Digest of Select Supreme Court Cases on Taxation, CY 2020*

A. JURISDICTION

1. COMMISSIONER OF INTERNAL REVENUE (CIR), PETITIONER, VS. BANK OF THE PHILIPPINE ISLANDS (BPI), RESPONDENT.

[G.R No. 227049, September 16, 2020]

The determination of the CIR's right to assess and collect is an issue cognizable by the Court of Tax Appeals in the exercise of its appellate jurisdiction over "other matters" arising from tax laws.

Facts:

Through a letter dated May 6, 1991, the CIR sent Assessment Notices to Citytrust Banking Corporation ("Citytrust") in connection with its deficiency of internal revenue taxes for the year 1986.

The assessments came after Citytrust execution of three Waivers of the Statute of Limitations under the Tax Code and protested the assessments. In the interim, the CIR, in a letter dated February 5, 1992, demanded the payment of the subject deficiency taxes within 10 days from the receipt thereof.

Meanwhile, on October 4, 1996, Citytrust and BPI entered into a merger agreement, wherein the latter emerged as the surviving corporation. Subsequently, the CIR sought to collect the above-mentioned tax liabilities and issued a Warrant of Distraint and/or Levy on November 4, 2011, against BPI.

BPI assailed the November 2011 Warrant before the Court of Tax Appeals (CTA) through a petition for review asking the tax court to suspend the collection of the alleged deficiency taxes, cancel the November 2011 Warrant, and enjoin the CIR from further implementing it. It also prayed for the CTA to declare the assessments as prescribed and cancel the related assessments. The OSG argued that CTA did not acquire jurisdiction over BPI's petition, having been filed out of time. According to OSG, the February 5, 1992 letter was a "final decision" denying Citytrust's protest. Thus, the failure of Citytrust to appeal the "final decision" within 30 days from receipt thereof rendered the tax assessment final, executory, and unappealable.

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Issue:
Whether the CTA acquired jurisdiction over the petition of the BPI.

Ruling:
Yes, the CTA properly exercised its jurisdiction over BPI's petition for review. BPI did not come to question any final decision issued in connection with Citytrust's assessment. They went before the CTA primarily to assail the November 2011 Warrant's issuance and implementation. To be sure, the issue for the CTA to resolve was the propriety not of any assessment but of a tax collection measure implemented against BPI.

The law expressly vests the CTA the authority to take cognizance of "other matters" arising from the Tax Code and other laws administered by the BIR, which necessarily includes rules, regulations, and measures on the collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement.

2. **THE COMMISSION ON AUDIT (COA), THE BUREAU OF INTERNAL REVENUE (BIR), AND THE BUREAU OF CUSTOMS (BOC), PETITIONERS, VS. HON. SILVINO T. PAMPILO, JR., ET AL., RESPONDENTS.**
[G.R. No. 188760, June 30, 2020]

CHEVRON PHILIPPINES, INC., PETITIONER, VS. HON. SILVINO T. PAMPILO, JR., ET AL., RESPONDENTS.
[G.R. No. 189060]

PETRON CORPORATION, PETITIONER, VS. HON. SILVINO T. PAMPILO, JR., ET AL., RESPONDENTS.
[G.R. No. 189333]

The BIR and BOC can only examine the books of accounts of a taxpayer when there are taxes or duties involved in a case.

Facts:
Social Justice Society (SJS), a political party duly registered with the Commission on Elections, filed with the Regional Trial Court (RTC) of Manila, a Petition for Declaratory Relief, against Pilipinas Shell Petroleum Corporation (Shell); Caltex Philippines, Inc. (Caltex), and Petron Corporation (Petron), collectively referred to as the "Big 3" alleging that the oil companies business practice of increasing the prices of their petroleum products whenever the price of crude oil increases in the world market despite that fact that they had purchased their inventories at a much lower price long before the increase constitutes monopoly and combination in restraint of trade under Article 186 of the Revised Penal Code.

The RTC directed the parties to refer the matter to the Joint Task Force of the Department of Energy (DOE) and Department of Justice (DOJ) pursuant to Section 11 of RA No. 8479 (The Oil Deregulation Law). Thereafter, the DOE-DOJ Joint Task

Force submitted its Report finding no clear evidence that the Big 3 violated Article 186 of the Revised Penal Code or Section 11 (a) of Republic Act (RA) No. 8479. Based on the said report, the Big 3 moved to dismiss the case at the RTC. SJS, on the other hand, moved to open and examine the books of account of the Big 3 to enable the court to determine whether Section 11 (a) of RA No. 8479 had been violated.

RTC denied the motion to dismiss of the Big 3 and directed the Chairman of COA and the Commissioners of the BIR and the BOC to form a panel of examiners to conduct an examination of the books of accounts of the Big 3 and to submit a report thereon within three (3) months from receipt of the Order.

Though not parties to the case, the COA, the BIR, and the BOC, through the OSG, were constrained to file a Motion for Reconsideration on the grounds that the order of examination was unwarranted and beyond their respective jurisdictions.

Issue:
Whether the BIR and BOC can be ordered to examine the books of accounts of the Big 3 to determine if there is cartelization and monopoly?

Ruling:
No. It is beyond the mandates of the BIR and the BOC to open and examine the books of accounts of the Big 3 for purposes of determining whether the latter is guilty of cartelization and monopoly since there are no taxes or duties involved in this case.

With respect to the BIR, its Commissioner is authorized to examine books, paper, records, or other data of taxpayers but only to ascertain the correctness of any return, or in making a return when none was made, or in determining the liability of any person for any internal revenue tax, or in collecting such liability, or evaluating the person's tax compliance. The BOC, on the other hand, is authorized to audit or examine all books, records, and documents of importers necessary or relevant for the purpose of collecting the proper duties and taxes.

B. INCOME TAX ON GOVERNMENT-OWNED AND -CONTROLLED CORPORATIONS

COMMISSIONER OF INTERNAL REVENUE (CIR), PETITIONER, VS. BASES CONVERSION AND DEVELOPMENT AUTHORITY (BCDA), RESPONDENT.

[G.R. No. 217898, January 15, 2020]

The proceeds from the sale or disposition of BCDA properties are not income subject to creditable withholding tax. The charter of BCDA, which prevails over the provision of the Tax Code, expressly exempts said sale proceeds from all kinds of fees and taxes.

Facts:
Respondent BCDA was the owner of four (4) real properties in Bonifacio Global City, Taguig City, collectively referred to as the "Expanded Big Delta Lots". It sold

these lots to the "Net Group" which committed not to remit to the Bureau of Internal Revenue (BIR) the creditable tax withheld (CWT) at source to give time to the respondent to present a certification of tax exemption.

Having failed to secure the certification of tax exemption from petitioner BIR, the "Net Group" deducted the CWT and issued to the respondent the corresponding certificates of CWT at source, and in turn, the "Net Group" remitted the amount to the BIR.

Respondent sought the refund of the remitted amount claiming that it was exempt from all taxes and fees arising from or in relation to the sale of its properties, as provided under its charter, Republic Act (RA) No. 7227, as amended by RA 7917. Petitioner countered that the respondent failed to sufficiently support its claim for a tax refund, and that the latter was not an exempt corporation under Section 27 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Issue:
Whether respondent BCDA is exempt from CWT on the sale of its properties?

Ruling:
Yes. Respondent BCDA's enabling charter, RA 7227, as amended by Section 8 of RA 7227, which exempts it from all forms of taxes and fees, is a special law, while the NIRC of 1997, as amended, is a general law. It is a fundamental rule in statutory construction that a special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect. A special law must be interpreted to constitute an exception to the general law in the absence of special circumstances warranting a contrary conclusion.

Section 8 of RA 7227, as amended by RA 7917, specifically governs the BCDA's disposition of the properties enumerated therein and its sale proceeds. The law exempts these sale proceeds from all kinds of fees and taxes as the same law has already appropriated them for specific purposes and designated beneficiaries.

In light of the foregoing considerations, therefore, the standard procedural and documentary requirements for tax refund applicable to government-owned and/or - controlled corporations, in general, do not apply to the BCDA vis-a-vis the properties and the sale proceeds specified under Section 8 of RA 7227, as amended. There is no income to speak of here; only the sale proceeds of specific properties which the legislature itself exempts from all taxes and fees.

C. INCOME TAX ON FOREIGN CORPORATIONS

ASSOCIATION OF INTERNATIONAL SHIPPING LINES, INC., APL CO. PTE LTD., AND MAERSK-FILIPINAS, INC., PETITIONERS V. SECRETARY OF FINANCE AND COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

[G.R. No. 222239, January 15, 2020]

Demurrage and retention fees charged by international sea carriers are treated as regular *income subject to regular income tax and not to the 2.5% preferential tax rate based on Gross Philippine Billings (GPB).*

Facts:

On March 7, 2013, Republic Act (RA) No. 10378 was enacted, amending Section 28 (A)(3)(a) of the National Internal Revenue Code (NIRC) of 1997, as amended, recognizing the principle of reciprocity as a basis for the grant of exemptions to international carriers. Subsequently, the Secretary of Finance issued Revenue Regulation (RR) 15-2013 to implement RA No. 10378.

Petitioners challenged Section 4.4 of RR 15-2013 on the ground that said regulation invalidly subjects demurrage and detention fees collected by international shipping carriers to regular corporate income tax rate. Petitioners also argued that demurrage and detention fees are not income but penalties imposed by the carrier to recover losses or expenses associated with or caused by the undue delay in the loading and/or discharging the latter's shipment from the container. Further, petitioners maintained that, assuming that demurrage and detention fees may be treated as income, these fees are taxable only if they form part of GPB and taxed at the preferential rate of 2.5%.

Issue:

Whether demurrage and detention fees imposed by international shipping carriers fall within the scope of GPB, thus subject to the preferential rate of 2.5%, or treated as regular income subject to regular income tax.

Ruling:

Demurrage and detention fees are **not part of the GPB of an international sea carrier, and, therefore, not subject to the preferential rate of 2.5%** since they are not income derived from the transportation of persons, cargo, and/or mail. Rather, such fees form part of an international sea carrier's gross income subject to the regular income tax rate.

The GPB covers gross revenue derived from the transportation of **passengers, cargo, and/or mail** originating from the Philippines up to the final destination. Any other income, therefore, is subject to the regular income tax rate.

Demurrage fee is the allowance or compensation due to the master or owners of a ship, by the freighter, for the time the vessel may have been detained beyond the time specified or implied in the contract of affreightment or the charter party. It is only an extended freight or reward to the vessel, in compensation for the earnings the carrier is improperly caused to lose. Detention occurs when the consignee holds on to the carrier's

container outside the port, terminal, or depot beyond the allotted free time. A detention fee is charged when import containers have been picked up, but the container (regardless if it is full or empty) is still in the possession of the consignee and has not been returned within the allotted time.

Demurrage and detention fees definitely form part of an international sea carrier's gross income for they are acquired in the normal course of trade or business. Thus, excluding such fees from the preferential rate of 2.5% under RR 15-2013 is proper since they are not income derived from the transportation of persons, goods, and/or mail, in accordance with the rule *expressio unios est exclusio alterius.*

D. VALUE-ADDED TAX

1. COMMISSIONER OF INTERNAL REVENUE (CIR), PETITIONER, VS. FEDERATION OF GOLF CLUBS OF THE PHILIPPINES, INC., (FEDGOLF), RESPONDENT.

[G.R. No. 226449, July 28, 2020]

RMC No. 32-2012 is invalid. Membership fees, assessment dues, and the like are neither income nor part of gross receipts of recreational clubs, but merely capital; hence, they are not taxable insofar as income tax and VAT are concerned.

Facts:
Respondent FEDGOLF questions the validity of Revenue Memorandum Circular (RMC) No. 35-2012, which subjects the income of recreational clubs from whatever source, including but not limited to membership fees, assessment dues, rental income, and service fees, to income tax; and the gross receipts of such clubs including but not limited to membership fees, assessment dues, rental income, and service fees to value-added tax (VAT).

In its Petition, FEDGOLF, among others, alleged that the implementation of the RMC has adverse consequences for it and its members considering that prior to the issuance of the same, membership fees, dues, and assessments received by it and its member golf clubs had not been subjected to income tax and VAT.

The Regional Trial Court (RTC) declared that RMC No. 35-2012 is invalid as the CIR exceeded its authority when it effectively imposed a tax upon the petitioner, a matter within the sole prerogative of the Legislature.

Issue:
Whether RMC No. 35-2012 is valid?

Ruling:
No. Membership fees, assessment dues, and the like are neither income nor part of gross receipts of recreational clubs, but merely capital; hence, they are not taxable insofar as income tax and VAT are concerned.

Income is defined as "an amount of money coming to a person or corporation within a specified time, whether as payment for services, interest or profit from investment" while capital is "fund" or "wealth". Based on the foregoing, the Court considered membership fees and the like as "capital," as they are intended for the upkeep of the facilities and operations of the recreational clubs, and not to generate revenue. For as long as these membership fees, assessment dues, and the like are treated as collections by recreational clubs from their members as an inherent consequence of their membership, and are, by nature, intended for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, then these fees cannot be classified as "the income of recreational clubs from whatever source" that are "subject to income tax". Instead, they only form part of the capital from which no income tax may be collected or imposed.

As to VAT, the Court interpreted that RMC No. 35-2012 erroneously included the gross receipts of recreational clubs on membership fees, assessment dues, and the like as subject to VAT because Section 105 of the National Internal Revenue Code (NIRC) of 1997, as amended, specified the taxability of only those which deal with the "sale, barter or exchange of goods or properties, or sale of service". In collecting such fees from their members, recreational clubs are not selling any kind of service, in the same way the members are not procuring service from them.

2. IN THE MATTER OF DECLARATORY RELIEF ON THE VALIDITY OF BUREAU OF INTERNAL REVENUE (BIR) REVENUE MEMORANDUM CIRCULAR (RMC) NO. 65-2012 "CLARIFYING THE TAXABILITY OF ASSOCIATION DUES, MEMBERSHIP FEES AND OTHER ASSESSMENTS/CHARGES COLLECTED BY CONDOMINIUM CORPORATIONS"

[G.R. No. 215801, January 15, 2020]

RMC No. 65-2012 is invalid. Association dues, membership fees, and other assessments/charges collected by condominium corporations are not subject to income tax, value-added tax (VAT), and withholding tax. These only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities. They represent funds "held in trust" to defray their operating and general costs and hence, only constitute an infusion of capital.

Facts:

First E-Bank filed a petition seeking to declare as invalid RMC No. 65-2012 entitled "Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/ Charges Collected by Condominium Corporations" essentially arguing that RMC No. 65-2012 imposed an additional burden on condominium unit owners with income tax and VAT on what should exclusively be used for the maintenance and preservation of the condominium building and its premises.

The trial court declared as invalid RMC No. 65-2012 for it purportedly expanded the law, created an additional tax burden on condominium corporations, and was issued without the requisite notice and hearing, thereby violating the respondent's right to

substantive and procedural due process. The BIR challenged the trial court's ruling insofar as it declared RMC No. 65-2012 invalid.

Issues:

1. Whether condominium corporations are engaged in trade or business?
2. Whether association dues, membership fees, and other assessments/charges are subject to income tax, VAT, and withholding tax?

Ruling No. 1:

No. Under Republic Act (RA) No. 4726 or "The Condominium Act" the corporate purposes of a condominium corporation are limited to holding the common areas, either in ownership or any other interest in real property recognized by law; management of the project; and to such other purposes necessary, incidental, or convenient to the accomplishment of these purposes. Additionally, the said law also prohibits the articles of incorporation or by-laws of the condominium corporation from containing any provisions contrary to the provisions of RA No. 4726, the enabling or master deed, or the declaration of restrictions of the condominium project.

In sum, the collection of association dues, membership fees, and other assessments/charges is purely for the benefit of the condominium owners. It is a necessary incident for the purpose of effectively overseeing, maintaining, or even improving the common areas of the condominium as well as its governance. Condominium corporations are not considered engaged in trade or business.

Ruling No. 2:

No. Association dues, membership fees, and other assessments/charges are not subject to income tax, VAT, and withholding tax.

First. Section 32 of RA No. 8424 does not include association dues, membership fees, and other assessments/charges collected by condominium corporations as sources of gross income. The subsequent amendment under the Tax Reform for Acceleration and Inclusion (TRAIN) Law substantially replicates the old Section 32.

Clearly, RMC No. 65-2012 expanded, if not altered, the list of taxable items in the law. RMC No. 65-2012, therefore, is void. Membership fees, assessment dues, and other fees of similar nature only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities. They represent funds "held in trust" to defray their operating and general costs and hence, only constitute an infusion of capital.

Second. Association dues, membership fees, and other assessments/charges do not arise from transactions involving the sale, barter, or exchange of goods or property. Nor are they generated by the performance of services. As such, they are not subject to VAT per Section 105 of RA No. 8424.

Neither can it be said that a condominium corporation is rendering services to the unit owners for a fee, remuneration, or consideration. Association dues, membership fees, and other assessments/charges form part of a pool from which a condominium

corporation must draw funds in order to bear the costs for maintenance, repair, improvement, reconstruction expenses, and other administrative expenses. Indisputably, the nature and purpose of a condominium corporation negate the application of our VAT provisions on its transactions and activities.

Third. The withholding tax system was devised for three (3) primary reasons: i.e. (1) to provide taxpayers a convenient manner to meet their probable income tax liability; (2) to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns; and (3) to improve the government's cash flow. This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies, and reduction of a governmental effort to collect taxes through more complicated means and remedies. Succinctly put, withholding tax is intended to facilitate the collection of income tax. Thus, if there is no income tax, withholding tax cannot be collected.

E. TAX REMEDIES.

1. **KABALIKAT PARA SA MAUNLAD NA BUHAY, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**
[G.R. Nos. 217530-31, February 10, 2020]

KABALIKAT PARA SA MAUNLAD NA BUHAY, INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.
[G.R. Nos. 217536-37]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. KABALIKAT PARA SA MAUNLAD NA BUHAY, INC., RESPONDENT.
[G.R. No. 217802]

Revenue losses on the part of the government may warrant the relaxation of procedural rules in tax cases.

Facts:
Kabalikat is a non-stock, non-profit civic organization. The Bureau of Internal Revenue (BIR) confirmed that it was a civic organization exempted from the payment of income tax through BIR Ruling No. S-30-071-20017 dated October 8, 2001. In 2006, pursuant to RA No. 8425 or the "Social Reform and Poverty Alleviation Act", Kabalikat amended its Articles of Incorporation to expressly provide micro-financing services to "small, cottage-scale, micro-entrepreneurial poor and the disadvantaged such as farmers, fishermen, women, tribal minorities, urban poor and other similar sectors."

BIR issued Preliminary Assessment Notices (PAN) against Kabalikat in relation to unpaid taxes for the TY 2006. On December 28, 2009, Kabalikat executed a Waiver of the Defense of Prescription under the Statute of Limitations to extend the assessment period for its 2006 unpaid taxes until December 31, 2010. The Commissioner of Internal Revenue (CIR) issued Final Assessment Notices (FAN) and

a Formal Letter of Demand (FLD) against Kabalikat for unpaid taxes, inclusive of interest, surcharge, and compromise penalty. Kabalikat filed an administrative protest with the BIR and upon inaction, filed a Petition for Review before the Court of Tax Appeals (CTA).

The CTA Division cancelled and set aside the assessments issued on the ground that the tax authorities right to assess has already been prescribed. The CTA Division also denied the parties' subsequent motions for reconsideration. Both parties appealed to the CTA En Banc via their respective petitions for review. The CTA En Banc dismissed both petitions outright for being procedurally defective, noting that Kabalikat failed to aver in their petition a "concise and direct statement of complete facts" and attach "either clearly legible duplicate originals or certified true copies" of the issuances assailed. On the other hand, the CIR failed to attach a Verification and Certification Against Forum Shopping and also failed to properly serve a copy of the petition upon Kabalikat.

Issue:
Whether or not the CTA En Banc erred when it denied outright the parties' respective petitions due solely to formal and procedural infirmities?

Ruling:
Yes. The Court finds that the CTA En Banc erred when it refused to consider the parties' respective mistakes. The circumstances in the present case warrant the relaxation of procedural rules. The parties face significant financial loss from the assessment's final adjudication. If cancelled, the government stands to lose revenues from taxation, its lifeblood. On the other hand, if upheld, the immensely onerous obligation of settling the assessment shall loom over Kabalikat, a non-stock, non-profit civic organization generally exempt therefrom. Certainly, an appeal is the proper forum to fully ventilate their cases. Abruptly ending litigation solely based on technicalities amounts to serious injustice to the parties.

To be sure, the formal and procedural lapses in the present case should not have rendered the parties' respective appeals fatally defective. The court a quo's insistence on strict implementation of these technicalities is unjust, especially when "the more prudent course of action would have been to afford petitioners time" to remedy their oversight which they already have, instead of using these mistakes to justify "dispossessing petitioners of relief".

2. COMMISSIONER OF INTERNAL REVENUE (CIR), PETITIONER, VS. DEUTSCHE KNOWLEDGE SERVICES (DKS) PTE. LTD., RESPONDENT.

[G.R. No. 234445, July 15, 2020]

Whether the claimant's submissions "are actually complete as required by law - is for the CIR and the courts to determine." Clearly, the CIR has no authority to unilaterally determine the completeness of these documents and dictate the running of the 120-day period to resolve the claim.

Facts:
DKS is a value-added tax (VAT)-registered Philippine branch of a Singaporean company and licensed to operate a regional operating headquarters in the country, providing services to affiliates and related parties. On October 21, 2011, DKS filed with the Bureau of Internal Revenue (BIR) an Application for Tax Refund/Credit supported by the relevant documents, on the basis of excess input VAT attributable to zero-rated sales to some affiliate clients.

Alleging that the CIR had not acted upon their administrative claim, DKS filed a petition for review before the Court of Tax Appeals (CTA) on March 19, 2012. In its Answer, the CIR claimed that DKS failed to submit the documents necessary to support its claim, and that under Revenue Memorandum Circular (RMO) 53-98, a taxpayer must submit the documents contained therein to substantiate his claim for tax refund or credit. It points out that DKS failed to submit the complete documents when it filed its administrative claim. Thus, the 120 and 30-day periods to resolve a claim, and file an appeal, did not begin to run.

Issue:
Whether DKS timely filed its judicial claim?

Ruling:
Yes. Section 112 (C) of the NIRC of 1997, as amended, gives the CIR 120 days from the date of submission of complete documents supporting the application for credit or refund excess input VAT attributable to zero-rated sales to resolve the administrative claim. If it remains unresolved after this period, the law allows the taxpayer to appeal the unacted claim to the CTA within 30 days from the expiration of the 120-day period.

The claimant has sufficient latitude to determine the completeness of his submission to ascertain the date of completion from which the 120-day period shall be reckoned. To counterbalance the claimant's liberty to do so, according to RMC No. 49-2003, he may be required by the tax authorities, in the course of their evaluation, to submit additional documents for the proper evaluation thereof. In this case, the CIR shall duly notify the claimant of his request, from which the claimant has 30 days to comply.

Whether the claimant's submissions "are actually complete as required by law - is for the CIR and the courts to determine." The CIR and courts' subsequent evaluation of the documents is a substantive determination of completeness, for the purpose of ascertaining the claimant's entitlement to the tax refund or credit sought. Clearly, the CIR has no authority to unilaterally determine the completeness of these documents and dictate the running of the 120-day period to resolve the claim.

In this case, there was no action on the claim on the administrative level. The first instance the BIR served a formal response to the claimant, alleging documentary deficiencies, was already in the CIR's Answer filed before the CTA on May 11, 2012. In other words, it took the BIR 203 days to show concern on the matter. The CIR cannot now fault DKS for proceeding to court for the appropriate remedial action on the claim they ignored.

3. **COMMISSIONER OF INTERNAL REVENUE (CIR), PETITIONER, VS. T SHUTTLE SERVICES, INC., RESPONDENT.**
[G.R. No. 240729, August 24, 2020]

The mere presentation of the registry receipt is insufficient to prove the receipt of the Preliminary Assessment Notice and the Final Assessment Notice.

Facts:
In 2009, petitioner CIR issued to the respondent a Letter of Notice (LN) informing it of the discrepancy found on its tax returns for 2007 with the Reconciliation of Listings for Enforcement and Third-Party Matching under the Tax Reconciliation System.

Subsequently, the Bureau of Internal Revenue (BIR) issued a follow-up letter but still, the respondent made no action. Thus, on January 12, 2010, the CIR issued a Letter of Authority (LOA) and Notice of Informal Conference (NIC). On March 29, 2010, the CIR issued a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies that found the respondent liable for deficiency income tax and value-added tax (VAT). On July 20, 2010, the CIR issued a Final Assessment Notice (FAN).

In 2013, the revenue district officer (RDO) issued a Final Notice Before Seizure (FNBS), giving the respondent the last opportunity to settle its tax liability within 10 days from the notice. On March 20, 2013, the respondent sent a letter to the RDO and collection officers stating that it was not aware of any pending liability for 2007 and that Mr. B. Benitez, who signed and received the preliminary notices, was not authorized to receive the notices. On April 19, 2013, the respondent protested the FNBS. It claimed that the service of the NIC was invalid and that it did not receive the PAN and FAN prior to the issuance of the FNBS.

Aggrieved, the respondent filed a Petition for Review with the Court of Tax Appeals (CTA) Division. Meanwhile, the CIR prayed for the denial of the petition for review, arguing that no error or illegality can be ascribed to his assessment as due process was observed, and the respondent failed to interpose a timely protest against the FAN and to submit within the prescribed period of 60 days supporting documents to refute the findings of the revenue examiners.

Issue:
Whether the PAN and FAN were properly and duly served upon and received by the respondent?

Ruling:
No. Section 3 of RR 12-99 provides that the service of the PAN or the FAN to the taxpayer may be made by registered mail. Under Section 3(v), Rule 131 of the Rules of Court, there is a disputable presumption that "a letter duly directed and mailed was received in the regular course of the mail." However, the presumption may be controverted, and in the case of direct denial, the burden is shifted to the party favored by the presumption to establish that the addressee actually received the subject mailed letter.

The petitioner CIR's mere presentation of the Registry Receipt was insufficient to prove the respondent's receipt of the PAN and the FAN. Witnesses for the CIR failed to identify and authenticate the signatures appearing on the registry receipts; thus, it cannot be ascertained whether the signatures appearing in the documents were those of the respondent's authorized representatives.

4. **IMELDA SZE, SZE KOU FOR, & TERESITA NG, PETITIONERS, VS. BUREAU OF INTERNAL REVENUE (BIR), REPRESENTED BY THE COMMISSIONER OF INTERNAL REVENUE (CIR), RESPONDENTS.**
[G.R. No. 210238, January 06, 2020]

An offense under the Tax Code is considered discovered only after the manner of commission and the nature and extent of fraud have been definitely ascertained, which occurs when the BIR renders its final decision and requires the taxpayer to pay the deficiency tax.

Facts:
In 2003, the BIR issued a Letter of Authority (LOA) for the examination of accounting books and records of Chiat Corporation for all internal revenue taxes for 1999 and 2000. Due to its refusal to present its accounting records, the BIR conducted an investigation and discovered that Chiat Corporation deliberately and willfully misdeclared its taxable base to evade payment of correct internal revenue liabilities.

Thereafter, the BIR issued a Notice of Informal Conference (NIC), Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD), and Final Assessment Notice (FAN). Chiat Corporation failed to interpose any protest resulting in the finality, and demandability of the assessment on May 26, 2005. Hence, in 2005, the BIR charged the officers of Chiat Corporation, petitioners Imelda T. Sze, Sze Kou For, and Teresita A. Ng, with tax evasion and/or tax fraud for violation of the National Internal Revenue Code (NIRC) of 1997, as amended, but was denied by the Department of Justice (DOJ). The BIR elevated the case before the Court of Appeals (CA), which resolved that a probable cause was sufficiently established for tax evasion and violation of the NIRC of 1997, and ordered the DOJ to file the corresponding information with the proper court. Pursuant to the said decision of the CA, an amended information

Issue:
Whether the failure of the petitioner to file a protest resulted in the finality, demandability, and executory nature of the assessment for deficiency taxes triggered the running of the five-year prescriptive period for violation of the provision of the Tax Code?

Ruling:
Yes, Revenue Memorandum Circular 101-90 provides that an offense under the NIRC of 1997, as amended, is considered discovered only after the manner of commission and the nature and extent of fraud have been definitely ascertained. This occurs when the BIR renders its final decision and requires the taxpayer to pay the deficiency tax.

The FLD and the FAN for taxable years 1999 and 2000 were served on Chiat Corporation on February 7, 2005. Chiat Corporation did not file a protest, resulting in the finality, demandability, and executory nature of the assessment for deficiency taxes. Counting 30 days from the service of the FLD and the FAN, the violations were considered discovered on March 9, 2005. However, the original Information was only filed in court on April 23, 2014, which exceeded the five-year prescriptive period. Therefore, the action had been prescribed.

5. **KEPCO PHILIPPINES CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE (CIR), RESPONDENT.**
[G.R. No. 225750-51, July 28, 2020]

The power of the CIR to enter into compromise agreements for deficiency taxes is explicit in Section 204(A) of the National Internal Revenue Code (NIRC) of 1997, as amended. The CIR may compromise an assessment when a reasonable doubt as to the validity of the claim against the taxpayer exists, or the financial position of the taxpayer demonstrates a clear inability to pay the tax.

Facts:
On September 8, 2009, Kepco received Preliminary Assessment Notice (PAN) for alleged deficiency income tax, value-added tax (VAT), expanded withholding tax, and final withholding tax (FWT) for the taxable year (TY) 2006. On October 30, 2009, Kepco received a Formal Letter of Demand (FLD) for deficiency VAT and FWT. Kepco filed its protest to the FLD on November 26, 2009.

Subsequently, on June 25, 2010, Kepco filed its petition before the Court of Tax Appeals (CTA) Division. The CTA Division partly granted Kepco's petition and canceled the deficiency FWT assessment and the compromise penalties. Kepco was ordered to pay deficiency VAT plus interest and surcharges. Kepco and the CIR filed motions for reconsideration but were denied for lack of merit.

Not satisfied, on May 5, 2014, Kepco elevated the case to the CTA En Banc but was denied for being filed out of time. Kepco sought reconsideration, but the CTA En Banc denied the motion.

Meantime, on December 28, 2017, Kepco filed a Manifestation that it entered into a compromise agreement with the CIR on its tax assessments for the years 2006, 2007, and 2009. In turn, Kepco moved that the case be declared closed and terminated.

The Office of the Solicitor General (OSG) opposed Kepco's manifestation and motion. It avers that the compromise agreement is not valid because first, it failed to allege and prove any of the grounds for a valid compromise under Section 3 of Revenue Regulations (RR) No. 30-2002; second, the CTA did not yet issue any adverse Decision against Kepco, hence, there is no "doubtful validity" to speak of as a ground for a valid compromise pursuant to Section 2 of RR No. 8-2004; and third, Kepco did not pay in full the compromise amount upon the filing of the application in violation of Section 2 of RR No. 9-2013. The OSG posits that the CIR improperly arrogated unto himself the

power of the National Evaluation Board (NEB) to decide on the offer of compromise when the CIR accepted Kepco's additional payment before the NEB could approve or reject Kepco's original application.

Meanwhile, the CIR filed his own Reply to the OSG's Comment. The CIR asserts that Kepco paid the full 40% of the basic tax assessed for TY s 2006, 2007, and 2009 when it applied for compromise. In consonance with Revenue Memorandum Order (RMO) No. 20-2007, the application was evaluated and processed, the Large Taxpayers Enforcement Collection Division recommended the approval of Kepco's application and thereafter, forwarded the favorable recommendation to the Large Taxpayers Service-Evaluation Board and subsequently to NEB based on doubtful validity. Eventually, the NEB approved Kepco's application, and the CIR issued a Certificate of Availment in its favor.

Issue:
Whether the compromise agreement is valid?

Ruling:
Yes. The power of the CIR to enter into compromise agreements for deficiency taxes is explicit in Section 204(A) of the NIRC of 1997, as amended. The CIR may compromise an assessment when a reasonable doubt as to the validity of the claim against the taxpayer exists, or the financial position of the taxpayer demonstrates a clear inability to pay the tax.

In this regard, the BIR issued RR No. 30-2002, as amended by RR No. 08-2004, which enumerates the bases for acceptance of the compromise settlement on the ground of doubtful validity, viz.:

SEC. 3. Basis for Acceptance of Compromise Settlement. - xx x
l. Doubtful validity of the assessment. - The offer to compromise a delinquent account or disputed assessment under these Regulations on the ground of reasonable doubt as to the validity of the assessment may be accepted when it is shown that:
(a) x x x; or
(e) The taxpayer failed to elevate to the CTA an adverse decision of the Commissioner, or his authorized representative, in some cases, within 30 days from receipt thereof, and there is reason to believe that the assessment is lacking in legal and/or factual basis; or
(f) xxx

Kepco's case falls under paragraph "e" as the assessment became final because Kepco failed to appeal the inaction or "deemed denial" of the CIR to the CTA within 30 days after the expiration of the 180-day period, and there is reason to believe that the assessment is lacking in legal and/or factual basis.

As to whether the CIR properly accepted Kepco's offer for a compromise because "the assessment is lacking in legal and/or factual basis", the general rule is that the authority of the CIR to compromise is purely discretionary, and the courts cannot interfere with his exercise of discretionary functions, absent grave abuse of discretion. Here, no grave abuse of discretion exists. Kepco complied with the procedures prescribed under the

BIR rules on the application and approval of the compromise settlement on the ground of doubtful validity.

A compromise agreement has the effect of res judicata on the parties. Compromises are generally to be favored, and those entered into in good faith cannot be set aside except when there is a mistake, fraud, violence, intimidation, undue influence, or falsity of documents. None of these exceptions obtain in the present case.

6. **PHILIPPINE DREAM COMPANY, INC. (PDCI), PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE (CIR), RESPONDENT.**
[G.R No. 216044, August 27, 2020]

Being a court of special jurisdiction, the Court of Tax Appeals (CTA) can take cognizance only of such matters as are clearly within its jurisdiction. While the right to appeal a decision of the CIR to the CTA is a statutory remedy, the requirement that appeal must be brought within the prescribed thirty days period is jurisdictional.

Facts:
On January 6, 2003, the Bureau of Internal Revenue (BIR) issued a Letter of Authority (LOA) to petitioner PDCI for examination of its financial records for its alleged tax deficiencies. On December 19, 2005, a Preliminary Assessment Notice (PAN) was issued to PDCI for its supposed value-added tax (VAT) and expanded withholding tax (EWT) deficiencies for the taxable year 2002. PDCI protested but was denied on the grounds that the PDCI already ceased its operation thus its assets were deemed sold and subjected to VAT, and PDCI failed to prove that it remitted withholding taxes on rental payments made. Consequently, a Formal Letter of Demand (FLD) and Final Assessment Notices (FAN) dated March 31, 2006, were issued to PDCI, which PDCI received on April 10, 2006.

On May 10, 2006, PDCI interposed its protest against the VAT assessment. On January 4, 2007, PDCI received a Final Notice Before Seizure (FNBS) giving it ten (10) days from notice to settle its tax liabilities, otherwise, a warrant of distraint and/or levy and garnishment shall be issued to enforce collection. Instead of settling its liabilities, PDCI requested RDO No. 80 to return the case to RDO No. 13 so it can submit evidence to refute its VAT liability. However, RDO No. 13 denied its request on the ground that its tax liabilities were due for collection because its period to interpose a protest had expired. Accordingly, on May 25, 2007, BIR requested the publication of the Notice of Sale of PDCI's vessel MV Philippine Dream.

On September 21, 2007, PDCI filed a notice of tax amnesty availment under Republic Act No. 9480 and requested the release of its vessel. In BIR Ruling No. DA-514-2007, dated September 27, 2007, the BIR denied PDCI's tax amnesty application for non-compliance with the requirements of RA 9480 and directed the concerned RDO to proceed with the auction sale. On October 31, 2007, PDCI initiated a petition before the Court of Tax Appeals seeking to nullify the Final Notice Before Seizure, Warrant of Distraint and Levy, and the auction sale, with prayer for restraining order to prevent

CIR from taking possession of MV Philippine Dream and turning it over to the winning bidder.

The denied PDCI's appeal for having been filed out of time. It ruled that the FNBS, which PDCI received on January 4, 2007, was deemed a denial of its protest. PDCI, therefore, had 30 days therefrom or until February 3, 2007, within which to appeal. As it was though, it belatedly filed its appeal on October 31, 2007.

In its motion for reconsideration, PDCI asserted that the petition should be given in due course as it also included the nullification of the auction sale. The 30-day period for appeal should be reckoned from the notice of the certificate of sale on October 2, 2007. Thus, the same was still within the period when it filed its petition on October 31, 2007. However, the CTA En Banc denied on the ground that the petition, insofar as it questioned the auction sale, was filed two (2) days late. The reckoning period was September 28, 2007, when PDCI was notified of the auction sale and the BIR ruling on its defective tax amnesty application.

Issues:

1. Whether PDCI timely file its appeal to the CTA?
2. Whether the CTA has jurisdiction to take cognizance of the petition filed by PDCI?

Ruling No. 1: No, the appeal was filed out of time. The FNBS can be considered as CIR's action on PDCI's protest, and the 30-day period for appeal must be reckoned from PDCI's receipt thereof. The correct recourse that the petitioner should have done was to dispute the final decision on the assessment with the Court within 30 days upon its receipt of FNBS. Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, is clear when it states that upon final denial, the only recourse left is to elevate the assessment to the CTA within a period of 30 days. Unfortunately, the petitioner chose to file a Petition for Review only on October 31, 2007, which was already beyond the period allowed by law.

As to the issue on the auction sale, the CTA is correct when it held that the 30-day period should be reckoned from PDCI's notice of the adverse BIR ruling (BIR Ruling No. DA-514-2007), allowing the auction sale to proceed. Pursuant to Section 11 of R.A. No. 1125, as amended by R.A. No. 9282, the petitioner had thirty (30) days from September 28, 2007, or until October 29, 2007, within which to seek the nullification of both the BIR ruling and the auction sale of M/V Philippine Dream. However, the Petition for Review was only filed on October 31, 2007, or two (2) days after the lapse of the thirty-day period to appeal.

Ruling No. 2:

No, the belated filing of appeal deprives the CTA of any authority to entertain it. The requirement that an appeal must be brought within the prescribed thirty days period is jurisdictional.

7. QATAR AIRWAYS COMPANY WITH LIMITED LIABILITY, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE (CIR), RESPONDENT.

[G.R. No. 238914, June 08, 2020]

The 25% surcharge provided in Section 248(A)(1) of the 1997 NIRC is neither unjust nor excessive, even if the taxpayer was only one-day late filing its tax return and paying the tax due thereon. Dura lex sed lex.

Facts:

On November 30, 2011, Qatar Airways Company with Limited Liability (petitioner) filed, through the Electronic Filing and Payment System (eFPS) of the Bureau of Internal Revenue (BIR), its 2nd Quarterly Income Tax Return (ITR) for the Fiscal Year ending March 31, 2012, and paid the corresponding tax due thereon. The said filing was one day late. Thus, the petitioner sent a letter to respondent CIR requesting the abatement of the surcharge. The BIR issued an assessment notice on May 18, 2012, informing the petitioner of its charges/fees.

On July 3, 2012, via the eFPS, the petitioner paid for the compromise penalty and the interest for late payment. As for the surcharge, the petitioner sent Letters dated July 4, 2012, and March 7, 2013, to the CIR requesting its abatement or cancellation on the ground that its imposition was unjust and excessive considering that: 1) the petitioner paid the tax due just one day after the deadline; 2) such belated filing was due to circumstances beyond petitioner's control; and 3) petitioner acted in good faith.

However, the BIR informed the petitioner that its application for abatement had been denied. Petitioner sought reconsideration contending inter-alia, that the late filing of such return was due to circumstances beyond the company's control as it was due to a technical failure brought about by a faulty internet connection at the company's office, but the BIR denied due course thereon. Undeterred, the petitioner appealed for another reconsideration, which the CIR denied for the last time. The petitioner filed a Petition for Review before the Court of Tax Appeals (CTA). However, the CTA Second Division denied the petition for lack of jurisdiction. It held that the 30-day period to file a Petition for Review already commenced when the petitioner received the letter of the BIR denying its request for reconsideration. Upon appeal, the CTA En Banc ruled that while the petition for review was seasonably filed, the surcharge imposed by the BIR was not unjust nor excessive

Issue:

Whether the surcharge is unjust or excessive subject to abatement or cancellation?

Ruling:

No. In 2001, the BIR issued Revenue Regulations (RR) No. 13-2001 prescribing the guidelines on the implementation of Section 204(B) regarding abatement or cancellation of internal revenue tax liabilities. The CTA En Banc, citing the CIR's April 3, 2014 Letter, found that there was no advice on eFPS unavailability on November 29, 2011, and the delay could have been easily avoided had the petitioner undertaken to file its ITR earlier or before the deadline. The Court agrees with the CTA En Banc that the surcharge imposed upon the petitioner was not unjust or excessive pursuant to Section

248(A)(1) of the 1997 NIRC, which provides for the imposition of a penalty equivalent to 25% of the amount due for failure to timely file any return and pay the tax due thereon. Dura lex sed lex.

A technical malfunction is not a situation too bleak to render the petitioner completely without recourse. As correctly observed by the CTA, the petitioner would not incur a delay in filing its ITR if only it filed the same before the deadline and not at the 11th hour or on the last day of filing.

F. TAX REFUND

1. COMMISSIONER OF INTERNAL REVENUE (CIR), PETITIONER, VS. CHEVRON HOLDINGS, INC., [FORMERLY CALTEX (ASIA) LIMITED], RESPONDENT.

[G.R. No. 233301, February 17, 2020]

RMO No. 53-98 assumes relevance only on matters pertinent to an audit of tax liabilities. It finds no application in the claim for a refund of input tax.

Facts:

Chevron, a US corporation duly registered with the Securities and Exchange Commission and the Bureau of Internal Revenue (BIR) to transact business in the Philippines as regional operating headquarters, filed on November 2, 2010, an application for tax credit/refund for excess input value-added tax (VAT) credits pertaining to taxable quarters of 2009.

Having its application unacted upon by the BIR, Chevron appealed to the Court of Tax Appeals (CTA), which partially granted the petition and ordered the CIR to refund or to issue a tax credit certificate in the reduced amount as not all the amount claimed was duly substantiated and therefore not all the input VAT claimed was allowed.

Both the BIR and Chevron filed their respective motions for reconsideration. The BIR maintains that Chevron's petition with the CTA Division was prematurely filed since the 120-day period (for the BIR to decide the administrative claim for refund) did not even commence to run for the failure of Chevron to submit complete documents to support its claim pursuant to Revenue Memorandum Order (RMO) No. 53-98. Chevron, on the other hand, argues that the BIR did not notify it of the need to submit additional supporting documents to substantiate its claim and stresses that absent such notification, the documents it submitted are deemed complete and sufficient.

Issue:

Whether or not the failure of the taxpayer to submit all the documents enumerated in RMO No. 53-98 is fatal to its judicial claim for a VAT refund?

Ruling:

No. RMO No. 53-98 is addressed to internal revenue officers and employees for purposes of equity and uniformity to guide them as to what documents they may require

taxpayers to present upon audit of their tax liabilities. The BIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, Revenue Regulations (RR) 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT.

RMO No. 53-98 assumes relevance only on matters pertinent to an audit of tax liabilities. Thus, it finds no application in the present case since Chevron's claim is one for a refund of its input tax.

Here, Chevron submitted all documents it deemed necessary for the grant of its refund claim. Interestingly, the BIR did not notify Chevron of the document it failed to submit, if any. In fact, there is not a single letter or notice sent to Chevron informing it of its failure to submit complete documents and/or ordering the production of the lacking documents necessary for the allowance of the claim. The BIR should have taken a positive step in appraising Chevron of the completeness and adequacy of its supporting documents considering their particular relevance in reckoning the 120-day period under Section 112(C) of the NIRC of 1997, as amended.

2. ZUELLIG-PHARMA ASIA PACIFIC LTD. PHILS. ROHQ, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE (CIR), RESPONDENT.

[G.R. No. 244154, July 15, 2020]

For claims for a refund made prior to June 11, 2014, the rule is that it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. For claims for refund filed on June 11, 2014, and thereafter, RMC 54-2014 is the controlling rule where it provides that the taxpayer is required to submit complete documents upon its filing of an administrative claim for a VAT refund/tax credit, as no other documents shall be accepted afterward.

Facts:

Zuellig-PH, a regional operating headquarters (ROHQ) of Zuellig-Pharma Asia Pacific Hong Kong, filed on February 15, 2011, its amended Quarterly Value-Added Tax (VAT) Returns for 2010 and filed an administrative claim for refund with the Bureau of Internal Revenue (BIR) on February 17, 2011.

On June 29, 2011, the BIR requested Zuellig-PH to present its records and submit supporting documents in relation to its administrative claim for a refund. In response thereto, Zuellig-PH submitted the requested documents to the BIR on July 5, 2011. The BIR made further verbal requests for the submission of documents from 2012 until 2014, to which the former acceded.

The BIR, again, requested Zuellig-PH to resubmit certain documents, to which the latter complied on April 29, 2014. In the same letter, Zuellig-PH manifested that it had already submitted the complete documents in support of its application. However, the BIR failed to act on the administrative claim for refund within 120 days from receipt of

Zuellig-PH's last correspondence on April 29, 2014 (the 120th day being August 27, 2014), thus Zuellig-PH filed a Petition for Review before the Court of Tax Appeals (CTA) -Second Division on September 25, 2014.

BIR argued that the CTA did not acquire jurisdiction over the case, considering that Zuellig-PH's judicial claim for refund was belatedly filed. In particular, the BIR pointed out that since Zuellig-PH filed its administrative claim for refund on February 17, 2011, the RDO had until June 11, 2011, to act on the claim. When the RDO failed to do so, Zuellig-PH should have filed a judicial claim with the CTA within thirty (30) days therefrom, or until July 11, 2011. Since Zuellig-PH filed its judicial claim only on September 25, 2014, which was clearly long after the lapse of the 30-day period, the claim was already belatedly filed.

Issue:
Whether petitioner Zuellig-PH's judicial claim for refund was filed out of time?

Ruling:
No, Zuellig-PH's judicial claim for refund was timely filed on September 25, 2014. As held in the Pilipinas Total Gas case, it is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. The 120-day period should be reckoned from the April 29, 2014 letter of Zuellig-PH wherein it stated that it had already submitted the complete documents in support of its refund claim. In turn, the BIR had 120 days from such time (or until August 27, 2014) to act on Zuellig-PH's administrative claim for a refund. Since it was established that the BIR failed to act within such a period, Zuellig-PH had thirty (30) days, or until September 26, 2014, to file its judicial claim.

In this case, records show that Zuellig-PH duly complied with the BIR officials' written and verbal requests for additional documents through its letters dated July 5, 2011, May 8, 2012, July 25, 2012, December 6, 2012, September 11, 2013, and April 29, 2014, with the last letter indicating that it had "already submitted the complete documents in support of [its] application for refund of excess and unutilized input VAT for the four (4) quarters of TY 2010 in the amount of Php39,931,971.21." Notably, all of these verbal requests for additional documents and Zuellig-PH's corresponding submissions in response thereto were well-documented and all confirmed by the BIR; hence, there is no danger of losing track of when to reckon the 120-day period.

As a final note, the Court clarifies that the above disquisition only finds application to those claims for a refund made prior to June 11, 2014 (i.e., the date that RMC No. 54-2014 was issued). Under this new circular, the taxpayer is now required to submit complete documents upon its filing of an administrative claim for a VAT refund/tax credit, as no other documents shall be accepted thereafter. For this purpose, the taxpayer shall also execute a statement under oath attesting to the completeness of said documents which shall also be submitted upon such filing. Thus, under the auspices of RMC No. 54-2014, there is no more need to delineate between verbal or written requests for additional documents because the submission thereof is not anymore

allowed. To reiterate, the prevailing rule now is that all complete documents are to be submitted upon the filing of the taxpayer's administrative claim for a refund.

G. REAL PROPERTY TAX

1. MUNICIPALITY OF CAINTA, RIZAL, PETITIONER, V. SPOUSES ERNESTO E. BRAÑA AND EDNA C. BRAÑA AND CITY OF PASIG, RESPONDENTS.

[G.R. No. 199290, February 03, 2020]

The LGU where the property is located has the authority to assess or appraise the current and fair market value of the property and to collect the taxes due thereon.

Facts:

Spouses Braña are the registered owners of six (6) parcels of land located at Pasig Green Park, Cainta Rizal. They religiously paid real estate taxes on the subject properties to the Municipality of Cainta from 1994 to 1996. In 1997, the City of Pasig filed a civil case for the collection of unpaid taxes against Spouses Braña. It claimed that the subject properties were all geographically located in Pasig City. However, the Municipality of Cainta continued to demand that Spouses Braña pay real estate taxes over the same properties. As such, Spouses Braña filed an action for interpleader to compel the two local government units (LGUs) to litigate with each other; as a pre-emptive measure to another possible tax collection case that the Municipality of Cainta might file against Spouses Braña. Meanwhile, on January 30, 1994, the Municipality of Cainta filed a petition for the settlement of a boundary dispute against the City of Pasig with the Regional Trial Court (RTC) of Antipolo City.

In the action for interpleader, the Municipality of Cainta claims that it is entitled to the payment of real estate tax on the ground that the subject properties are within the geographical jurisdiction of Cainta under the Cainta-Taytay Cadastral Survey. Further, the subject properties have long been registered for tax purposes in Cainta, before the City of Pasig assessed the same in 1997. For its part, the City of Pasig claims that the locational entries in the Transfer Certificate of Titles (TCTs) state that the properties are located in Barangay Santolan, Municipality of Pasig. Further, the Department of Finance (DOF) has consistently ruled that the location of the property, as indicated in the certificate of title, is controlling as to the venue of payment of real estate taxes.

Issue:

Whether real estate taxes due upon the subject properties owned by Spouses Braña should be paid to the City of Pasig or the Municipality of Cainta?

Ruling:

Still to be determined. Under the Real Property Tax Code, it is provided that the LGU where the property is located has the authority to assess or appraise the current and fair market value of the property and to collect the taxes due thereon. Thus, to determine who has the right to collect taxes from Spouses Braña, it is necessary to determine the location of the property. However, this Court cannot make any definitive ruling on the location of the property due to the pending boundary dispute case.

While the TCTs state that the location is in Pasig, the same cannot be relied on in this case because the location of the property is precisely in dispute. The RTC of Antipolo, which has jurisdiction over the boundary dispute case, would be the best forum to determine the precise metes and bounds of the LGUs with respect to their territorial jurisdiction, as well as the extent of each LGU's authority, such as its power to assess and collect real estate taxes. Thus, it would be more prudent to avoid any further animosity between the two LGUs, Spouses Braña are ordered to deposit the succeeding payment of real estate taxes due on the subject properties in an account with the Land Bank of the Philippines in escrow for the City of Pasig/the Municipality of Cainta. The proceeds of the same will be released to the local government adjudged by virtue of a final judgment on the issue of territorial jurisdiction over the disputed areas.

2. **PROVINCIAL GOVERNMENT OF CAVITE AND PROVINCIAL TREASURER OF CAVITE, PETITIONERS, VS. CQM MANAGEMENT, INC., [AS SUCCESSOR-IN-INTEREST OF THE PHILIPPINE INVESTMENT ONE (SPV-AMC), INC.], RESPONDENT.**
[G.R. No. 248033, July 15, 2020]

Unpaid real property taxes attached to the property and are chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner.

Facts:
In 2014, respondent CQM Management, Inc., became the new owner of Maxon and Ultimate properties, which it acquired through Deed of Assignments and auction sale, respectively. Both properties are located at Main Avenue, Philippine Economic Zone Authority (PEZA), Rosario, Cavite.

Respondent, tried to consolidate its tax declarations over the two properties after the lapse of the redemption periods. From the records of the Provincial Treasurer of Cavite, Maxon, and Ultimate have unpaid real property taxes in the following amounts: (1) Maxon — P15,888,089.09 (for the years 2000-2013); and (2) Ultimate — P6,238,407.76 (for the years 1997-2013). Because of the unpaid real property taxes, the respondent could not obtain the necessary tax clearance from petitioners in order to transfer the tax declarations over the properties under its name. Worse, the Provincial Treasurer of Cavite issued a tax assessment and a warrant of levy against Maxon and Ultimate after having declared the properties as delinquent. It also set the same for public auction on December 10, 2014, in order to satisfy the unpaid real property taxes assessed against them.

Respondent filed a petition for injunction with prayer for a temporary restraining order and preliminary injunction against the Provincial Government of Cavite and the Provincial Treasurer of Cavite (collectively, petitioners) in connection with Maxon's and Ultimate's unpaid real property taxes and the impending tax delinquency sale of their properties.

The Regional Trial Court (RTC) ruled in favor of respondent CQM Management, Inc. holding that the respondent is not liable for the real property tax since the Maxon and Ultimate properties, which are located in a special economic zone under the PEZA in Cavite, are exempt from any local or national tax, save for a 5% tax on their gross income.

The case was elevated to the Court of Appeals (CA), but the petition was also denied, inasmuch as the respondent was neither the owner nor did it have actual or beneficial use or possession of the subject properties at the time of accrual of the taxes sought to be collected. The CA also ruled that the properties involved were exempt from real estate taxation pursuant to Section 24 of RA No. 7916, as amended. The CA further ruled that some of the unpaid realty taxes sought to be collected were already prescribed and can no longer be collected under Section 270 of RA No. 7160, also known as the Local Government Code (LGC), which provides that the basic real property tax (RPT) shall be collected within five (5) years from the date they become due and that no action for the collection of the tax, whether administrative or judicial, shall be instituted after the expiration of such period.

Issue:
Whether respondent CQM is liable for any unpaid RPT?

Ruling:
No. Respondent CQM was not yet the owner or entity with the actual or beneficial use of the properties during the years for which petitioners sought to collect RPT. Specifically, petitioners sought to collect from respondent RPT due on the Maxon property for the years 2000-2013 and on the Ultimate property for the years 1997-2013. However, the respondent became the owner of the Maxon property and the Ultimate property only in March 2014, and August 2014, respectively. To impose the RPT on the respondent, which was neither the owner nor the beneficial user of the property during the designated periods would not only be contrary to the law but also unjust.

Moreover, a contractual assumption of the obligation to pay RPT, by itself, is insufficient to make one liable for taxes. The contractual assumption of the tax liability must be supplemented by an interest that the party assuming the liability had on the property; the person from whom payment is sought must have also acquired the beneficial use of the property taxed. In other words, he must have the use and possession of the property.

Parenthetically, the respondent is exempt from paying RPT over the Maxon and Ultimate properties from the time it had acquired ownership and/or actual or beneficial use of the properties pursuant to Section 24 of RA No. 7916, as amended by RA No. 8748. As correctly ruled by the CA, there is nothing in Section 24 which requires prior concurrence from the local government unit before the respondent can avail himself of the exemption provided under the law. In fact, under Section 35 of RA No. 7916, the only requirement for business enterprises within a designated ECOZONE to avail themselves of all incentives and benefits provided for under RA No. 7916 is to register with the PEZA. This requirement was satisfied by the respondent. Lastly, as correctly ruled by the CA, the collection of some of the unpaid real property taxes sought by the

petitioner is already prescribed under Section 270 of RA No. 7160, which provides that "the basic RPT shall be collected within five (5) years from the date they become due," and that "no action for the collection of the tax, whether administrative or judicial, shall be instituted after the expiration of such period".

3. **PHILIPPINE HEART CENTER (PHC), PETITIONER V. THE LOCAL GOVERNMENT OF QUEZON CITY, CITY MAYOR OF QUEZON CITY, CITY TREASURER OF QUEZON CITY, AND CITY ASSESSOR OF QUEZON CITY RESPONDENTS.**
[G.R. No. 225409, March 11, 2020]

Government properties leased out to private persons only lose their exemption from being taxed, but it did not lose their exemption from the means to collect such taxes, such as levies. In such cases, the only recourse of LGUs is to institute judicial action for the collection of RPT against private individuals with beneficial use of government properties.

Facts: In 1975, the PHC was established under Presidential Decree (PD) No. 673 as a specialty hospital mandated to provide expert comprehensive cardiovascular care to the general public, especially the poor and less fortunate in life. PD No. 673 authorized the PHC to acquire properties; enter into contracts; and mortgage, encumber, lease, sell, convey, or dispose of its properties. Moreover, it exempted the PHC from "the payment of all taxes, charges, fees imposed by the Government or any political subdivision or instrumentality thereof" for a period of ten (10) years. In 1985, then President Ferdinand E. Marcos issued a Letter of Instruction (LOI) 1455 extending the tax exemption "without interruption."

Among the properties owned by the PHC were land and buildings in Quezon City (QC). In 2004, respondent QC Government issued final Notices of Delinquency for unpaid RPT pertaining to the afore-cited properties of the PHC. The notices were unheeded, thus, the respondent QC Treasurer levied on the PHC's properties. Aggrieved, the PHC wrote to then President Gloria M. Macapagal-Arroyo for condonation or reduction of the taxes assessed on its properties, but said the letter was not acted upon. Since its letter was not acted upon, the PHC entered into a Memorandum of Agreement (MOA) with the QC Government as a means to settle its tax liabilities.

Meanwhile, the Office of the Government Corporate Counsel (OGCC) informed the PHC that government entities are exempt from taxes, fees, or charges of any kind that may be imposed by any local government unit (LGU). The QC Government, nonetheless, stood firm on its position that the PHC was and still remained liable for RPT since a major portion of its properties were being leased to private individuals. Thus, the respondent QC Treasurer issued a Warrant of Levy for the PHC 's failure to pay RPT despite due notice, and after due publication, all the properties were sold to the QC Government, the lone bidder during the public auction.

Issue: Whether PHC's properties leased out to private individuals loses their tax-exempt status and are consequently subject to levy for collection of unpaid taxes?

Ruling: No, the Republic and its instrumentalities, including the PHC, retain their exempt status despite leasing out their properties to private individuals. The fact that PHC was short of alienating its properties to private parties in relation to the establishment, operation, maintenance, and viability of a fully functional specialized hospital does not divest them of their exemption from levy; the properties only lost the exemption from being taxed, but they did not lose their exemption from the means to collect such taxes.

Although LGUs have the power to collect RPT, such power can only be exercised when the subject property's beneficial use has been granted to a "taxable person." It is the "taxable person" with beneficial use who shall be responsible for payment of RPT due on government properties. Any remedy for the collection of taxes should then be directed against the "taxable person," the same being an action in personam.

Otherwise stated, LGUs are precluded from availing of the remedy of levy against properties owned by government instrumentalities, whether or not vested with corporate powers, such as the PHC. This leaves the QC Government with only one recourse - judicial action for the collection of RPT against private individuals with beneficial use of the PHC's properties.

Section 234(a) of Republic Act (RA) No. 7160 exempts real property owned by the Republic from real property taxes except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person. Thus, the Court has invariably held that a government instrumentality, though vested with corporate powers, is exempt from real property tax, but the exemption shall not extend to taxable private entities to whom the beneficial use of the government instrumentality's properties has been vested.

H. LOCAL BUSINESS TAX

1. THE CITY OF MAKATI, PETITIONER, VS. THE MUNICIPALITY OF BAKUN AND LUZON HYDRO CORPORATION, RESPONDENTS.

[G.R. No. 225226, July 07, 2020]

The mere label of a project office does not convert a mere administrative office into one, if the term is used in such a way that carries tax implications. Thus, to be considered a "project office" for local business tax purposes, an office needs to be directly involved in the production or operations of a business.

Facts: Luzon Hydro Corporation (LHC) operates a hydroelectric power plant harnessing the Bakun River that runs through the Provinces of Ilocos Sur and Benguet. The major components of its plant facility, such as the power station and switch yard, are situated in Alilem, Ilocos Sur. Other structures, such as the conveyance tunnel, penstock, wier, intakes, and desander, are located in Bakun, Benguet. LHC also maintains an office in Makati City.

In 2004, LHC began paying local business taxes (LBT) to Alilem, Bakun, and Makati. LHC pays Alilem the 30% portion of its LBT allocated for the site of the principal office, conformably with Section 150 of RA No. 7160 or the Local Government Code (LGC) of 1991, as amended, given that Alilem is specified as the location of LHC's principal office in its Articles of Incorporation. For three years since 2004, the 70% portion of the LBT was equally apportioned among Alilem, Bakun, and Makati, such that each local government unit (LGU) received 23.33% -Alilem and Bakun as power plant sites and Makati as a "project office" site. It is the sharing in the 70% portion that became the bone of contention among the three LGUs.

Bakun questioned the sharing scheme, thus, the matter was submitted to the Bureau of Local Government and Finance (BLGF) for determination. The BLGF opined that only Bakun and Alilem should share in the 70% portion of LHC's LBT because LHC's Makati office was a mere "administrative office" and thus, Makati can only collect the mayor's permit fee and other regulatory fees under its existing local tax ordinances.

Notwithstanding the BLGF opinion, Makati informed LHC that it would still assess the latter's LBT. To resolve the ensuing uncertainty, LHC filed the action for interpleader. The Regional Trial Court (RTC) of Makati City found that LHC's Makati office was a "project office," which entitled Makati to an equal share with LHC's power plant sites from the 70% portion of LHC's business tax. On appeal, the Court of Tax Appeals (CTA) reversed the RTC decision and ruled that the City of Makati was not entitled to an equal share in the 70% allocation.

Issue:
Whether LHC's Makati office was a mere "administrative office," not entitled to the 70% local business tax allocation?

Ruling:
Yes. LHC's Makati office was not a project office that would have entitled the City of Makati to an equal share in the 70% disputed amount. In tackling what constitutes a project office, it was not erroneous for the CTA to cite Department of Finance-Local Finance Circular No. 3-95 dated May 22, 1995. On the situs of tax, Section 5(a)(3) of the said Circular defines a project office as "equivalent to the factory of a manufacturer."

The rules on tax allocation in relation to tax situs under Section 150 of Republic Act No. 7160 come into play when a business subject to it does not operate a branch or sales office outside of its principal office where all sales are recorded, but has a factory, project office, plant, or plantation situated in different localities, whether or not sales are made in these localities. Thus, even if no sales were recorded or undertaken at LHC's Makati office, Makati would have been entitled to share with LHC's power plant sites in the 70% portion of the business tax if it could be shown that the Makati office was a project office of LHC akin to a factory. The enumeration itself - factory, project office, plant, or plantation - reveals the character of the office contemplated by the provision. These are offices directly involved in production or operations; hence, the inescapable conclusion that LHC's Makati office was a mere administrative office.

What constitutes a project office in relation to the rules on business tax situs was central to the tax court's resolution of the controversy. It was not reversible error for it to set aside the trial court's erroneous conclusion. The RTC made a conclusion of fact based on loose reference to the Makati office as a project office in various communications and in LHC's pleadings, as well as prior treatment of it as a project office. These are immaterial, given LHC's willingness to pay the business tax in full to any or all of the claimants. The obligation to pay taxes is one that arises from law and not from the agreement or acquiescence of the parties or contending claimants. The mere label of a project office does not convert a mere administrative office into one, if the term is used in such a way that carries tax implications. The question was submitted to the tax court, which ruled on the matter based on its technical expertise. We find no reversible error in its application of the laws and rules within its competence

2. **CITY OF DAVAO AND MR. ERWIN ALPARAQUE, IN HIS OFFICIAL CAPACITY AS ACTING CITY TREASURER OF THE CITY OF DAVAO, PETITIONERS, VS. AP HOLDINGS, INC. (APHI), RESPONDENT.**
[G.R. No. 245887, January 22, 2020]

A holding company of government funds and assets, such as the APHI, cannot be considered a non-bank financial intermediary. As such, it is not liable to pay local business taxes on the dividends earned from its preferred shares, as the same shares are government assets owned by the national government to benefit the coconut industry.

Facts:
The Coconut Industry Investment Fund (CIIF) under Presidential Decree (PD) No. 582 is a fund from part of the levy imposed on the initial sale by coconut farmers of copra and other coconut products. Pursuant to PD No. 582, the CIIF has invested in six (6) oil mills, the CIIF Oil Mills Group (CIIF OMG).

Respondent APHI was established by CIIF OMG as a holding company and, over time, received dividends from shares in San Miguel Corporation (SMC). These dividends were deposited in a trust account which earned interest from money market placements.

In 2011, the petitioner City of Davao, through its City Treasurer, issued a Business Tax Order of Payment directing APHI to pay local business tax (LBT). Pursuant to Section 69(f) of the 2005 Revenue Code of the City of Davao, the tax was assessed on the dividends and interests APHI earned from its SMC preferred shares and money market placements. APHI paid the assessment under protest. Subsequently, it filed an administrative claim for a refund or tax credit with the City Treasurer. Claiming that the City Treasurer failed to act on the protest, APHI filed a petition for review with the Regional Trial Court (RTC), which ruled in favor of the petitioner City of Davao. On appeal, the Court of Tax Appeals (CTA) reversed the RTC decision and ruled in favor of APHI entitling it to a tax refund or credit.

Issue:
Whether as a CIIF holding company, respondent APHI is liable to pay LBT on its dividend earnings from its SMC preferred shares?

Ruling:
No. CIIF holding companies, including APHI itself and the entire CIIF block of SMC shares, are public assets owned by the Republic of the Philippines. Consequently, dividends and any income from these shares are also owned by the Republic. On this score, APHI cannot be considered a non-bank financial intermediary since its investment and placement of funds are not done in a regular or recurring manner for the purpose of earning profit. Rather, its management of dividends from the SMC shares is only in furtherance of its purpose as a CIIF holding company for the benefit of the Republic.

The SMC preferred shares held by it are considered government assets owned by the National Government for the coconut industry. As held in the same case, these SMC shares, as well as any resulting dividends or increments from said shares, are owned by the National Government and shall be used only for the benefit of the coconut farmers and for the development of the coconut industry. Consequently, the local government of Davao cannot tax a National Government property.

I. UNCONSTITUTIONALITY OF TAX PROVISIONS

FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES, PETITIONER, VS. COLON HERITAGE REALTY CORPORATION, OPERATOR OF ORIENTE GROUP OF THEATERS, REPRESENTED BY ISIDORO A. CANIZARES/FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES VS. CITY OF CEBU AND SM PRIME HOLDINGS, INC. (SMPHI), RESPONDENTS.
[G.R. No. 203754/G.R. No. 204418, November 03, 2020]

With the unconstitutionality of Sections 13 and 14 of Republic Act (RA) No. 9167, proprietors, operators, or lessees of theatres or cinemas are no longer under any obligation to remit to FDCP the amusement taxes on graded films from October 15, 2019, or the finality of this case.

Facts:
On June 7, 2002, Congress passed RA No. 9167, creating the Film Development Council of the Philippines (FDCP). Sections 13 and 14 thereof provide that the amusement tax on certain graded films which would otherwise accrue to the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines pursuant to Section 140 of RA No. 7160 or the Local Government Code (LGC) of 1991 during the period the graded film is exhibited, should be deducted and withheld by the proprietors, operators or lessees of theaters or cinemas and remitted to the FDCP, which shall reward the same to the producers of the graded films.

In the June 16, 2015 Decision, the Court struck down as invalid and unconstitutional Sections 13 and 14 of RA No. 9167, essentially holding that these provisions violated the principle of local fiscal autonomy because they authorized the FDCP to earmark, and hence, effectively confiscate the amusement taxes which should have otherwise

inured to the benefit of the local government units (LGUs). However, recognizing the existence of these statutory provisions and the reliance of the public thereto prior to their being declared unconstitutional, the Court applied the doctrine of operative fact.

In the October 15, 2019 Resolution, the Court denied with finality the motion for reconsideration of the FDCP, which hence, rendered the issue anent the unconstitutionality of Sections 13 and 14 of RA No. 9167 final and executory.

This notwithstanding, SMPHI, in the present Urgent Motion, had drawn the Court's attention to the fact that it received a Memorandum dated December 11, 2019, wherein FDCP's Chairperson and CEO, Mary Liza B. Dino, directed all theater owners to process all amusement tax remittances accorded to films graded before December 10, 2019, i.e., the date it received the Court's October 15, 2019 Resolution, with a further warning that non-compliance therewith will result in legal action. In the foregoing regard, SMPHI, avers that the amusement taxes collected from the exhibition of the graded films during the Metro Manila Film Festival were not yet due to FDCP. It claims that the screening of the films started on December 25, 2019, and most of them stopped on January 7, 2020. Thus, the amusement taxes would have been due for remittance to FDCP thirty (30) days after or on February 6, 2020, by virtue of Section 14 of RA No. 9167. Accordingly, SMPHI seeks clarification from the Court.

Issue:
Whether SMPHI should remit to FDCP amusement taxes withheld or which were due for remittance after December 10, 2019, specifically for the graded films exhibited during the Metro Manila Film Festival?

Ruling: No. With the unconstitutionality of Sections 13 and 14 of RA No. 9167, proprietors, operators, or lessees of theatres or cinemas are no longer under any obligation to remit to FDCP the amusement taxes on graded films, which should have accrued to the LGUs. Conversely, FDCP no longer had any legal right to receive or demand the same. The Court clarifies that pursuant to the operative fact doctrine, FDCP's right to claim all taxes withheld by proprietors, operators, or lessees of theatres or cinemas, which may otherwise accrue to the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines pursuant to Section 140 of RA No. 7160 during the period the graded film is exhibited, is only recognized from the date of effectivity of RA No. 9167 up until October 15, 2019 (finality of this case).

Hence, in response to the query in the Urgent Motion, SMPHI should no longer remit to FDCP amusement taxes withheld or which were due for remittance after December 10, 2019, specifically for the graded films exhibited during the Metro Manila Film Festival.

As a final point, it must be reiterated that Sections 13 and 14 limited recognition is only premised on the application of the operative fact doctrine. Sections 13 and 14 are void statutory provisions that should not have produced legal effects were it not for the operative fact doctrine. Indeed, to allow FDCP to claim revenue from amusement taxes at the point of sale, although the film is to be exhibited post-October 15, 2019, would

not only defy the express language of Section 14, which caps FDCP's right to revenues from amusement taxes "during the period the graded film is exhibited", it would also deprive the LGUs of revenue that should have, beginning October 15, 2019, rightfully redounded to their benefit.