LOA dated January 27, 2009 authorizing Revenue Officer Edison 0. Larin to examine petitioner's books of accounts and other accounting records for taxable year 2007 was valid because it was issued by the Head Revenue Executive Assistant. However, when the audit investigation was reassigned to Revenue Officer Elizabeth U. Cadiz for the continuation thereof, it was merely made through a referral memorandum dated May 15, 2009 and was issued by the Chief, LT Audit and Investigation Division I, Conrado C. Lee. Thus, RO Elizabeth U. Cadiz was not duly authorized to continue the audit investigation.

Titanium Corporation v. Commission of Internal Revenue
CTA Case No. 9515; 2 October 2019

While it is a settled rule that all presumptions are in favor of correctness of tax assessments, tax assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be, and in order to stand the test of judicial scrutiny, such assessments must be based on actual facts.

Here, there was no factual basis to support the assessment that the alleged unaccounted expenses arising from the excess payments found in petitioner's Alphalist as compared to its FS/ITR, translate to undeclared income on the part of petitioner. As stated in the Details of Discrepancies attached to the FDDA, the assessment was based merely on the inference that undeclared expenses reflect undeclared sources of income.

For income to be taxable, the following requisites must exist: (a) there must be gain; (b) the gain must be realized or received; and, (c) the gain must not be excluded by law or treaty from taxation. These requisites were not met in this case as respondent was not able to show that there was any gain actually or constructively realized or received by petitioner. Moreover, any claim of undeclared income is offset by the corresponding expense payment. Respondent merely presumed that there was a gain on the part of petitioner as a result of unaccounted expenses.

Commissioner of Internal Revenue v. Asia United Insurance, Inc.
CTA EB No. 1725; 7 October 2019

It was not established by the CIR that respondent requested for extensions of time to pay or requested for investigation. Hence, there was no reason for CIR to postpone the collection of the deficiency interest.

The CTA in Division ruled that the collection of alleged interest on deficiency documentary stamp tax (DST) assessment against respondent for taxable year 2003 had already prescribed. Herein, the CTA *En Banc* ruled that the Formal Assessment Notice (FAN) was issued on 27 January 2006 and was received by respondent on 31 January 2006. Counting five (5) years from 31 January 2006, the CIR had until 31 January 2011 within which to collect the interest on the deficiency DST liability.

The Warrant of Distraint and/or Levy (WDL) was served on respondent only on 13 December 2013, which is clearly more than five (5) years after the FAN, and is therefore prescribed.

Metro Pacific Tollways Corporation v. Makati City
CTA AC No. 204; 9 October 2019

Previously, a taxpayer assessed by the local treasurer for deficiency taxes, fees or charges has generally two (2) remedies to question the local treasurer's assessment, protest such assessment under Section 195 of the LGC or pay the tax under protest and, thereafter, file a claim for refund

under Section 196 of the LGC. However, recently in the case of City of Manila v. Cosmos Bottling G.R No. 196681 27 June 2018, the Supreme Court held that that whenever there is an assessment by the local treasurer, Section 195 applies, whether or not the taxpayer opts to pay the assessed tax.

When the assessment for deficiency of local taxes made by an entity, other than the local treasurer, the failure to protest the same does not make the assessment final and unappealable. In fact, the taxpayer may seek to avail of Section 196 of the LGC to refund erroneous taxes paid.

In this instant case, there is no dispute that the controversy arose from Billing Assessment Forms No. 03763J4 and 037634, both dated 28 January 2015, issued by the Makati City Business Permits Office, as signed by the City Administrator/OIC Head Business Permits Office and by the City Mayor. Considering that the Billing Assessments were not issued by the Office of the City Treasurer nor were they signed by the City Treasurer, they cannot be considered as the notice of assessment required under Section 195, which becomes final and unappealable within sixty (60) days from receipt of the notice.

Sunnyphil Incorporated v. Commissioner of Internal Revenue
CTA Case No. 9421; 09 October 2019

The Letter of Assessment gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment. It also authorizes and empowers a designated Revenue Officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period. Unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

In this case, the BIR Officer who recommended the issuance of the PAN against Petitioner was not authorized to recommend the issuance of a tax assessment of any deficiency tax due against petitioner. Her supposed authority cannot be based on a mere Re-Assignment Notice. A re-assignment or transfer of cases to another Regional Officer requires the issuance of a new Letter of Assessment pursuant to Revenue Memorandum Order No. 43-90 dated 20 September 1990.

Roberto O. Yangco v. The Revenue District Officer of Revenue District No. 8 of the Bureau of Internal Revenue, Baguio City et al.
CTA Case No. 9388; 10 October 2019

Upon receipt of the CIR's final decision on the disputed assessment, the taxpayer can file a petition for review with this Court within thirty (30) days after receipt of a copy of such decision. However, if the final decision was only rendered by the CIR's duly authorized representative, the taxpayer is given the option of whether (1) to elevate his protest to the CIR upon receipt of denial of protest by the authorized representative, or (2) to directly appeal such denial to the Court of Tax Appeals, again, both within thirty (30) days from receipt of the denial of the protest.

In this case, Petitioner took eight-two (82) days after receipt of the final decision to file an appeal with the CIR. Thus, the instant Motion is filed out of time.

Lanao Del Norte Electric Cooperative v. Commissioner of Internal Revenue Kim S. Jacinto-Henaras
CTA Case No. 8769; 11 October 2019

Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.

In this case, Petitioner was informed of the factual and legal bases of the assessment. The Preliminary Assessment Notice, Formal Letter of Demand and Final Decision on Disputed Assessment indicated not only the deficiency tax involved and interest due thereon, but also sufficiently stated the facts, the law, rules and regulations on which the assessment is based.

CRU Concepts, Inc. v. Commissioner of Internal Revenue
CTA Case No. 9389; 15 October 2019

The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands.

In this case, the CTA observed that most of petitioner's documentary evidence were denied admission due to failure to submit the duly marked exhibits. The Court also finds that there is no evidence presented to prove that the items pertained in the assessment are erroneously subjected to tax by the respondent. Hence the petitioner was not able to show proof to prove that the CIR's assessment is wrong.

Toledo Holdings Corporation, v. Commissioner of Internal Revenue
CTA Case No. 9375; 15 October 2019

There must be a grant of authority, through a LOA issued in favor of a revenue officer assigned to perform assessment functions, before said officer can conduct a tax audit or examination. In the absence of such an authority, the assessment or examination is a nullity.

In this case, the want of the necessary issuance of a new LOA specifically designating Revenue Officer Pedrosa to conduct the audit and examination of petitioner's books of account and accounting records for 2011, RO Pedrosa acted without authority when she conducted the audit of petitioner's books. Consequently, the assessment is a nullity, and petitioner cannot be held liable for the Donor's Tax due in the FDDA.

Nationwide Health Systems Baguio, Inc. v. Commissioner of Internal Revenue
CTA Case No. 9507; 15 October 2019

In* Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, the Supreme Court that a direct denial of the receipt of the mail which contains the assessment notice shifts the burden upon the BIR to prove that the mailed letter was indeed received by the addressee.

In this case, petitioner's treasurer, Benitez, directly denied the receipt of an assessment notice from the BIR; what she admitted was the receipt of the FLD dated 27 August 2015, and not the assessment notice. The direct denial makes it incumbent upon the BIR to prove that the assessment notice which he claimed to have been mailed together with the FLD was indeed received by petitioner. Unfortunately, aside from not actually showing that it was the FLD that was sent to petitioner (and duly received by it), this registry receipt was also not properly authenticated. It is settled that receipts

for registered letters and return receipts must be properly authenticated in order to serve as proof of the letters.

C. Refund /Issuance of Tax Credit

Axeia Development Corporation v. Commissioner of Internal Revenue
CTA Case No. 9816; 16 September 2019

In the case of Commissioner of Internal Revenue v. PASCOR Realty and Development Corporation, et al., the Supreme Court held that an assessment informs the taxpayer that he or she has tax liabilities. But not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments—it should also include a demand for payment within a prescribed period.

In this case, the document attached to the electronic mail sent by the Revenue District Officer cannot be considered as an assessment constituting a demand for payment nor a final decision of the CIR. It is a mere computation of deficiency taxes, notifying petitioner of the amounts stated. There was neither a demand for payment nor was the same contained in the document attached therein. Thus, there is no disputed assessment to speak of and an appeal of this case over the alleged assessment is premature.

Petitioner's remedy is to first file a claim for refund or credit with the CIR. From the records, instead of filing an administrative claim for refund under Section 229 of the NIRC, as amended, Petitioner filed a letter-protest questioning the imposition of deficiency tax against it by the CIR.

Thermaprime Well Services, Inc. v. Commissioner of Internal Revenue
CTA Case No. 8896; 16 September 2019

A claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+ 30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120 + 30 day periods is necessary for such a claim to prosper.

The rule that the counting of the 120-day period is to begin from the submission of the complete documents cannot be applied in this case since it was only after the lapse of the 120-day period when Petitioner started to submit additional supporting documents. The subsequent dates when Petitioner submitted the said supporting documents are already way beyond the 120 + 30 day period prescribed by law. Thus, petitioner's failure to observe the mandatory 120+30 day periods is fatal to its claim and rendered the Court devoid of jurisdiction.

Commissioner of Internal Revenue v. Sartorious Aketiengesellschaft
CTA EB No. 1858; 16 September 2019

Respondent is a non-resident foreign corporation which is located abroad and appointed the law firm to facilitate on its behalf the processing of all its tax and legal requirements in the Philippines.

Under paragraph 1(f) and (g) of the SPA, said law firm, where Atty. Hechanova is a partner, is mandated to file the return and pay the tax due for any CGT and DST that respondent may incur in its

transaction for the transfer of shares of stock to another entity. Thus, Atty. Hechanova has knowledge in the payment of such CGT and DST as well as the administrative claim for refund initiated by the law firm. The Court in Division did not err in allowing Atty. Hechanova as signatory in the subject verification and certification against forum shopping.

San Miguel Brewery Inc. v. Commissioner of Internal Revenue
CTA Case No. 9513; 17 September 2019

The Court of Tax Appeals has jurisdiction to rule, not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular which the said assessment is based.

In the case of Commissioner of Internal Revenue v. Philippine-Aluminum Wheels, Inc., the Supreme Court reiterated that if there is a discrepancy between the law and a regulation issued to implement the law, the law prevails because the rule or regulation cannot go beyond the terms and provisions of the law. In this case, the Court finds there is no basis for imposing the additional four percent (4%) excise tax. At the time effectivity of RA No. 10351, as well as at the time when Petitioner's cause of action arose there is no downward reclassification of Petitioner's beer products from Tier 1 to Tier 2 which would merit the automatic four percent (4%) increase mentioned in R.A. No. 10351.

In this case, the Motion for Partial New Trial cannot be granted since it failed to prove that there is failure to present evidence was due to excusable negligence or mistake.

Hedcor Sibulan, Inc. Commissioner of Internal Revenue
CTA EB No. 1689; 17 September 2019

Section 112 (c) of the 1997 NIRC, has three (3) validly legal scenarios for the Appeal to the CTA which should be filed: (a) within 30 days from receipt of the CIR's decision of denial; OR (b) after the expiration of the 120-day period. In this case the 3 scenarios are the following:

1. CIR issues decision before the lapse of 120 days from filing of administrative claim.	1. Taxpayer files judicial claim within 30 days from receipt of the decision without need to wait anymore for the 120th day.
2. CIR issued decision on the 120th day from filing of administrative claim.	2. Taxpayer flies judicial claim within 30 days from the 120th day the decision was issued.
3. CIR does not issue decision within 120 days from filing of administrative claim	3. Taxpayer filed judicial claim within 30 days after the 120th day.

However, in this Petitioner filed a Petition for Review beyond the prescribed period, hence, such petition is beyond the jurisdiction of this Court for being filed out of time. In this case, considering that there is no actual denial of the claim, it should be treated as inaction.

Carmen Copper Corporation v. Commissioner of Internal Revenue
CTA Case No. 9457; 19 September 2019

Section 8 of Republic Act No. 1125 the Court of Tax Appeals as a court of record, thus, as cases filed before it are litigated de novo, party-litigants shall prove every minute aspect of their cases. It is the function of this Court to review factual issues and examine, evaluate or weight the probative value of the evidence presented by the parties.

In this case, Petitioner did not formally offer the same during trial and the documents submitted are mere photocopies. Thus, the Court is constrained to disregard the documents, for lack of probative value and being inadmissible in evidence.

Parties should follow Section 34 of Rule 132 of the Rules of Court provides that the court shall consider no evidence which has not been formally offered. Petitioner neither offered the subject documents nor submitted the originals.

Actions for tax refund, as in the instant case, are in the nature of a claim for exemption hence must be construed in *strictissimi juris* not only against the taxpayer, but also with respect to scrutinizing and analyzing the evidence presented.

Vestas Services Philippines, Inc. v. Commissioner of Internal Revenue
CTA Case No. 9480; 20 September 2019

The special law applicable in petitioner's case is Republic Act (RA) No. 9513 or the Renewable Energy Act of 2008, which was approved on December 16, 2008. Among the incentives provided under the law is that all renewable energy (RE) developers are entitled to zero-rated value-added tax on their purchases of local supply of goods, properties and services needed for the development, construction and installation of their plant facilities. Thus, Petitioner's sales of services to EDC qualify for VAT zero-rating under Section 108(B)(3) of the NIRC of 1997.

In this case, in order to be considered as VAT zero-rated under Section 108(B)(2) of the NIRC, the following requisites must be met: (1) the services must be other than processing, manufacturing or repacking of goods; (2) the recipient of such services is doing business outside the Philippines; and (3) payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

It is well-settled that in order to be considered a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC certificate of non-registration of corporation/partnership and proof of foreign incorporation/association/business registration

Lepanto Consolidated Mining Company v. Commissioner of Internal Revenue
CTA Case No. 9649; 23 September 2019

Section 112(A) of the NIRC requires that administrative claim or issuance of a tax credit certificate (TCC) of input VAT must be made with the BIR within two (2) years after the close of taxable quarter when the zero-rated or effectively zero-rated sales were made. A 120-day waiting period to give time for the CIR to act on the administrative claim for a refund or credit and the period of 30 days which refers for filing a judicial claim with the CTA.

In this case, Petitioner had until 31 March 2017, 30 June 2017, 30 September 2017 and 31 December 2017, respectively within which to file its administrative claim. Hence, it timely filed its administrative claim on 17 March 2017. Respondent had one hundred twenty (120) days or until 15 July 2017 within which to act on petitioner's claim. However, since respondent failed to expressly act on the said claim, Petitioner has thirty (30) days after the 120-day period or until 14 August 2017. Thus, this Petition is timely filed.

Intergraph Process & Building Solutions Philippines, Inc v. Commissioner of Internal Revenue
CTA Case No. 9454; 23 September 2019

The Philippine VAT system adheres to the Cross Border Doctrine, according to which, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority.

Actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT.

In this case, Petitioner's order to refund or issue a tax credit certificate is partially granted. Petitioner proved that it was engaged in zero-rated sales or transactions with regard to its PEZA-registered clients. This is pursuant to Section 112(A) of the National Internal Revenue Code ("NIRC") of 1997, as amended, provides for a situation where the taxpayer is engaged in zero-rated or effectively zero-rated sales and in taxable or exempt sales and the input taxes cannot be directly and entirely attributed to any of the sales, in which case, the input taxes shall be allocated proportionately on the basis of the volume of sales.

BW Shipping Philippines, Inc. v. Commissioner of Internal Revenue
CTA Case No. 9448; 23 September 2019

In order to be considered as VAT zero-rated under Section 108(B)(2) of the NIRC, the following requisites must be met: (1) the services must be other than processing, manufacturing or repacking of goods; (2) the recipient of such services is doing business outside the Philippines; and (3) payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

In order that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a "non-resident foreign corporation." Moreover, there must not be any indication that the recipient of the services is doing business in the Philippines. Hence, to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC certificate of non-registration of corporation/partnership and proof of incorporation, association or registration in a foreign country.

The foreign currency remittances referred to under Section 1 08(B)(2) of the NIRC must likewise be supported by VAT zero-rated official receipts. In this case, the 4th quarter of taxable year 2014 is disallowed for being unsupported by VAT zero-rated official receipts.

In this case, Petitioner has sufficiently proven its entitlement to refund or issuance of a TCC in the reduced amount of Php 5,503,628.95 representing its unutilized input

NOKIA Philippines, Inc. v. Commissioner of Internal Revenue
CTA Case No. 8405; 24 September 2019

The following requisites that must be satisfied in order that Petitioner's claim for refund or issuance of tax credit certificate of unutilized input VAT under Section 112 of the NIRC of 1997, are the following: (1) the taxpayer is VAT-registered; (2) the claim must be filed within two years after the close of the taxable quarter when such sales were made; (3) the taxpayer is engaged in sales which are zero-rated or effectively zero-rated; (4) the creditable input VAT due or paid must be attributable to such sales, except the transitional input VAT, to the extent that such input VAT has not been

applied against the output VAT; (5) in case of zero-rated sales under Section 1 06(A)(2)(a)(1) and (2), Section 1 06(8) and Section 1 08(8)(1) and (2), the acceptable foreign currency exchange proceeds thereof have been duly accounted for in accordance with BSP rules and regulations; and (6) in case of denial of the refund claim, whether full or partial, or inaction on the part of respondent, the judicial action must be timely filed in accordance with the above-quoted Section 112(0) and pertinent jurisprudence.

For the third requisite, the following elements must be present for a transaction to be treated as subject to zero percent (0%) VAT under Section 108 (B)(2): (1) the services must be performed in the Philippines; (2) the recipient of such services is doing business outside the Philippines; (3) the services must be other than processing, manufacturing or repacking goods; and (4) the consideration for the services is paid for in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

In this case, Petitioner failed to show that its services were performed in the Philippines.

Commissioner of Internal Revenue v. Pilipinas Total Gas Inc.
CTA EB No. 1969; 24 September 2019

The law provides does not require that the input taxes subject of the claim be directly attributable to zero-rated sales. The NIRC even allows allocation of input taxes in case the same cannot be directly or entirely attributed to any of the sale, where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services.

Section 112(A) of the NIRC, only required that the input tax paid or incurred is attributable to a taxpayer's zero-rated sales and does not mandate that the input tax be directly attributable to petitioner's zero-rated sales. Input tax that bears a direct or indirect connection with petitioner's zero-rated sales satisfied the requirement of the law.

In this case, despite the strict construction against the taxpayer, Petitioner overcame the burden of showing that it has complied with the conditions for the grants of the tax refund.

VAT attributable to its zero-rated sales for the four quarters of taxable year 2014.

Philippine Airlines, Inc. v. Commissioner of Internal Revenue and Commissioner of Customs
CTA Case No. 8220; 26 September 2019

In order to be exempt from paying specific taxes on its importation of Jet A-1 fuel and be entitled the refund sought, the following must be established: (1) the basic corporate income tax or franchise tax, whichever is lower, must be paid, under the conditions set forth in Section 13 of PD No. 1590; (2) the articles, materials or supplies imported should be for its use in its transport and non-transport operations and other activities incidental thereto; and (3) the articles, materials or supplies imported should not be locally available in reasonable quantity, quality or price.

In order to show compliance with the second requisite, Petitioner presented its Manager for Fuel Supply and Operations—Fuel Management Department, Roberto R. Razal, who described in detail the movement of the subject imported Jet A-1 fuel from the primary depot where they were stored after their release from the BOC until they were uplifted into the aircraft.

In the case of Commissioner of Customs v. Air Philippines Corporation, documentary and testimonial evidence that are corroborated may be considered as proof that the imported aviation fuel was, indeed, used in petitioner's transport and on-transport operation and other activities incidental thereto. Thus, the additional evidence presented by Petitioner, both testimonial and documentary, sufficiently established that the importation of subject aviation fuel was for its transport operations and other activities incidental thereto.

Indubitably, the additional evidence presented by petitioner, both testimonial and documentary, sufficiently established that the importation of subject aviation fuel was for its transport operations and other activities incidental in satisfaction of the second condition for its entitlement for the refund prayed for.

For the third requisite, the Jet Fuel for the years of 2008 and 2009, clearly exceeds the Total Local Available Supply of 6,050 MB and 5,517 MB. Hence, the Jet A-1 fuel imported by petitioner was not locally available in reasonable quantity, justifying the subject importation thereby entitling petitioner to the tax exemption prayed for. Note, that it is sufficient for the taxpayer, such as herein petitioner, to prove just one circumstance to qualify for the tax exemption.

Bangko Sentral ng Pilipinas v. Commissioner of Internal Revenue
CTA Case No. 9478; 26 September 2019

Sections 204 and 229 of the NIRC pertain to the refund of erroneously or illegally collected taxes. Section 204 applied to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from date of payment of the tax or penalty.

In this case, Petitioner BSP presented as evidence Credit Advices to the Bureau of Treasury to claim a tax refund. However, said pieces of evidence cannot be given credence by Court for being hearsay evidence. Pursuant to jurisprudence, hearsay evidence has no probative value unless it can be shown that the evidence falls under the exceptions to hearsay evidence. Petitioner did not present in court the persons who prepared or issued the respective Credit Advices in violation of the hearsay evidence. Thus, as a consequence, these pieces of evidence cannot be given probative weight.

Philippine Airlines Inc. v. Commissioner of Internal Revenue
CTA Case No. 9435; 26 September 2019

A claimant for refund must first file an administrative claim for refund before the CIR, prior to filing a judicial claim before the CTA pursuant to Section 229.

In this case, Petitioners failed to establish that prior to the judicial claim for refund, administrative claims for refund were in fact filed with the respondent CIR in compliance with Section 229. There is non-compliance considering that both the administrative claim and the judicial claim for refund was simultaneously filed on 22 August 2016. Thus, there is violation of Section 229 of the law which requires that an administrative claim be filed prior to the judicial claim. The primary purpose of the requirement that an administrative claim be filed prior to the judicial claim to serve as a notice of warning to the CIR that court action would follow unless the tax alleged to have been collected erroneously or illegally is refunded, was defeated.

Lepanto Consolidated Mining Company v. Commissioner of Internal Revenue
CTA Case No. 10163; 27 September 2019

Taxpayers can file an appeal in one of the two ways: (1) file the judicial claim within 30 days after the BIR Commissioner denies the claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the expiration. The compliance with the 120+30 days periods is mandatory and jurisdictional.

In this case, Petitioner filed its administrative claims on 01 February 2013 and 01 August 2013. Counting 120 days from Petitioner from the aforementioned dates, the CIR had until 01 June 2013 and 29 November 2013 within which to act on petitioner's claim for refund. Considering that Respondent CIR failed to act within the 120-day period, petitioner had thirty (30) days after the lapse of the 120-day period or until 01 July 2013 and 29 December 2013 within which to file its judicial appeals before this Court. The denial of the claim of refund made after the 120- and 30-day period is not considered in counting the period for judicial appeal. The inaction of the CIR during the 120-day period is "deemed a denial," and without a timely appeal, said inaction which is "deemed a denial" becomes final and unappealable.

Zuellig Pharma Corporation v. Commissioner of Internal Revenue
CTA EB No. 1793-1794; 1 October 2019

Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. To establish the fact that taxes are withheld, the best evidence thereof would be the CWT certificate or BIR Form No. 2307. The ITRs, therefore, would be in the nature of secondary evidence. Moreover, under Section 3 (c) of Rule 130, it is discretionary upon the Court to decide on whether or not the documents to be presented is voluminous, thereby, allowing the presentation of secondary evidence.

Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent, and not the payee-refund claimant, who is vested with the responsibility of withholding and remitting income taxes. Hence, the payee-refund claimant is not required to provide proof of actual remittance.

Denso Philippines Corporation v. Commissioner of Internal Revenue
CTA Case No. 10046; 02 October 2019

Filing a Petition for Review beyond the 30-day period under Section 112(C) of the 1997 NIRC means that the VAT refund applications were deemed denied.

The NIRC provides for two scenarios before a judicial claim for refund may be filed with the CTA: (1) the full or partial denial of the claim within the 120-day period, or (2) the lapse of the 120-day period without the CIR having acted on the claim. It is only from the expiry date of either one may a taxpayer-claimant within thirty (30) days file its judicial claim for refund or tax credit for unutilized input VAT. Consequently, failure to observe the said period renders the judicial claim premature, divesting the CTA of jurisdiction to act on it.

Prior to 11 June 2014, the issuance date of RMC No. 54-2014, the applicant/claimant had thirty (30) days within which to submit the complete documentary requirements sufficient to support his claim, unless given further extension by the respondent. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. If, however, the applicant/claimant manifests that

he no longer wishes to submit any other additional documents to complete his administrative claim, the 120-day period shall begin to run from the date of filing.

In ***CIR v. San Roque Power Corporation***, the Court held that the 30-day period of filing an appeal is mandatory and jurisdictional after the expiration of the 120-day period if the applicant/claimant will opt to file an appeal. As an exception, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force.

Although this case was within the coverage of BIR Ruling No. DA-489-03, it is not a premature filing but a late filing. Thus, the exception is not applicable. Since respondent did not act on the last day of the 120-day period, it means that the VAT refund applications were deemed denied.

Colt Commercial, Inc. v. Commissioner of Internal Revenue
CTA Case No. 9340; 2 October 2019

The summary with the certification by an independent Certified Public Accountant ("CPA") is merely corroborative of the actual input VAT paid and the actual export sales. The pertinent invoices, receipts, and export sales documents are the best and competent pieces of evidence required to substantiate the claim for tax credit or refund which is merely corroborated by the summary duly certified by a CPA.

In this case, the Court disallowed the application for tax credit/refund, ruling that Petitioner was unable to substantiate its actual zero-rated export sales because the airway bills submitted by Petitioner were unreadable.

Calamba Premier Realty Corporation v. Commissioner of Internal Revenue
CTA Case No. 9541, 7 October 2019

Section 112 (C) of the NIRC, as amended, provides that the CIR has 120 days from the submission of complete documents in support of the application for refund/tax credit within which to grant or deny the claim. Relevantly, under RMC 54-2014, which has been recently affirmed by CTA and the Supreme Court, required the submission of complete documents as listed in Annex A and B before the 120-day period starts.

Actuate Builders, Inc. v. Commissioner of Internal Revenue
CTA Case No. 9129; 3 October 2019

Pursuant to Section 112(A) of the NIRC, in order to be entitled to a refund or issuance of a tax credit certificate for unutilized input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied: (1) that the taxpayer is VAT-registered; (2) that the claim for refund was filed within the prescriptive period; (3) that there must be zero-rated or effectively zero-rated sales; (4) that input taxes were incurred or paid; (5) that such input taxes are attributable to zero-rated or effectively zero-rated sales; and (6) that the input taxes were not applied against any output VAT liability.

In this case, the Petitioner was able to satisfy the requirements to be entitled to a refund/tax credit of its excess and unutilized input VAT attributable to zero-rated sales.

Commissioner of Internal Revenue v. Maibarara Geothermal, Inc.
CTA EB No. 1863; 4 October 2019

Neither the law nor the implementing regulations provide that in a claim for refund of input VAT that there be zero-rated or effectively zero-rated transactions at the time the claimed input VAT was incurred or paid.

Under Section 110 (B) and Section 112 (A) and (C) of the NIRC, the remedies available to the taxpayer in case of unutilized input VAT credits are: (1) the carrying over of the excess input tax into the succeeding quarter/s; (2) the claim for refund or issuance of tax credit certificate within two (2) years after the close of the taxable quarter when the sales were made.

To be entitled to the issuance of a tax credit certificate or tax refund, the input taxes should not have been applied against output taxes. The input tax is attributable to zero-rated or effectively zero-rated sales and the claim should be made within two (2) years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. Whether there is no reported zero-rated sale for taxable year 2012 is immaterial as long as the input taxes should not have been applied against output taxes.

In this case, Respondents claimed refund of its unutilized input VAT on importation of goods and local purchases for calendar year 2012.

Deutsche Knowledge Services Pte, Ltd. v. Commissioner of Internal Revenue
CTA CASE NO. 9154; 4 October 2019

To be considered as a non-resident foreign corporation doing business outside the Philippines, each service-recipient must be supported, at the very least, by both a certificate of nonregistration of corporation/partnership issued by the Philippine Securities and Exchange Commission (SEC) and certificate/articles of foreign incorporation/association.

Notwithstanding the presentation of the said documents, there must be no indication that any of the recipient of petitioner's services is doing business in the Philippines, consistent with the said ruling in the case of CIR v. Burmeister.

The said basic documents are necessary. This is so because the Philippine SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines and that the service-recipient is not engaged in trade or business within the Philippines. As for the said certificate I articles of incorporation/association, this will prove that the said recipient of the service is indeed foreign, and is determinative of whether the same service-recipient is in engaged in business at all. In this case, Petitioner failed to establish that it was engaged in zero-rated or effectively zero-rated sales.

Commissioner of Internal Revenue v. Irish Fe N. Aguilar, et al.
CTA EB No. 1859; 4 October 2019

Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) stringently decrees a party dissatisfied with the Decision of the Court in Division to first institute a timely motion for reconsideration or new trial thereto before invocation of the Court En Banc's jurisdiction may be permitted. This is because it is the resolution of the Court in Division on the motion for reconsideration or new trial which may be the proper subject of an appeal before the Court En Banc.

In this case, respondents are ADB employees who are Filipino nationals. They filed their respective administrative claims for refund of income taxes they paid based on the Decision of the RTC-Mandaluyong invalidating RMC No. 31-2013 for having been issued without legal basis, in excess of authority and/or without due process of law due to absence of legislation and/or regulation in support thereof, filed by other ADB employees. Both petitioner and respondents sought a reconsideration of the Original Decision by the CTA Division.

Finding respondent's Motion for Partial Reconsideration partially meritorious, the CTA in Division in its Amended Decision increased the refundable amount.

Consistent with Republic Act No. 1125, as amended, in relation to the RRCTA, the proper legal recourse of petitioner was to seasonably challenge the Amended Decision via a motion for reconsideration/new trial, but he utterly failed to do so. Hence, the Amended Decision attained immutability.

Toledo Power Company v. Commissioner of Internal Revenue
CTA Case No. 9307; 09 October 2019

The requirements for the refund of taxes erroneously paid or illegally collected are the following: (1) That the taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty; (2) That in case of denial or inaction on the part of the BIR within said period, the petition for refund shall be filed with Court of Tax Appeals (CTA) within thirty (30) days from receipt of the denial, or the lapse of the said period, and within said two (2)year period from the said date of payment of the tax regardless of any supervening cause; (3) The claim for refund must be a categorical demand for reimbursement; (4) There must be proof of payment of the erroneously or illegally collected taxes; and (5) No refund shall be given resulting from availment of incentives granted to special laws for which no actual payment was made.

RMO No. 9-2000 clarified the tax treatment of sales of goods, properties, and services made by VAT-registered suppliers to BOI-registered manufacturers/exporters with 100% export sales. Section 3 provides the conditions to be entitled to VAT zero-rated sales are the following: (1) The supplier must be VAT-registered; (2) The BOl-registered buyer must likewise be VAT-registered; and (3) The buyer must be a BOl-registered manufacturer/producer whose products are 100% exported. For this purpose a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI; (4) The BOl-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOl-registered buyers; and (5) The VAT-registered supplier shall issue for each sale to SOl-registered manufacturer/exporters a duly-registered VAT invoice with the words "zero-rated" stamped thereon in compliance with Sec. 4.108-1(5) of RR 7-95. The supplier must likewise indicate in the VAT invoice the name and BOI-registry number of the buyer.

In this case, the Petitioner fully complied with the conditions laid down under RMO No. 9-200, hence, its sales of electricity to CCC is subject to VAT zero-rating.

Commissioner of Internal Revenue v. Colt Commercial, Inc.
CTA EB No. 1889; 11 October 2019

In claims for refund, the dispute most often centers on the sufficiency of the documentary evidence to prove the alleged erroneously paid taxes.

In this case, an examination of the records would show that Respondent's accumulated input VAT arising from its purchase of goods and services as well as its importation of goods are substantiated by pertinent documentary evidence. Thus, even if under Rule 132 of the Rule of Court evidence not formally offered should not be admitted, such rule admits of an exception. To reiterate, the evidence may be admitted provided the following requirements are present: (1) the same must have been duly identified by testimony duly recorded; and (2) the same must have been incorporated in the records of the case. Being an exception, the same may only be applied when there is strict compliance with the requisites mentioned above.

San Miguel Brewery Inc vs. Commissioner of Internal Revenue
CTA Case No. 9743; 14 October 2019

No basis for imposition of Additional 4% excise tax rate based on regulation; In case of discrepancy between regulation and law, the law prevails.

The claim for refund for overpayment of excise tax erroneously assessed on and collected on the removal of beer products of San Miguel Brewery ("SMB") was granted by Court on the basis that during the time of the payment, Republic Act No. 10351, amending Section 143 of the NIRC provided a two-tier classification for the rate of tax. Particularly, effective 1 January 2016, an excise tax rate of P21.00 would apply to fermented liquors with a retail price of P50.60 and an excise tax rate of P23.14 would apply to fermented liquors with a retail price of more than P50.60. In the same year, the Commission released Revenue Memorandum Circular ("RMC") No. 90-2012 which imposed an additional four percent (4%) excise tax, without basis. The Court held that the Commission erroneously issued the RMC and in case of discrepancy between law and regulation, the provisions of the law apply. Thus, SMB's is entitled to a refund in the rate of P0.14 per liter.

MSCI Hong Kong vs. Commissioner of Internal Revenue
CTA Case No. 9661; 14 October 2019

Elements to claim refund/TCC of unutilized/excess input VAT attributable to zero-rated or effectively zero-rated sales; Cannot claim excess input VAT if there is no output tax liability for the period.

Elements to claim refund/TCC of unutilized/excess input VAT attributable to zero-rate or effectively zero-rated sales are as follows: (a) the taxpayer is VAT-registered; (b) the claim for refund was filed within the prescriptive period; (c) there must be zero-rate or effectively zero-rated sales; (d) input taxes were incurred or paid; (e) such input taxes are attributable to zero-rated or effectively zero-rated sales; and (f) the input taxes were not applied against any output VAT liability. MSCI had all requisites present. However, the Court noted that it was not allowed to claim the input VAT carried-over to amend the quarterly VAT return for the 1st quarter remained unutilized since MSCI had no output tax liability for the period and, as such, it can no longer form part of excess input VAT.

Commissioner of Internal Revenue vs. Colt Commercial Inc.
CTA EB No. 1884; 14 October 2019

BIR Form 2550-Q or the Quarterly Value-Added Tax Return is used to proof that excess input VAT pursuant to Section 110 (C) of the 1997 NIRC was deducted as "VAT Refund/TCC Claimed". Additionally, PEXA and SBMA Certificates of registration of clients/customers can be used as proof to prove VAT zero-rating of sales of a Corporation to the latter.

Lapanday Agricultural and Development Corporation vs. Commissioner of Internal Revenue
CTA Case No. 10026; 14 October 2019

The CIR is given 120 days to decide on the application for refund or a tax credit certificate. If he does not decide within that period, the taxpayer must elevate the matter to the CTA within 30 days after the lapse thereof. Otherwise, the Court will be deprived of jurisdiction to hear and determine the case.

Lapanday Foods Corporation vs. Commissioner of Internal Revenue
CTA Case No. 9950; 14 October 2019

Taxpayer can file an appeal in one of two ways: (1) file the judicial claim within 30 days after thee CIR denies the claim within the 120-day period; or (2) fil the judicial claim within 30 days from the expiration of the 120-day period if the CIR does not act within the 120-day period.

Deutsche Knowledge Services Pte. Ltd vs. Commissioner of Internal Revenue
CTA Case Nos. 8720, 8736, 8754 & 8767; 14 October 2019

In an action for refund the burden of proof is on the taxpayer to establish its right to refund and compliance with all statutory and administrative requirements; failure to sustain the burden will warrant a dismissal of the claim. The 120-day period only commences from the submission of complete documents.

Deutsche must provide the proper documentation of its claim for the alleged representation of unutilized input VAT for the second quarter of taxable year 2012. It must show the registration requirements in compliance with Revenue Regulations No. 6-97; the invoicing and accounting requirements; the proof of compliance with the prescribed checklist under Revenue Memorandum Order No 53-98; proof that the input tax allegedly paid by petitioner were attributed to zero-rated sales and not applied against output tax nor carried over to the succeeding taxable quarters; the administrative and judicial claims were filed on time; the domestic purchases of goods were made in the course of its trade or business, supported by VAT invoices showing payment of VAT; and that the requirements under Section 4.104-5 of Revenue Regulation No 7-95 were complied with.

In this case, Deutsche submitted only a partial of the documents it was required to submit to substantiate its claim for refund to reckon the commencement of the 120-day period. Additionally, there is no record showing that complete documents showing proof of unutilized input VAT arising from the petitioner's domestic purchases of goods and services, purchases of capital goods and purchases of services rendered by non-residents were attributable to zero-rated sales.

D. Violations of the Tax Code

People of the Philippines v. Rashdi Camlian Sakaluran
CTA Crim Case Nos. O-411; O-412; O-413; and O-414; 16 September 2019

The prosecution must prove beyond reasonable doubt the existence of the following elements before accused can be held liable under Section 255 of the NIRC of 1997 the following: (1) The accused is a person required under the NIRC or rules and regulations to supply correct and accurate information; (2) The accused failed to supply correct and accurate information at the time or times required by law or rules and regulations; and (3) Such failure to supply correct and accurate information is willful.

Based on Section 51 and 74 of the NIRC of 1997, as amended, accused has the duty to file an annual income tax return, as well as to supply correct and accurate information thereon. The taxpayer is duty bound to declare all of his income from all sources, including, but not limited to, the conduct of trade and business. In this case, the accused is required by law to declare all of his income from all sources. Thus, his failure to file his Returns for taxable years 2006, 2007, 2008 and 2009 satisfies the first element of the crime.

In this case, the second element of the crime charged has been sufficiently proven, since the Accused's income from the sales transactions with the BSP were not included in the subject Returns.

For the third elements, the case of *Caluag v. People of the Philippines*, an act or omission is "willfully" done if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done. Furthermore, A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. A willful act differs essentially from a negligent act. The one is positive and the other negative. In this case, the prosecution failed to prove the third element of the crime charged that the accused willfully failed to supply the correct and accurate information on his ITRs filed for taxable years 2006 to 2009.

In this case, civil liability arising from a taxpayer's obligation to pay tax is not deemed instituted in the criminal case like tax evasion because it came from a different source of obligation. However, it will not exonerate the taxpayer in the criminal case cannot operate to discharge him or her from the duty to pay tax, because that duty is imposed by statute prior to and independently of any attempt on the part of the taxpayer to evade payment. Truly, settled is the rule that there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the NIRC.

People of the Philippines v. Rolando J. Ang et al.
CTA EB Crim. No. 062; 18 September 2019

Illness or even confinement in a hospital of his counsel is not sufficient ground to justify the late filing of the Petition for Review which deprived the Court of the competence to entertain the same. It must also be stressed that perfection of an appeal in the manner and within the period permitted by law is mandatory and jurisdictional such that failure to do so renders the judgment of the court final and executory. The right to appeal is a statutory right, not a natural nor a constitutional right. The party who intends to appeal must comply with the procedures and rules governing appeals; otherwise, the right of appeal may be lost or squandered.

The negligence of counsel binds the client because otherwise, "there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent, or experienced, or learned.

While procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.

People of the Philippines v. SHEMA Ultimate Business Innovation Concept Corporation
CTA Crim. Case No. 0-760; 27 September 2019

The requirement of due process mandates that the accused be informed of the nature and cause of the accusation against him/her. This is pursuant to the Revised Rules of Criminal Procedure which states that an information, in order to be valid, must state the name of the accused, the designation of the offense given by the statute, the acts or omissions constituting the offense, the name of the offended party, the approximate date of the commission of the offense, and the place where the offense was committed.

In this case, the present information filed against the Accused provides in the caption "Violation of Section 255, in relation to Sections 253 and 256 of the NIRC of 1997, as amended," while the body reads "violation of Section 255 of the National Internal Revenue Code of 1997, as amended" only. Likewise, the name of the accused in the body was inconsistently spelled out from "Arciliza T. Sequira" to "Acilla T. Segura". The inconsistencies will make it challenging for accused to prepare their defense and will render them susceptible to surprises, in violation of their due process.

Alicia O. Fernandez et al. v. People of the Philippines
CTA EB Crim. No. 048; 27 September 2019

In order to be convicted of the crime of willful importation of goods through the use of false statements of fraudulent practice to evade the payment of the correct and appropriate duties and taxes, the elements of which are the following: (1) There must be entry of imported or exported articles/goods; (2) The entry was made by means of any false or fraudulent invoice, declaration, affidavit, document or fraudulent practice; and (3) There must be intent to avoid payment of taxes.

In this case, the Petitioner already admitted the presence of the first element. As to the second element, a perusal of the evidence will show that the Petitioners intentionally misdeclared the classification of the shipment through its authorized customs broker. Lastly, the Court will not disturb the finding of the Court in Division when it found that there was intent on the part of the Petitioner who undoubtedly knew the importation steel from China. Despite knowledge of the transaction, they failed to perform acts to ensure the importation was made in accordance with law.

San Miguel Foods v. Commissioner of Internal Revenue
CTA Case No. 9241; 2 October 2019

Waivers which suffer from serious defects and infirmities are void; consequently, the prescriptive period given the Government to assess deficiency taxes will not be extended. However, it has been held time and time again that the taxpayer may be estopped from claiming the waivers were invalid and that the assessment was issued beyond the prescriptive period, when the taxpayer makes a partial payment of the deficiency tax assessment.

In this case, the CTA held that if petitioner truly believed that the subject Waivers were invalid, then it should not have partially paid the deficiency tax assessments on November 27, 2015. The fact that it had done so is an indication that petitioner recognized the validity thereof. Thus, petitioner is in estoppel from questioning the subject Waiver's validity.

People of the Philippines v. Virginia T. Manalo
CTA Crim. Case No. O-754; 8 October 2019

Considering that the prosecution has failed to submit, within the prescribed non-extendible period, the document that would show that accused Virginia T. Manalo was the President of VTM Quilts Collection, Inc. at the time the crime was committed, the evidence on record clearly fails to establish probable cause against the accused. Thus, the dismissal of the present case pursuant to Section 4, Rule 9 of the Revised Rules of the Court of Tax Appeals, as amended, is warranted.

Commissioner of Internal Revenue v. Perpetual Succour Hospital of Cebu, Inc.
CTA EB No. 1819; 10 October 2019

It is well-settled that good-faith and honest belief that one is not subject to tax on the basis of previous interpretations of government agencies tasked to implement the tax law are sufficient justification to delete the imposition of surcharges and interest.

A perusal of the records will show that the Petitioner honestly believed in good faith that it is not liable to pay the tax assessed.

Section 30(E) of the NIRC provides that a charitable institution, in order to claim a tax exemption, must be: (1) a non-stock corporation or association; (2) organized exclusively for charitable purposes; (3) operated exclusively for charitable purposes; and (4) No part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person. Thus, both the organization and operations of the charitable institution must be devoted 'exclusively' for charitable purposes for the exemption to apply.

In this case, Petitioner is considered to have satisfied such requirement considering that no part of its net income belongs or inures to the benefit of any member and organizer of the charity.

Commissioner of Internal Revenue v. Maersk Global Service Centres Philippines LTD.
CTA EB No. 1786; 11 October 2019

There is no prohibition for a taxpayer to resort to any other mode for the recovery of excess input tax, as in this case. There is no transgression of any law or rule by the Respondent when it treated its denied VAT refund claim as an expense or a loss. Respondent merely chose to claim it as a deductible expense or loss.

Philippine Electric Corporation v. Commissioner of Internal Revenue
CTA EB No. 1828; 11 October 2019

An appeal from the decision or resolution of the Court in Division on a motion for reconsideration or new trial falls under the exclusive appellate jurisdiction of the Court En Banc. The party adversely affected by the decision or resolution of the Court in Division on a motion for reconsideration or new trial, may appeal the same by filing a Petition for Review with the Court En Banc within fifteen (15) days from receipt of the questioned resolution. The Court En Banc may grant an additional period not exceeding fifteen (15) days from the expiration of the original period, provided the party files the proper motion before the expiration of the original period to file the said Petition for Review.

The CIR is vested with power to compromise the payment of any internal revenue tax. Where the basic tax involved exceed One Million Pesos (Php1,000,000) or where the settlement offered is less than the prescribed minimum rates, the compromise settlement is subject to the approval by a majority of

all the members of the NEB, which are composed of Respondent CIR and four (4) Deputy Commissioners. Any grant of compromise or all favorable decisions, however, of the NEB shall have the concurrence of the respondent. Accordingly, for a compromise settlement falling within the jurisdiction of the NEB to be valid, it must be shown that the same is approved by a majority of all the members of the NEB with the concurrence of respondent, and that there is a full settlement of the offered amount.

In this case, Petitioner faithfully complied with all the requisites necessary for the compromise of tax liabilities.

E. Others

City of Manila and the City Treasurer of Manila v. Asian Terminals, Inc.
CTA AC No. 199; 25 September 2019

It is well-settled in the case of Philippine National Bank v. Commissioner of Internal Revenue pronounced that amount earmarked, whether delivered or received, do not form part of gross receipts, because these are by law or regulation reserved for some person other than the taxpayer. In order for an amount to be considered as "earmarked" and not forming part of gross receipts of a taxpayer, the following must be established: (1) The said amount must have been designated for a specific purpose; (2) It must be identifiable and distinguishable from other property of the same nature; and (3) There must be a law or regulation reserving the same for some other person.

For the third requisite so long as a contract has a similar provision as the foregoing, the same may be deemed as a "regulation" for purposes of earmarking, so as not to be included in the taxpayer's gross receipts.

In this case, Respondent has shown the existence of certain contracts entered into as the "CONTRACTOR" with the PPA. based on the foregoing contractual provisions, respondent must comply with a government "regulation" requiring the reservation of certain amounts from respondent's gross income, or gross revenues from certain operations or activities, as the case may be, to be remitted to the PPA. The Court finds that the PPA fees of respondent may be considered as earmarked amounts, not forming of its gross receipts so as to be subject to LBT, as it falls under the parameters laid down by the said jurisprudential pronouncements.

Calamba Premier Realty Corporation v. Commissioner of Internal Revenue
CTA Case No. 9541; 7 October 2019

VAT is imposed on the sale or transaction entered into by a person in the course of any trade or business. A transaction that was made incidental to the pursuit of a commercial or economic activity is considered as one entered into in the course of trade or business. "Incidental" means something else as primary; something necessary, appertaining to, or depending upon another, which is termed as the principal. Hence, an isolated transaction is not necessarily disqualified from being made incidentally in the course of trade or business.

In this case, SEMPHIL's act of extending interest bearing loans to petitioner is a way or means of extending an aid by way of financial assistance to a corporation through evidence of indebtedness, which is well within SEMPHIL's secondary purpose. Hence, the interest which accrued on the loan, and subsequently, paid by petitioner undoubtedly constitutes as income incidental to SEMPHIL's regular course of trade or business.

Financial Times Electronic Publishing Philippines, Inc. v. Commissioner of Internal Revenue
CTA Case No. 9631; 7 October 2019

In order to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation.

In this case, the petitioner was able to prove that its client, FTL, is a foreign entity; without however showing that it is not engaged in business in the Philippines. Hence, the CTA cannot receive the invoices and bank statements presented by the petitioner as evidence of FTL's non-engagement in business within the Philippines because they failed to meet the requirements of Sections 113, 222, and 223 of the NIRC. The offered documents are, thus, inappropriate and insufficient to show that FTL is not doing business locally.

Altus Angeles, Inc., v. Commissioner of Internal Revenue
CTA Case No. 9164; 8 October 2019

I**nstructional letters as well as the journal and cash vouchers evidencing the advances extended to affiliates qualify as loan agreements, upon which DST maybe imposed as held in the case of Filinvest v. CIR. Moreover, the ruling under the Filinvest case retroacts to the date the NIRC took effect and therefore applicable to the present case.**

OMYA Chemical Merchants vs. Commissioner of Internal Revenue
CTA Case No. 9047 ;14 October 2019

A wavier executed not in strict compliance with the requirements laid down in Revenue Memorandum Order No. 20-90 is invalid.

Waiver executed was not in strict compliance with the requirements laid down in Revenue Memorandum Order No. 20-90 since Ms. Samson, as Treasurer, had no written authority to execute the waiver for and in behalf of petition OMYA. Additionally, the Notary Public who notarized the waiver was not duly commissioned, and therefore, without authority. Accordingly, the assessment of the IT, VAT, and EWT is void since the invalid waiver did not extend the period of assessment for CY 2010. It was only issued on 25 July 2014, beyond the regular three-year prescriptive period.

Commissioner of Internal Revenue vs. Saturn Holdings Corporation
CTA Case No. 1747; 14 October 2019

A Motion for Reconsideration which is a rehash of arguments contained in the Petition For Review will be denied for lack of merit.

Asurion Hong Kong Limited-ROHQ vs. Commissioner of Internal Revenue
CTA EB No. 1736; 14 October 2019

Any subsequent submission of documents despite the request of CIR of additional documents to use in its evaluation will not move the mandatory 120-day period.

Asurion questioned the 120+30 period under RMC No. 54-2014 and claimed that the 120-day period for CIR to decide the administrative case does not apply when CIR ordered for submission additional documents for claim of refund. Additionally, Asurian, belatedly filed its judicial claim. When decision

of CIR received by Asurion on 20 April 2017, it was already beyond 120-day period reckoned from date of filing its administrative fund with submission of complete documents. The denial of CIR beyond 120-day period cannot be reckoning point of 30 days within which the taxpayer can appeal the decision with Court.

Commissioner of internal Revenue vs. JVC (Philippines), Inc.
CTA EB No. 1744;14 October 2019

One of the exceptions to the general rule on invalid waivers is when a party comes to court with unclean hands. Failure to raise the invalidity of the waivers without reason cannot be considered as coming to court with clean hands.

If the waiver does not comply with requisites for validity under RMO No. 20-90 and Revenue Delegation Authority Order No. 05-10, it is invalid and ineffective to extend the prescriptive period. The exceptions, however, to the general rule are as follows: (a) the parties are *in pare delicto;* (b) the parties came to court not with clean hands; (c) the taxpayer is estopped from questioning validity of its Waivers; or (d) the existence of highly suspicious situation. In this case, petitioner is estopped from questioning invalidity of the first waiver since it failed to indicate invalidity of the first waiver in its administrative protest nor in its supplemental protest. Thus, petitioner did not come to the court with clean hands and cannot now question the invalidity of the first waiver.

Commissioner of Internal Revenue vs. Green Valley Marketing Corporation
CTA EB No. 1808; 14 October 2019

Failure to prove that expenses were not exempt from withholding tax will be disallowed by the Commission to be deducted as an expense.

It is the income payor-withholding agent's duty to withhold accrues the moment such income is paid or payable, accrued or recorded as an expense in the payor's/employer's books, whichever comes first. Failure of Green Valley to present evidence to demonstrate that its pertinent purchases from Pilipinas Shell Petroleum Corporation and the Petron Fleet Card were subjected to withholding taxes, whether as supplier of service or supplier of goods is ground to deny the deduction of the expense under Section 34 (K) in relation to Section 34 (A)(1)(a) of the NIRC.

Commissioner of Internal Revenue vs. South Premiere Power Corp.
CTA EB No. 1898; 14 October 2019

BIR RMC No. 48, Series of 2011 applying the CIR vs. Filinvest Development case forms part of the law of the land. The assessment of DST based on the Notes from the AFS of San Miguel Energy Corporation and San Miguel Corporation is valid.

The ruling of the Court in ***CIR vs. Filinvest Development*** where it said that "instructional letters and journal and cash vouchers evidencing the advances which Filinvest Development Corporation extended to its affiliates qualifies as loan agreements upon which documentary stamp taxes ("DST") may be imposed" forms part of the law of the land. Thus, the assessment of DST on the notes from the AFS of San Miguel Energy Corporation and San Miguel Corporation is valid.

II. REVENUE MEMORANDUM CIRCULARS

Revenue Memorandum Circular No. 99-2019
Dated 12 September 2019, issued on 24 September 2019

This Revenue Memorandum Circular (”RMC”) provides for the notice of loss of the used but unissued accountable forms lost by Ms. Maricar Eunis V. Bautista and Ms. Kimberly Rose M. Canlas assigned at the Revenue District Office No. 17-A – Tarlac City. Wherefore listed forms are considered INVALID.

Revenue Memorandum Circular No. 100-2019
Dated 30 September 2019, issued on 30 September 2019

This Revenue Memorandum Circular (”RMC”) prescribes and provides the revised BIR Form No. 2316 [Certificate of Compensation Payment/Tax Withheld] January 2018 (“ENCS”), amended pursuant to Republic Act No. 10963 or the “Tax reform for Acceleration and Inclusion (“TRAIN”) Law.

Revenue Memorandum Circular No. 101-2019
Dated 20 September 2019, issued on 2 October 2019

This circularizes Civil Service Commission (“CSC”) Memorandum Circular No. 19, series of 2019 (“MC 19-2019”) regarding the Revised Policies on Training/Learning and Development Requirements for Division Chief and Executive/Managerial Positions in the Government. MC 19-2019 will now serve as the basis for evaluation for positions equivalent to Division Chief and Revenue District Officer designations.

Revenue Memorandum Circular No. 102-2019
Dated 25 September 2019, issued on 4 October 2019

This Circular clarifies several issues relative to the implementation of the estate tax amnesty under Republic Act No. 11213 or the Tax Amnesty Act. The question-and-answer format of this Circular clarified provisions of the said law on the matters below:

- Jurisdiction of Revenue District Offices (“RDOs”) in case of estates involving several stages of succession;
- Filing of a supplemental Extra Judicial Settlement (“EJS”) for undeclared real or personal property;
- Propriety of availing of the estate tax amnesty of an estate whose tax clearance has already been released but whose Certificate Authorizing Registration (“CAR”) has yet to be released;
- Proper RDO where estate tax amnesty shall be filed in case of an on-going investigation in a different revenue district than that of the decedent’s domicile;
- Whether an Electronic CAR (eCAR) shall be issued if the decedent has a pending investigation;
- Whether an estate whose deficiency estate tax is not yet a delinquent account can still avail of estate tax amnesty;
- Whether an estate whose owner’s duplicate of the Transfer Certificate of Title (“TCT”) has been lost can avail of the estate tax amnesty;
- Propriety of claiming judicial expenses pertaining to issues of heirship as deduction from gross estate;
- Whether medical expense is an ordinary or special deduction;
- Whether one (1) out of many heirs can self-adjudicate;

- Whether a general waiver or renunciation of rights, interest and participation in the settlement of estate of the decedent is subject to Donor's and Documentary Stamp Tax ("DST").

Revenue Memorandum Circular No. 103-2019
Dated 25 September 2019, issued on 4 October 2019

This prescribes the revised versions of the Estate Tax Amnesty Return ("ETAR") and Certificate of Availment ("CA"). Likewise, this clarifies the treatment of allowable deductions from the gross estate of the decedent in case no estate tax return had been previously filed. Special deductions for Family Home, Standard Deduction and Medical Expense should not be included among the deductions from the gross estate when computing the share of the surviving spouse.

Further, the deductions from the gross estate of non-resident aliens shall only be allowed if the executor, administrator, or anyone of the heirs, as the case may be, includes in the return to be filed, the value at the time of death of that part of the gross estate situated in the Philippines.

Revenue Memorandum Circular No. 104-2019
Dated 9 September 2019, issued on 9 October 2019

This mandates all RDOs to provide or submit to Excise Large Taxpayers Field Operations Division ("ELTFOD") the lists of all owners, retailers and suppliers of gasoline stations within their respective jurisdictions in order to create a database of the same on or before 31 October 2019. This is pursuant to Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion ("TRAIN") law.

Revenue Memorandum Circular No. 105-2019
Dated 3 September 2019, issued on 9 October 2019

This clarifies the salary differential that an employer must pay female workers in the private sector, pursuant to the provisions of Republic Act No. 11210 or the "105-day Expanded Maternity Leave Law" as a benefit. The new law defines "average daily salary credit" as the result obtained by dividing the sum of the six (6) highest monthly salary credit in the twelve-month period immediately preceding the semester of contingency by one hundred eighty (180).

Based on the new law, its joint Implementing Rules and Regulations and the issuances of the Social Security System ("SSS") and the Department of Labor and Employment ("DOLE"), a female worker's maternity benefit has been expanded to a full pay or salary which includes the salary differential as its component on top of the added duration of the maternity leave. Hence, the salary differential is considered as a benefit.

Revenue Memorandum Circular No. 106-2019
Dated 10 October 2019, issued on 11 October 2019

This prescribes the revised Documentary Stamp Tax Declaration/Return for One Time Transactions BIR Form No. 2000-OT, or the revised manual return, pursuant to the implementation of the TRAIN Law. Although the revised manual return is live on the BIR website, the form is not yet available in the Electronic Bureau of Internal Revenue Forms ("eBIRForms"). Hence, all taxpayers are still to use manual returns in filing and paying of taxes due.

Revenue Memorandum Circular No. 107-2019
Dated and issued on 15 October 2019

This further extends the validity period existing Permits to Use ("PTU") and Certificates of Accreditation of developers/dealers/supplier-vendors/pseudo-suppliers of Cash Register Machines ("CRMs"), Point-of-Sale ("POS") Machines and other sales machines/receipting software. Likewise, this prescribes that all primary and supplementary receipts/invoices should reflect the "Effectivity Date" as "Date Issued" and the "Valid Until" date.

III. REVENUE MEMORANDUM ORDERS

Revenue Memorandum Order No. 48-2019
Dated 5 September 2019, issued on 25 September 2019

This Revenue Memorandum Order ("RMO") prescribes the CY 2019 Operational Key Performance Indicators ("KPIs") as indicated in the Measure Dictionary containing the following information:

a. Name of the measure/KPI;
b. Formula;
c. Definition of the Numerator and Denominator;
d. Data source of the Numerator and Denominator;
e. Measure Owner;
f. Target of the KPI; and
g. Office/s to which the measure/KPI applies.

Revenue Memorandum Order No. 49-2019
Dated 16 September 2019, issued on 30 September 2019

This Revenue Memorandum Order ("RMO") prescribes the guidelines and procedures in the preparation and submission of the accomplishment Reposts in compliance with the FY 2019 Performance-Based Bonus ("PBB") requirements under Administrative Order ("AO") No. 25 IATF MC No. 2019-1. It provides for the different Annexes that modified the following:

a. The Planning and Management Service ("PMS"), through the Planning and Programming Division ("PDD") forms;
b. The PPD and Personnel Division form;
c. The Citizen Satisfaction Report prepared by the Client Support Service ("CSS") and Taxpayer Service Programs and Monitoring Division ("TSPMD") where the endorsement by the Secretariat shall be submitted on or before August 31, 2010;
d. The performance indicators, the responsible officers and the deadline submission to PPD;
e. The performance indicator under the GASS and other cross-cutting requirements; and
f. The responsible offices in the BIR that will prepare the Good Governance Conditions in compliance with Section 4.0 of Memorandum Circular 2019-1.

Revenue Memorandum Order No. 50-2019
Dated 10 September 2019, issued on 10 October 2019

This Revenue Memorandum Order ("RMO") amends a portion of RMO No. 7-2019 in relation to the BIR Operational Key Performance Indicators (KPIs) for CY 2019. The KPI formula for No. 8 of Annex A on CY 2019 Operation KPI Accomplishments was revised to the following formula:

$$\frac{\text{2019 Arrears Collected and Cancelled Thru ATCA}}{\text{2019 Total Accounts Handled}} - \frac{\text{2018 Arrears Collected and Cancelled Thru ATCA}}{\text{2018 al Accounts Handled}} \times 100$$

IV. SEC ISSUANCES

SEC Memorandum Circular No. 19, series of 2019
Dated 18 September 2019, published on 20 September 2019

All Financing Companies and Lending Companies, which operate financing and lending activities through Online Platforms such as websites and mobile applications ("Covered Companies"), are required to file an Affidavit of Compliance with the Securities and Exchange Commission ("SEC") under SEC Memorandum Circular No. 19, series of 2019 (the "Circular").

Based on the Circular, there are three regulatory requirements which Covered Companies must comply with, particularly:

A. Provide certain disclosures in their Advertisements and Online Platforms;
B. Register all their business names with the SEC; and
C. File an Affidavit of Compliance with the Corporate Governance and Finance Department ("CGFD") of the SEC until 15 October 2019.