**GENERAL PRINCIPLES OF TAXATION**

"Time and again, the Court has held that it is a necessary judicial practice that when a court has laid down a principle of law as applicable to a certain facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. Stare decisis et non quieta movere, stand by the decisions and disturb not what is settled. Stare decisis simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of stare decisisis a bar to any attempt to relitigate the same issue." The Court has pronounced in Republic of the Philippines v. Sunlife Assurance Company of Canada " that under the Tax Code although respondent is a cooperative, registration with the CDA is not necessary in order for it to be exempt from the payment of both percentage taxes on insurance premiums, under Section 121; and documentary stamp taxes on policies of insurance or annuities it grants, under Section 199." The CTA observed that the factual circumstances obtaining in Sunlife and the present case are substantially the same. Hence, the CTA based its assailed decision on the doctrine enunciated by the Court in the said case. **COMMISSIONER OF INTERNAL REVENUE vs. THE INSULAR LIFE ASSURANCE CO. LTD., G.R. No. 197192, June 4, 2014, J. Reyes**

For Double taxation to take place, the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and the taxes must be of the same kind or character. Because Section 21 of the Revenue Code of Manila imposed the tax on a person who sold goods and services in the course of trade or business based on a certain percentage of his gross sales or receipts in the preceding calendar year, while Section 15 and Section 17 likewise imposed the tax on a person who sold goods and services in the course of trade or business but only identified such person with particularity, namely, the wholesaler, distributor or dealer (Section 15), and the retailer (Section 17), all the taxes – being imposed on the privilege of doing business in the City of Manila in order to make the taxpayers contribute to the city’s revenues – were imposed on the same subject matter and for the same purpose. **NURSERY CARE CORPORATION; SHOEMART, INC.; STAR APPLIANCE CENTER, INC.; H&B, INC.; SUPPLIES STATION, INC.; and HARDWARE WORKSHOP, INC.** **vs**. **ANTHONY ACEVEDO, in his capacity as THE TREASURER OF MANILA; and THE CITY OF MANILA, G.R. No. 180651, July 30, 2014, J. Bersamin**

The Court has consolidated these 3 petitions as they involve the same parties, similar facts and common questions of law. This is not the first time that Fort Bonifacio Development Corporation (FBDC) has come to this Court about these issues against the very same respondents (CIR), and the Court En Banc has resolved them in two separate, recent cases that are applicable here. It is of course axiomatic that a rule or regulation must bear upon, and be consistent with, the provisions of the enabling statute if such rule or regulation is to be valid. In case of conflict between a statute and an administrative order, the former must prevail. To be valid, an administrative rule or regulation must conform, not contradict, the provisions of the enabling law. An implementing rule or regulation cannot modify, expand, or subtract from the law it is intended to implement. Any rule that is not consistent with the statute itself is null and void. To recapitulate, RR 7-95, insofar as it restricts the definition of "goods" as basis of transitional input tax credit under Section 105 is a nullity. **FORT BONIFACIO DEVELOPMENT CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE and REVENUE DISTRICT OFFICER, REVENUE DISTRICT NO. 44, TAGUIG and PATEROS, BUREAU OF INTERNAL REVENUE, G.R. No. 175707, November 19, 2014, J. Leonardo-De Castro**

The claim of a taxpayer under a tax amnesty shall be allowed when the liability involves the deficiency in payment of income tax. However, it must be disallowed when the taxpayer is assessed on his capacity as a withholding tax agent because the person who earned the taxable income was another person other than the withholding agent. **LG ELECTRONICS PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 165451, December 03, 2014, J. Leonen**

**INCOME TAXATION**

Section 1 of R.A. No. 9337, amending Section 27(c) of R.A. No. 8424, by excluding petitioner from the enumeration of GOCCs exempted from corporate income tax, is valid and constitutional. In addition, we hold that: 1)Petitioner’s tax privilege of paying five percent (5%) franchise tax in lieu of all other taxes with respect to its income from gaming operations, pursuant to P.D. 1869, as amended, is not repealed or amended by Section 1(c) of R.A. No. 9337; 2)Petitioner’s income from gaming operations is subject to the five percent (5%) franchise tax only; and 3)Petitioner’s income from other related services is subject to corporate income tax only. **PHILIPPINE AMUSEMENT AND GAMING CORPORATION vs. THE BUREAU OF INTERNAL REVENUE, G.R. No. 215427, December 10, 2014, J. Peralta**

**DOCUMENTARY STAMP TAX/ CAPITAL GAINS TAX**

HSBC issued SWIFT messages to its clients containing instructions about their accounts. HSBC paid DST on the said messages. However, later on, HSBC filed for tax refund for the DST it paid. CIR denied their claim. On review with the Supreme Court, it held that an electronic message containing instructions to debit their respective local or foreign currency accounts in the Philippines and pay a certain named recipient also residing in the Philippines is not transaction contemplated under Section 181 of the Tax Code. They are also not bills of exchange due to their non-negotiability. Hence, they are not subject to DST. **THE HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED-PHILIPPINE BRANCHES vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 166018 & 167728, June 4, 2014, J. Leonardo-De Castro**

It should be noted that a DST is in the nature of an excise tax because it is imposed upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, or transfer of an obligation, right or property incident thereto. DST is thus imposed on the exercise of these privileges through the execution of specific instruments, independently of the legal status of the transactions giving rise thereto.

The transfer of real properties from SPPC to PSPC is not subject to DST considering that the same was not conveyed to or vested in PSPC by means of any specific deed, instrument or writing. There was no deed of assignment and transfer separately executed by the parties for the conveyance of the real properties. The conveyance of real properties not being embodied in a separate instrument but is incorporated in the merger plan, thus, PSPC is not liable to pay DST.

Notably, R.A. No. 9243, entitled “An Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code of 1997” was enacted and took effect on April 27, 2004, which exempts the transfer of real property of a corporation, which is a party to the merger or consolidation, to another corporation, which is also a party to the merger or consolidation, from the payment of DST. **COMMISSIONER OF INTERNAL REVENUE vs. PILIPINAS SHELL PETROLEUM CORPORATION, G.R. No. 192398, September 29, 2014, J. Villarama, Jr.**

Capital gains is a tax on passive income, it is the seller, not the buyer, who generally would shoulder the tax. As a general rule, therefore, any of the parties to a transaction shall be liable for the full amount of the documentary stamp tax due, unless they agree among themselves on who shall be liable for the same. In this case, with respect to the capital gains tax, we find merit in petitioner’s posture that pursuant to Sections 24(D) and 56(A)(3) of the 1997 National Internal Revenue Code (NIRC), capital gains tax due on the sale of real property is a liability for the account of the seller. It has been held that since capital gains is a tax on passive income, it is the seller, not the buyer, who generally would shoulder the tax. Also, there is no agreement as to the party liable for the documentary stamp tax due on the sale of the land to be expropriated. But while DPWH rejects any liability for the same, this Court must take note of petitioner’s Citizen’s Charter, which functions as a guide for the procedure to be taken by the DPWH in acquiring real property through expropriation under RA 8974. The Citizen’s Charter, issued by DPWH itself on December 4, 2013, explicitly provides that the documentary stamp tax, transfer tax, and registration fee due on the transfer of the title of land in the name of the Republic shall be shouldered by the implementing agency of the DPWH, while the capital gains tax shall be paid by the affected property owner. **REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS vs. ARLENE R. SORIANO, G.R. No. 211666, February 25, 2015, J. Peralta**

**FRANCHISE TAX**

A corporation that has been ordered to pay franchise tax delinquency but which facilities, including its nationwide franchise, had been transferred to the National Transmission Corporation (TRANSCO) by operation of law during the time of the alleged delinquency, cannot be ordered to pay as it is not the proper party subject to the local franchise tax, the transferee being the one liable. **NATIONAL POWER CORPORATION vs. PROVINCIAL GOVERNMENT OF BATAAN, SANGGUNIANG PANLALAWIGAN OF BATAAN, PASTOR B. VICHUACO (IN HIS OFFICIAL CAPACITY AS PROVINCIAL TREASURER OF BATAAN) and THE REGISTER OF DEEDS OF THE PROVINCE OF BATAAN, G.R. No. 180654, April 21, 2014, J. Abad**

**EXCISE TAX**

Petitioner filed the instant petition assailing the decision of the CTA finding PAL exempt from payment of excise tax. Affirming the decision of the CTA the SC ruled that PD 1590 has not been revoked by the NIRC of 1997, as amended. Or to be more precise, the tax privilege of PAL provided in Sec. 13 of PD 1590 has not been revoked by Sec. 131 of the NIRC of 1997, as amended by Sec. 6 of RA 9334. Such being the case, PAL is indeed exempt from payment of excise tax. **COMMISSIONER OF INTERNAL REVENUE and COMMISSIONER OF CUSTOMS vs. PHILIPPINE AIRLINES, INC., G.R. Nos. 212536-37, August 27, 2014, J. Velasco, Jr.**

Stemmed leaf tobacco is subject to the specific tax under Section 141(b). It is a partially prepared tobacco. The removal of the stem or midrib from the leaf tobacco makes the resulting stemmed leaf tobacco a prepared or partially prepared tobacco. Since the Tax Code contained no definition of “partially prepared tobacco,” then the term should be construed in its general, ordinary, and comprehensive sense. However, importation of stemmed leaf tobacco is not included in the exemption under Section 137. The transaction contemplated in Section 137 does not include importation of stemmed leaf tobacco for the reason that the law uses the word “sold” to describe the transaction of transferring the raw materials from one manufacturer to another. Finally, excise taxes are essentially taxes on property because they are levied on certain specified goods or articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, and on goods imported. In this case, there is no double taxation in the prohibited sense despite the fact that they are paying the specific tax on the raw material and on the finished product in which the raw material was a part, because the specific tax is imposed by explicit provisions of the Tax Code on two different articles or products: (1) on the stemmed leaf tobacco; and (2) on cigar or cigarette. **LA SUERTE CIGAR & CIGARETTE FACTORY vs. COURT OF APPEALS AND COMMISSIONER OF INTERNAL REVENUE, G.R. No. 125346, G.R. Nos. 136328-29, G.R. No. 144942, G.R. No. 148605, G.R. No. 158197, G.R. No. 165499, November 11, 2014, J. Leonen**

**FINAL WITHHOLDING TAX**

Should there have been a simultaneous sale to 20 or more lenders/investors, the Poverty Eradication and Alleviation Certificates or the PEACe Bonds are deemed deposit substitutes within the meaning of Sec. 22(Y) of the 1997 NIRC and RCBC Capital would have been obliged to pay the 20% FWT on the interest or discount from the PEACe Bonds. Further, the obligation to withhold the 20% final tax on the corresponding interest from the PEACe Bonds would likewise be required of any lender/investor had the latter turned around and sold said PEACe Bonds, whether in whole or part, simultaneously to 20 or more lenders or investors.

The Court notes, however, that under Section 242 of the 1997 NIRC, interest income received by individuals from longterm deposits or investments with a holding period of not less than five (5) years is exempt from the final tax.

Thus, should the PEACe Bonds be found to be within the coverage of deposit substitutes, the proper procedure was for the Bureau of Treasury to pay the face value of the PEACe Bonds to the bondholders and for the BIR to collect the unpaid FWT directly from RCBC Capital, or any lender or investor if such be the case, as the withholding agents. **BANCO DE ORO, et al. vs. REPUBLIC OF THE PHILIPPINES, et al., G.R. No. 198756, January 13, 2015, J. Leonen**

**VALUE- ADDED TAX**

The 2-year period under Section 229 does not apply to appeals before the CTA in relation to claims for a refund or tax credit for unutilized creditable input VAT. Section 229 pertains to the recovery of taxes erroneously, illegally, or excessively collected. San Roque stressed that “input VAT is not ‘excessively’ collected as understood under Section 229 because, at the time the input VAT is collected, the amount paid is correct and proper.” It is, therefore, Section 112 which applies specifically with regard to claiming a refund or tax credit for unutilized creditable input VAT. **VISAYAS GEOTHERMAL POWER COMPANY vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 197525, June 4, 2014, J. Mendoza**

A claim for tax refund or credit, like a claim for tax refund exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the Atlas doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the Aichi doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional. **MIRAMAR FISH COMPANY, INC., vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 185432, June 4, 2014, J. Perez**

Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at anytime within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C). **SAN ROQUE POWER CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 205543, June 30, 2014, J. Leonardo-De Castro**

CE Luzon filed an action for refund of the VAT. The court ruled that While both claims for refund were filed within the two (2)-year prescriptive period, CE Luzon failed to comply with the 120-day period as it filed its judicial claim in C.T.A. Case No. 6792 four (4) days after the filing of the administrative claim, while in C.T.A. Case No. 6837, the judicial claim was filed a day after the filing of the administrative claim. Proceeding from the aforementioned jurisprudence, only C.T.A. Case No. 6792 should be dismissed on the ground of lack of jurisdiction for being prematurely filed. In contrast, CE Luzon filed its administrative and judicial claims for refund in C.T.A. Case No. 6837 during the period, i.e., from December 10, 2003 to October 6, 2010, when BIR Ruling No. DA-489-03 was in place. As such, the aforementioned rule on equitable estoppel operates in its favor, thereby shielding it from any supposed jurisdictional defect which would have attended the filing of its judicial claim before the expiration of the 120-day period. **COMMISSIONER OF INTERNAL REVENUE vs. CE LUZON GEOTHERMAL POWER COMPANY, INC., G.R. No. 190198, September 17, 2014, J. Perlas- Bernabe**

Its petition for review having been denied by the CTA for being prematurely filed, petitioner filed the instant petition arguing that since it filed its judicial claim after the issuance of BIR Ruling No. DA-489-03, but before the adoption of the Aichi doctrine, it can invoke the said BIR Ruling. The SC ruled that the jurisdiction of the CTA over decisions or inaction of the CIR is only appellate in nature and, thus, necessarily requires the prior filing of an administrative case before the CIR under Section 112. A petition filed prior to the lapse of the 120-day period prescribed under said Section would be premature for violating the doctrine on the exhaustion of administrative remedies. There is, however, an exception to the mandatory and jurisdictional nature of the 120+30 day period. The Court in San Roque noted that BIR Ruling No. DA-489-03, dated December 10, 2003, expressly stated that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review." Hence, taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on December 10, 2003 up to its reversal by this Court in Aichi on October 6, 2010, where it was held that the 120+30 day period was mandatory and jurisdictional. **TAGANITO MINING CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 201195, November 26, 2014, J. Mendoza**

Section 112(D) of the 1997 Tax Code states the time requirements for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the CIR to act on the administrative claim for a refund or credit; and the period of 30 days, which refers to the period for filing a judicial claim with the CTA. It is the 30-day period that is at issue in this case. **ROHM APOLLO SEMICONDUCTOR PHILIPPINES vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 168950, January 14, 2015, CJ Sereno**

This Court has consistently held as fatal the failure to print the word “zero-rated” on the VAT invoices or official receipts in claims for a refund or credit of input VAT on zero-rated sales, even if the claims were made prior to the effectivity of R.A. 9337. As to the sufficiency of a Northern Mindanao’s company invoice to prove the sales of services to NPC, the Court finds that this claim is without sufficient legal basis. A VAT invoice is the seller’s best proof of the sale of goods or services to the buyer, while a VAT receipt is the buyer’s best evidence of the payment of goods or services received from the seller. The requirement of imprinting the word “zero-rated” proceeds from the rule-making authority granted to the Secretary of Finance by the NIRC for the efficient enforcement of the same Tax Code and its amendments. A VAT-registered person whose sales are zero-rated or effectively zero-rated, Section 112(A) specifically provides for a two-year prescriptive period after the close of the taxable quarter when the sales were made within which such taxpayer may apply for the issuance of a tax credit certificate or refund of creditable input tax. **NORTHERN MINDANAO POWER CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 185115, February 18, 2015, CJ. Sereno**

Cargill filed two claims for refund. However, the court ruled that the rule must therefore be that during the period December 10, 2003 (when BIR Ruling No. DA-489-03 was issued) to October 6, 2010 (when the Aichi case was promulgated),taxpayers-claimants need not observe the 120-day period before it could file a judicial claim for refund of excess input VAT before the CTA. Before and after the aforementioned period (i.e., December 10, 2003 to October 6, 2010), the observance of the 120-day period is mandatory and jurisdictional to the filing of such claim. **CARGILL PHILIPPINES, INC vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 203774, March 11, 2015, J. Perlas- Bernabe**

The failure to indicate the words “zero-rated” on the invoices and receipts issued by a taxpayer would result in the denial of the claim for refund or tax credit. The Court has consistently ruled on the denial of a claim for refund or tax credit whenever the word “zero-rated” has been omitted on the invoices or sale receipts of the taxpayer-claimant. Furthermore, the CTA is a highly specialized court dedicated exclusively to the study and consideration of revenue-related problems, in which it has necessarily developed an expertise. Hence, its factual findings, when supported by substantial evidence, will not be disturbed on appeal. **EASTERN TELECOMMUNICATIONS PHILIPPINES, INC., vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 183531, March 25, 2015, J. Reyes**

**LOCAL TAXATION**

The City’s yearly imposition of the 25% surcharge, which was sustained by the trial court and the Court of Appeals, resulted in an aggregate penalty that is way higher than NAPOCOR’s basic tax liabilities. A surcharge regardless of how it is computed is already a deterrent. While it is true that imposing a higher amount may be a more effective deterrent, it cannot be done in violation of law and in such a way as to make it confiscatory. **NATIONAL CORPORATION POWER vs. CITY OF CABANATUAN represented by its CITY MAYOR, HON. HONORATO PEREZ, G.R. No. 177332, October 01, 2014, J. Leonen**

It is already well-settled that although the power to tax is inherent in the State, the same is not true for the LGUs to whom the power must be delegated by Congress and must be exercised within the guidelines and limitations that Congress may provide. In the case at bar, the sanggunian of the municipality or city cannot enact an ordinance imposing business tax on the gross receipts of transportation contractors, persons engaged in the transportation of passengers or freight by hire, and common carriers by air, land, or water, when said sanggunian was already specifically prohibited from doing so.  Any exception to the express prohibition under Section 133(j) of the LGC should be just as specific and unambiguous. Section 21(B) of the Manila Revenue Code, as amended, is null and void for being beyond the power of the City of Manila and its public officials to enact, approve, and implement under the LGC. [**City of Manila, Hon. Alfredo S. Lim, as Mayor of the City of Manila, et al. vs. Hon. Angel Valera Colet, as Presiding Judge, Regional Trial Court of Manila (Br. 43), et al.,**](http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/december2014/120051.pdf) **G.R. No. 120051, December 10, 2014, J. Leonardo-De Castro**

Setting the rate of the additional levy for the special education fund at less than 1% is within the taxing power of local government units. It is consistent with the guiding constitutional principle of local autonomy. It was well within the power of the Sangguniang Panlalawigan of Palawan to enact an ordinance providing for additional levy on real property tax for the special education fund at the rate of 0.5% rather than at 1%. **LUCENA D. DEMAALA vs. COMMISSION ON AUDIT, REPRESENTED BY ITS CHAIRPERSON COMMISSIONER MA. GRACIA M. PULIDO TAN, G.R. No. 199752, February 17, 2015, J. Leonen**

**REAL PROPERTY TAX**

Being an instrumentality of the national government, the PEZA cannot be taxed by local government units. Although a body corporate vested with some corporate powers, the PEZA is not a government-owned or controlled corporation taxable for real property taxes. The PEZA’s predecessor, the EPZA, was declared non-profit in character with all its revenues devoted for its development, improvement, and maintenance.  Consistent with this non-profit character, the EPZA was explicitly declared exempt from real property taxes under its charter. Even the PEZA’s lands and buildings whose beneficial use have been granted to other persons may not be taxed with real property taxes.  The PEZA may only lease its lands and buildings to PEZA-registered economic zone enterprises and entities. These PEZA-registered enterprises and entities, which operate within economic zones, are not subject to real property taxes.  **CITY OF LAPU-LAPU** **vs.** **PHILIPPINE ECONOMIC ZONE AUTHORITY; PROVINCE OF BATAAN, REPRESENTED BY GOVERNOR ENRIQUE T. GARCIA, JR., AND EMERLINDA S. TALENTO, IN HER CAPACITY AS PROVINCIAL TREASURER OF BATAAN** **vs.** **PHILIPPINE ECONOMIC ZONE AUTHORITY, G.R. No. 184203**, **G.R. NO. 187583**, **November 26, 2014, J. Leonen**

**TARIFF AND CUSTOMS CODE**

NFSC japan based company who sells raw sugar. However, NFSC was charged by violation of the Joint Order by the Commissioner Customs. The court ruled that NFSC did not violate the order and such was in good faith. The Court ruled that the onus probandi to establish the existence of fraud is lodged with the Bureau of Customs which ordered the forfeiture of the imported goods. Fraud is never presumed. It must be proved. Failure of proof of fraud is a bar to forfeiture. The reason is that forfeitures are not favored in law and equity. The fraud contemplated by law must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right. Absent fraud, the Bureau of Customs cannot forfeit the shipment in its favor. **THE COMMISSIONER OF CUSTOMS & THE DISTRICT COLLECTOR OF CUSTOMS FOR THE PORT OF ILOILO vs. NEW FRONTIER SUGAR CORPORATION, G.R. No. 163055, June 11, 2014, J. Perez**

**TAX REMEDIES**

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| **ASSESSMENT** |

Spouses Manly were charged with tax evasion due to their under declaration of income in their ITR. The investigation of the revenue officers shows that the under declaration exceeded 30% of the declared income of the spouses. The Spouses Manly opposed the said complaint due to the lack of deficiency tax assessment. In this case, the Court ruled that tax evasion is deemed complete when the violator has knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. Corollarily, an assessment of the tax deficiency is not required in a criminal prosecution for tax evasion. However, in Commissioner of Internal Revenue v. Court of Appeals, we clarified that although a deficiency assessment is not necessary, the fact that a tax is due must first be proved before one can be prosecuted for tax evasion. **BUREAU OF INTERNAL REVENUE, as represented by the COMMISSIONER OF INTERNAL REVENUE vs. COURT OF APPEALS, SPOUSES ANTONIO VILLAN MANLY, and RUBY ONG MANLY, G.R. No. 197590, November 24, 2014, J. Del Castillo**

The notice requirement under Section 228 of the NIRC is substantially complied with whenever the taxpayer had been fully informed in writing of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an effective protest. **SAMAR-I ELECTRIC COOPERATIVE *vs.* COMMISSIONER OF INTERNAL REVENUE, G.R. No. 193100, December 10, 2014, J. Villarama, Jr.**

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| **PRESCRIPTIVE PERIOD OF ASSESSMENT** |

It is clear that the assailed deficiency tax assessment for the EWT in 1994 disregarded the provisions of Section 228 of the [NIRC], as amended, as well as Section 3.1.4 of the Revenue Regulations No. 12-99 by not providing the legal and factual bases of the assessment. Hence, the formal letter of demand and the notice of assessment issued relative thereto are void.

The statute of limitations on assessment and collection of national internal taxes was shortened from five (5) years to three (3) years by virtue of Batas Pambansa Blg. 700. Thus, [Petitioner CIR] has three (3) years from the date of actual filing of the tax return to assess a national internal revenue tax or to commence court proceedings for the collection thereof without an assessment. However, when it validly issues an assessment within the three (3) year period, it has another three (3) years within which to collect the tax due by distraint, levy, or court proceeding. **COMMISSIONER OF INTERNAL REVENUE vs. UNITED SALVAGE AND TOWAGE (PHILS.), INC., G.R. No. 197515, July 2, 2014, J. Peralta**

The assessment of the tax is deemed made and the three-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer. Thus, failure of the BIR to file a warrant of distraint or serve a levy on taxpayer's properties nor file collection case within the three-year period is fatal. Also, the attempt of the BIR to collect the tax through its Answer with a demand for the taxpayer to pay the assessed DST in the CTA  is not deemed compliance with the Tax Code. **CHINA BANKING CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 172509, February 04, 2015, C.J. Sereno**

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| **ASSESSMENT PROCESS** |

Petitioner questions the decision of the CTA holding that its right to assess respondent of its tax deficiencies for the taxable year 1999 has already prescribed for its failure to send the Formal Assessment Notice to respondent’s new address despite respondent’s failure to give petitioner a formal written notice of its change of address. The SC ruled that despite the absence of a formal written notice of respondent's change of address, the fact remains that petitioner became aware of respondent's new address as shown by the documents replete in its records. As a consequence, the running of the three-year period to assess respondent was not suspended and has already prescribed. **COMMISSIONER OF INTERNAL REVENUE vs. BASF COATING + INKS PHILS., INC., G.R. No. 198677, November 26, 2014, J. Peralta**

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| **COMMISSIONER’S ACTION EQUIVALENT TO DENIAL OF PROTEST** |

Under Section 112(C) of the NIRC, in case of failure on the part of the CIR to act on the application, the taxpayer affected may, within 30 days after the expiration of the 120-day period, appeal the unacted claim with the CTA. If the Commissioner fails to decide within “a specific period” required by law, such “inaction shall be deemed a denial” of the application for tax refund or credit. In this case, when TSC filed its administrative claim on 21 December 2005, the CIR had a period of 120 days, or until 20 April 2006, to act on the claim. However, the CIR failed to act on TSC’s claim within this 120-day period. Thus, TSC filed its petition for review with the CTA on 24 April 2006 or within 30 days after the expiration of the 120-day period. Hence, the judicial claim was not prematurely filed. **COMMISSIONER OF INTERNAL REVENUE vs. TEAM SUAL CORPORATION, G.R. No. 205055, July 18, 2014, J. Carpio**

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| **COLLECTION** |

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| **PRESCRIPTIVE PERIOD** |

There is a distinction between a request for reconsideration and a request for reinvestigation. A reinvestigation which entails the reception and evaluation of additional evidence will take more time than a reconsideration of a tax assessment, which will be limited to the evidence already at hand; this justifies why the reinvestigation can suspend the running of the statute of limitations on collection of the assessed tax, while the reconsideration cannot.

Hence, the period for BIR to collect the deficiency DST already prescribed as the protest letter of BPI was a request for reconsideration, which did not suspend the running of the prescriptive period to collect. **BANK OF THE PHILIPPINE ISLANDS vs.** **COMMISSIONER OF INTERNAL REVENUE, G.R. No. 181836, July 9, 2014, J. CARPIO**

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| **TAX REFUND/CREDIT** |

There are three essential conditions for the grant of a claim for refund of creditable withholding income tax, to wit: (1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax; (2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and (3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom. **COMMISSIONER OF INTERNAL REVENUE vs. TEAM [PHILIPPINES] OPERATIONS CORPORATION [formerly MIRANT (PHILS) OPERATIONS CORPORATION], G.R. No. 179260, April 2, 2014, J. Perez**

Under the first option, any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.On the other hand, the second option works by applying the refundable amount against the tax liabilities of the petitioner in the succeeding taxable years. Hence, instead of moving for the issuance of a writ of execution relative to the aforesaid decision, petitioner should have merely requested for the approval of the City of Manila in implementing the tax refund or tax credit, whichever is appropriate. In other words, no writ was necessary to cause the execution thereof, since the implementation of the tax refund will effectively be a return of funds by the City of Manila in favor of petitioner while a tax credit will merely serve as a deduction of petitioner’s tax liabilities in the future. Accordingly, while we find merit in petitioner’s contention that there are two (2) ways by which respondents may satisfy the judgment of the RTC-Manila: (1) to pay the petitioner the amount of Php3,036,887.33 as tax refund; or (2) to issue a tax credit certificate in the same amount which may be credited by petitioner from its future tax liabilities due to the respondent City of Manila, the issuance of the Writ of Execution relative thereto was superfluous, because the judgment of the RTC-Manila can neither be considered a judgment for a specific sum of money susceptible of execution by levy or garnishment under Section 9,Rule 39 of the Rules of Court nor a special judgment under Section 11,Rule 39 thereof. **COCA-COLA BOTTLER’S PHILIPPINES, INC. vs. CITY OF MANILA, ET AL., G.R. No. 197561, April 7, 2014, J. Peralta**

Tax refunds are based on the general premise that taxes have either been erroneously or excessively paid. Though the Tax Code recognizes the right of taxpayers to request the return of such excess/erroneous payments from the government, they must do so within a prescribed period. Further, "a taxpayer must prove not only his entitlement to a refund, but also his compliance with the procedural due process as non-observance of the prescriptive periods within which to file the administrative and the judicial claims would result in the denial of his claim." In the case at bar, MERALCO had ample opportunity to verify on the tax-exempt status of NORD/LB for purposes of claiming tax refund. Nevertheless, it only filed its claim for tax refund ten (10) months from the issuance of the aforesaid Ruling. **COMMISSIONER OF INTERNAL REVENUE vs.** **MANILA ELECTRIC COMPANY (MERALCO), G.R. No. 181459, June 9, 2014, J. Peralta**

The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates.In Banco Filipino Savings and Mortgage Bank v. Court of Appeals,this court declared that a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes. In fine, the document which may be accepted as evidence of the third condition, that is, the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid. **COMMISSIONER OF INTERNAL REVENUE vs. PHILIPPINE NATIONAL BANK, G.R. No. 180290 September 29, 2014, J. Leonen**

The requirements for entitlement of a corporate taxpayer for a refund or the issuance of tax credit certificate involving excess withholding taxes are as follows: 1) That the claim for refund was filed within the two-year reglementary period pursuant to Sec. 229 of the NIRC; 2) When it is shown on the ITR that the income payment received is being declared part of the taxpayer’s gross income; and 3) When the fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and income tax withheld from that amount.

Relevant to the instant case is requirements numbers 2 and 3, which were duly proved by TPEC, as found by the courts a quo.

With regard to the second requirement, it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties. Consequently, the Court adopts the findings of the CTA in Division, which the CTA En Banc concurred with. **REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE COMMISSIONER OF INTERNAL REVENUE vs. TEAM (PHILS.) ENERGY CORPORATION (FORMERLY MIRANT PHILS ENERGY CORPORATION), G.R. No. 188016, January 14, 2015, J. Bersamin**

Those who claim for refund must not only prove its entitlement to the excess credits, but likewise must prove that no carry-over has been made in cases where refund is sought. However, proving that no carry-over has been made does not absolutely require the presentation of the quarterly ITRs. With Winebrenner & Inigo Insurance Brokers, Inc. having complied with the requirements for refund, and without the CIR showing contrary evidence other than its bare assertion of the absence of the quarterly ITRs, copies of which are easily verifiable by its very own records, the burden of proof of establishing the propriety of the claim for refund has been sufficiently discharged. Hence, the grant of refund is proper. **WINEBRENNER & IÑIGO INSURANCE BROKERS, INC.** **vs**. **COMMISSIONER OF INTERNAL REVENUE, G.R. No. 206526, January 28, 2015,** **J. Mendoza**

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| **STATUTORY BASIS FOR TAX REFUND UNDER THE TAX CODE** |

**Prescriptive Period for Recovery of Tax**

As a general rule, compliance with the 120-day period stated in Section 112(D) of NIRC is mandatory. However, a VAT-registered taxpayer claiming refund for input VAT may not wait for the lapse of the 120-day period when the claim is filed between December 10, 2003 (the time of promulgation of BIR Ruling No. DA-489-03) to October 6, 2010 (the time of promulgation of the Aichi case). **TAGANITO MINING CORPORATION** **vs.** **COMMISSIONER OF INTERNAL REVENUE**, **G.R. No. 197591, June 18, 2014, J. Perlas-Bernabe**

When a taxpayer seeking refund or tax credit under VAT files a judicial claim beyond the 30-day period provided by the law, the same shall be dismissed for lack of jurisdiction. A taxpayer seeking refund or tax credit under VAT must strictly follow the “120+30” rule to be entitled thereof, otherwise, the claim shall be barred. In the present case, the respondent filed its administrative claim on May 30, 2003. The petitioner CIR therefore had only until September 27, 2003 to decide the claim, and following the petitioner’s inaction, the respondent had until October 27, 2003, the last day of the 30-day period to file its judicial claim. However, the respondent filed its judicial claim with the CTA only on March 31, 2004 or 155 days late. Clearly, the respondent's judicial claim has prescribed and the CTA did not acquire jurisdiction over the claim. **COMMISSIONER OF INTERNAL REVENUE vs. MINDANAO II GEOTHERMAL PARTNERSHIP, G.R. No. 189440, June 18, 2014, J. Villarama, Jr.**

The Atlas doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Sec. 229, should be effective only from its promulgation on June 8, 2007 until its abandonment on [September 12, 2008] in Mirant. The Atlas doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT. The Mirant ruling, which abandoned the Atlas doctrine, adopted the verba legis rule, thus applying Sec. 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT. Since July 23, 2008 falls within the window of effectivity of Atlas, CBK’s administrative claim for the second quarter of 2006 was filed on time considering that it filed the original VAT return for the second quarter on July 25, 2006. **CBK POWER COMPANY LIMITED vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 202066 (consolidated), September 30, 2014, J. Leonen**

Section 112 (D) (now renumbered as Section 112[C]) of RA 8424, which is explicit on the mandatory and jurisdictional nature of the 120+30-day period, was already effective on January 1, 1998. That being said, and notwithstanding the fact that respondent's administrative claim had been timely filed, the Court is nonetheless constrained to deny the averred tax refund or credit, as its judicial claim therefore was filed beyond the 120+30-day period, and, hence - as earlier stated - deemed to be filed out of time. As the records would show, the CIR had 120 days from the filing of the administrative claim on July 21, 1999, or until November 18, 1999, to decide on respondent's application. Since the CIR did not act at all, respondent had until December 18, 1999, the last day of the 30-day period, to file its judicial claim. Respondent filed its petition for review with the CTA only on January 9, 2001 and, thus, was one (1) year and 22 days late. **COMMISSIONER OF INTERNAL REVENUE *vs.* BURMEISTER AND WAIN SCANDINAVIAN CONTRACTOR MINDANAO, INC., G.R. No. 190021, October 22, 2014, J. Perlas-Bernabe**

Aichi filed an application for tax credit/refund with the BIR on March 29, 2005. On 31 March 2005, respondent filed judicial claim before the CTA. BIR contends that Aichi failed to observe the 120-day reglementary period provided by NIRC for the CIR to act on the claim. In this issue the Supreme court ruled that the Court agree with petitioner that the judicial claim was prematurely filed on 31 March 2005, since respondent failed to observe the mandatory 120day waiting period to give the CIR an opportunity to act on the administrative claim.  However, the Court ruled in San Roque that BIR Ruling No. DA-489-03 allowed the premature filing of a judicial claim, which means non-exhaustion of the 120-day period for the Commissioner to act on an administrative claim. All taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional. Therefore, respondent's filing of the judicial claim barely two days after the administrative claim is acceptable, as it fell within the period during which the Court recognized the validity of BIR Ruling No. DA-489-03. **COMMISSIONER OF INTERNAL REVENUE vs. AICHI FORGING COMPANY OF ASIA, INC., G.R. No. 183421, October 22, 2014, CJ Sereno**

As an exception to the mandatory and jurisdictional nature of the 120+ 30 day period, judicial claims filed between December 10, 2003 or from the issuance of BIR Ruling No. DA-489-03, up to October 6, 2010 or the reversal of the ruling in Aichi, need not wait for the lapse of the 120+ 30 day period in consonance with the principle of equitable estoppel. In the present case, Taganito filed its judicial claim with the CTA on February 19, 2004, clearly within the period of exception of December I 0, 2003 to October 6, 20 I 0. Its judicial claim was, therefore, not prematurely filed and should not have been dismissed by the CTA En Banc. **TAGANITO MINING CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 198076, November 19, 2014, J. Mendoza**

As a general rule, a taxpayer-claimant needs to wait for the expiration of the one hundred twenty (120)-day period before it may be considered as "inaction" on the part of the Commissioner of Internal Revenue (CIR). Thereafter, the taxpayer-claimant is given only a limited period of thirty (30) days from said expiration to file its corresponding judicial claim with the CTA. However, with the exception of claims made during the effectivity of BIR Ruling No. DA-489-03 (from 10 December 2003 to 5 October 2010), AT&T Communications has indeed properly and timely filed its judicial claim covering the Second, Third, and Fourth Quarters of taxable year 2003, within the bounds of the law and existing jurisprudence. The VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Thus, the High Court concluded that VAT invoice and VAT receipt should not be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used interchangeably. **AT&T COMMUNICATIONS SERVICES PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 185969, November 19, 2014, J. Perez**

In 1993, the BIR issued against respondent assessment notice for deficiency income tax for 1989. A waiver of the defense of prescription was executed but it was not signed by the Commissioner or any of his authorized representatives and did not state the date of acceptance. The Court held that the Commissioner’s right to collect has prescribed. The period to assess and collect deficiency taxes may be extended only upon a written agreement between the Commissioner and the taxpayer prior to the expiration of the three-year prescribed period. The BIR cannot claim the benefits of extending the period when it was the BIR’s inaction which is the proximate cause of the defects of the waiver. **COMMISSIONER OF INTERNAL REVENUE vs. THE STANLEY WORKS SALES (PHILS.), INCORPORATED, G.R. No. 187589, December 03, 2014, CJ. Sereno**

CBK Power filed its judicial claim for refund/credit just 20 days after it filed its administrative claim. CTA En Banc dismissed the case for lack of jurisdiction as it failed to observe the mandatory and jurisdictional 120-day period provided under Section 112 (D) of the National Internal Revenue Code. The Court found that the CTA En Banc was incorrect. The Court recognized an exception in which the existing BIR Ruling applicable to this case in which it held that taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief. **CBK POWER COMPANY LIMITED vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 198928, December 03, 2014, J. Perlas-Bernabe**

In Reconciling the pronouncements in the Aichi and San Roque cases, the rule must therefore be that during the period December 10, 2003 (when BIR Ruling No. DA-489-03 was issued) to October 6, 2010 (when the Aichi case was promulgated), taxpayers-claimants need not observe the 120-day period before it could file a judicial claim for refund of excess input VAT before the CTA. Before and after the aforementioned period (i.e., December 10, 2003 to October 6, 2010), the observance of the 120-day period is mandatory and jurisdictional to the filing of such claim. **PANAY POWER CORPORATION (Formerly Avon River Power Holdings Corp.) vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 203351, January 21, 2015, J. Perlas-Bernabe**

Gotesco’s relentless refusal to transfer registered ownership of the Ever Ortigas Commercial Complex to PNB constitutes proof enough that Gotesco will not do any act inconsistent with its claim of ownership over the foreclosed asset, including claiming the creditable tax imposed on the foreclosure sale as tax credit and utilizing such amount to offset its tax liabilities. To do such would run roughshod over Gotesco’s firm stance that PNB’s foreclosure on the mortgage was invalid and that it remained the owner of the subject property. While perhaps it may be necessary to prove that the taxpayer did not use the claimed creditable withholding tax to pay for his/its tax liabilities, there is no basis in law or jurisprudence to say that BIR Form No. 2307 is the only evidence that may be adduced to prove such non-use. **PHILIPPINE NATIONAL BANK vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 206019, March 18, 2015, J. Velasco Jr.**

For failure of Silicon to comply with the provisions of Section 112(C) of the NIRC, its judicial claims for tax refund or credit should have been dismissed by the CTA for lack of jurisdiction. The Court stresses that the 120/30-day prescriptive periods are mandatory and jurisdictional, and are not mere technical requirements. **SILICON PHILIPPINES, INC. (FORMERLY INTEL PHILIPPINES MANUFACTURING, INC.) vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 173241, March 25, 2015, J. Leonardo-De Castro**

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| **GOVERNMENT REMEDIES** |

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| **ADMINISTRATIVE REMEDIES** |

Agriex Co. foreign corporation alleges that the Bureau of Customs exclusive original jurisdiction over actual and physical possession of foreign shipments and thus RTC has no jurisdiction over such. The court ruled that it is well settled that the Collector of Customs has exclusive jurisdiction over seizure and forfeiture proceedings, and regular courts cannot interfere with his exercise thereof or stifle or put it at naught. The Collector of Customs sitting in seizure and forfeiture proceedings has exclusive jurisdiction to hear and determine all questions touching on the seizure and forfeiture of dutiable goods. Regional trial courts are devoid of any competence to pass upon the validity or regularity of seizure and forfeiture proceedings conducted by the BOC and to enjoin or otherwise interfere with these proceedings. Regional trial courts are precluded from assuming cognizance over such matters even through petitions for certiorari, prohibition or mandamus. **AGRIEX CO., LTD**, **vs**. **HON. TITUS B. VILLANUEVA, Commissioner, Bureau of Customs (now replaced by HON. ANTONIO M. BERNARDO), and HON. BILLY C. BIBIT, Collector of Customs, Port of Subic (now replaced by HON. EMELITO VILLARUZ),** **G.R. No. 158150, September 10, 2014, J. Bersamin**

There could be no presumption of the regularity of any administrative action which resulted in depriving a taxpayer of his property through a tax sale. This is an exception to the rule that administrative proceedings are presumed to be regular. This jurisprudential tenor clearly demonstrates that the burden to prove compliance with the validity of the proceedings leading up to the tax delinquency sale is incumbent upon the buyer or the winning bidder, which, in this case, is Agojo. This is premised on the rule that a sale of land for tax delinquency is in derogation of property and due process rights of the registered owner. In order to be valid, the steps required by law must be strictly followed. Agojo must be reminded that the requirements for a tax delinquency sale under the LGC are mandatory. Strict adherence to the statutes governing tax sales is imperative not only for the protection of the taxpayers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce the laws. **CORPORATE STRATEGIES DEVELOPMENT CORP. and RAFAEL R. PRIETO vs. NORMAN A. AGOJO, G.R. No. 208740, November 19, 2014, J. Mendoza**

CBK Power raised the lone issue of whether or not an ITAD ruling is required before it can avail of the preferential tax rate. On the other hand, the Commissioner claimed that CBK Power failed to exhaust administrative remedies when it filed its petitions before the CTA First Division, and that said petitions were not filed within the two-year prescriptive period for initiating judicial claims for refund. The Court categorically held that the BIR should not impose additional requirements that would negate the availment of the reliefs provided for under international agreements, especially since said tax treaties do not provide for any prerequisite at all for the availment of the benefits under said agreements.  Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim, or that the taxpayer shall not go to court before he is notified of the Collector’s action. **CBK POWER COMPANY LIMITED vs. COMMISSIONER INTERNAL REVENUE, G.R. Nos. 193383-84, January 14, 2015, J. Perlas-Bernabe**

**JUDICIAL REMEDIES**

The CIR categorically admitted that it failed to formally offer the Preliminary Assessment Notices as evidence. Worse, it advanced no justifiable reason for such fatal omission. Instead, it merely alleged that the existence and due execution of the Preliminary Assessment Notices were duly tackled by CIR’s witnesses. We hold that such is not sufficient to seek exception from the general rule requiring a formal offer of evidence, since no evidence of positive identification of such Preliminary Assessment Notices by petitioner’s witnesses was presented. **COMMISSIONER OF INTERNAL REVENUE vs. UNITED SALVAGE AND TOWAGE (PHILS.), INC., G.R. No. 197515, July 2, 2014, J. Peralta**

The Commissioner of Customs contends that the CTA should not take cognizance of the case because of the lapse of the 30-day period within which to appeal, arguing that on November 25, 1998 URC had already received the BoC’s final assessment demanding payment of the amount due within 10 days, but filed the petition only on July 30, 1999. The Court ruled against the Commissioner of Customs. The reckoning date was on date that the Commissioner of Customs denied the protest of Oilink, July 12, 1999.

The Commissioner of Customs posits that only when the ensuing decision of the Collector and then the adverse decision of the Commissioner of Customs would it be proper for Oilink to seek judicial relief from the CTA. The Court ruled that the principle of non-exhaustion of administrative remedies was not an iron-clad rule because there were instances in which the immediate resort to judicial action was proper. As the records indicate, the Commissioner of Customs already decided to deny the protest by Oilink and stressed then that the demand to pay was final. In that instance, the exhaustion of administrative remedies would have been an exercise in futility because it was already the Commissioner of Customs demanding the payment of the deficiency taxes and duties. **COMMISSIONER OF CUSTOMS vs. OILINK INTERNATIONAL CORPORATION, G.R. No. 161759, July 2, 2014, J. Bersamin**

The respondents allege that the Court of Tax Appeals has no jurisdiction to make an assessment in cases of an administrative claim for tax refunds. The Supreme Court ruled that in an action for the refund of taxes allegedly erroneously paid, the Court of Tax Appeals may determine whether there are taxes that should have been paid in lieu of the taxes paid. Determining the proper category of tax that should have been paid is not an assessment. It is incidental to determining whether there should be a refund. **SMI-ED PHILIPPINES TECHNOLOGY, INC.** **vs**. **COMMISSIONER OF INTERNAL REVENUE**, **G.R. No. 175410, November 12, 2014, J. Leonen**

NAPOCOR filed a petition for declaratory relief based on the assessments of real property taxes the Municipality of Navotas imposed. It then questioned the legality of the tax imposition. On appeal, the CTA En Banc ruled that the RTC has jurisdiction over the case even though administrative remedies were not exhausted. The Court clarified that although there are instances were resort to judicial action is allowed, it is not so in the case at hand.

The fact that a separate chapter is devoted to the treatment of real property taxes, and a distinct appeal procedure is provided therefor does not justify an inference that Section 7(a)(3) of R.A. 9282 pertains only to local taxes other than real property taxes. Rather, the term "local taxes" in the aforementioned provision should be considered in its general and comprehensive sense, which embraces real property tax assessments, in line with the precept Generalia verba sunt generaliter inteligencia—what is generally spoken shall be generally understood. Based on the foregoing, the general meaning of "local taxes" should be adopted in relation to Paragraph (a)(3) of Section 7 of R.A. 9282, which necessarily includes real property taxes.

In fine, if a taxpayer is not satisfied with the decision of the CBAA or the RTC, as the case may be, the taxpayer may file, within thirty (30) days from receipt of the assailed decision, a petition for review with the CTA pursuant to Section 7(a) of R.A. 9282. In cases where the question involves the amount of the tax or the correctness thereof, the appeal will be pursuant to Section 7(a)(5) of R.A. 9282. When the appeal comes from a judicial remedy which questions the authority of the local government to impose the tax, Section 7(a)(3) of R.A. 9282 applies. Thereafter, such decision, ruling or resolution may be further reviewed by the CT A En Banc pursuant to Section 2, Rule 4 of the Revised Rules of the CTA. **NATIONAL POWER CORPORATION vs. MUNICIPAL GOVERNMENT OF NAVOTAS, SANGGUNIANG BAYAN OF NAVOTAS AND MANUEL T. ENRIQUEZ, in his capacity as Municipal Treasurer of Navotas, G.R. No. 192300, November 24, 2014, J. Peralta**

Philamlife sold its shares through a public bidding. However, the selling price was below the book value of the shares. Hence, the BIR imposed donor’s tax on the price difference. Philamlife appealed to the Secretary of Finance. Due to the adverse ruling, Philamlife appealed with the CA. CA alleged that it does not have jurisdiction for jurisdiction lies with the CTA. The Court ruled that, the CTA can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based. **THE PHILIPPINE AMERICAN LIFE AND GENERAL INSURANCE COMPANY vs. SECRETARY OF FINANCE and COMMISSIONER OF INTERNAL REVENUE, G.R. No. 210987, November 24, 2014, J. Velasco Jr.**

In case of an illegal assessment where the assessment was issued without authority, exhaustion of administrative remedies is not necessary and the taxpayer may directly resort to judicial action. The taxpayer shall file a complaint for injunction before the Regional Trial Court to enjoin the local government unit from collecting real property taxes. The party unsatisfied with the decision of the Regional Trial Court shall file an appeal, not a petition for certiorari, before the Court of Tax Appeals, the complaint being a local tax case decided by the Regional Trial Court. The appeal shall be filed within fifteen (15) days from notice of the trial court’s decision. In this case, the petition for injunction filed before the Regional Trial Court of Pasay was a local tax case originally decided by the trial court in its original jurisdiction.  Since the PEZA assailed a judgment, not an interlocutory order, of the Regional Trial Court, the PEZA’s proper remedy was an appeal to the Court of Tax Appeals. **CITY OF LAPU-LAPU** **vs.** **PHILIPPINE ECONOMIC ZONE AUTHORITY; PROVINCE OF BATAAN, REPRESENTED BY GOVERNOR ENRIQUE T. GARCIA, JR., AND EMERLINDA S. TALENTO, IN HER CAPACITY AS PROVINCIAL TREASURER OF BATAAN** **vs.** **PHILIPPINE ECONOMIC ZONE AUTHORITY, G.R. No. 184203**, **G.R. NO. 187583**, **November 26, 2014, J. Leonen**

A VAT-registered taxpayer need not wait for the lapse of the 120-day period to file a judicial claim for unutilized VAT inputs before the CTA when the claim was filed on December 10, 2003 up to October 6, 2010. If the claim is filed within those dates, the same shall not be considered prematurely filed. In this case, records disclose that petitioner filed its administrative and judicial claims for refund/credit of its input VAT in CTA Case No. 8082 on December 28, 2009 and March 30, 2010, respectively, or during the period when BIR Ruling No. DA-489-03 was in place, i.e., from December 10, 2003 to October 6, 2010. As such, it need not wait for the expiration of the 120-day period before filing its judicial claim before the CTA, and hence, is deemed timely filed. In view of the foregoing, both the CTA Division and the CTA En Banc erred in dismissing outright petitioner’s claim on the ground of prematurity. **MINDANAO II GEOTHERMAL PARTNERSHIP vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 204745, December 08, 2014, J. Perlas-Bernabe**

The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate.  In case of failure on the part of the CIR to act on the application within the 120-day period prescribed by law, the taxpayer has only has 30 days after the expiration of the 120-day period to appeal the unacted claim with the CTA.  Since petitioner’s judicial claim was filed before the CTA only way beyond the mandatory 120+30 days to seek judicial recourse, such non-compliance with the mandatory period of 30 days is fatal to its refund claim on the ground of prescription.  Consequently, the CTA has no jurisdiction over its judicial appeal considering that its Petition for Review was filed out of time. Consequently, the claim for refund must be denied. **NIPPON EXPRESS (PHILIPPINES) CORP. vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 185666, February 04, 2015, J. Perez**