# TMAP TAX UPDATE FOR FEBRUARY 2016

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## COURT OF TAX APPEALS EN BANC DECISIONS

**City Assessor of Paranaque vs. Portal Holdings, Inc.** *(CTA EB Case No. 998 dated January 26, 2016)*

Paranaque City enacted Ordinance No. 03-06, Series of 2003 which allowed the City Assessor to transfer the tax declaration of properties at Aseana Business Park from Barangay Tambo to Barangay Baclaran.

Portal Holdings, Inc. ("Portal Holdings") owned three lots in the Aseana complex. Portal Holdings alleged that after requesting for a computation of the exact amount of real property taxes due on the subject properties for 2004, it discovered an increase in the assessment of the subject properties. The computation provided by the City Treasurer based on assessment levels was higher than in previous years. Portal Holdings paid the RPT due on the subject properties for the year 2004 under protest. The City Assessor denied the protest.

Portal Holdings filed an Appeal with the LBAA. The LBAA denied Portal Holdings' appeal on the ground that it had no jurisdiction, and that the issue(s) raised by Portal Holdings boiled down to the constitutionality of Paranaque City Ordinance No. 03-06, which was outside the jurisdiction of the LBAA.

The case was appealed to the CBAA which set aside the Resolution of the LBAA. The City Assessor filed a Petition for Review with the CTA.

**Ruling:** LBAA has jurisdiction over the subject matter since the items contested by Portal Holdings were indicative of dissatisfaction over the actions of the City Assessor in the assessment of the subject properties. Even though the appeal to the LBAA and CBAA raised the issue of constitutionality of Paranaque City Ordinance No. 03-06, the same did not divest the LBAA of its jurisdiction to hear and decide on the correctness of the new assessment, which was the very subject of the appeal.

The issue is whether the City Assessor was justified in increasing the assessment levels of the subject properties allegedly pursuant to Paranaque City Ordinance No. 03-06 which changed the barangay location of the subject properties from Barangay Tambo to Barangay Baclaran.

While Section III of the ordinance provided that "[t]he Office of the City Assessor is hereby directed to implement the provision of this ordinance", there was nothing therein which authorized the City Assessor to make a corresponding reassessment of the affected properties. Section 220 of the Local Government Code, as implemented by Article 311 of the IRR, enumerated the only instances when an assessor may make a classification, appraisal or assessment of real property under his jurisdiction. Assessing subject properties, purportedly pursuant to the provisions of Paranaque City Ordinance No. 03-06, Series of 2003, did not fall under any of the instances enumerated in Section 220. Thus, the reassessments made by the City Assessor on the subject properties were null and void for lack of legal basis.

**Commissioner of Internal Revenue vs. AR Realty Holdings, Inc.** *(CTA EB Case No. 1202 dated January 28, 2016)*

This is a case of deficiency income tax assessment against respondent AR Realty Holdings ("AR") for taxable year 2006. The material issues resolved by the Court were as follows:

(a*) Proof of the Fact of Withholding*: The CIR contends that respondent AR's total excess tax credits in the amount of P850,247.98 should not be considered in offsetting respondent's income tax due, for failure to support the same with BIR Form No. 2307 (Certificate of Creditable Tax Withheld at Source). Citing Section 2.58.3(A) (B) of RR No. 2098 as amended, the respondent's total tax credits should be established by showing a copy of the withholding tax statements duly issued by the payor to the payee stating the amount paid and the amount of tax withheld therefrom.

Respondent argued that in the course of trial the ICPA testified that the excess credit, as appearing in the BIR Formal Letter of Final Decision on Disputed Assessment, is the same as the amount indicated in its Annual Income Tax Return for 2006. The ICPA clearly stated in his report that the subject excess credits were carried over in the succeeding years of 2007, 2008 and 2009 but were never utilized since creditable withholding taxes were higher than the tax due for the following taxable years.

On this issue, the Court ruled in favor of respondent AR. Petitioner CIR heavily relied on Section 2.58.3 (A) (B) of RR No. 2-98 in arguing that the total tax credits of the respondent in the amount of P850,247.98 must not be considered in offsetting against its income tax due. However, a careful reading of Section 2.58.3 (A) (B) of RR No. 2-98 will show that this provision applies only to claims for tax credit or refund. The requirement of showing the *fact of withholding* through a copy of the withholding tax statement specifically pertains only to claims for tax credit or refund. Thus, said provision cannot be used or cited by the CIR as a requirement in this case, which does not involve a claim for tax credit or refund, but one involving tax assessments.

(b) *Allegation of "Double Benefit"*: The CIR argues that excess tax credits carried over to the succeeding years in the amount of P837,589.42 should be disallowed in order to recapture the benefit derived in crediting the same. To allow respondent AR to carry over the excess tax credits and the MCIT, and credit it in the succeeding years, and then let it be credited in the year the MCIT was paid by offsetting the same from deficiency income tax, would result to double benefit.

The Court ruled that the contention of petitioner CIR is untenable. It is inappropriate to disallow the benefit of excess tax carryover which will redound to the succeeding year, for such is beyond the scope of the present assessment. Based on the computation, it can be seen that the amount of P12,658.56, which represents the MCIT payment, has already been deducted and thus, it is no longer included in the amount to be carried over to the succeeding periods. Such being the case, even when the amount of P837,589.42 has been carried over to the succeeding years to be applied to respondent's future income tax liabilities, the contention on the supposed double benefit that may arise in the succeeding years, as regards the MCIT, has no leg to stand on.

Furthermore, there is no indication that the amount of P837,589.42 has been claimed twice in the succeeding periods so as to effectuate the alleged double benefit, since it is merely carried over to the succeeding years in accordance with Section 76 of the NIRC. The CIR failed to pinpoint any evidence to show that respondent claimed twice the said amount as excess tax credits in the succeeding periods. Lastly, the supposed double benefit could not have been realized by respondent since it incurred losses in the succeeding taxable years, as can be seen in AR's Annual Income Tax Returns for 2007, 2008 and 2009.

**Commissioner of Interval Revenue vs. Staedtler (Philippines), Inc.** *(CTA EB Case No. 1310 dated January 28, 2016)*

Respondent Staedtler filed its Quarterly VAT Returns for taxable year 2007 on April 24, 2007 for the first quarter, July 25, 2007 for the second quarter, October 24, 2007 for the third quarter, and January 25, 2008

for the fourth quarter. Thus, the CIR had only until April 25, 2010, July 25, 2010, October 25, 2010 and January 25 2011, respectively, within which to assess respondent of its VAT liability for the year 2007. However, the CIR issued the Formal Letter of Demand (FLD) with Details of Discrepancies and Assessment Notices No. 040-8105-079 in respect of respondent's 2007 VAT, only on November 4, 2010.

**Ruling:** The right of the CIR to assess Staedtler for deficiency VAT with respect to the first, second and third quarters of taxable year 2007 had already prescribed.

The general rule is that internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return or the actual date of filing of said return, whichever comes later.

On the CIR claim that the running of the Statute of Limitations on respondent's VAT assessment was suspended by virtue of its request for reinvestigation via its administrative protest, the CTA en banc ruled that Section 223 of the NIRC provides that it is only when the taxpayer requests for a reinvestigation that the running of the statute is suspended. In the case at bar, perusal of respondent's Letter of Protest against the PAN, and its subsequent Protest Letter against the FLD, reveal that neither of them contains a request for reinvestigation nor have the tenor of requesting for a reinvestigation.

**Lourdes College vs. Commissioner of Internal Revenue** *(CTA EB Case No. 1164 dated February 2, 2016)*

This case relates to the following issues raised by the petitioner Lourdes College, to wit:

(a) CIR's denial of petitioner's protest of the Formal Letter of Demand did not state the basis of such denial; and

(b) the amount paid by Lourdes College to the Congregation was not donation (because of the Sisters' vow of poverty) but an income to the Congregation.

**Ruling:**

(a) Lourdes College was validly informed of the basis of the CIR's ruling.

The CIR, by stating in its denial that "*the letter issued by Regional Director Esmeralda M. Tabule dated January 25, 2010, is considered by this Office as the Final Decision on the Disputed Assessment*," clearly adopted the findings of the Regional Director as her decision on the disputed assessment, as well as the basis thereof. Lourdes College therefore cannot claim that it was unaware of the basis of the assessment against it.

(b) The amount paid by Lourdes College to the Congregation was subject to Donor's Tax. Lourdes College cannot invoke exemption from payment of donor's tax since it failed to prove that the amount of Pxxxx it paid to the Congregation was income of the latter. Based on Sections 101 and 99(B) of the NIRC, the amounts that were actually paid to the Congregation were considered donations to strangers because the Congregation was not considered as one of those (entities) enumerated in the abovementioned provision. Thus the tax rate of 30% of the net gift will apply to the amount paid by Lourdes College to the Congregation.

**Commissioner of Internal Revenue vs. East Asia Utilities Corporation** *(CTA EB No. 1207 dated February 3, 2016)*

Respondent East Asia is an entity registered with the PEZA entitled to incentives under Sections 24 and 42 of RA No. 7916. The issues raised in this case related to the allowance/disallowance of certain items claimed by East Asia as deductible expenses.

**Rulings:**

(a) The list of direct cost under RR No. 11-05 is not all-inclusive and intended merely as guide in determining the items that may be considered for Income Tax deduction purposes. PEZA-registered enterprises may be allowed to deduct expenses which are in the nature of direct costs even though the same are not included in the list. If the item of cost or expense can be directly attributed in providing the PEZA-registered services, then it should be treated as direct cost.

(b) The items SSS Employer Cost, Pag-ibig Employer Cost, Medical/Health Insurance and Accident/Life Insurance formed part of personnel compensation and must be allowed as deduction under "direct salaries, wages or labor expenses" of RR No. 11-05. However, the amount incurred for the accident/life insurance, working gear and uniform of on-the-job trainees (OJTs) assigned to the Operations and/Maintenance Department should be classified as operating expenses and must be disallowed since respondent can still carry on its power generation activities without having to incur cost for its apprenticeship program.

(c) The amount allegedly representing “expense for employees activities” in the form of expenses for pingpong tournament and treadmill in the physical fitness club and holy mass, was properly disallowed by the Court in Division because while said expenses may promote the physical health as well as the spiritual and moral well-being of respondent's plant operations personnel, they were not directly related or essential to the rendition of its registered services.

(d) The amount representing cost for Non-Technical Training and Development was likewise correctly disallowed since they were clearly general and administrative costs. On the other hand, respondent's cost for technical training should be considered as direct cost of service (although a small portion of the amount involved should be disallowed as it was incurred not for Operations and Maintenance personnel [a factual matter]).

(e) The amounts representing rental of a crane to relocate concrete poles utilized in connection with respondent's transmission facilities and a motorized pump boat for the maintenance of respondent's berthing dolphin or fuel platform, were allowable as deductible cost of services. The concrete poles and dolphin/fuel platform were essential plant facilities that must be regularly repaired and maintained for respondent's continued and efficient operation.

(f) Expenses for Insurance and Freight, Brokerage Fees, and Other Inventory Incidental Cost should likewise be included as deductions from gross income as they were incurred to maintain and repair respondent's plant's machinery and equipment. (However, a certain amount [P507,336.25] was disallowed for lack of specification in the invoice pertaining to the contents of shipment or lack of invoice or lack of supporting documents).

(g) Insurance premium payments for respondent’s Other Assets and Power Plant were properly deemed as cost of services, consequently deductible.

(h) An amount was totally disallowed as deduction for purposes of computing the 5% Gross Income Tax since it represents contributions required by PEZA as condition for registration to conduct and operate the business. As such, this mandatory contribution is in the nature of an operating expense, specifically a general and administrative expense, and not direct costs.

**Commissioner of Internal Revenue vs. Dole Philippines, Inc. ("Dole")** *(CTA EB Case No. 1190 dated February 4, 2016)*

This case relates mainly to the claim by Dole that the three (3)-year period mandated by law within which the CIR could validly assess Dole for deficiency income and sales taxes for taxable year 1986 had already prescribed. This contention was based on the ground that the waivers of the defense of prescription it executed with the CIR were invalid due to certain defects, specifically the lack of signature and date of acceptance by the CIR or her duly authorized representatives.

Evidence also showed that Dole filed a letter-application to the Revenue National Approval Committee-BIR for Compromise Settlement/Abatement of Penalties under RMO No. 54-93, doubting the validity of the assessment issued against it. Dole offered to pay the amount representing its alleged basic sales tax due. The CIR approved Dole's application for compromise settlement but reversed it due to Dole's failure to pay the compromise amount within the prescribed period.

**Ruling:** The assessment against Dole was issued beyond the three year prescriptive period provided by law.

Section 203 of the NIRC requires that the CIR must make an assessment for deficiency taxes within three years from the last day prescribed by law to file the tax return or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond the three year prescriptive period shall not be valid save only in certain cases under Section 222 of the NIRC, such as when both the Commissioner and the taxpayer have agreed in writing to its assessment after such time.

The waivers dated August 21, 1990, June 6, 1991 and February 17, 1993 executed by Dole were defective for the following reasons: (a) first, there was deviation from the form of the waiver prescribed under RMO No. 20-90; (b) second, the waivers did not state the amount of assessed taxes as required under the prescribed form; and (c) third, the waivers failed to comply with the requirement that the CIR or duly authorized revenue officer should sign the waiver to indicate his/her agreement and acceptance of the waiver and the date of such acceptance. Therefore, with respect to these waivers, no valid agreement between the CIR and Dole could be construed to have taken place.

The waiver dated August 30, 1989 waiver was deemed acceptable because at that time, strict compliance with the form and execution of waivers were not yet mandatory. Based on this August 30, 1989 waiver, the CIR had until September 30, 1990 within which to make the assessment against Dole. However, the assessment notices issued in respect of this waiver were issued only on November 24, 1993. Thus, no proper assessment can likewise be deemed to have validly been made under said assessment notices because the assessments made under such waiver were fifty-five (55) days overdue.

On the application of Dole for compromise, the CTA en banc held that the mere act of applying for compromise does not necessarily equate to abandonment of any claim against the validity of any assessments and waivers. It is the act of immediately paying the tax assessment covered by the waivers of the Statute of Limitations that rendered the taxpayer estopped from questioning the validity of waivers. Dole had not paid any portion of the assessed taxes and did not receive any benefit from its offer of compromise to warrant estoppel on its part since the approval thereof was subsequently withdrawn by the CIR.

**Philippine Aerospace Development Corporation vs. Commissioner of Internal Revenue** *(CTA EB No. 1035 dated February 9, 2016)*

This case arose from respondent CIR's deficiency income tax assessment against petitioner Philippine Aerospace Development Corporation ("Aerospace") mainly for failure of petitioner to reconcile the difference noted between the petitioner's purchases per VAT returns against the amount of its expenses as declared in its financial statements. The said expenses were disallowed as deduction from petitioner's gross income for being unsupported pursuant to Section 34(A)(1)(b) of the NIRC.

Petitioner also questioned the CIR's assessment of undeclared income from Accounts Receivables based on the Requisition and Delivery Issue Slips (RDIS) it issued in 2003, which were not yet billed as of December 31, 2003, thereby subjecting the said amount of unbilled Receivables to the thirty-two percent (32%) income tax rate.

**Ruling:**

(a) Petitioner, in following the accrual basis of accounting, must only be taxed on income earned during the taxable period with allowed deduction for costs/expenses incurred necessary to generate such income, regardless of when such income/expenses were collected or paid, as the case may be. In this case, respondent CIR attempted to disallow deductions from petitioner's gross income based on the total value of its purchases during the period. Said purchases during the period may not have been consumed in the same period in order to generate the income as reported in the FS/ITR.

As to the purchase of service parts, these were declared by petitioner in its VAT returns to be significantly lower than the actual purchases determined by respondent. Hence, this only showed that there were purchases made by petitioner wherein no input VAT was accordingly claimed. To disallow an input VAT credit which was not claimed by petitioner in the first place would tantamount to levying VAT on the petitioner without the benefit of any creditable input tax, hence resulting to undue burden on its part.

(b) The petitioner used the accrual method in reporting its income and expenses for income tax purposes. In the letter for reconsideration it sent to the BIR, it admitted that it recognizes its income at the exact instance it is earned. Therefore, the Accounts Receivable of petitioner as of December 31, 2003 though unbilled and unpaid, should have been recognized as income by petitioner in 2003 inasmuch as the items have been delivered per the Requisition and Delivery Issue Slips (RDIS). The said income "accrued" to petitioner in 2003 since there was already an unconditional right to the receipt of a sum certain, as per the "all events test", even though actual payment thereof has been deferred.

(c) Petitioner sought reconsideration of the decision of the CTA in division that it failed to withhold the amount representing attorney's fees, consultants fees, repairs and maintenance, labor, security and advertising, salaries and wages and purchase of service parts, despite petitioner having filed with the BIR the necessary forms evidencing payment of withholding tax and submission to the Court of certified true copies thereof. On this issue, the CTA en banc ruled that petitioner was unable to present all necessary evidence to support every aspect of its claims. The presumption is always in favor of the correctness of an assessment, and the burden is upon the taxpayer to refute such assessment with the presentation of clear and convincing evidence which should be formally offered to and admitted by the Court.

(d) Petitioner argued that the amount claimed by the CIR to be subject to VAT should not be subject to VAT because the same represented mere reimbursement for shared expenses, such as its share on electricity and water consumption. Furthermore, the fact that petitioner issued receipts for the reimbursements did not convert the reimbursement into sales or service from which petitioner gained profit.

The CTA en banc affirmed the ruling of the CTA in division and held that the shared expenses were sales because petitioner issued VAT invoices and official receipts for these alleged shared expenses. Based on Sections 106(D) and 108(C) of the NIRC, the amounts indicated in the VAT invoice and official receipt included the 10% VAT imposed under Sections 106(A) and 108(A) of the same Code. Following the said provisions, the VAT invoices and official receipts issued by petitioner for the shared expenses included the 10% VAT. Such 10% VAT became petitioner's output VAT, which in turn became the input tax of the entities to whom the VAT invoices and official receipts were issued.

(e) Petitioner argued that it should not have been assessed deficiency VAT on the amount of sale of unserviceable scrap material which was of no value to it. Moreover, said disposition of tools and equipment did not comprise inventory for sale. The disposition was not in the petitioner's ordinary course of trade or business which therefore should not be subject to VAT.

The CTA en banc affirmed the decision of the CTA in Division. Absent proof to the contrary, the tools and equipment subject of the assessment shall be considered to have been used by petitioner in the conduct of its business. Prior to the sale, the tools and equipment formed part of petitioner's assets being used in its business operations. Therefore, petitioner's sale of the same tools and equipment was an incidental transaction subject to VAT because the said tools and equipment were used in furtherance of petitioner's business.

## COURT OF TAX APPEALS (IN DIVISION) DECISIONS

**Landbank of the Philippines vs. Commissioner of Internal Revenue** *(CTA Case No. 8684 dated January 21, 2016)*

Petitioner Landbank of the Philippines (LBP) won a collection suit and a separate bid on an unrelated property undergoing execution. Consequently, the redemption period of the said property expired on September 29, 2012. Petitioner paid the corresponding expanded withholding tax (EWT) and Documentary Stamp Tax (DST) on this transaction on October 12, 2012.

Respondent CIR assessed petitioner LBP for surcharges, interests and penalties for alleged late payment of EWT and DST. LBP filed a protest letter against the One-Time Transaction Computation Sheet (ONETT) issued by the BIR Revenue Region No. 9, thereby contesting the imposition of the penalties, surcharges and interests in the payment of EWT and DST. Said protest was denied. LBP elevated the matter to the CIR but due to the alleged inaction of the latter, petitioner filed a Petition for Review with the CTA. In its Petition for Review, petitioner asked for the nullification of the surcharges, interests and penalties it paid to the BIR and also the refund of the said amounts.

The main issue in this case was whether CTA has jurisdiction over the controversy. Because LBP paid the penalties and surcharges, the CIR argued that (i) the CTA had no jurisdiction on the ground as there was no actual “disputed assessment”, and (ii) LBP did not take the proper remedy under the provision of Section 229 of the NIRC.

**Ruling:** The CTA has no jurisdiction over the controversy.

(a) The Court may only acquire jurisdiction over matters that are clearly stated under RA No. 9282, such as the decision or inaction of the CIR over a taxpayer’s disputed assessment pursuant to Section 228 of the NIRC. The Court cited the Supreme Court ruling in *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue and the Court of Appeals*, to wit: "The rule is that for the CTA to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the CIR to warrant a decision from which a petition for review may be taken to the CTA".

The ONETT Computation Sheet did not constitute an "assessment" contemplated under Section 228 of the NIRC. An assessment contains not only a computation of tax liabilities but also a demand for payment within a prescribed period. The ONETT Computation Sheet did not formally inform LBP of its tax liabilities and did not contain any formal demand to pay the same. Thus, there was no assessment as contemplated under Section 228 of the NIRC that would require a protest from LBP.

(b) No proper administrative claim for refund was filed by petitioner under Section 229 of the NIRC, and hence the Court had no jurisdiction to act on the subject Petition for Review. To be able to claim for refund under Section 229 of the NIRC, petitioner must first file an administrative claim before respondent CIR. However, records reveal that petitioner did not file an administrative claim for refund with the CIR and without such, the CTA cannot entertain petitioner's refund claim with the CTA.

**Qatar Airways Company With Limited Liability vs. Commissioner of Internal Revenue** *(CTA Case No. 8816 decided on January 22, 2016)*

Respondent CIR issued Assessment Notice No. QA-12-000135 charging petitioner Qatar Airways with surcharge, interest, and compromise penalty due to late filing of tax returns. Qatar Airways repeatedly requested for the abatement of the surcharge.

On October 13, 2013, the CIR informed petitioner that its application for abatement was denied for lack of legal basis. Qatar Airways wrote OIC-ACIR Misajon requesting for the reconsideration of the denial of its application for abatement. Such request was denied on February 10, 2014. Qatar Airways again wrote a letter requesting for the reconsideration of the denial of its application for abatement. The same request was again denied. Qatar Airways then filed a Petition for Review with the CTA.

The issues raised in this case are (a) whether the CIR had jurisdiction over tax abatement cases, and (b) whether the petition was filed beyond the 30-day period to seek judicial review of a decision on other matters.

**Rulings:**

(a) The CTA has jurisdiction over the controversy.

The jurisdiction of the CTA is conferred by RA No. 1125, Section 7 of which provides:

> "SEC. 7. Jurisdiction. -The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;..."

(b) Qatar Airways filed the Petition for Review beyond the prescriptive period.

The Supreme Court held in the case of *Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, et al.* that the Bureau of Internal Revenue had taken its final action on a petitioner's request for reconsideration when it reiterated the tax deficiency assessments due from petitioner and requested its payment.

It is clear from the tenor of the letters of denial that the denial was CIR's final determination on the matter. The letters stated that the amount of Pxxxx must be paid within ten (10) days from notice thereof, or else, it "*shall be constrained to enforce the collection thereof thru the administrative summary remedies provided for by law, without further notice*." Clearly, such text indicated that the CIR intended the letters to be her final determination on the matter.

Thus, when respondent CIR denied petitioner's request for reconsideration (as stated in its letter dated October 3, 2013) on February 10, 2014, the thirty (30)-day period to file the Petition for Review had commenced. Petitioner then had until March 10, 2014 to file its Petition for Review with the CTA. However, since the instant Petition was filed only on May 8, 2014, the CTA lost jurisdiction over the case.

**Mid-land QC Realty Corporation vs. Commissioner of Internal Revenue** *(CTA Case No. 8711 dated January 22, 2016)*

Petitioner Midland QC Realty Corporation ("Midland") claimed that it did not receive any Notice for Informal Conference, or any FAN or FLD before it was issued a Warrant of Distraint and/Or Levy.

**Ruling:** Midland is not liable for deficiency income tax and VAT for taxable year 2007 since there was lack of due process in the issuance of the assessment notices. Accordingly, the Warrant of Distraint and/ or Levy issued to Petitioner was invalid and unenforceable.

Section 228 of the NIRC provides that the taxpayer shall be notified in writing of the law and the facts on which the assessment is made; otherwise, the assessment is void. The Supreme Court held in the case of *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, citing the case of *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) vs. Commissioner of Internal Revenue*, that if the taxpayer denied ever having received an assessment from the BIR, it was incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Since petitioner denies having received such notices, the *onus probandi* was on the CIR.

Based on the records of the case, the Notice for Informal Conference and the FAN were served via registered mail. Although the Registry Receipt and the Registry Return Receipt were presented, Section 13, Rule 13 of the Rules of Court requires that if the service is made by registered mail, proof shall be made by affidavit of the party mailing it and the Registry Receipt.

In this case, the Registry Receipt was the sole proof of service of the Notice for Informal Conference, while only the Registry Return Receipt was presented to prove the alleged sending of FAN. The CIR did not offer the affidavit of the person mailing the said notices. Furthermore, an examination of the Registry Return Receipt reveals that neither the date of delivery, nor the signature or name of addressee, or the signature of addressee's agent was filled up. Therefore, in this case there was no valid service of the assessment notices.

**Filminera Resources Corporation vs. Commissioner of Internal Revenue** *(CTA Case Nos. 8690 and 8716 dated January 22, 2016)*

Petitioner Filminera Resources Corporation ("Filminera") filed its Quarterly VAT Returns for the 4th quarter of Fiscal Year (FY) 2011 and for the 1st quarter of FY 2012 on June 30, 2012. It then separately filed its applications for tax refund or issuance of a Tax Credit Certificate (TCC) of unutilized input VAT for the period April 1, 2011 to June 30, 2011 and for July 1, 2011 to September 30, 2011. Due to the

supposed inaction of the respondent CIR, Filminera separately filed two Petitions for Review before the CTA.

Filminera argues that it has sufficiently complied with the requirements for its claim for refund and/or issuance of a TCC, to wit: (i) it has adequately proven that it is a VAT-registered taxpayer under Certificate of Registration No. XXX; (ii) it is engaged in an activity which is subject to zero-rated transaction; (iii) it submitted and offered as evidence VAT invoices or official receipts which are compliant with the invoicing requirements under Section 4.108-1 of RR No. 7-95; and (iv) the subject claims were seasonably filed within two years after the close of the taxable quarter when such sales were made.

**Ruling:** Filminera failed to substantiate its claims for tax refund.

As provided for in Section 112 of the NIRC, certain requisites have been jurisprudentially formulated which must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of unutilized input VAT. Said requisites are categorized as follows, to wit:

(a) As to the timeliness of the filing of the administrative and judicial claims:

> 1. the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;
>
> 2. in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 days, the judicial claim has been filed with the CTA Court within 30 days from receipt of the decision or after the expiration of the said 120-day period;

(b) With reference to the taxpayer's registration with the BIR:

> 3. the taxpayer is VAT registered;

(c) In relation to the taxpayer's output VAT:

> 4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;
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> 5. for zero-rated sales under Section 1 06(A)(2)(1) and (2); 106(8); and 1 08(8)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;

(d) As regards the taxpayer's input VAT being refunded:

> 6. the input taxes are due or paid;
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> 7. the input taxes are not transitional input taxes;
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> 8. the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
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> 9. where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;
>
> and

10. the input taxes have not been applied against output taxes during and in the succeeding quarters.

The CIR was wrong in its claim that there must be proof of compliance by petitioner with the checklist of requirements prescribed under RMO No. 53-98 in order to commence the running of the 120-day period under Section 112 of the NIRC. The SC ruled in the case of *Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation)* that there was nothing in Section 112 of the NIRC, RR 3-88, or RMO 53-98 itself that required submission of complete documents enumerated in RMO 53-98 for a valid grant of refund or credit of input VAT.

Filminera complied with the first and second requisites for having filed its claim for tax refund within two years from the close of the taxable quarter when the tax was due. It also complied with the third requisite for having a certificate of registration issued by the BIR. Lastly, it complied with the fourth requisite as its buyer, PGPRC, was issued the Certification by the BOI attesting to the fact that PGPRC was a BOl-registered entity.

The CTA disallowed input VAT in the total amount of Pxxxxx for not being properly substantiated by VAT invoices or official receipts in accordance with Sections 110(A) and 113(A) and (B) of the NIRC and as implemented by Sections 4.110-2, 4.110-8 and 4.113-1 of RR No. 16-2005. In addition, the input VAT of Pxxxxx was also be disallowed for not being supported by proper documentation as per Resolution dated October 14, 2014.

Under the eighth requisite, the input taxes claimed must be attributable to zero-rated or effectively zero-rated sales; while under the ninth requisite, it was required that where there were both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume. Hence, consistent with the eighth and ninth requisites, in claiming refund or tax credit of input VAT, only the input VAT in the amount of Pxxxxxx can be attributed to petitioner's zero-rated sales for the 4th quarter of FY 2011 and the 1st quarter of FY 2012.

Finally, Filminera did not comply with the tenth requisite which is that the input taxes have not been applied against output taxes during and in the succeeding quarters.

**PNOC Development and Management Corporation ("PNOC") vs. Commissioner of Internal Revenue** *(CTA Case No. 8649 dated January 22, 2016)*

On August 31, 2012, petitioner PNOC received the Formal Assessment Notice (FAN) dated August 31, 2012 relative to the investigation of petitioner's internal revenue tax liabilities for 2007. On September 28, 2012, petitioner filed with the BIR its Administrative Protest Letters, all dated September 25, 2012, in respect of each of the assessments for deficiency taxes.

The CIR failed to act on petitioner's protest, prompting the petitioner to file a Petition for Review with the CTA on April 26, 2013.

**Rulings** (rulings on factual issues are omitted): (1) The income payments/expenses of Pxxxx shall be disallowed from PNOC's claimed deductible expenses.

Section 34(K) of the NIRC provides as a condition for deductibility of an expense that the tax required to be withheld on the amount paid or payable is shown to have been remitted to the Bureau of Internal Revenue (BIR) by the taxpayer. PNOC was unable to prove that it properly withheld and remitted the EWT on said item; therefore the said expense cannot be a deductible expense.

PNOC failed to prove that it withheld and remitted the withholding tax due on the salaries and wages of Pxxxx. Hence, the same cannot be deducted by PNOC from its taxable gross income pursuant to the above-quoted Section 34(K) of the NIRC.

The deficiency income tax assessment corresponding to the alleged undeclared income from unaccounted professional fee of Pxxxxx should be cancelled for lack of factual basis. The imputation of alleged undeclared income is based on a mere presumption that since there was an undeclared expense, there was likewise undeclared income which corresponds to it. Even if this alleged unaccounted expense is to be considered as income, the same shall be offset by recording the equivalent payment as expense.

The claimed tax credit amounting to Pxxxxx should be upheld. Yes, petitioner presented BIR Form No. 2307 to prove that Sta. Lucia withheld the amount of Pxxxxx, representing creditable tax withheld at source for the period January to December 2006 and the Official Receipt No. 53261 dated January 24, 200 to prove that Sta. Lucia made income payments to petitioner amounting to Pxxxx which corresponds to the tax withheld. An Official Receipt, however, is not sufficient to prove that the income arising from such withholding was recorded and reported as income for the subject period of assessment, or in taxable year 2007.

PNOC did not furnish the Court with its general ledger, audited financial statements and annual income tax return for taxable year 2007 to serve as basis to ascertain the alleged recognition of income. Hence, the Court cannot determine if the corresponding withholding tax is allowable as tax credit for taxable year 2007 as required under Section 2.58.3(A) and (B) of RR No. 02-98.

(2) Sale of real properties utilized for socialized housing as defined under Republic Act (R.A.) No. 7279, and other related laws, such as R.A. No. 7835 and R.A. No. 8763, where the price ceiling per unit is P225,000 or as may from time to time be determined by the HUDCC and the NEDA and other related laws, is exempt from VAT.

PNOC did not provide the Court with documents to prove that the subject amount of the assessment is actually comprised of receipts from the socialized housing project.

Moreover, since PNOC's sale of the Site 2A property to MTS was made in the ordinary course of its real estate business, the proceeds therefrom in the amount of Pxxxxx shall be subjected to 12% VAT pursuant to Sections 105 and 106(A) of the NIRC.

Section 3 of RR No. 07-23 provides that in determining whether a particular real property is an ordinary asset for real estate developers, all real properties acquired by the real estate developer, whether developed or undeveloped as of the time of acquisition, shall be considered as ordinary assets. On the other hand, abandoned and idle real properties shall continue to be treated as ordinary assets. Its abandonment shall not result in its conversion into a capital asset even if the same is subsequently abandoned or becomes idle.

As to surcharge, the same should only be 25% and not 50% as assessed by the CIR. Section 248(B) of the NIRC provides that to justify the imposition of the 50% surcharge for fraud, a false or fraudulent return must be willfully made. Records of the case show that there was no willful falsity, only a mere error in the interpretation of laws and regulations as to the treatment of sales from public bidding and the insufficiency of the pieces of evidence presented to warrant petitioner's coverage within the exemptions provided by law.

(3) No deficiency interest can be imposed on the said WT, WTC, VAT, and final withholding VAT assessments, except on the deficiency income tax assessment.

Section 249(B) provides that the "Deficiency Interest" shall be imposed on '[a]ny deficiency in the tax due, as the term is defined in this Code", i.e., as the term "deficiency" is defined in the NIRC. Relative thereto, an examination of the Tax Code discloses that there are only three (3) instances where it defines the term "deficiency", and this relates only and respectively to three (3) types of internal revenue taxes, namely, income tax, estate tax, and donor's tax, pursuant to Sections 56(B), 93 and 104 of the NIRC. Such being the case, the deficiency interest under Section 249(8) should be applied only whenever there is a deficiency income tax, a deficiency estate tax, and a deficiency donor's tax.

**Amadeus Marketing Philippines, Inc. vs. Commissioner of Internal Revenue** *(CTA Case No. 8628 dated January 22, 2016)*

Petitioner Amadeus Marketing Philippines ("Amadeus") filed a claim for refund for alleged unutilized input VAT for the first to fourth quarters of taxable 2011.

Pursuant to Sections 112(A) and (C) of the NIRC, petitioner must show that it was engaged in zero-rated or effectively zero-rated sales. Thus, it avers that its sales of services to Amadeus IT Group S.A. for taxable year 2011 qualify as zero-rated sales under Section 108(8)(2) of the NIRC and thus it should be entitled to refund of unutilized input VAT.

**Ruling:** Amadeus cannot be granted the refund of the input VAT as it failed to prove that it had zero-rated sales for the year 2011.

In order for the supply of services to be considered VAT zero-rated under Section 108(8)(2) of the NIRC, the following requisites must be satisfied:

1. the services by a VAT -registered person must be other than processing, manufacturing or repacking of goods;

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

3. the recipient of such services is doing business outside the Philippines.

Amadeus failed to discharge its burden of complying with the third requisite. The service in question in the context of Section 108(B)(2) must be specifically proven to have been rendered in favor of a nonresident foreign corporation. The records show that Amadeus IT Group S.A. conducts business in the Philippines. Considering that Amadeus IT Group S.A., the recipient of petitioner's services, is doing business in the Philippines, petitioner failed to comply with the third requisite to qualify for VAT zero-rating of its services.

**Colgate-Palmolive Philippines, Inc. ("CPPI") vs. Commissioner of Customs** *(CTA Case No. 7806 dated January 26, 2016)*

Respondent Commissioner of Customs sent an Audit Notification Letter to petitioner Colgate. Afterwards, the latter received a Summary of Findings and Recommendation (SFR) issued by the Post-Entry Audit Group (PEAG) assessing petitioner for deficiency duty on royalties/license fees paid to Colgate-Palmolive Corporation (CPC) (on the ground that the royalties were paid to CPC as condition of sale/purchase and should be added as dutiable value of imported goods) and deficiency VAT on arrastre and wharfage fees.

Petitioner objected to the aforesaid assessment in a letter. PEAG issued its Final Audit Report and Recommendations (FARR). Respondent sent petitioner a letter informing it of the final amount of the assessment as a result of the audit. Petitioner filed a Petition for Review praying for the reversal of the decision of respondent, declaring that it is not liable for any deficiency customs duties and taxes and suspending the payment of the assessed duties and penalties pending the decision of the Court.

**Rulings:**

(a) Petitioner's immediate recourse to respondent after receipt of the FARR without waiting for the response of the PEAG's head in its protest to the SFR did not by itself constitute premature resort to the court which is proscribed under the doctrine of exhaustion of administrative remedies. Considering that respondent acted upon petitioner's letters contesting the PEAG's recommendation, as in fact he affirmed the FARR in his letter dated May 5, 2008, such action of respondent partakes of the nature of a final decision that is appealable to the CTA under Section 11 of Republic Act No. 1125, as amended by Section 7 of RA 9282.

(b) In order for royalties and license fees to be added as part of the dutiable value, the following are indispensable: (1) the royalties and license fees are related to the goods being valued (*relationship*); (2) the royalties and license fees are paid by the buyer directly or indirectly (*payment*); and (3) the payment of royalties and license fees is a condition of sale of the goods to the buyer (*condition*). These requirements are obtaining in this case. There was no evidence presented to establish that the imported products would have been sold separately in the Philippines under a different brand other than that of CPC. Thus, the royalties which were related to the goods being valued (and which were paid by petitioner to CPC as a condition of the sale of the imported goods) were considered part of the dutiable value subject to customs duties pursuant to Section 201 of the Tariff and Customs Code of the Philippines (TCCP).

(c) Arrastre and Wharfage Fees are considered as "Other Charges" subject to VAT. The Court cannot sustain petitioner's theory limiting the phrase "other charges" to mean those of the same nature as customs duties and excise taxes. Section 107 of the NIRC as amended, is clear, plain and unequivocal in providing that VAT on importation of goods is imposed on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and *other charges*.

**Toenec Philippines, Inc. vs. Commissioner of Internal Revenue** *(CTA Case No. 8653 dated January 27, 2016)*

Petitioner Toenec Philippines and Toenec Japan executed a Capital Infusion Agreement, wherein Toenec Japan contributed P30,000,000 as additional paid-in capital (APIC) to petitioner purportedly to sustain the viability of its operations and to protect its original capital investment.

The BIR took the position that the infusion of additional capital is subject to donor's tax. In its pleadings, the BIR noted that "(t)he Notes to Financial Statements of petitioner reveals that the P30,000,000.00 APIC is entered as proceeds from donation stating that 'in May 2010, the stockholders donated a capital amounting to thirty million pesos (P30,000,000.00) to support the Company's operations'. This unmistakenly indicates that the transaction of petitioner is a donation and not an investment."

Petitioner claims that the additional capital infusion made by Toenec Japan does not fall within the purview of the concept of donation; hence, not subject to donor's tax.

**Ruling:** The cash from Toenec Japan was a donation.

However, based on Sections 98, 99 and 103 of the NIRC (which provide for the imposition of donor's tax, rates of tax payable by the donor, filing of return and payment of donor's tax), it is clear that the person or entity liable to pay donor's tax is the donor, or the person or entity transferring the property to another. Since in the case at bar petitioner Toenec Philippines is the entity that received the money, it is the donee. The donee is not liable to pay donor's tax pursuant to Section 98 of the NIRC.

The liability to pay donor's tax is not transferable. The burden to pay the donor's tax is imposed upon the donor and not upon the donee. Since the donor is a non-resident, the donor's tax must be paid through, and the corresponding tax return filed with, the Philippine Embassy or with the Office of the Commissioner, particularly with the Revenue District Office No. 39.

**The City Government of Makati and the City Treasurer of Makati City, and the Officer-In-Charge of the Office of the City Administrator and Head of Business Permits Office (*the petitioners*) vs. Honorable Regional Trial Court, Makati City, Branch 59 and Mactel Corporation *(the respondents)***
*(CTA A.C. Case No. 147 Dated February 9, 2015)*

On August 1, 2005, petitioner City Treasurer issued a Notice of Assessment against private respondent Mactel Corporation ("Mactel") for alleged deficiency taxes, fees and charges. Private respondent filed a protest with petitioner City Treasurer claiming that there was gross discrepancy in the amount used as basis in the said assessment. Mactel was engaged in business as a cell card dealer which generally charged a markup of 10% of the face value of the call cards it sells. The assessment by the City Treasurer was based on gross sales/receipts of the face value of the call cards, instead of the 10% discount of the face value of the call cards from which Mactel derived its profit.

After Mactel's protest was denied by the petitioners, it filed a Petition for Review with the Makati RTC. The Makati RTC found the assessment unjust, excessive and confiscatory. The Makati court held that the assessment should only cover the actual income derived by private respondent and ordered the petitioners to compute the taxes on the 10% discount given by the telecom operators as discount.

The City Treasurer issued a Notice of Assessment under a Letter of Authority, again assessing private respondent for deficiency taxes, fees and charges. Private respondent tried to apply for the renewal of its business permit via Business Permit Application Form of Makati City, but the latter refused to issue the same due to an alleged business tax deficiency for taxable year 2014.

Mactel filed its protest to the second Notice of Assessment and filed a Petition for Declaratory Relief with Application for Temporary Restraining Order (TRO) and/or Preliminary Injunction for petitioners' alleged unlawful withholding of the issuance of private respondent's business permit and/ or denial of its application for renewal thereof. The Writ of Preliminary Injunction was granted. Petitioners filed a Petition for Review with the CTA. Private respondent argued that the CTA has no jurisdiction over the instant case since the proceedings before the court a quo is not a tax case.

**Ruling:** The CTA has no jurisdiction over the dispute because it is not a local tax case.

RA 9282, effectively amending RA No. 1125, expanded the jurisdiction of the CTA and provided that the CTA has exclusive appellate jurisdiction to review by appeal decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction, among others.

The instant dispute does not involve a local tax case. The nature of private respondent's petition with the court a quo is for the unlawful withholding of business permit and/or denial of the application thereof by the petitioners. As such, the petition includes a prayer for preliminary mandatory injunctive relief for the issuance of a temporary business permit to private respondent until the main case pending before the RTC-Branch 59 of Makati City is resolved with finality. This is not a tax case. It is a civil case.

**Altimax Broadcasting Co., Inc. vs. Commissioner of Internal Revenue** *(CTA Case No. 8828 dated February 9, 2016)*

The Formal Letter of Demand (FLD) subject of this case assessed petitioner Altimax Broadcasting Co., Inc. ("Altimax"") of deficiency income tax for taxable year 2008 by disallowing certain alleged unsupported direct write-off of "other assets" pursuant to Section 34(D)(2) of the NIRC. Respondent CIR alleged that there were no supporting documents to substantiate the write-off and the declaration of net loss on account of such write-off, and therefore "added back" the same amount to the Income Account of the petitioner.

**Ruling:**

Section 34(D)(2) of the NIRC states:

> "SEC. 34. Deductions from Gross Income. – Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under Subsection (M) hereof, in computing taxable income subject to income tax under Sections 24(A); 25(A); 26; 27(A), (B) and (C); and 28(A)(1), there shall be allowed the following deductions from gross income:
>
> xxx xxx xxx xxx
>
> (D) Losses. –
>
> Xxx xxx xxx xxx
>
> (2) Proof of Loss. – In the case of a nonresident alien individual or foreign corporation, the losses deductible shall be those actually sustained during the year incurred in business, trade or exercise of a profession conducted within ythe Philippines, when such losses are not compensated for by insurance or other forms of indemnity. xxx"

Petitioner, being a corporation duly organized and existing under the laws of the Republic of the Philippines, is neither a non-resident alien individual nor a foreign corporation. Thus, the CIR committed an error in her application of Section 34(D)(2) of the NIRC in the computation of petitioner's deficiency income tax assessment. The Court even observed that the amount disallowed as deduction by the CIR was not even claimed as deduction in petitioner's 2008 Annual Income Tax Return.

Respondent CIR has no legal basis to require petitioner to support the direct write-off of other assets for it to be allowed as deduction under Section 34(D)(2) of the NIRC, since the amount was not even claimed as a deduction. Consequently, the tax assessment which resulted from the erroneous disallowance of the unclaimed deduction pertaining to the direct write-off of other assets has no factual and legal bases.

In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption. Hence, an assessment should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.

**Kerby Food Ingredients Cebu, Inc. vs. Commissioner of Internal Revenue** *(CTA Case No. 8593 dated February 9, 2016)*

Petitioner Kerby Food Ingredients Cebu, Inc. ("Kerby") received from the CIR various assessments for deficiency IT, VAT, EWT, WTC, FWT, and DST for taxable year 2007. The disposition of the CTA on the material issues in this case are as follows:

(a) *Imposition of Compromise Penalty*: An amount of P25,000 was imposed as a compromise penalty on account of petitioner's alleged failure to supply correct information on its schedule of purchases.

The Court held that compromise penalties are amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same, pursuant to RMO No. 01-90, as amended by RMO No. 19-2007. Thus, the Court cannot compel a taxpayer to pay the compromise penalty because the imposition of the same without the conformity of the taxpayer is illegal and unauthorized.

The record, however, reveals that petitioner agreed to the imposition and paid the compromise penalty *pendente lite*.

(b) *Taxpayers must be afforded public hearing on BIR Issuances that are not merely interpretative in nature*: Petitioner was assessed deficiency EWT for failure to withhold 1% EWT on income payments to its agricultural suppliers of goods for taxable year 2007. Petitioner alleged that the 1% WT on income payments to suppliers of agricultural products under section 2.57.2(S) of RR No. 2-98 as amended, was indefinitely suspended pursuant to Section 3 of RR No. 3-2004. Petitioner alleged that it was not informed of the clarifications made in RMC No. 44-2007 issued in July 2007, with respect to payments to agricultural suppliers as it was addressed and directed only to all internal revenue officers for compliance.

The Court ruled that petitioner's argument is impressed with merit.

With the effectivity of RR No. 3-2004 and RMC No. 44-2007, the income payments to suppliers of agricultural products were made subject to Section 2.57.2(M) of RR No. 2-98 as amended [Income payments made by the top 20,000 private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax], pursuant to RMC No. 44-2007. Clearly, this is not interpretative in nature. Thus, it was incumbent upon the taxing power to duly inform taxpayers directly affected by it and accord them the opportunity to be heard on this imposition or burden.

When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.

There is, however, no indication in the record or in any of the documentary and testimonial evidence presented by any of the parties that respondent complied with such basic requirement insofar as RMC No.

44-2007 was concerned. Thus, the assessment of EWT on income payments made by petitioner to its suppliers of agricultural products should be cancelled and set aside.

(c) *Self-withholding by the payee does not relieve the withholding agent/payor of its duty to withhold*: Per petitioner's loan agreement with Citibank, the obligation for the payment of withholding tax rested either with petitioner or its transaction bank as evidenced by a Certification it issued. In this case, the bank remitted and paid the required withholding tax on the loan transaction. According to the petitioner, since the bank is the ultimate recipient of the income (and the one subject to tax), the bank took on the obligation to remit and pay the taxes due in compliance with the law. The petitioner admitted that as withholding agent under the law it was the entity under legal obligation to withhold the corresponding tax for the loan transaction.

The Court held that the bank's self-withholding and subsequent remittance of the proper taxes over the loan agreement did not relieve petitioner of the duty to withhold and remit the same to the BIR. There is no question as to the separate liabilities of the taxpayer and the withholding agent (citing CIR v. The Court of Appeals, G.R. No. 108576, January 20, 1999). Petitioner therefore had the burden of proving that proper taxes had actually been withheld and subsequently remitted to the CIR. The Certification presented to the Court, standing alone, was not sufficient to establish compliance with the requirements.

Section 20, Rule 132 of the Rules on Evidence provides a standard on the acceptance and authentication of private documents. The Certification must be testified to and authenticated by a competent witness to establish the truth of the contents of the document in the spirit of fair play. This did not occur in the present case. Hence, the assessment of FWT against the petitioner (in respect of the bank loan) should be upheld.

**PEOPLE OF THE PHILIPPINES vs. JOEL C. MENDEZ** *(CTA Crim. Case No. 0-014 dated February 10, 2016)*

Joel C. Mendez was charged with Violation of Section 255 of Republic Act No. 8424 (Failure to file return, supply correct and accurate information, pay tax, withhold and remit tax and refund excess taxes withheld on compensation).

The LOA and the First Notice were served upon accused. This was followed by a Second Notice when accused failed to submit the required documents. Again, he failed to comply with the Second Notice. A Final Request for Presentation of Documents was served upon him, but again he failed to comply. The BIR issued a Certification that per the BIR Integrated Tax System (ITS), the accused has no record of ITR filed with the BIR for taxable years 2001 to 2003. Despite lacking in documents, the BIR prepared the Deficiency Tax of the accused for the taxable year ending December 31, 2001, using the "Net Worth Method" of investigation which is applied when a taxpayer failed to file an ITR.

**Ruling:** The accused was adjudged guilty of violating Section 255 of Republic Act No. 8424.

To be held liable for Section 255 of RA 8424, the following elements of the offense charged must be established by sufficient and credible proof:

(1) That accused was a person required to make or file a return;

(2) That he failed to make or file such return at the time required by law;

(3) That the failure to make or file the return was willful.

First, accused claims that he was not legally obligated to file an ITR for taxable year 2001 as he had no income earned during said taxable year. The pieces of evidence, however, reveal that he had been practicing his profession as a doctor offering medical services in his various clinics operating under the name and style of "Weigh Less Center/Mendez Medical Group" as early as 1996. Moreover, the massive and huge advertising campaign covering print and broadcast media in 2000 and 2001 to promote the branches of Weigh Less Center, negates accused's contention that he was not yet engaged in the practice of his profession in 2001.

Second, he claims that his clients were all celebrities who did not pay him for his services. Even assuming in *gratia argumenti* that no income was generated from his business in 2001, still, under Section 51(A)(2)(a) of the 1997 NIRC, the accused had the obligation to file an ITR. The said provision explicitly requires every person engaged in trade or business or in the exercise of his profession to file an ITR and declare income obtained from whatever source, irrespective of whether the income flowed during the taxable period. Contrary to the claim of the accused, generation of income is not a condition to the filing of an ITR. The obligation to file an ITR is not dependent on the acquisition of income during the relevant taxable period. In fact, a taxpayer who has registered but has not operated his business during the taxable year, or worse, has incurred losses in the conduct of business, is still mandated to file an ITR. Once the business is registered, a corresponding duty to file an ITR exists.

Third, to be convicted for willful failure to file an ITR, the prosecution ought to show that the act or omission was done by accused knowingly, intentionally and with the specific intent to disregard the law. Accused cannot feign ignorance of his obligation under the NIRC, as amended. He was notified on the matter by the BIR as confirmed by his own employee. He was given not one but several opportunities to submit his accounting records and other business documents to refute if not negate the BIR finding that he failed to file the required 2001 ITR and pay the corresponding tax for income earned for taxable year 2001. But despite notice and opportunity granted, accused failed to take any action on the matter, an indication of his intent to defraud the Government.

## BIR RULINGS

**BIR Ruling No. 037-2016** *dated January 15, 2016*

This ruling confirms that "Equi-Parco Construction Company-Hebei Road and Bridge Group Co., Ltd. Joint Venture" (JV) formed for the purpose of construction of certain road projects of the DPWH located in the Provinces of Surigao del Norte and Agusan del Norte funded under the JICA Loan Agreement, is a joint venture not taxable as a corporation for complying with the conditions provided in RR 10-2012, i.e. (1) the JV is for the undertaking of a construction project; (2) the JV involves joining or pooling of resources by licensed local contractors licensed as general contractor by the PCAB or (in case of the foreign contractor) otherwise covered by a special license as contractor by the PCAB; (3) the local contractors are engaged in the construction business; and (4) the JV itself is likewise duly licensed by PCAB.

The JV is not subject to the corporate income tax under Section 27(A) of the NIRC. The gross corporate payments to the JV are not likewise subject to the 2% creditable withholding tax prescribed under Section 57(B) of the NIRC as implemented by RR 2-98, as amended. Since the JV is exempt from corporate income tax, it will not be required to file quarterly and final adjustment returns.

However, the co-venturers are separately subject to the regular corporate income tax imposed under Section 27(A) of the NIRC on their taxable income during each taxable year respectively derived by them

from the aforesaid construction project. Finally, the co-venturers are required to enroll themselves under the EFP system of the BIR.

**BIR Ruling No. 038-2016** *dated January 15, 2016*

This ruling confirms that Kyeryong-R.D. Policarpio Joint Venture (JV) formed for the purpose of undertaking certain Civil Works under the JICA Assisted Road Upgrading and Preservation Project, is a joint venture not taxable as a corporation for complying with the conditions provided in RR 10-2012 (same ruling as in **BIR Ruling NO. 037-2016** *dated January 15, 2016*).

This ruling further holds that the respective net incomes of the co-venturers derived from the joint venture project are subject to CWT imposed under Section 57 of the NIRC and as implemented by RR No. 2-98. Thus, before Kyeryong-R.D. Policarpio JV distributes the net income of the co-venturers pursuant to their agreed profit/income sharing, it shall withhold the proper tax based on the net income of its co-venturers (citing BIR Ruling No. 176-14 dated June 9, 2014 and BIR Ruling No. 475-14 dated November 26, 2014).

**BIR Ruling No. 039-2016** *dated January 21, 2016;* **BIR Ruling No. 040-2016** *dated January 21, 2016;* **BIR Ruling No. 041-2016** *dated January 21, 2016;* **BIR Ruling No. 042-2016** *dated January 21, 2016;* **BIR Ruling No. 043-2016** *dated January 28, 2016*

The requests in these rulings conform to similar factual circumstances. A homeowner's association secured a housing loan under the Community Mortgage Program (CMP), a financing assistance program of the Social Housing Finance Corporation (SHFC), a subsidiary of the National Home Mortgage Finance Corporation (NHMFC). On the issues raised for confirmation pursuant to RA No. 7279 otherwise known as the "Urban Development and Housing Act of 1992", the BIR confirmed that:

(1) The landowners who sold their properties for use in a socialized housing project are exempt from the payment of capital gains tax. Upon issuance of the ruling and upon registration of the document of sale, a lien on the Certificates of Title of the land to be issued in the name of the Homeowners' Association shall be annotated by the Register of Deeds having jurisdiction over the properties, to the effect that the said properties shall be used for socialized housing pursuant to RA No. 7279.

(2) The landowner shall be liable to pay DST on the documents conveying the properties imposed under Section 196 of the 1997 Tax Code based on the consideration contracted to be paid for such realty or its fair market value determined in accordance with Section 6(E) of the said Code, whichever is higher.

(3) The sale of the real properties utilized for low-cost and socialized housing as defined by RA No. 7279 shall be exempt from VAT.

**BIR Ruling No. 048-2016** *dated January 29, 2016;* **BIR Ruling No. 049-2016** *dated January 29, 2016*

Each subject taxpayer under the above rulings was granted permission to change its accounting method from FIFO to Weighted Average Method pursuant to the provisions of Section 41 of the NIRC in relation to Section 145 of RR No. 2 in order to make its accounting method compatible with the inventory costing method of its parent company/related parties, affiliates and subsidiaries, and to clearly reflect the income of the Company.

**BIR Ruling No. 051-2016** *dated February 2, 2016*

This ruling is a confirmation of the tax consequences of income payments received by a corporation ("Jonhdorf") which registered its housing project (Dominique Square Subdivision) (the "Project") with the BOI.

(a) Income payments received by Johndorf in connection with its housing project, Dominique Square Subdivision, is exempt from CWT under RR No. 2-98, as amended by RR No. 6-2001, for a period of four years from January 2015 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration. This exemption from CWT covers only income directly attributable to revenues generated from its registered activity. Furthermore, such exemption shall not cover revenues from units with selling price exceeding P3,000,000.00. In the computation of ITH, interest income from in-house financing shall not be considered as revenues generated from the registered activity.

(b) The entitlement to ITH of the Project is not automatic as it still has to comply with specific provisions of the Specific Terms and Conditions of Johndorf's BOI Registration. BOI-registered enterprises enjoy no tax exemption/privileges other than those granted under EO 226.

(c) Only the sale of the Project's housing units that are residential lots valued at less than Php1,919,500.00, or house and lot and other residential dwellings valued at Php3,199,200.00 shall be exempt from VAT.

(d) Pursuant to Section 4 of RA 10708, Johndorf is required to file its tax returns and pay its tax liabilities using the electronic system for filing and payment of taxes of the BIR. Furthermore, Johndorf shall file with the BOI a complete annual tax incentives report of its income-based tax incentives, VAT and duty exemptions, deductions, credits or exclusions from the tax base, as may be provided under EO 226, within 30 days from the deadline for filing of tax returns and payment of taxes.

## BIR ISSUANCES

**Revenue Regulation 1-2016** *(dated February 10, 2016)*

RR No. 1-2016 amends certain provisions of Revenue Regulations (RR) No. 3-2005 particularly in the issuance of Tax Clearance, one of the eligibility requirements pursuant to the Implementing Rules of Republic Act (RA) No. 9184, in relation to Executive Order (EO) No. 398.

**Revenue Memorandum Order No. 4-2016** *(dated January 26, 2016)*

RMO No. 4-2016 amends pertinent provisions of Revenue Memorandum Order (RMO) No. 20-2007 simplifying the processing of applications for compromise settlement and abatement cases by concerned Regional Offices.

All applications for compromise settlement, abatement or cancellation of internal revenue tax liabilities filed by all concerned taxpayers under the respective jurisdiction of the Revenue Regions and Large Taxpayers Service (LTS) (regardless of the amount of the threshold prescribed under the provisions of Section 204 (A) for compromise settlement) which have been evaluated by the Regional Evaluation Board (REB) or the LTS Sub-Technical Working Committee (TWC), for abatement cases, or the LTS Evaluation Board (LTSEB), for compromise settlement cases, resulting to a recommendation for denial of the application, shall be considered FINAL and the outstanding tax liabilities and/or penalties shall be immediately collected from the concerned taxpayer-applicant.

The corresponding Notice of Denial shall be prepared and, together with the entire docket of the application, shall be transmitted to the Chief, Accounts Receivable Monitoring Division (ARMD), for recording and monitoring purposes, within ten (10) days immediately after the denial by the concerned LTS Sub-TWC/EB or regional Technical Working Group (TWG)/REB, as the case may be. Subsequently, the Chief, ARMD shall, within five (5) days from receipt thereof, directly submit the said Notice, together with the entire docket of the application, to the Commissioner of Internal Revenue (CIR) for signature, without the need of any further review or evaluation of the substantive aspect of the LTSEB/REB by the National Office (NO)-TWG/TWC. After the approval of the said Notice by the BIR Commissioner, the approved Notice and the entire docket of the application shall be returned to the Chief, ARMD for recording purposes and the same shall be immediately transmitted to the originating revenue office for appropriate service of the Notice to the taxpayer and the immediate collection enforcement of the outstanding tax liabilities.

A monthly consolidated report on all denied applications for compromise settlement/abatement cases shall be prepared and submitted by the Chief, ARMD to the Assistant Commissioner (ACIR), Collection Service, copy furnished the offices of the Deputy Commissioner (DCIR) for Operations and the CIR, within ten (10) days immediately after the end of each month.

In case the recommendations of the REB/LTS-EB was/were to approve the taxpayer's application, the pertinent procedural requirements set forth under Revenue Regulations (RR) No. 30-2002 and RR No. 13-2001, as amended by RR No. 4-2012, RMO No. 20-2007 and other relevant revenue issuances for the filing of the said applications at the concerned regional, LTS or National offices up to the approval thereof by the concerned TWG/National Evaluation Board (NEB)/TWC/CIR at the National Office shall still be observed. However, in the evaluation thereof, all concerned respective members of the LTS-Sub-TWC/EB and REBs/Regional TWGs, as the case may be, shall ensure that each and every application for compromise settlement or abatement of the internal revenue tax liabilities of the taxpayer are strictly processed and evaluated in accordance with these revenue issuances. In case any application shall be recommended for approval by the LTS-Sub-TWC/EB or REB, with the deliberate intention of simply passing the resolution of any factual/legal issue on the application to, but the same has been clearly found to be contrary by, the NEB/TWG/TWC/CIR, the same shall be considered as a demerit from the individual performance of every member of the said recommending TWC/TWG/Boards/revenue officials, without prejudice of holding him/her administratively liable thereto.

The LTS Sub-TWC/EB and all regional TWGs/REBs shall evaluate and release their respective board's decision within fifteen (15) calendar days from receipt of any application for compromise settlement or abatement.

The prescribed reports (i.e., Annexes "A" to "G") for applications for compromise settlement/abatement penalties under Operations Memorandum No. 13-01-003 issued by the DCIR for Operations Group of this Bureau shall be strictly observed by all concerned Revenue Offices.

**Revenue Memorandum Order No. 5-2016** *(dated February 1, 2016)*

RMO No. 5-2016 amends Revenue Memorandum Order (RMO) No. 28-2008 on the policies, guidelines and procedures in reporting, recording and monitoring of attendance of revenue officials and employees. Section 10-E of RMO No. 28-2008 spelled out the role of the Personnel Division and Administrative & Human Resource Management Division (AHRMD) in the monitoring and reporting of the non-submission of DTRs of an employee.

**Revenue Memorandum Circular No. 9-2016** *(dated January 28, 2016)*

RMC No. 9-2016 clarifies the taxability of Non-Stock Savings and Loan Associations (NSSLAs) for purposes of Income Tax, Gross Receipts Tax and Documentary Stamp Tax.

NSSLAs are under the direct supervision and regulation of the Bangko Sentral ng Pilipinas (BSP). They are classified as Non-bank Financial Intermediaries (NBFIs) under the BSP Manual of Regulations.

A NSSLA shall be exempt from Income Tax with respect to the income it receives, including interest on its deposits with any bank. However, any income derived by it from any of its properties, real or personal, or any activity conducted for profit, regardless of the disposition thereof, is subject to the applicable Income Tax and other internal revenue taxes imposed under the 1997 National Internal Revenue Code (NIRC), as amended. Thus, any disposition made by NSSLAs of its properties (real or personal) is subject to the applicable Income Tax depending on the classification of its properties, either capital or ordinary asset.

As a non-bank financial intermediary (NBFI), NSSLA is generally subject to Gross Receipts Tax on income derived from its operations, unless otherwise exempted under special rules.

NSSLAs are also subject to Documentary Stamp Tax under the provisions of Revenue Regulations (RR) No. 13-2004, particularly on loan agreements, mortgages, pledges, foreclosures and sales, among others.

Pursuant to RR No. 9-2000, whenever a NSSLA is one of the parties to a taxable transaction, the NSSLA shall be responsible for the remittance of the DST due regardless of who will bear the burden of paying the DST.

**Revenue Memorandum Circular No. 14-2016** *(dated February 15, 2016)*

RMC No. 14-2016 prescribes the BIR Priority Programs for CY 2016.