MONTHLY TAX UPDATES

July 2018

CARPO LAW & ASSOCIATES

BUREAU OF INTERNAL REVENUE ("BIR") ISSUANCES

A. REVENUE REGULATIONS

THE VALUATION OF GIFTS FOR PURPOSES OF DONOR'S TAX SHALL BE THE SAME AS THAT OF GROSS ESTATE FOR ESTATE TAX PURPOSES; THE RECKONING POINT FOR VALUATION SHALL BE THE DATE WHEN THE DONATION IS MADE.

- Donated property shall be valued according to its fair market value ("FMV") at the time of donation.
- FMV of Real property - FMV as determined by BIR or FMV as fixed by provincial or city assessor, whichever is higher.
- FMV of shares of stock depends on whether the shares are listed or unlisted in the stock exchange
    - Unlisted common shares - valued based on book value
        - In determining the book value of common shares, appraisal surplus shall not be considered as well as the value assigned to preferred shares, if there are any;
        - The shares are exempted from valuation.
    - Unlisted preferred shares -valued at par value.
    - Listed shares - FMV is the arithmetic mean between the highest and lowest quotation.
    - Units of participation in any association, recreation or amusement club (such as golf, polo or similar clubs) – valued at bid price nearest the date of donation published in any newspaper or publication of general circulation. *Revenue Regulations No. 17-2018, July 10, 2018.*

B. REVENUE MEMORANDUM CIRCULARS

REVENUE MEMORANDUM CIRCULAR NO. 062-18, DATED JUNE 28, 2018, CLARIFIES THE REQUIREMENTS ON THE WITHDRAWAL FROM THE BANK DEPOSIT ACCOUNT/S OF A DECEASED DEPOSITOR/JOINT DEPOSITOR WITHOUT THE REQUIRED ELECTRONIC CERTIFICATE AUTHORIZING REGISTRATION (E-CAR).

- The executor, administrator or any of the legal heir/s ("authorized persons") of a decedent who, prior to death, maintained bank deposit/s, may be allowed withdrawal from the said bank deposit account/s within one (1) year from the date of death of the depositor/joint depositor but the amount withdrawn shall be subject to six percent (6%) final withholding tax.

- For joint account, the final withholding tax shall be based on the share of the decedent in the joint bank deposit/s.

- Prior to such withdrawal, the bank shall require the authorized person withdrawing from the deposit account to present a copy of the Tax Identification Number of the estate of the decedent and BIR Form No. 1904 of the estate, duly stamped received by the concerned Revenue District Office (RDO).

- The bank shall issue the corresponding BIR Form No. 2306 certifying the withholding of six percent (6%) final tax, file the prescribed quarterly return on the final tax withheld and remit the same on or before the last day of the month following the close of the quarter during which the withholding was made.

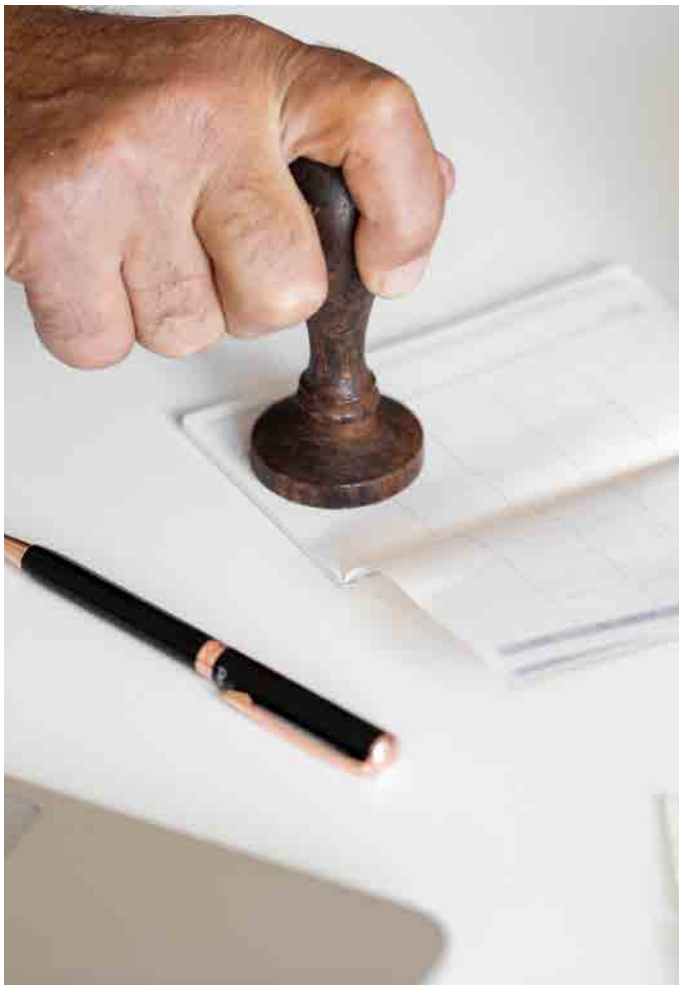
- All withdrawal slips to be used shall contain the following terms and conditions:

    - A sworn statement by any one of the surviving joint depositor/s to the effect that all the other joint depositor/s is/are still living at the time of withdrawal; and

    - A statement that the withdrawal is subject to six percent (6%) final withholding tax.

- Bank deposit/s already declared for estate tax purposes and is/are indicated in the eCAR issued by the concerned RDO to the authorized person, presented to the bank for withdrawal of the said bank deposit/s, shall no longer be subject to the six percent (6%) final withholding tax.

- The bank is not prevented from requiring pertinent documents in accordance with its existing policy or in pursuance of a requirement under applicable laws, rules and regulations, for the purpose of, among others, ascertaining the identity and the right to claim of the heir/s or its authorized representative before allowing any withdrawal from the bank deposit account/s.



REVENUE MEMORANDUM CIRCULAR NO. 058-18, JULY 3, 2018, CIRCULARIZES ENTRY INTO FORCE, EFFECTIVITY AND APPLICABILITY OF THE PHILIPPINES-MEXICO DOUBLE TAXATION AGREEMENT.

- The concerned Mexican resident and income earner, or his duly authorized representative, should file a duly accomplished Application for Relief from Double Taxation (BIR Form No. 0901) or Certificate of Residence for Tax Treaty Relief (CORTT Form), whichever is applicable, together with the required documents.

- Agreement shall have effect on income that arises in the Philippines beginning January 1, 2019.

- Tax Treaty Relief Applications invoking the Philippines-Mexico Double Taxation Agreement should be filed with, and addressed to, the International Tax Affairs Division.

C. REVENUE MEMORANDUM ORDERS

REVENUE MEMORANDUM ORDER NO. 032-18, JULY 6, 2018, PRESCRIBES THE AUDIT/ INVESTIGATION OF INDIVIDUAL AND NON-INDIVIDUAL TAXPAYERS BY THE REGIONAL ASSESSMENT DIVISIONS.

- Electronic Letters of Authority (eLAs) shall be issued to cover the audit/investigation of taxpayers for tax returns for taxable year 2017 under the jurisdiction of the Regional Office with gross sales/receipts as follows:

Revenue Region Nos.	Gross Sales/Receipts
5, 6, 7 and 8	P10,000,000.00 Million Pesos and below
1, 4, 9A, 9B, 11, 12, 13, 16 and 19	P5,000,000.00 Million Pesos and below
2, 3, 10, 14, 15, 17 and 18	P2,000,000.00 Million Pesos and below

- One (1) eLA shall be issued for each taxable year to include all internal revenue tax liabilities of the taxpayer, except when a specific tax type had been previously examined (e.g., audit of VAT under the VAT Audit Program and claim for issuance of VAT refund/Tax Credit Certificate). Under such instance, the phrase "All internal revenue tax liabilities, except VAT" shall be indicated in the eLA. Exclusion: Claims for issuance of tax refund/Tax Credit Certificate (TCC) of taxpayers.

- The audit of cases issued under this Order shall be conducted without field investigation.

- The BIR shall retrieve copies of manually filed and electronically submitted tax returns for taxable year 2017. From the said tax returns, the BIR shall select tax returns for office audit.

- The report of investigation shall be submitted to the Review and Evaluation Section in the Assessment Division within ninety (90) days from the issuance of the eLA.

- The eLA, together with the Notice for the Presentation/Submission of Documents/Records with checklist of requirements may be delivered personally to the taxpayer by: (1) a BIR employee duly authorized for the purpose, who may be the RO assigned to the case or another employee with a written authorization or (2) delivered through a courier company. The concerned taxpayer shall be given ten (10) days from receipt of the Notice to present/submit the required documents and records. In case the taxpayer does not comply with the Notice, a reminder letter shall be sent immediately after the lapse of the 10-day period. In case the requested documents/records are not presented/submitted within five (5) days from receipt of the reminder letter, a memorandum report shall be prepared recommending the issuance of Subpoena Duces Tecum (SDT). No further extension for the presentation/submission of documents and records shall be allowed.

D. BIR RULINGS

TRANSFER OR CONVEYANCE OF TITLE OVER A PARCEL LAND BY THE TRANSFEROR -TRUSTEE, IN FAVOR OF THE TRUSTOR, WHO IS THE BENEFICIAL OWNER THEREOF IS NOT SUBJECT TO TAX. Considering that the conveyance merely acknowledges, confirms, and consolidates the legal title and beneficial ownership over the properties in the name of the trustor, the transfer titles by the transferor-trustee, in favor of the trustor is not subject to capital gains tax imposed ("CGT") nor to the creditable withholding tax ("CWT"). The transfer/conveyance of the land to the trustor is not likewise subject to the 12% VAT because the said property is not held primarily for sale to customers or for lease in the ordinary course of trade or business. Moreover, the conveyance without any monetary consideration is not subject to donor's tax since there is no donative intent on the part of the trustee. Lastly, the transfer is not subject to the documentary stamp tax ("DST"), but the notarial acknowledgment to such deed is subject to DST of P15.00. *Cebu Central Realty Corporation, BIR Ruling No. 1114-18, July 27, 2018.*

DONATIONS TO THE GOVERNMENT, ITS AGENCIES OR POLITICAL SUBDIVISION IS A DEDUCTIBLE EXPENSE AND NOT SUBJECT TO DONOR'S TAX. Donations to the Government, its agencies or political subdivisions are deductible in full from the gross income of the donor. However, donations not in accordance with the National Priority Plan are subject to limited deductibility or deductions to an amount not exceeding ten percent (10%) in the case of an individual and five percent (5%) in the case of a corporation of the taxpayer's taxable net income as computed without the benefit of this deduction. Moreover, expenses incurred by the adopting entity for the 'Adopt-a-School Program' shall be allowed an additional deduction from the gross income equivalent to fifty percent (50%) of such expenses. Valuation of assistance other than money shall be based on the acquisition cost of the property. Lastly, the same donation is likewise exempt from the payment of donor's tax. *Radiowealth Finance Company, Inc., BIR Ruling No. 1110-18, July 24, 2018.*

CONVEYANCE OF THE PARCEL OF LAND FOR USE IN SOCIALIZED HOUSING PROJECT IS EXEMPT FROM CAPITAL GAINS TAX BUT SUBJECT TO DST. As an instrumentality of the government, a local government unit, which acts for the purpose of accomplishing government policies and objectives and extending essential services to the people, performs governmental and not proprietary functions. Thus, in line with the foregoing, the law provides incentives for the private sector participating in socialized housing – exemption from payment of capital gains tax on raw lands used for the project. Upon application for exemption, a lien on the title of the land shall be annotated by the Register of Deeds having jurisdiction over the property, to the effect that the same is to be applied or is being applied to socialized housing project. However, the sale is subject to the documentary stamp tax. *Sampaguita Hills (United Parañaque) Homeowners Association, Inc., BIR Ruling No. 1091-18, July 18, 2018; Office of the Secretary to the Mayor, BIR Ruling No. 1100-18, July 14, 2018.*

WHERE THE TAXPAYER IS A HOLDER OF A GAMING LICENSE FOR ITS BINGO GAMES OPERATIONS ISSUED BY PAGCOR, THE EXEMPTION FROM TAXES, FEES, AND CHARGES ENJOYED BY PAGCOR IS EXTENDED TO THE TAXPAYER. THEREFORE, THE INCOME DERIVED BY TAXPAYER SOLELY FROM ITS BINGO GAMES OPERATIONS IS SUBJECT ONLY TO THE 5% FRANCHISE TAX, AND SHALL BE EXEMPTED FROM CORPORATE INCOME TAX AND VAT. HOWEVER, FOR THE PURPOSE OF APPLYING THE 5% FRANCHISE TAX, ANY INCOME THAT MAY BE REALIZED BY TAXPAYER FROM RELATED SERVICES OR SUCH SERVICES NOT FALLING UNDER GAMING OPERATIONS, SHALL BE SUBJECT TO CORPORATE INCOME TAX AND VAT. As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all contractees and licensees of PAGCOR, upon payment of the five percent (5%) franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos. Further, where PAGCOR is subject to corporate income tax for "other related services," its contractees and licensees shall likewise pay corporate income tax for income derived from such "related services." Lastly, PAGCOR and its licensees are exempt from the payment of VAT because PAGCOR's charter, PD 1869, is a special law that grants the latter exemption from taxes and such exemptions extend or inure to the benefit of its licensees. *Viesla and Company, BIR Ruling No. 1090-18, July 16, 2018.*

REQUEST FOR TAX RULING WHICH WAS NOT SWORN TO AND EXECUTED UNDER OATH; DOES NOT CONTAIN THE AFFIRMATIONS REQUIRED UNDER THE LAW; AND THE ACCOMPANYING DOCUMENTS SUBMITTED WITH THE LETTER REQUEST WERE NOT CERTIFIED AS TRUE COPIES BY THE PUBLIC OFFICER HAVING CUSTODY OF THE ORIGINAL DOCUMENTS; AND WAS NOT ACCOMPANIED WITH A SPECIAL POWER OF ATTORNEY OR AUTHORIZATION IN WRITING AS THE REQUEST WAS FILED BY A REPRESENTATIVE, CANNOT BE PROCESSED.

A letter request for ruling must be sworn and executed under oath by the individual taxpayer or by the authorized official/representative of the corporation, partnership or entity containing the following: 1. Factual background of the request for ruling; 2. Issues/questions raised or conclusions sought to be confirmed; 3. Legal grounds and relevant authorities supporting the position of the taxpayer; 4. List of documents submitted; and 5. Affirmations stating that: a. A similar inquiry has not been filed and is not pending in another office of the BIR; b. There is no pending case in litigation involving the same issue/s and the same taxpayer and related taxpayer; c. The issue/s subject of the request is not pending investigation, ongoing audit, administrative protest, claim for refund or issuance of tax credit certificate, collection proceeding or judicial appeal; and d. The documents are complete and that no other documents will be submitted in connection with the request. Moreover, a request for ruling must be accompanied by the following documents:

1. All documents that are material to the transaction, certified as true copies by the appropriate government agency having custody of the original documents;

2. Proof that the taxpayer is entitled to exemption or incentive; and

3. Special Power of Attorney or authorization in writing in case the request is filed by a representative of the taxpayer. *Mayfair International Technologies, Inc., BIR Ruling No. 1089-18, July 16, 2018.*

TRANSFER BY ASSOCIATION IN FAVOR OF THE MEMBER-BENEFICIARIES WHO HAVE MADE FULL PAYMENT OF THEIR PURCHASED SUBDIVIDED LOT IS NOT SUBJECT TO TAX. The transfer is not subject to either the Capital Gain Tax or the creditable withholding tax as the said transfer of property is made without any consideration and effected only as a formality to finally effect the transfer of the said property to its member-beneficiaries, who actually bought the same from the former owner through the Association. In other words, the association is merely transferring the ownership of the properties to its member-beneficiaries who actually own the lot. Furthermore, said transfer is not subject to the donor's tax since there is no donative intent on the part of the association to donate the said property to said members-beneficiaries, considering that it could not donate property the ownership of which already belongs to the members-beneficiaries themselves. Moreover, no DST should be imposed considering that the deeds or documents subject to the DST imposed therein are those where the realty sold shall be granted, assigned, transferred or otherwise conveyed to a purchaser or purchasers or to any other person or persons designated by such purchaser or purchasers, thereby excluding from its purview the instant case considering that the supposed purchasers are actually the owners thereof. Besides, no consideration is involved in said transaction upon which the tax imposed could be based. However, the notarial acknowledgment to the deed of conveyance is subject to the DST of P15.00. *Pinulot Community Association, Dinalupihan, Bataan, Inc., BIR Ruling No. 1074-18, July 13, 2018.*

CLAIM FOR REFUND SHOULD BE MADE WITHIN THE 2-YEAR PRESCRIPTIVE PERIOD. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty. Where payment of tax is made on June 30, 2015 while the letter requesting for refund of VAT paid was received by BIR on October 6, 2016, claim for refund was filed within the two (2)-year prescriptive period *prescribed by law. Ariela Marketing Co., Inc., BIR Ruling No. 1067-18, July 12, 2018.*

AUTHORITY TO RELEASE IMPORTED GOODS (ATRIG) IS NOT PER SE PROOF OF VAT EXEMPTION. ATRIG is not evidence in itself that taxpayer and/or the imported goods are VAT-exempt. It is merely a document that is issued by the BIR in accordance with the guidelines set forth in Revenue Memorandum Order No. 35-2002, and the same is addressed to the Commissioner of Customs, allowing the release of imported goods from customs custody upon payment of applicable taxes, or proof of exemption from payment thereof, whichever is applicable. *Ibid.*

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PROOF OF EXEMPTION IS REQUIRED BEFORE TAXPAYER CAN CLAIM REFUND OF VAT. The sale or importation of fish, prawn, livestock and poultry feeds, including ingredients, whether locally produced or imported, used in the manufacture of finished feeds (except specialty feeds for race horses, fighting cocks, aquarium fish, zoo animals and other animals generally considered as pets) is exempt from VAT. Accordingly, any person claiming such VAT exemption must secure the following mandatory requirements, to wit: (a) current Bureau of Animal Industry ("BAI")-Certificate of Business Registration; (b) BAI-Certificate of Product Registration for each type/kind of product; and/or (c) BAI-Import Permit for each type/kind of product. Where claim for refund is pending compliance with aforesaid requirements, its claim for refund cannot *ipso facto* be granted. *Ibid.*

JOINT VENTURE OR CONSORTIUM FORMED FOR THE PURPOSE OF UNDERTAKING CONSTRUCTION PROJECTS OR ENGAGING IN PETROLEUM, COAL, GEOTHERMAL AND OTHER ENERGY OPERATIONS PURSUANT TO AN OPERATING OR CONSORTIUM AGREEMENT UNDER A SERVICE CONTRACT WITH THE GOVERNMENT IS NOT CONSIDERED A TAXABLE CORPORATION; REQUISITES. The withholding of creditable withholding tax shall not apply to income payments made to such joint ventures or construction A joint venture or consortium formed for the purpose of undertaking construction projects which are not considered a corporation should be: (1) for the undertaking of a construction project; (2) should involve joining or pooling of resources by licensed local contractors; that is, licensed as general contractor by the Philippine Contractors Accreditation Board (PCAB) of the Department of Trade and Industry (DTI); (3) the local contractors are engaged in construction business; and (4) the Joint Venture itself must likewise be duly licensed as such by the PCAB. Absent any one of the aforesaid requirements, the joint venture or consortium formed for the purpose of undertaking construction projects shall be considered as taxable corporations. The members of a Joint Venture not taxable as a corporation shall each be responsible for reporting and paying appropriate income taxes on their respective share to the joint venture's profit. Respective net income of the co-venturers derived from the joint venture project is subject to the creditable withholding tax. Finally, the co-venturers are required to enroll themselves in the Electronic Filing and Payment System (EFPS). The enrollment should be done at the RDO where they are registered as taxpayers. *A.M. Oreta & Company, Inc., BIR Ruling No. 1063-18, July 12, 2018.*

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SERVICES PERFORMED OUTSIDE THE PHILIPPINES IS EXEMPT FROM INCOME TAX. A foreign corporation, whether or not engaged in trade or business in the Philippines, is subject to income tax only with respect to income derived from sources in the Philippines. Income is considered derived in the Philippines only if the services are actually performed in the Philippines. Only services rendered in the Philippines under a single contract are subject to the taxing jurisdiction of the Philippines and consequently subject to Philippine income tax. Where subject services are rendered outside the Philippines, the fees to be paid therefor are exempt from income tax and consequently from withholding tax. *Isla Lipana & Co., BIR Ruling No. 1061-18, July 12, 2018.*

SERVICES PERFORMED OUTSIDE THE PHILIPPINES IS EXEMPT FROM VAT. Payments for the sale or exchange of services, including the use or lease of properties are subject to VAT only if the services are performed in the Philippines. Where the services are performed outside the Philippines, the fees to be paid are likewise exempt from VAT. *Ibid.*

NO REGISTRATION OF ANY DOCUMENT TRANSFERRING REAL PROPERTY SHALL BE EFFECTED BY THE REGISTER OF DEEDS UNLESS THE BIR HAS ISSUED THE E-CAR. Therefore, it is thus clear that there is a need for eCARs to be issued by the BIR to allow the transfer and registration of land and building. *Regional Trial Court of Lanao Del Norte, BIR Ruling No. 1050-18, July 10, 2018.*

SEPARATION OF COMMUNITY/CONJUGAL PROPERTY IS NOT SUBJECT TO CGT AND DST. In a voluntary dissolution of the conjugal partnership of gains where the former spouses adjudicated to themselves separately the properties which belong to their community property/conjugal partnership as a consequence of the liquidation of the partnership, the parties merely segregated and adjudicated for their own individual and separate ownership the properties which, from the celebration of their marriage, rightfully belong to them. Therefore, where the parties merely appropriated to themselves their respective shares in the community property, such transfer of the titles and tax declarations is not subject to CGT and DST. *Ibid.*

IMPORTATION OF AN AIRCRAFT DESTINED FOR DOMESTIC TRANSPORT OR INTERNATIONAL TRANSPORT OPERATIONS SHALL BE EXEMPT FROM VAT. However, exemption from VAT should be subject to the requirements on restriction on vessel importation and mandatory vessel retirement program of Maritime Industry Authority. *Subic Air, Inc., BIR Ruling No. 1049-18, July 5, 2018.*

SUPREME COURT DECISIONS

THE GRANT OF AN INFORMER'S REWARD FOR THE DISCOVERY, CONVICTION, AND PUNISHMENT OF TAX OFFENSES IS A DISCRETIONARY QUASI-JUDICIAL MATTER THAT CANNOT BE THE SUBJECT OF A WRIT OF MANDAMUS. It is not a legally mandated ministerial duty. Where an informant makes sweeping averments about undisclosed wealth, rather than specific tax offenses, and who fails to show that the information which he or she supplied was the undiscovered pivotal cause for the revelation of a tax offense, the conviction and/or punishment of the persons liable, and an actual recovery made by the State, reward cannot be given. Indiscriminate, expendable information negates a clear legal right and further impugns the propriety of issuing a writ of mandamus. Determination of informer reward requires a review of evidentiary matters and an application of statutory principles and administrative guidelines. Its determination is a discretionary, quasi-judicial function, demanding an exercise of independent judgment on the part of certain public officers. Moreover, where informant failed to demonstrate that his supplied information was the principal, if not exclusive, impetus for the State's efforts at prosecuting possible tax offenses and failed to prove that he was the sole and exclusive source of information leading to the discovery of fraud and violations of tax laws, which specifically resulted in conviction and punishment for violations of tax laws, informer reward will not be granted. *Lihaylihay v. Tan, G.R. No. 192223, July 23, 2018.*

BIR ISSUANCE REQUIRING GOVERNMENT AGENCY TO WITHHOLD TAX ON EMPLOYEES' COMPENSATION IS VALID AS IT IS IN ACCORDANCE WITH TAX LAW. The law is clear that withholding tax on compensation applies to the Government of the Philippines, including its agencies, instrumentalities, and political subdivisions. The Government, as an employer, is constituted as the withholding agent, mandated to deduct, withhold, and remit the corresponding tax on compensation income paid to all its employees. Where a BIR issuance does not charge any new or additional tax; merely mirrors the relevant provisions of the tax law on withholding tax on compensation income; reinforce the rule that every form of compensation for personal services received by all employees arising from employer-employee relationship is deemed subject to income tax and, consequently, to withholding tax, unless specifically exempted or excluded by the Tax Code; and the duty of the Government, as an employer, to withhold and remit the correct amount of withholding taxes due thereon, the BIR issuance is valid. *Confederation for Unity, Recognition and Advancement of Government Employees v. Commissioner, Bureau of Internal Revenue, G.R. Nos. 213446 & 213658, July 3, 2018.*

BIR ISSUANCE REQUIRING "PROVINCIAL GOVERNOR, MAYOR, BARANGAY CAPTAIN AND THE HEAD OF GOVERNMENT OFFICE OR THE OFFICIAL HOLDING THE HIGHEST POSITION (SUCH AS THE PRESIDENT, CHIEF EXECUTIVE OFFICER, GOVERNOR, AND GENERAL MANAGER) IN AN AGENCY OR GOCC" ("SUBJECT OFFICIALS") TO DEDUCT, WITHHOLD, AND REMIT THE CORRECT AMOUNT OF WITHHOLDING TAXES IS NOT IN ACCORDANCE WITH THE LAW. The Provincial Treasurer in provinces, the City Treasurer in cities, the Municipal Treasurer in municipalities, Barangay Treasurer in barangays, Treasurers of government-owned or -controlled corporations (GOCCs), and the Chief Accountant or any person holding similar position and performing similar function in national government offices are the persons required by law to deduct and withhold the appropriate taxes on the income payments made by the government. Where a BIR issuance provides that Subject Officials are required to deduct, withhold and remit the correct amount of withholding taxes, the BIR, in imposing upon these officials the obligation not found in law nor in the implementing rules, did not merely issue an interpretative rule designed to provide guidelines to the law which it is in charge of enforcing;

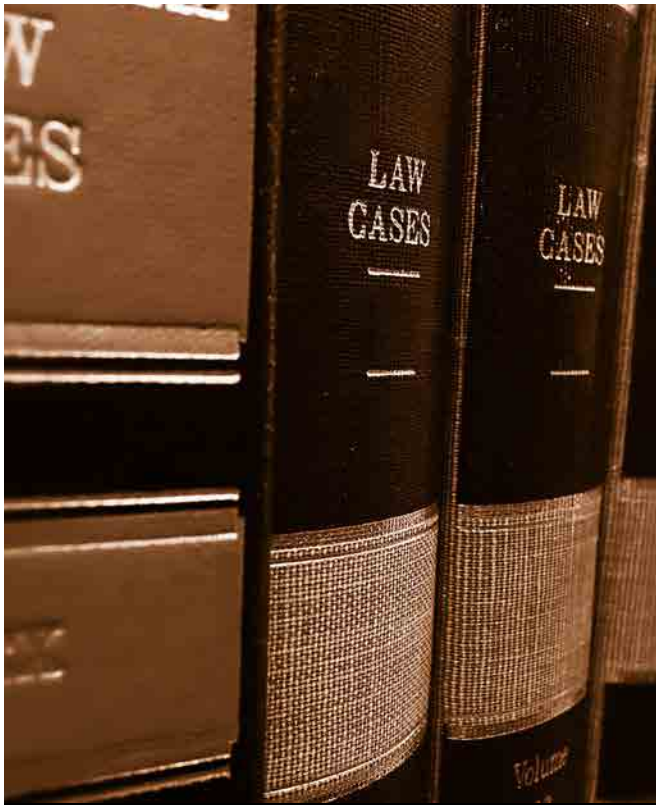
but instead, supplanted details thereon — a power duly vested by law only to respondent Secretary of Finance. BIR gravely abused its discretion in including the foregoing officers. *Ibid.*

LGUs JUST SHARE IS NOT LIMITED TO NIRC TAXES BUT MAY ALSO INCLUDE CUSTOMS DUTIES. Where the Constitution provides that LGU shall have just share in the "national taxes," but Local Government Code ("LGC") provides that LGU shall have share in the "national internal revenue taxes," Congress has exceeded its constitutional boundary by limiting to the latter the base from which to compute the just share of the LGUs. The phrase "national internal revenue taxes" is undoubtedly more restrictive than the term national. Such departure is impermissible. Equally impermissible is that Congress has also thereby curtailed the guarantee of fiscal autonomy in favor of the LGUs under the 1987 Constitution. It is clear from the foregoing clarification that the exclusion of other national taxes like customs duties from the base for determining the just share of the LGUs contravened the express constitutional edict. *Mandanas v. Ochoa, Jr., G.R. Nos. 199802 & 208488, July 3, 2018.*

COURT OF TAX APPEALS DECISIONS

I. ASSESSMENT

THE FACT THAT AN ASSESSMENT HAS BECOME FINAL FOR FAILURE OF THE TAXPAYER TO FILE A PROTEST WITHIN THE TIME ALLOWED MEANS THAT THE VALIDITY OR CORRECTNESS OF THE ASSESSMENT MAY NO LONGER BE QUESTIONED ON APPEAL. CTA has jurisdiction over the decision of or inaction by the BIR in cases involving disputed assessments. However, this does not cover assessment which became final, executory, and demandable. The rule is that for CTA to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled [or not acted] upon by the Commissioner to warrant a decision from which a petition for review may be taken to the Court. The protest to the formal letter of demand and the assessment notice must be made within thirty (30) days from the taxpayer's receipt of the deficiency tax assessment; otherwise, the assessment becomes final, executory, and demandable. Thus, for failure to file a protest within the reglementary period, the assessment in question became final, executory, and demandable. *Grand Plaza Hotel Corporation v. Commissioner of Internal Revenue, CTA Case No. 8992, July 4, 2018.*



A FORMAL ASSESSMENT NOTICE ("FAN") WITH A PHRASE "PLEASE NOTE THAT THE INTEREST AND THE TOTAL AMOUNT DUE WILL HAVE TO BE ADJUSTED ACCORDING TO THE ACTUAL DATE OF PAYMENT" IS DEFECTIVE, AS IT DOES NOT CONTAIN A CLEAR AND DEFINITE AMOUNT OF TAX TO BE PAID BY THE TAXPAYER. An assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed. Its primary purpose is to

determine the amount that a taxpayer is liable to pay. Thus, a FAN, which is still subject to modification is not an assessment envisaged by the Tax Code and settled case-law on the matter. *Commissioner of Internal Revenue v. Robert Christopher M. Carmona, CTA EB No. 1324 (CTA Case No. 8484), July 2, 2018*

A FAN THAT LACKS DEFINITE DUE DATE FOR PAYMENT OF TAX IS FATAL. Internal revenue tax assessment shall be paid by the taxpayer only upon notice and demand from petitioner or his authorized representative. An assessment, therefore, must contain not only a computation of tax liabilities but also a demand for payment within a prescribed period. Where a FAN states that the due dates for payment of tax and increments thereon are reflected in the enclosed assessment notices but the assessment notices appended in the FAN reveals that the space for the due dates for payment of tax obligation and increments thereon are unaccomplished, an obligation to pay the tax may not be deemed to have accrued since the alleged assessment lacks a definite and fixed period to settle the same. In other words, taxpayer cannot be made to account for taxes which in the first place are not legally demandable. *Ibid.*

SUBSTANTIAL UNDERDECLARATION OF SALES DOES NOT INSTANTLY DEMONSTRATE FALSITY IN RETURNS FOR PURPOSES OF PRESCRIPTION IN TAX ASSESSMENTS. In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed at any time within 10 years after the discovery of the falsity, fraud or omission. Allegations of falsity or fraud in the filing of tax returns must be proven to exist by clear and convincing evidence and cannot be justified by mere speculation. Where BIR claims that substantial under-declaration of sales demonstrates falsity or fraud in the VAT returns but did not present any witness or evidence to support such allegation, and no penalty of fifty percent (50%) of the tax assessed was imposed, the claim of the BIR that the alleged falsity falls within the exceptions as to the period of limitation to assess a taxpayer for deficiency tax has no merit. *Medicard Philippines v. Commissioner of Internal Revenue, CTA Case No. 9049, July 12, 2018.*

ESTOPPEL DOES NOT GENERALLY APPLY ON WAIVERS OF THE STATUTE OF LIMITATIONS. The Tax Code authorizes the extension of the original 3-year prescriptive period to assess deficiency tax by the execution of a valid waiver, where the taxpayer and the BIR agree in writing that the period to issue an assessment and collect the taxes due is extended to an agreed upon date. Where BIR failed to verify whether a notarized written authority was given by the Company to its representative; date of the acceptance by the BIR of the waiver was not indicated in the taxpayer's copy of the waiver; fact of receipt by the taxpayer of the waiver was not indicated in the original copy of the waiver, etc., the waivers were defective. To these defects, the BIR argued based on the "in pari delicto" rule, contesting that the succeeding acts of the Company of signing the subsequent waivers demonstrate its intention to give force and effect to all the waivers. Be it noted, though, that the BIR cannot hide

behind the doctrine of estoppel to cover its failure to comply with the procedural and technical requirements in executing a valid waiver. Moreso, the "in pari delicto" rule is only an exception rather than a general rule. To make it the general rule would result in the absurd consequence of invalidating the taxpayer's remedy of being able to waive the statute of limitations. Having caused the defects in the waivers and for being remiss in its duty to faithfully comply with its own issuances, the BIR must bear the consequences of prescription of its right to assess the Company. *Medicard Philippines v. Commissioner of Internal Revenue, CTA Case No. 9049, July 12, 2018.*

RULE ON PROTESTING OF ASSESSMENT DOES NOT APPLY FOR VIOLATION OF OTHER PROVISIONS OF THE TAX CODE. Where the imposition of penalties was not the result of a regular examination of its internal revenue tax liabilities but the outcome of the inspection made by the BIR of the Company's compliance with the administrative provisions of the Tax Code, more particularly with regards to the keeping of books of accounts, official receipts, and related financial records, the rule on protesting of assessment under Section 228 of the NIRC is not applicable. Thus, the taxpayer cannot claim that the BIR did not accord it its right to due process when the BIR failed to inform the Company in writing of the law and facts on which the assessment is made. *Frankfort, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9363, July 10, 2018.*

FAILURE TO OVERCOME THE PRESUMPTION OF FALSITY WARRANTS THE APPLICATION OF THE 10-YEAR PERIOD TO ASSESS DEFICIENCY TAX. The finding of undeclared sales, receipts, and income in the total amount exceeding thirty percent (30%) of that declared in a Company's tax returns constitutes substantial under-declaration of taxable sales, receipts or income pursuant to Section 249(B) of the Tax Code, and thus creates a prima facie presumption of falsity. Such a presumption, if uncontroverted or unrebutted, would be sufficient to establish the proposition it supports or to establish a fact. Thus, it is incumbent upon the taxpayer to present adequate evidence to prove that it had filed accurate returns. To require the BIR to present further evidence to prove the falsity of the returns in spite of the presumption would render the Tax Code inutile. *Macintel, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9252, July 06, 2018.*

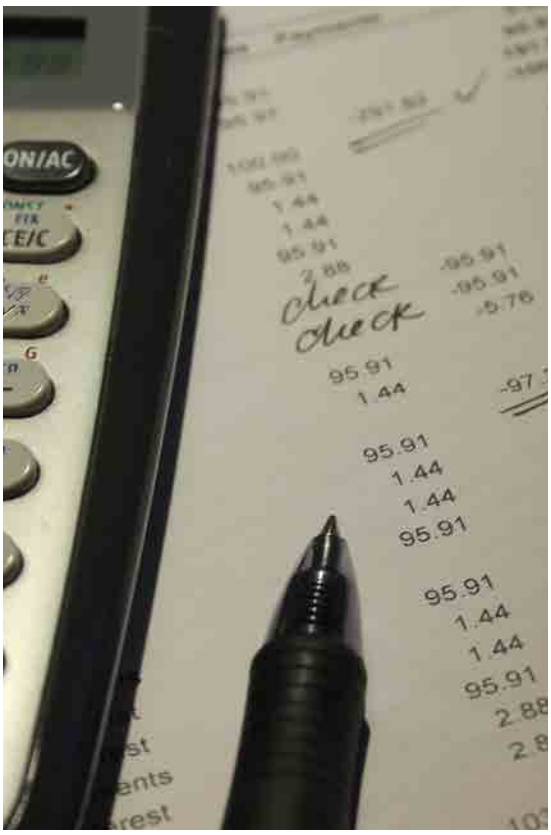
UNDERDECLARATION OF PURCHASES DOES NOT DIRECTLY TRANSLATE TO TAXABLE INCOME. For income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein. Thus, even when there is under-declaration of purchases, the same is not prohibited by law. Where the sole basis for the income tax assessment against the Company is the finding that there was under-declaration of purchases, such basis is not enough to uphold an assessment by the BIR for deficiency income tax, especially in the absence of the three elements in the imposition of income tax (there must be gain or profit, the gain or profit is realized or received, actually or constructively, and, it is not exempted by law or treaty for income tax). *Philippine Power MC Distribution, Inc., v. Commissioner of Internal Revenue, CTA Case No. 9263, July 06, 2018.*

DELINQUENCY INTEREST IN ASSESSMENT SHALL BE ADJUSTED PURSUANT TO TRAIN LAW. In view of the TRAIN law, the interest rate of 20% per annum was amended to "double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas". As such, the delinquency interest imposed in this assessment case shall be at a rate of twenty percent (20%) until December 31, 2017 and shall be adjusted to a rate of twelve percent (12%) per annum from January 1, 2018 (which is the effectivity date of the TRAIN law) until the amount is fully paid. *Tridharma Marketing Corporation, Inc., v. Commissioner of Internal Revenue, CTA Case No. 8833, July 06, 2018.*

WHERE BIR MERELY ISSUED A LETTER NOTICE ("LN") TO THE COMPANY INSTEAD OF LETTER OF AUTHORITY (LOA), CLAIMING THAT THE ISSUANCE OF A LOA IS NO LONGER NECESSARY, THE ASSESSMENT IS VOID; DIFFERENCE BETWEEN LETTER OF AUTHORITY (LOA) AND LETTER NOTICE (LN) EXPLAINED. Tax audit commences with the issuance by the BIR of LOA which is the authority given to the appropriate Revenue Officer assigned to perform assessment functions. The purpose of the LOA is to give notice to the taxpayer that it is under investigation for possible deficiency tax assessment, as well as to empower or enable the designated officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. LN is entirely different and serves a different purpose from that of an LOA. First, LOA addressed to a Revenue Officer is specifically required under the Tax Code before an examination of a taxpayer may be had, while an LN is not found in the Code and is only for the purpose of notifying the taxpayer that a discrepancy is found based on the BIR's System. Second, an LOA is valid only for 30 days from the date of issuance while an LN has no such limitation. Third, an LOA only gives the RO a period of 10 days from receipt of LOA to conduct his examination of the taxpayer whereas an LN does not contain such limitation. For these reasons, the issuance of a mere LN instead of LOA would not suffice. Due process demands that after an LN was served, the revenue officer should have properly secured an LOA before proceeding with the examination and assessment of a taxpayer. *Lapanday Holdings Corporation v. Commissioner of Internal Revenue, CTA Case No. 8932, July 05, 2018.*

ISSUANCE OF LOA COVERING THE AUDIT OF "UNVERIFIED PRIOR YEARS" IS A PROHIBITED PRACTICE. What the provision clearly prohibits is the practice of issuing LOAs covering audit of unverified prior years. It prescribes that if the audit includes more than one (1) taxable period, the other period or years must be specified. If a taxpayer is audited for more than one taxable year, the BIR must specify each taxable year or taxable period on separate LOAs. The requirement to specify the taxable period covered by the LOA is simply to inform the taxpayer of the extent of the audit and the scope of the Revenue Officer's authority. Where taxable years 2003, 2004, and 2005 are not specified in separate LOAs and merely incorporated as "unverified prior years", the assessments resulting therefrom are void. *Commissioner of Internal Revenue v. China State Philippines Construction Corporation, CTA EB Case No. 1558 (CTA Case No. 8522), July 16, 2018.*

PRESENTATION OF REGISTRY RETURN RECEIPT IS NOT SUFFICIENT TO PROVE THAT THE TAXPAYER ACTUALLY RECEIVED THE PAN AND FAN. Registry return receipts must be authenticated to serve as proof of receipt of letter sent through registered mail. In the absence of such authentication or such further evidence, presentation of the registration receipt is not sufficient to prove that the taxpayer actually received the PAN and FAN. *Commissioner of Internal Revenue v. T Shuttle Services, Inc., CTA EB Case No. 1565 (CTA Case No. 8650), July 16, 2018.*



II. VALUE-ADDED TAX

IN REFUND OF EXCESS AND UNUTILIZED CWT, PRESENTATION OF BIR FORM NO. 2307 ISSUED BY THE WITHHOLDING AGENTS CONSTITUTES SUFFICIENT PROOF OF THE EXISTENCE AND VALIDITY OF A TAXPAYER'S CWT. The withholding agent is required under the law to furnish every recipient-taxpayer a statement of the taxes deducted and withheld by the former from the latter. Said statement refers to BIR Form No. 2307 or the Certificate of Creditable Tax Withheld at source, which is the proof of the tax withheld by the withholding agent from the income payments to the recipient-taxpayer. The documentary requirement of tax returns with claimed tax credits cited in the revenue regulation is not a mandatory requirement under the law. Any condition or term being prescribed under an administrative issuance which is beyond what the law prescribes is invalid and unconstitutional. Albeit, what the regulation imposes as penalty for non-submission of such information is a fine of Php 1,000.00 for each failure, but not, denial of CWT claim for refund. Moreover, recipient-taxpayer need not prove the actual remittance of the tax withheld made by the withholding agent since remittance is the responsibility of the latter and not of the former. The burden is on the BIR to prove that said document is not authentic. *Univation Motor Philippines, Inc. (formerly, Nissan Motor Philippines, Inc.) v. Commissioner of Internal Revenue, CTA Case No. 9335; Commissioner of Internal Revenue v. GIC Private Limited, CTA EB Case No. 1477 (CTA Case No. 8749), July 16, 2018.*

THE TWO-YEAR PRESCRIPTIVE PERIOD IS APPLICABLE FOR TAX REFUND/CREDIT ON THE EXCISE TAX ON TOBACCO PRODUCTS, PAID AS ADVANCE PAYMENT OR DEPOSIT. Section 204 of the NIRC provides that no credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty. Moreover, Section 229 or NIRC provides no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty. An advance payment/deposit of excise taxes being claimed for refund may be deemed to have been excessively/erroneously collected, the same having remained unutilized after payment. As such, the refund of the excess advance payment falls under Section 229 of the NIRC. Where the taxpayer paid the excise taxes from January 7, 2010 to March 31, 2012 but taxpayer filed its administrative claim for refund or issuance of TCC in the total amount only on December 4, 2015, while the judicial claim was subsequently filed on January 4, 2016, taxpayer's claim for refund/issuance of TCC has already prescribed. Section 229 of the NIRC of 1997, as amended, governs exclusively all kinds of refund or credit of internal revenue taxes erroneously or illegally imposed or collected pursuant to the NIRC of 1997, as amended. *Philip Morris Philippines Manufacturing, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9228, July 2, 2018.*

CARPO LAW & ASSOCIATES

DEPARTMENT OF ENERGY ("DOE") REGISTRATION IS REQUIRED IN CLAIMING VAT ZERO-RATING FOR EXPLORATION OF RENEWABLE ENERGY RESOURCES. Any individual or juridical entity with a valid and existing service or development contracts and agreements with DOE for the exploration, development or utilization of renewable energy ("RE") resources shall be deemed provisionally registered as an RE developer, which registration shall subsist until the issuance of DOE Certificate of Registration. For this purpose, the DOE shall issue a corresponding provisional certificate of registration upon receipt of the RE developer's letter of intent for conversion to RE contract. Where the taxpayer timely filed its letter of intent prior to the subject period for claim of VAT refund, but it failed to submit its provisional certificate of registration from the DOE, the taxpayer, absence of such registration, albeit provisional, cannot validly claim VAT zero-rating. *Philippine Geothermal Production Company Inc. v. Commissioner of Internal Revenue, CTA Case No. 9048, July 10, 2018.*

ACTUAL SHIPMENT OF GOODS FROM THE PHILIPPINES TO A FOREIGN COUNTRY SUPPORTED BY AIRWAY BILL OR BILL OF LADING IS NECESSARY TO ESTABLISH "EXPORT SALES". The term "export sales" is defined under the Tax Code as the sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon. Thus, the Code categorically demands proof of actual shipment of goods to a foreign country (in the form of airway bill or bill of lading) apart from the proof of the fact of sale of such goods. Where the taxpayer provided a BOI Certification stating therein that the Company is registered with the BOI and that the alleged sales therein was based on an affidavit of the Company with a note that such volume/value is subject to post-audit, in lieu of any airway bill or bill of lading, the submitted evidence does not establish export sales. *Phil. Gold Processing & Refining Corp. v. Commissioner of Internal Revenue, CTA EB Case No. 1670 (CTA Case No. 8763) dated July 09, 2018 and Phil. Gold Processing & Refining Corp. v. Commissioner of Internal Revenue, CTA EB Case No. 1599 (CTA Case No. 8697), July 09, 2018.*

A TAXPAYER IS PRESUMED TO HAVE SUBMITTED ALL SUPPORTING DOCUMENTS WHEN APPLYING FOR REFUND. Bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, it is presumed that in order to discharge its burden, the taxpayer has to attach complete supporting documents necessary to prove its entitlement to a refund in its application, absent any evidence to the contrary. Therefore, where BIR argues that the taxpayer did not submit supporting documents for its administrative claim for refund did not stand, it should have decided against such claim. Records of the case, however, show that the BIR did not act on the said claim. *Commissioner of Internal Revenue v. Bahay Bonds 2 Special Purpose Trust, CTA EB Case No. 1630 (CTA Case No. 8944), July 06, 2018.*

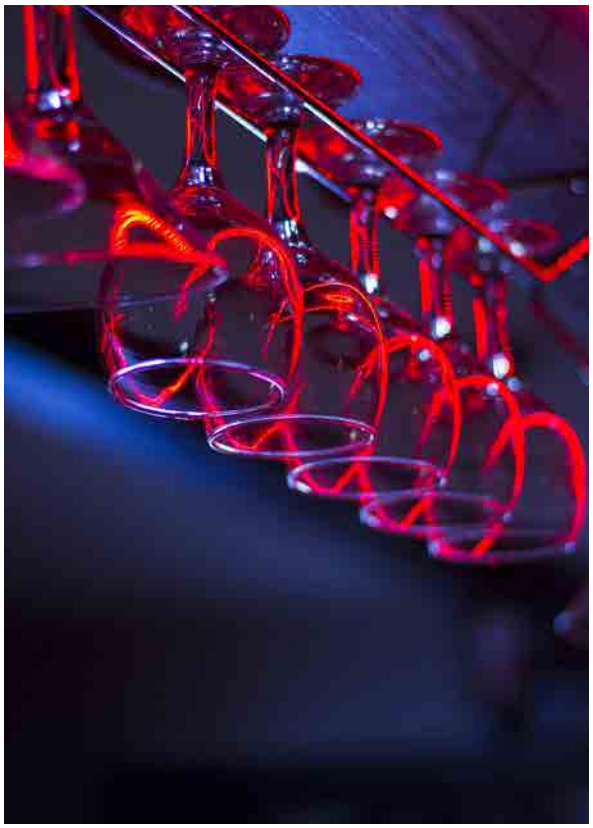
INPUT TAXES SUBJECT OF REFUND IS NOT REQUIRED TO BE DIRECTLY ATTRIBUTABLE TO ZERO-RATED SALES. AS A MATTER OF FACT, THE PROVISION ALLOWS ALLOCATION OF INPUT TAXES IN CASE THE SAME ARE NOT DIRECTLY AND ENTIRELY ATTRIBUTED TO ANY OF THE SALES. Where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. Provided, finally, that for a person making sales that are zero-rated, the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales. Therefore, the creditable input tax due or paid attributable to such sales is not limited to those input taxes on purchases which form part of the finished product. *Air Liquide Philippines, Inc. v. Commissioner of Internal Revenue, CTA Special Division Case No. 8017, July 12 2018; Chevron Holdings, Inc. v. Commissioner of Internal Revenue, CTA Case Nos. 8790 and 8835, July 10, 2018.*

III. DOCUMENTARY STAMP TAX

WHERE TAXPAYER RELIED ON PREVAILING COURT DECISIONS AND PREVIOUS BIR ISSUANCES TO THE EFFECT THAT INTER-COMPANY LOANS AND ADVANCES COVERED BY INTER-OFFICE MEMORANDA WERE NOT LOAN AGREEMENTS SUBJECT TO DST, TAXPAYER'S RELIANCE ON THE SAID CASES AND BIR ISSUANCES JUSTIFIES THE NON-IMPOSITION OF SURCHARGES AND INTEREST. Penalty claimed to have been excessively or in any manner wrongfully collected may be a subject of a claim for refund. Good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law are sufficient justification to delete the imposition of surcharges and interest. *Ibid.* Note: Such transaction is presently subject to DST.

IV. PERCENTAGE TAX

TO HOLD PETITIONER LIABLE FOR PERCENTAGE OR AMUSEMENT TAX, THERE MUST BE A SUFFICIENT PROOF THAT PETITIONER OPERATES AS A CABARET, NIGHT OR DAY CLUB. To be deemed a cabaret, or night and day club, it must be established that taxpayer's operations involve dancing as the main business and customers patronize the place in order to dance either with their own partners or with professional hostesses engaged by said Petitioner for that purpose. Where a witness testified that taxpayer has no dance floor, nor does it encourage its customers to dance even though taxpayer provides entertainment to its customers through live bands and singers but which are incidental to the main restaurant business of providing food and drinks to its diners and are merely for the purpose of advertisement and promotion of petitioner's restaurant, and where the documents presented (Articles of Incorporation,



Certification from the Makati City government, accreditation from the Department of Tourism, Petitioner's menu, Petitioner's Financial Statement) indubitably show that petitioner operates as a restaurant, chiefly serving food and drinks to its customers, taxpayer does not fall within the scope or coverage of cabarets and/or night or day clubs. *Hard Rock Café (Makati City), Inc. v. CIR, CTA Case No. 9279, July 12, 2018.*

V. LOCAL GOVERNMENT CODE

PAYMENT UNDER PROTEST IS A CONDITION PRECEDENT IN APPEALS OF ASSESSMENT OF REAL PROPERTY TAX TO THE LOCAL BOARD OF ASSESSMENT APPEALS. Section 226 of the Local Government Code ("LGC"), in declaring that any owner or person having interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of the property may appeal to the Board of Assessment appeals, should be read in conjunction with Section 252 of the same Code which states that no protest shall be entertained unless the taxpayer first pays the tax. Thus, the Code emphatically directs the taxpayer questioning the assessment to first pay the tax due before his/her protest can be entertained. Consequently, only after such payment has been made may the taxpayer file a protest in writing. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid. *National Grid Corporation of the Philippines v. Central Board of Assessment Appeals; Local Board of Assessment Appeals of the Province of South Cotabato, et. al., CTA EB Case No. 1459 (CBAA Case No. M-39), July 16, 2018.*

VI. CUSTOMS LAW

TARIFF AND CUSTOMS CODE OF THE PHILIPPINES (TCCP) SPECIFICALLY EMPOWERS THE BUREAU OF CUSTOMS TO EXERCISE EXCLUSIVE ORIGINAL JURISDICTION OVER SEIZURE AND FORFEITURE CASES UNDER THE TARIFF AND CUSTOMS LAWS; FILING OF THE PETITION FOR REVIEW BEFORE THE COURT OF TAX APPEALS IS PREMATURE IN THE ABSENCE OF A FINAL DECISION OF THE COMMISSIONER OF CUSTOMS. Upon effecting the seizure of the goods, the Bureau of Customs acquired exclusive jurisdiction not only over the case but also over the goods seized for the purpose of enforcing the tariff and customs laws. The prevailing doctrine is that the exclusive jurisdiction in seizure and forfeiture cases vested in the Collector of Customs precludes Court of Tax Appeals from assuming cognizance over such a matter. Filing of the petition for review before the Court of Tax Appeals is premature in the absence of a final decision of the Commissioner of Customs. Taxpayer's failure to exhaust the available administrative remedies renders his judicial appeal dismissible for being prematurely filed. Absent decision from the petitioners, CTA did not acquire jurisdiction over the case. *Bureau of Customs et. al. v. Jade Bros Farm and Livestock, CTA Case EB No. 1566 (CTA Case No. 8886), July 4, 2018.*

VII. RULES OF PROCEDURE

TO PROVE FILING OF MOTION FOR RECONSIDERATION ("MR") VIA REGISTERED MAIL, ORIGINAL COPY OF THE MR, WITH THE ORIGINAL REGISTRY RECEIPT ATTACHED THERETO AND A CERTIFICATION FROM THE BUREAU OF POSTS THAT THE MR WAS ACTUALLY MAILED TO AND RECEIVED BY THE COURT SHOULD BE PRESENTED. When a mail matter is sent by registered mail, there exists a presumption that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (1) that the letter was properly addressed with postage prepaid; and (2) that it was mailed. While a mailed letter is deemed received by

the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. Photocopy of the MR allegedly sent to the court, email correspondences of counsels, and the affidavits are insufficient. *Nueva Ecija II Area Electric Cooperative, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9549, July 5, 2018.*

THE DEPARTMENT OF JUSTICE, NOT THE COURT OF TAX APPEALS, HAS JURISDICTION OVER DISPUTES BETWEEN GOVERNMENT OFFICES. All controversies involving government offices, bureaus, agencies, and instrumentalities, including GOCC, fall within the initial jurisdiction of the Department of Justice. Thus, where the petitioner in this case is Philippine Mining Development Corporation, a GOCC, while respondent is the Bureau of Internal Revenue, another government agency, the dispute is solely between two government entities, and the Court of Tax Appeals has no jurisdiction. *Philippine Mining Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 9292, July 5, 2018.*

MOTION FOR NEW TRIAL MAY BE GRANTED FOR FAILURE OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT (ICPA) TO INCLUDE CERTAIN DOCUMENTS DUE TO HONEST MISTAKE OR EXCUSABLE NEGLIGENCE WHICH ORDINARY PRUDENCE COULD NOT HAVE GUARDED AGAINST. A party may file a motion for new trial on the grounds of fraud, accident, mistake or excusable negligence; or of newly discovered evidence, in the manner provided for proof of motions. Where a motion asserts that the ICPA failed to include certain documents, shows that the reason advanced by petitioner falls under the phrase "mistake or excusable negligence" as a ground for new trial, the court may grant the motion. *Rio Tuba Nickel Mining Corporation v. Commissioner of Internal Revenue, CTA Case No. 9127, July 4, 2018.*

PERIOD IN FILING PETITION FOR REVIEW. Taxpayer has thirty (30) days from receipt of the FAN within which to file its administrative protest. It has sixty (60) days from filing of such administrative protest to submit all relevant supporting documents. It also has thirty (30) days from receipt of the BIR Commissioner's adverse decision, or from the lapse of the one hundred eighty (180)-day period from submission of documents, for it to file a Petition for Review with the CTA. *Hard Rock Café (Makati City), Inc. v. CIR, CTA Case No. 9279; July 12, 2018.*

ADMINISTRATIVE ISSUANCES MUST BE INTERPRETED AND IMPLEMENTED IN A MANNER CONSISTENT WITH STATUTES, JURISPRUDENCE, AND OTHER RULES. By virtue of a BIR issuance, the terms "cabarets, night, and day clubs" now include other places which offer similar pleasurable diversion entertainment and function such as videoke bars, karaoke bars, karaoke televisions, karaoke boxes, and music lounges, for purposes of

imposing amusement tax. With such inclusion of other places or enterprises, petitioner would seem to fall under the terms cabarets, night, and day clubs. It is undisputed that the definition of cabarets, night, and day under the BIR issuance is a radical departure from the previous definition of the said terms. Simply put, it unilaterally changed and expanded or widened the scope or meaning of the terms cabarets, night, and day clubs as defined under the Tax Code and in existing jurisprudence. Where there is a conflict between administrative issuances and jurisprudence, it is the latter which shall prevail. *Ibid.*

WHEN AN ISSUE WAS DISCUSSED AND PASSED UPON BY THE COURT IN DIVISION, AND THE SAME WAS NOT TACKLED BY THE DECISION OF THE COURT EN BANC, THE RESOLUTION ON SAID ISSUE BY THE COURT DIVISION IS DEEMED AFFIRMED BY THE COURT EN BANC. When the *Court En Banc* denied taxpayer's Petition for Review assailing the Court in Division's Resolution, the disquisition made by the Court in Division on the matter was deemed affirmed. *CIR v. Iconic Beverages, Inc., CTA EB No. 1412/1417, July 16, 2018.*

CTA HAS JURISDICTION OVER CASES INVOLVING THE VALIDITY OF THE PROTEST AND ASSESSMENT. CTA has jurisdiction to review by appeal the decisions of the BIR Commissioner in cases involving disputed assessments. Therefore, there is no merit to BIR's argument that CTA has no jurisdiction over the subject matter since there is no disputed assessment to speak of because the taxpayer failed to file a valid protest. The CTA has jurisdiction over the subject matter of the case since the validity of the assessment itself is the issue. *Commissioner of Internal Revenue v. Asian Navigation and Tracking Systems, Inc., CTA EB Case No. 1490 (CTA Case No. 7999), July 6, 2018.*

CTA OR COURT OF APPEAL'S ("CA") DECISIONS ARE SPECIFIC RULINGS APPLICABLE ONLY TO THE PARTIES TO THE CASE AND NOT TO THE PUBLIC. UNLIKE THOSE OF THE SUPREME COURT, THEY DO NOT FORM PART OF THE LAW OF THE LAND. DECISIONS OF LOWER COURTS DO NOT HAVE ANY VALUE AS PRECEDENTS AND ARE NOT BINDING ON THE SUPREME COURT. ONLY DECISIONS OF THE SUPREME COURT CONSTITUTE BINDING PRECEDENTS, FORMING PART OF THE PHILIPPINE LEGAL SYSTEM. Judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law. Judicial decisions which form part of our legal system are only the decisions of the Supreme Court. Cited CA and CTA decisions cannot be considered as previous doctrines and therefore have no value as precedents. *South Premiere Power Corp. v. Commissioner of Internal Revenue, C.T.A. Case No. 9337 (Resolution), July 12, 2018.*