INSIGHTS

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What's Inside…

INSIGHTS is a monthly publication of BDB LAW to inform, update and provide perspectives to our clients and readers on significant tax-related court decisions and regulatory issuances (*includes BIR, SEC, BSP and various government agencies*).

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COURT OF TAX APPEALS

DECISION HIGHLIGHTS

UPDATES

- The significance of due date and demand for payment within a prescribed period in the Formal Letter of demand (FLD) cannot be overemphasized. The issuance of a valid FLD is a substantive prerequisite for collection of taxes. *(Apo International Marketing Corporation vs. Commissioner of Internal Revenue, CTA CASE NO. 9071, January 7, 2020)*

  Note: A definite date of payment must be stated in the FAN. It cannot just be inferred from how the BIR computes interest. This is well settled in the Medicard case.

- Similar to when no due date is indicated in the Formal Assessment Notice (FAN), two (2) due dates indicated in the FAN negates the BIR's demand for payment of the deficiency tax liabilities. *(Benchmark Marketing Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9296 dated 2 January 2020)*

- Payment of docket fees to perfect the appeal from Collector of Customs to Commissioner of Customs is mandatory and jurisdictional. *(Lynard Allan Bigcas vs. Commissioner of Customs, Manila, CTA Case No. 8717 dated 16 January 2020)*

  Note: When a taxpayer appeals to the CIR, no filing fee is required. But an appeal to the Commissioner of the BOC, a filing fee is mandatory. Failure to file the same has the effect of making a BOC assessment final.

- Issuance of Preliminary Collection Letter (PCL) and Final Notice Before Seizure (FNBS) is tantamount to denial of protest. *(Ten-Four Readymix Concrete, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10081, January 16, 2020).*

  Note: The BIR will no longer be issuing PCL and FNBS. It will immediately issue a Warrant of Distraint and Levy (RMO 35-2019 on July 18, 2019). After receipt of a Warrant of Distraint and Levy, a taxpayer must expect that notice of garnishment of his bank accounts will follow.

- Taxpayers must file the judicial claim for refund of excess input VAT within 30 days from the lapse of the 120-day waiting period and there was inaction on the part of the CIR. *(Carmen Copper Corporation v. Commissioner of Internal Revenue, CTA EB No. 1846 (CTA Case No. 8834), January 2, 2020)*

  Note: The new period within which the BIR must decide a claim for VAT refund is 90 days. But the Tax Code has deleted the provision which states that inaction is tantamount to a denial of the claim for refund which would trigger the 30-day period for the taxpayer to file an appeal to the CTA. What if after 90 days and the BIR has not acted on you claim for VAT refund? What is your recourse?

- A refund of input taxes shall be granted only if the goods and services are directly attributable to the zero-rated sales. *(Commissioner of Internal Revenue vs. Coral Bay Nickel, CTA EB No. 1735 & 1737)*

  Note: The CTA espouses a new doctrine that only input taxes directly attributable to zero-rated sales may be claimed for refund. In other words, even if a taxpayer has purely zero-rated sales, if the input VAT cannot be classified as a direct cost, it is not refundable. For example, if a taxpayer incurred input VAT on its purchase of a pen and a paper, the said input VAT is not refundable since it is not directly attributable to the taxpayer's main line of business of exporting coal.

The significance of due date and demand for payment within a prescribed period in the Formal Letter of demand (FLD) and Formal Assessment Notice cannot be overemphasized. The issuance of a valid FAN is a substantive prerequisite for collection of taxes.

Taxpayer alleges that the FAN sent to it by the BIR is not a valid assessment. According to the taxpayer, it received on November 15, 2013, the FAN, all of which are undated and do not have a demand for payment, for alleged deficiency tax for the taxable year 2010.

The CTA ruled that to be liable for deficiency assessment, there must be a valid assessment. In this case, the FLD and FAN sent to the taxpayer are invalid assessments based on the absence of due date and demand for payment within a prescribed period. The significance of due date and demand for payment within a prescribed period in the FAN cannot be overemphasized. The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. A final assessment is a notice to the effect that the amount therein stated is due as tax and a demand for payment thereof. This demand for payment signals the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies. Thus, it must be sent to and received by the taxpayer and must demand payment of the taxes described therein within a specific period.

Here, the FAN is undated and do not contain a demand for payment within a prescribed period. Therefore, the assessment is void. *(Apo International Marketing Corporation vs. Commissioner of Internal Revenue, CTA CASE NO. 9071, January 7, 2020)*

Note: A definite date of payment must be stated in the FAN. It cannot just be inferred from how the BIR computes interest. This is well settled in the Medicard case.

The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer.

Taxpayer argues that the revocation of BIR Ruling No. DA-245-05 dated June 7, 2005, with the issuance of RMC No. 20-2010, shall not be given retroactive effect since it would be prejudicial to it. The BIR ruling is to the effect that there is no sale transaction in the subject scheme, while the RMC rules that there is selling or preselling under the same scheme.

Pursuant to section 246 of the NIRC, circular, rules and regulations promulgated by the Commissioner would have no retroactive application if to so apply them would be prejudicial to the taxpayers.

In other words, taxpayers may rely upon a rule or ruling issued by the Commissioner from the time the rule or ruling is issued up to its reversal by Commissioner or by the Supreme Court. The reversal is not given retroactive effect. This is the doctrine of operative fact.

Here, BIR could not apply the revocation of BIR Ruling No. DA-245-2005 retroactively because undue prejudice will be caused to the taxpayer. More importantly, none of the exceptions stated under Section 246 of the NIRC of 1997 that would prevent the application of the non-retroactivity rule was shown to exist. *(Meridien East Realty & Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9130 dated 7 January 2020)*

(Meridien East Realty & Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9130 dated 7 January 2020)

A taxpayer is given fifteen (15) days from receipt of the PAN to file a protest or response thereto with the BIR. It is only upon the lapse of the prescribed 15-day period, without such protest or response being filed by the taxpayer within such period, that the Commissioner may issue the corresponding FLD or FAN.

Taxpayer argues that the FAN was issued prematurely and is null and void because the Commissioner issued the same on March 28, 2014, or barely two (2) days from taxpayer's receipt of the PAN, and before the lapse of the said 15-day period for it to protest or respond thereto.

The CTA ruled that a taxpayer has fifteen (15) days from receipt of PAN within which to file a protest or to respond to the said PAN. It is only upon the lapse of the prescribed 15-day period, without such protest or response being filed by the taxpayer within such period, that the Commissioner may issue the corresponding FAN.

Accordingly, the subject deficiency tax assessments are null and void because, based on doctrinal pronouncements, the Commissioner is mandated to perform its assessment functions in accordance with law, and strict adherence thereto, with their own rules of procedure, and always with regard to the basic tenets of due process. Moreover, part of the administrative due process requirement is the recognition by the BIR that the taxpayer has the right to present evidence, and thus, should be allowed to submit comments or arguments with supporting documents at each stage in the assessment process and in case the Commissioner or the BIR fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void, and of no force and effect.

Here, the FAN was clearly issued prematurely thereby depriving the taxpayer of the opportunity to be heard on the PAN, in violation of the due process requirement in the issuance of tax assessments. *(The Orchard Golf and Country Club, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8986, January 14, 2020)*

The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer

BIR argued that since the Taxpayer did not attach any document to prove that it submitted documents within the period provided for by law to support its protest, then the deficiency assessment has become final, executory and demandable, and the Court of Tax Appeals has no jurisdiction over the Petition for Review.

The CTA held that relevant supporting documents are based on the determination of the taxpayer and not by the BIR. The term 'relevant supporting documents' should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted.

(Lotte Confectionery Pilipinas Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8923 dated 15 January 2020)

Similar to when no due date is indicated in the Formal Assessment Notice (FAN), two (2) due dates indicated in the FAN negates the BIR's demand for payment of the deficiency tax liabilities.

BIR assess the Taxpayer of Income tax, VAT and EWT for the taxable year 2011. However, CTA, in its Decision, partially granted the Petition for Review of the Taxpayer and ordered to pay the deficiency Income Tax but declared as void VAT and EWT for allegedly not containing a definite due date.

Pursuant to Section 222(a) of the NIRC, as amended, and in relation to *CIR vs. Fitness By Design, Inc*, CTA has held that similar to when no due date is indicated in the FAN, two (2) due dates indicated in the FANs negates BIR's demand for payment of the deficiency tax liabilities. To be valid, a FAN must contain a singular definite amount and period.

Here, the deficiency VAT and EWT was void because the FAN does not include a due date. *(Benchmark Marketing Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9296 dated 2 January 2020)*

The service of the Letter of Authority (LOA) to the concerned taxpayer within the said 30-day period is mandatory. Failure to serve within the said period would render the LOA, and the assessment, void.

The Taxpayer alleged that the assessment made by the BIR for deficiency income taxes should be declared void due to failure to serve within the thirty-day period from issuance, and lack of authority of the revenue officers who conducted the assessment.

Pursuant to RMO 43-90, CTA has held that an LOA must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void.

Here, the LOA issued by BIR is void because it was not served within the mandatory period of thirty days. BIR issued and served the LOA to the security guard on July 29, 2008. It is apparent that the person is not the concerned Taxpayer, and there was no showing that the security guard was a duly authorized representative of the Taxpayer as to legally bind the latter. *(AC Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8485 dated 6 January 2020)*

The Court of Tax Appeals, being a Court of special jurisdiction, has jurisdiction over decisions, orders, or resolutions of RTC in connection with local tax cases.

In 1998, pursuant to Comprehensive Agrarian Reform Program, certain individual were granted parcels of land located in the Province of Bataan. In 2008, Province of Bataan levied such properties for alleged non-payment of real property taxes, and subsequently sold such to the individual Taxpayers. In 2009, however, the individuals originally granted the parcels of land sold the same to individual Respondents. In September 22, 2009 or more than the one-year redemption period, the Respondent, in representing the individual Respondents, tendered payment for the subject parcels of land. Since the Province of Bataan already sold the parcels of land, they refused to accept the tender of payment. The Respondents filed and obtained favorable judgment of injunction before the RTC to restrain Taxpayers to effect the transfer of ownership, allow consignation, and for damages. Hence, the Taxpayers filed a Petition for Review before the CTA.

CTA Division settled the issue of whether or not it has jurisdiction over the subject matter. Pursuant to Section 7(a) (3) of RA No. 1125, as

amended, and Sections 3 and 4 of the Revised Rules of Court of Tax Appeals, the Court ruled that it has exclusive appellate jurisdiction over decisions, orders, resolutions of the RTC in local cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction. Stated otherwise, CTA has exclusive appellate jurisdiction over decisions, orders, or resolutions of the RTC operative when the latter has ruled on a local tax case.

Here, CTA has no jurisdiction over the subject matter because the issue to be decided was the ownership over the parcels of land, the allowance of consignation as payment, and for damages. Although existent, the issue on non-payment of real property tax is neither the main issue of the case nor material for the complete disposition of the case. *(Office of the Provincial Treasurer of Bataan vs. Batarasa Consolidated, Inc., et. al., CTA AC No. 205 dated 14 January 2020)*

Payment of docket fees to perfect the appeal from Collector of Customs to Commissioner of Customs is mandatory and jurisdictional.

Under the joint operations among FBI, NBI and PNP, Bureau of Customs (BOC) seized 29 vehicles from the Importer for alleged smuggling. The Importer filed a Petition before the CTA arguing that the seizure was improper and illegal, while BOC argued that the seizure was legal and the appeal made by the Importer to the CTA has no jurisdiction because the Decision of the Collector of Customs is final and executory due to its failure to appeal BOC for review.

Pursuant to Sections 2313 and 3301 of TCCP, CTA has held that an appeal is perfected from the Collector of Customs to the Commissioner of Customs upon (1) filing of a written notice of appeal within fifteen (15) days from notification; and (2) payment of pertinent fee in accordance with the prescribed rates.

Here, the Decision of the Collector of Customs became final and executory because the Importer failed to pay the docket fee, as supposedly evidenced by a documentary customs tax. Therefore, CTA has no jurisdiction to take cognizance of this case. *(Lynard Allan Bigcas vs. Commissioner of Customs, Manila, CTA Case No. 8717 dated 16 January 2020)*

Note: When a taxpayer appeals to the CIR, no filing fee is required. But an appeal to the Commissioner of the BOC, a filing fee is mandatory. Failure to file the same has the effect of making a BOC assessment final

The appellate jurisdiction of the Court of Tax Appeals is not limited to cases which involve decisions of Commissioner of Internal Revenue on matters relating to assessments or refunds. It also covers other cases that arise out of the NIRC or related laws administered by the BIR.

Taxpayer invokes that the CTA in Division is competent to review cases falling under "other matters" as provided in Section 7 (a)(1) of Republic Act No. 1125, as amended, and other laws administered by the BIR.

BIR argues that the Court is without jurisdiction to determine the case involving a denial of an Application for Compromise since a compromise agreement is in the nature of a contract requiring mutual consent of the contracting parties. By law, respondent CIR has the discretion to approve or disapprove the compromise agreement, thus neither taxpayer nor the Court can compel him to enter into such agreement absent any law or rule that authorizing the same.

The CTA it shall exercise exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR. *(New Farmer's Plaza, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9475, January 14, 2020)*

In the absence of a definitive Supreme Court decision interpreting the provisions of the NIRC on transactions subject to Documentary Stamp Tax, the higher interests of justice should compel us not to retroactively apply a recent Supreme Court decision to a time period where the CIR himself had and pronounced a contrary view.

Taxpayer argues that the decision of the Supreme Court in the *Filinvest* case promulgated on July 19, 2011 and RMC No. 48-2011, may not be given retroactive effect so as to cover advances extended by taxpayer to its affiliates prior to July 19, 2011. For taxpayer, when a doctrine is overruled by the Supreme Court and a different view is adopted, the new doctrine should be applied prospectively. Taxpayer submits that a previous doctrine was overruled by the Supreme Court in the Filinvest case. It also argues that RMC No. 48-2011 may not be used against it citing Section 246 of the NIRC.

The Court ruled that the doctrine in the Filinvest case was not controlling at the time herein taxpayer entered into such transactions prior to July 19, 2011. Article 8 of the Civil Code expressly provides that "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines. Corollarily, Article 4 of the Civil Code mandates the non-retroactivity of laws, unless expressly provided. In the absence of a definitive Supreme Court decision interpreting the provisions of the NIRC on transactions subject to Documentary Stamp Tax, the higher interests of justice should compel us not to retroactively apply a recent Supreme Court decision to a time period where the CIR himself had and pronounced a contrary view. *(San Miguel Corporation v. Commissioner of Internal Revenue, CTA Case No. 9504, January 14, 2020)*

When an act is official, a presumption of regularity exists because of the assumption that the law tells the official what his duties are and that he discharged these duties accordingly. In the absence of more convincing evidence, the presumption of regularity in favour of the BOC Customs Examiner must be sustained.

Taxpayer claims that the respondent COC erred in ruling that the seized pieces of jewelry should be forfeited in favor of the government on mere presumption of fraud on her part. There being no fraud on her part, respondent COC committed a reversible error when it affirmed the District Collector's denial of her offer to settle the tax obligation to redeem the undeclared taxable items.

The COC on the other hand, argues that taxpayer committed fraud when she did not declare the subject pieces of jewelry found in her possession for the purpose of frustrating the collection of duties and taxes.

The CTA held that taxpayer committed fraud to frustrate collection of proper duties and taxes for the undeclared pieces of jewelry, as shown in the continuous events and circumstances that occurred in the arrival area of NAIA Terminal 3 indicating deceit and dishonesty on the part of the taxpayer, who utterly failed to declare via an accomplished document for the purpose, or mention that she was carrying dutiable items. While fraud cannot be presumed, it need not be proved by direct evidence and it can well be inferred from attendant circumstances, which is abundant in the present case. *(Rosemarie G. Clemente v. Republic of the Philippines, CTA Case No. 9545, January 15, 2020)*

The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts.

Taxpayer argues that the FLD and Assessment Notices were not properly served to the taxpayer, since it is only its President who is authorized to receive the same. Moreover, taxpayer avers that it should not be held liable for deficiency VAT and compromise penalty.

The BIR claims that taxpayer never alleged any facts or law that would invalidate the assessment issued by respondent; and that taxpayer cannot allege that the subject FLD and Assessment Notices were not properly served as the same were received by the same person whose authority was not contested by taxpayer.

The CTA ruled that in deciding a case, it may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. *(Alphaland Makati Place, Inc. v. Commissioner of Internal revenue, CTA Case No. 9609, January 15, 2020).*

Issuance of Preliminary Collection Letter (PCL) and Final Notice Before Seizure (FNBS) is tantamount to denial of protest.

The BIR avers that taxpayer failed to submit its relevant supporting documents within the prescribed period after filing its protest on May 18, 2018. Thus, said failure rendered the deficiency assessment final, executory and demandable after the lapse of the 60-day period after the date of filing said protest.

On the other hand, Taxpayer contends that it submitted additional relevant document in support of its protest. However, on December 21, 2018, taxpayer was surprised to receive PCL and FNBS, despite its non-receipt of the BIR's decision on its protest.

The CTA held that taxpayer should be aware that the issuance of Preliminary Collection Letter (PCL) and Final Notice Before Seizure (FNBS) is tantamount to denial of protest. The protest was deemed denied by the issuance of said PCL and FNBS. Hence, taxpayer should have appealed before the CTA within 30 days from December 21, 2018 or until January 20, 2019 by filing a Petition for Review. However, taxpayer only filed its Petition on May 20, 2019. Thus, prescription on the filing of the said Petition has already set in. *(Ten-Four Readymix Concrete, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10081, January 16, 2020).*

Note: The BIR will no longer be issuing PCL and FNBS. It will immediately issue a Warrant of Distraint and Levy (RMO 35-2019 on July 18, 2019). After receipt of a Warrant of Distraint and Levy, a taxpayer must expect that notice of garnishment of his bank accounts will follow.

Taxpayers must file the judicial claim for refund of excess input VAT within 30 days from the lapse of the 120-day waiting period and there was inaction on the part of the CIR.

Under the law, particularly Section 112 of the NIRC, as amended, the filing of a judicial claim for refund in case of unutilized input VAT is subject to two (2) time requirements: (1) the two-year prescriptive period for filing an application for refund or credit of unutilized input VAT (administrative claim); and (2) the 30-day period for filing an appeal with the CTA (judicial claim).

On the other hand, the judicial claim for refund of input VAT may be filed in two ways: (1) to file the judicial claim within 30 days after the Commissioner denies the administrative claim within the 120-day period counted from the date of the submission of complete documents; or (2) file the judicial claim within 30 days from expiration of the 120-day period (120 + 30 days) if the Commissioner does not act within the 120-day period.

In the present case, the taxpayer filed its judicial claim within 30 days from its receipt of the Notice form the CIR partially denying its claim for refund of excess input VAT, in the mistaken belief that it had a fresh 30-day period to file its judicial claim counted from the receipt of said denial. However, the CTA emphasized that when the 120-day period lapses and there was inaction on the part of the CIR, the taxpayers must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself, denying the claim for refund. Thus the

taxpayer must file an appeal within the 30 days from the lapse of the 120-day waiting period, else the judicial claim will be considered filed out of time. *(Carmen Copper Corporation v. Commissioner of Internal Revenue, CTA EB No. 1846 (CTA Case No. 8834), January 2, 2020)*

The taxpayer has the burden of proving its claim for refund of excess input VAT in accordance with the requirements of the provision of law it invoked when it filed its judicial claim for refund.

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The taxpayer filed a judicial claim for refund of excess input VAT based on Section 112 of the NIRC, as amended, before the CTA in Division. The CTA in Division denied the claim on the ground that no valid proof subsists on record to convincingly show that all the requisites for input VAT refund pursuant to Section 112 were complied with because all documents formally offered were denied admission for being mere photocopies.

The CTA in Division likewise observed that the argument of the taxpayer was anchored on the payment of VAT on the interest it paid to an entity not engaged in the lending business which spelled out a case for erroneous VAT payment, which must be pursued under Section 229 of the NIRC. The taxpayer therefore filed a Petition for Review before the CTA en Banc, now asking that it be refunded the input VAT under Section 229 of the NIRC, as amended.

The CTA en Banc held that a party cannot be permitted to change its theory on appeal. In this case, the taxpayer in its Motion for Reconsideration confessed having in its possession the original of the documents in support of its claim for refund. But for reasons only known to it, the taxpayer formally offered mere photocopies of said documents. The CTA en Banc likewise observed that if the taxpayer was keen on having its denied documentary exhibits be evaluated, it could have easily made a tender of excluded evidence, which it likewise failed to do. *(Batino Corporation v. Commisisoner of Internal Revenue, CTA EB No. 1885 (CTA Case No. 9542), January 3, 2020)*

The CTA is not bound by the technical rules of evidence and may consider evidence which are not formally offered by the parties.

The BIR filed a Petition for Review assailing the decision of the CTA in Division which cancelled and modified parts of its assessments against the taxpayer. In the main, the BIR argued that it was error on the part of the CTA in Division to consider certain exhibits which were not formally offered by the taxpayer during trial.

According to the CTA en Banc, while it is true that under Section 34, Rule 132 of the Rule of Court, courts shall consider no evidence which has not been formally offered, Section 8 of RA No. 1125 provides that proceedings in the CTA shall not be governed strictly by technical rules of evidence. The CTA en Banc held that the most important aspect in disposing the cases brought before it is the ascertainment of the truthfulness and veracity of the factual allegations made by the parties in their respective pleadings.

It is the ascertainment of truth that will ultimately guide it in adjudicating whose substantial rights amount the parties should prevail and technicalities should not be a hindrance to such determination. In addition, the exhibits, while not formally offered, were identified and marked by the taxpayer's witness in his judicial affidavit and were incorporated as part of the records of the case. *(Commissioner of Internal Revenue v. Thai Airways International Public Company Limited, CTA EB No. 1853 (CTA Case No. 8597), January 9, 2020*

The invalidity of the assessment casts substantial doubt as to the requirement that offender fails to supply correct and accurate information.

The taxpayer is being charged for violations of Section 255 of the 1997 NIRC or failure to supply correct and accurate information in his annual income tax return and quarterly VAT returns. During trial it was proven that the assessment made by the BIR was based on a presumption and not on actual audit investigation by assuming that the variance arising from the purchases of the taxpayer as income thereof without any empirical and valid evidence to support its computation on said assessment.

The CTA ruled that an element of the offenses under Section 255 is that the taxpayer fails to supply correct and accurate information at the time or times required by law or rules and regulations. Here, the invalidity of the assessment casts substantial doubt as the requirement that offender fails to supply correct and accurate information. Thus, there is

reasonable doubt if indeed the accused willfully failed to supply correct and accurate information in his ITR and VAT Returns. *(People of the Philippines vs. Barriga, CTA Case No. O-266 to O-269, January 21, 2020)*

The presentation of the registered letter and the registry receipt, with an unauthenticated signature do not meet the required proof beyond reasonable doubt that taxpayer-corporation or the accused received the subject assessment notices.

The Republic of the Philippines seeks reconsideration of the decision of the CTA En Banc ruling that the Republic of the Philippines failed to establish that the FDDA was validly served upon the taxpayer-corporation.

The Court ruled that the arguments raised by the Republic of the Philippines are mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision. To reiterate, the Republic of the Philippines failed to prove the actual receipt of the assessment notices. The presentation of the registered letter and the registry receipt, with an unauthenticated signature do not meet the required proof beyond reasonable doubt that the taxpayer-corporation or the accused received the subject assessment notices. Hence, they were not informed in writing of the facts and laws on which the assessments were made. The assessments in this case did not become final and executory. *(People of the Philippines vs. Cross Country Oil & PetroleumCorp. Et. Al., CTA EB Crim. No. 050 (CTA Crim Case No. O-619), January 3, 2020)*

A refund of input taxes shall be granted only if the goods and services are directly attributable to the zero-rated sales.

The taxpayer and the CIR seeks for reconsideration of the CTA En Banc's decision affirming the decision of the CTA Division. The CIR alleges that the input VAT sought to be refunded are not attributable to Coral Bay's zero-rated sales and this requisite of attribution is essential for a claim for refund to prosper. On the other hand, taxpayer alleges that if it has no other sales but zero-rated sales, there is no need for allocation because all taxpayer's input VAT is attributable to its zero-rated sales.

The Court ruled that a closer look at the provisions of the afore-quoted Section 112 (A) reveals that the word "attributable" read in the first portion is consistent with and in harmony with the last portion pertaining to the proper allocation of input VAT in case taxpayer is engaged in "mixed transactions", when "the amount of creditable input tax due or paid cannot be attributed to any one of the transactions." The second portion then proffers a solution in cases where the input

VAT is sourced from various sales transactions, hence, allocation should apply in order to reserve the refund incentive only to those which are attributable to the taxpayer's zero-rated or effectively zero-rated sales. This allocation emphasizes the purpose and incentives provided under the law and the corresponding conditions before a taxpayer may avail of said incentive. Thus, a refund of input taxes shall be granted only if the goods and services are directly attributable to the zero-rated sales which in this case is the export sale of nickel/ cobalt mixed sulfide to its client abroad. *(Commissioner of Internal Revenue vs. Coral Bay Nickel, CTA EB No. 1735 & 1737 (CTA Case No. 8905), January 9, 2020)*

Note: The CTA espouses a new doctrine that only input taxes directly attributable to zero-rated sales may be claimed for refund. In other words, even if a taxpayer has purely zero-rated sales, if the input VAT cannot be classified as a direct cost, it is not refundable. For example, if a taxpayer incurred input VAT on its purchase of a pen and a paper, the said input VAT is not refundable since it is not directly attributable to the taxpayer's main line of business of exporting coal.

A Branch is a division, office, or other unit of business located at a different location from main office or headquarters.

The City of Calamba filed a Petition for Review seeking the nullification of the decision of the CTA Division declaring that the City of Makati is entitled to the local business tax which accrues from the sales made by Fuji-Haya International Corporation's (FHIC) branch office in Makati City. The City of Calamba asserts that FHIC's office in Makati is not a branch office and insists that the last sentence of Section 150 (a) of the Local Government Code.

The CTA ruled that a perusal of the record shows that there are transactions in the office in Makati which would confirm that FHIC is doing business in Makati. The administrative, executive, engineering and accounting office of FHIC are in Makati City as per admission made by FHIC's witness, Ms. Gemma Matamoros. Furthermore, a branch is an extension of the business of a bank or commercial establishment to a locality. It is a division, office, or other unit of business located at a different location from main office or headquarters. *Applying the foregoing definition to the instant case, a branch office of FHIC is an office of its business located at a different location from its principal*

office in Calamba City. As such, the office in Makati is a branch office. (The City Government of Calamba vs. The City of Makati and Fuji-Haya International Corporation, CTA EB No. 1829 (CTA Case No. 167), January 2, 2020)

Letter of Authority is different from a Letter Notice, and their differences are crucial. Due process demands that after a Letter Notice has served its purpose, the revenue officer should secure a Letter of Authority before

LOA is different from a LN, and their differences are crucial. LN is entirely different and serves a different purpose than a LOA. Due process demands that after an LN has serve its purpose, the revenue officer should secure a LOA before proceeding with the further examination and assessment of the taxpayer.

Since the subject VAT assessment was issued without a prior LOA, the same is void. As such, the said assessment bears no valid fruit, and could not have attained finality. (*WPP Marketing Communications, Inc. vs. CIR, and National Evaluation Board, CTA Case No. 9704, January 29, 2020)*

BIR ISSUANCES

UPDATES

RAO No. 1-2020, January 9, 2020 – This renames the Revenue District Office No. 4 – Calasiao, West Pangasinan to Calasiao, Central Pangasinan.

RMC No. 3-2020, January 02, 2020 – This prescribes the use of the newly revised and available BIR Form No. 1702Q (Quarterly Income Tax for Corporations, Partnerships and Other Non-Individual Taxpayers) for manual filers.

RMC No. 5-2020, January 22, 2020 – This prescribes the Daily Minimum Wage Rates in Cordillera Administrative Region to wit: P350 for Baguio City & La Trinidad, Benguet, and Tabuk City, Kalinga; P340 for Other Areas in the Region.

RMC No. 7-2020, January 14, 2020 – This suspends the Deadline in the Acceptance of Tax Returns and Payment of Internal Revenue Taxes of Taxpayers in the Province of Batangas in view of the declaration of State of Calamity due to the recent volcanic eruption of the Taal Volcano, particularly under the jurisdiction of RDOs No. 58 (Batangas City, West Batangas) and No. 59 (Lipa City, East Batangas).

RR No. 1-2020, January 09, 2020 – This was issued to amend Section 8 of RR No. 11-2018 in regard to Application for Registration for Individuals Earning Compensation Income (BIR Form 1902). It provides that all employers shall require their concerned employees to accomplish in triplicate the Application for Registration to be distributed to the RDO, employer, and the employee. And in case of changes in the information data in the Application for Registration previously submitted to its current employer, the employee should furnish his/her employer a copy of BIR Form No. 1905 duly stamped received by the RDO where the employee is registered, and the employer shall then make the necessary adjustments on the withholding tax of the employee based on the new information.

RR No. 2-2020, January 15, 2020 – This implements the tax exemption provisions of RA 11211 which amends RA 7653, otherwise known as "The New Central Bank Act". It provides that the BSP is exempt from all national internal revenue taxes on income derived from its governmental functions, specifically its activities or transactions in the exercise of its supervision over operations of banks and its primary objective to maintain price stability.

Specifically, the exempt transactions are 1.) income from activities or transactions in the exercise of its supervision over operations of banks and its regulatory examination powers over non-bank financial institutions performing quasi-banking functions, money service businesses, credit granting businesses and

payment system operations; and 2.) income in pursuit of its primary objective to maintain price stability conducive to a balanced and sustainable growth of the economy, and the promotion and maintenance of monetary and financial stability and the convertibility of the peso.

SEC Memorandum Circular No. 1 series of 2020, January 20, 2020 - This memorandum circular provides the revised implementing rules and regulations of Republic Act No. 9856, otherwise known as the Real Estate Investment Trust (REIT) act of 2009

This provides the implementing rules and regulations for REIT Act of 2009. The following should be noted upon:

- "Rule 3 (kk). - Real Estate Investment Trust" or "REIT" is a stock corporation established in accordance with the Revised Corporation Code of the Philippines and the rules and regulations promulgated by the Commission principally for the purpose of owning income-generating real estate assets. For purposes of clarity, a REIT, although designated as a "trust", does not have the same technical meaning as "trust" under existing laws and regulations but is used herein for the sole purpose of adopting the internationally accepted description of the company in accordance with global best practices."
- "Sec. 5 of Rule 4 - Requirements. The REIT shall comply with the following requirements:

  5.1 Body Corporate.

  a. Minimum Public Ownership
  b. Capitalization
  c. Independent Directors
  d. Organization and Governance
  e. Reinvestment in the Philippines

  5.2 Executive Compensation.
  5.3 Fund Manager and Property Manager Fees."

SEC Memorandum Circular No. 2 series of 2020, January 21, 2020 - This memorandum circular provides the guidelines for the 2020 filing of annual financial statements and general information sheet.

This memorandum circular provides the measures in the filing of annual reports for 2020. The following should be noted upon:

- "Audited Financial Statements (AFS) of companies whose fiscal year ends on December 31, 2009.
  - All coporations, including branch offices, representative offices, regional headquarters and regional operating headquarters of foreign corporations, shall file their AFS depending on the last numerical digit of their SEC registration or license number in accordance with the following schedule:

April 20, 21, 22, 23, 24	:
1 and 2	
April 27, 28, 29, 30	:
3 and 4	
May 4, 5, 6, 7, 8	:
5 and 6	
May 11, 12, 13, 14, 15	:
7 and 8	
May 18, 19, 20, 21, 22	:
9 amd 10"	

- "General Information Sheet (GS)
  - All corporations shall file their GIS within 30 calendar days from:
    a. Stock Corporations – date of actual annual stockholder's meeting
    b. Non-stock Corporation – date of actual annual members meeting

Foreign Corporations – anniversary date of the issuance of the SEC License."

A group of persons intending to form a corporation may use the name of a dissolved corporation or one whose registration has been revoked if its use has been allowed at the time of dissolution or revocation by the stockholders who represent a majority of the outstanding capital stock of the dissolved or revoked corporation.

After the expiration of the old corporation's corporate term, the directors applied for the registration of a new corporation under a name identical with the old corporation.

The Company Registration and Monitoring Department (CRMD) approved the application and issued the Certificate of Incorporation of the new corporation after finding that it has complied with and submitted all the requirements prescribed under the Corporation Code and existing rules and regulations.

The Certificate of Incorporation of the new corporation is sought to be cancelled before the SEC.

The SEC held that in issuing certificates of registration in favor of a corporation, is not called upon to adjudicate the rights of contending parties merely to verify the documents submitted for incorporation in order to determine if there has been substantial compliance with the list of requirements of the Code.

Section 18 of the Corporation Code aims to protect (a) a registered name of an existing corporation or (b) a name which is already protected by law or those that are registered with the Intellectual Property Office (IPO). Thus, CRMD correctly ruled that since the old corporation is a dissolved entity and the corporate name is not registered with the IPO, the new corporation could validly use the old corporation's name.

A careful review of the records of case would reveal that the new corporation was able to secure the consent of the majority stockholders of the dissolved corporation considering that the granting authority were the very Incorporators of the new corporation. (Santos vs. Philippine British Assurance Company, Inc., SEC En Banc Case No. 11-13-307, January 16, 2020)

A company that has voluntarily delisted from the PSE is no longer covered by the Code of Corporate Governance	– this seeks to determine whether Energy Development Corporation (EDC) is still a publicly – listed company after its delisting from the Philippine Stock Exchange (PSE) The Corporation seeks clarification to determine whether a corporation remains as a publicly – listed company after the delisting of shares in the PSE and whether the CG Code for PLCs applies to companies with delisted shares in the PSE. The Commission opined that EDC having voluntarily delisted its shares in the PSE, is therefore excluded from the coverage of the Code of Corporate Governance for Publicly – Listed Companies (CG Code for PLCs) it remains as a Registered Issuer. Accordingly, it is now covered by the recently issued SEC Memorandum Circular No. 24, Series of 2019 or the Code of Corporate Governance for Public Companies and Registered Issuer, which was issued by the Commission on 19 December 2019 (Securities and Exchange Commission -Office of the General Counsel (SEC-OGC) Opinion No. 20 – 01 dated January 31 2020)

BSP ISSUANCE UPDATES

BSP Circular Letter No. CL 2020-001, January 2 2020	This advises on the application replacement of Lost Bangko Sentral Registration Document (BSRD) covering the foreign direct investment of BEPHA Beteiligungsgesellschaft fur Pharmawerte mbH, Germany, which should not be honored if found and presented for purchase of foreign exchange for capital repatriation or remittance of profits/dividends.
BSP Circular Letter No. CL 2020-002, January 8 2020	This is a call made to all Banks for the publication/posting of its Balance Sheet (Head Office, branches and other offices) together with its Consolidated Balance Sheet (banks and its subsidiaries and affiliates), if applicable, as of 31 December 2019.
BSP Circular Letter No. CL 2020-003, January 8 2020	This is a call made to all non-bank financial institutions with quasi-banking functions and/or trust authority for the publication, in a newspaper of general circulation, of its Statement of Condition side-by-side with its Consolidated Statement of Condition and submission thereof within 20 working days to the Department of Supervisory Analytics.
BSP Circular Letter No. CL 2020-004, January 8 2020	This is a call to all trust corporation for the publication of its Balance Sheet, as of December 2019.
BSP Circular Letter No. CL 2020-005, January 8 2020	This provides information on the approved application for new banking offices, and opened banking offices during the 3rd Quarter of 2019.
BSP Circular Letter No. CL 2020-006, January 10 2020	This provides the BSP's approval on the conversion of Advantage Bank Corp. (A Microfinance-Oriented Rural Bank) into a Regular Rural Bank to be known as Advance Credit Bank (A Rural Bank) Corp. (Formerly Advantage Bank Corp. – A Microfinance Oriented Rural Bank)

BSP Circular Letter No. CL 2020-007, January 21 2020	This provides the SEC's approval on the Plan of Merger And Articles of Merger, by and among 1st Valley Bank Inc., A Development Bank, the surviving corporation, and Sugbuanon Rural Bank, Inc. and D'Asian Hills Bank, Inc., the absorbed corporations, effective operating as a merged entity on January 2 2020.
Bangko Sentral ng Pilipinas Circular No. 1071, Series of 2020, dated January 8 2020	This provides for the revised rediscount/lending rates for Peso and Dollar/Yen, amending Section 282 of the MoRB The salient amendments are as follows: a. Peso Discount rates – shall be the Bangko Sentral overnight (O/N) lending rate plus a spread depending on the term of the loan as may be determined by the Bangko Sentral. The spread between these two may change periodically to complement changes in the Bangko Sentral's monetary policy goals. Banks eligible to apply in the Bangko Sentral's peso rediscounting window may avail of a 1-90 days and/or 91-i.80 days term facility, subject to applicable rediscount rates. Dollar/Yen Rediscount Rates - shall be the 90-day London Inter-bank Offered Rate (LIBOR) or in the absence of LIBOR, an applicable benchmark rate, plus an appropriate spread depending on the term of the loan as may be determined by the Bangko Sentral. The spread between these two rates may also vary to reflect movements in the market interest rates and to achieve monetary policy objectives. Banks eligibleto apply idthe Bangko sentral's foreign currency rediscounting window may avail of the 1-90 days, 91-180 days, and/or 181-360 days term facility, subject to applicable rediscount rates.

Published Articles

Business Mirror

Tax Law for Business

INSIGHTS

REFORMING THE REAL PROPERTY VALUATION SYSTEM IN THE PHILIPPINES

By

Rodel C. Unciano

As we are again in the season of payment of real property taxes (RPT), I hear several stories and concerns involving the proper valuation of real properties. Many are surprised with the sudden increase in real property values as basis in the assessment of RPT without a clear legitimate reference as to the market value of the property being assessed.

Valuation of real property in the Philippines has become a perennial concern to many taxpayers and to tax administrators alike. This is a major concern many of us encounter not only during payments of real property taxes, but also in time of payment of internal revenue taxes on transactions involving real property, the valuation of which, pursuant to the 1997 Tax Code, is the fair market value of the property as determined by the Commissioner of Internal Revenue, or the fair market value as shown in the schedule of values of the provincial and city assessors. This is apparently because of the cumbersome determination of the fair market value of real property currently in place, which is a key determinant in real property taxes and other applicable taxes in the disposition of real property.

Reforming the Real Property Valuation System in the Philippines

By
Rodel C. Unciano

INSIGHTS

To date, no single agency is responsible in ensuring correct valuation of real property, yet in almost all transactions involving sale or disposition of real property, determination of fair market value of real property is almost always necessary, pursuant to existing laws.

Under the 1997 Tax Code, as amended by TRAIN Law, the Commissioner of Internal Revenue is authorized to divide the Philippines into different zones or areas and shall determine the fair market value of real properties located in each zone or area, upon mandatory consultation with competent appraisers, both from the private and public sectors. Under the law, this is supposed to be subject to automatic adjustment once every three (3) years. However, over the last three years, record of the Department of Finance shows that only 60% of Revenue District Offices (RDOs) under the Bureau of Internal Revenue (BIR) have updated their zonal values.

On the other hand, under the Local Government Code of 1991, provincial and city assessors across the country are mandated to prepare a schedule of fair market values for the different classes of real property situated in their respective jurisdictions for enactment by ordinance of the sanggunian concerned. The assessors are mandated, by law, to prepare revisions of real property assessment and classification every three years. However, this has not been transformed into reality. Study shows that only 37% of local government units (LGUs) have updated the schedule of market values.

The outdated real property valuation references, both in the BIR and the LGUs has led to a situation where taxpayers oftentimes employ their own system of property valuation while administrators on the other hand likewise employ their own system and methodology which is entirely different from the system adopted by the taxpayers. Hence, the squabble.

House Bill No. 4664, to be known as Real Property Valuation and Assessment Reform Act, aims to remedy the situation through the development and maintenance of a just, equitable, impartial, and nationally consistent real property valuation based on internationally accepted valuation standards, concepts, principles, and practices. It aims to improve the quality of valuation of local governments and making the revisions frequent, efficient, transparent, reliable and attuned to market developments.

A single valuation base for taxation, which is a principal feature of the bill, is therefore a welcome development that will hopefully end the dilemma that taxpayers have been facing for decades everytime they pay real property taxes and other taxes on disposition of real properties, such as transfer taxes, capital gains tax/withholding tax, documentary stamp tax, value added tax, among others. This will certainly speed-up transactions involving real property as the single valuation

base will also be used as benchmark for other purposes, such as right-of-way acquisition, lease, rental, etc.

Indeed, the reforms are expected to foster private investors' confidence and build the public's trust in the valuations of government.

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