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INSIGHTS

JUNE 2018

A monthly digest of significant tax-related court decisions and regulatory issuances (includes BIR, SEC, BSP and various government agencies)

Fourth Issue, Series of 2018

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- **Taxpayer's Recourse on BIR's Unacted VAT Return Claims, Business Mirror: Tax Law for Business, June 14, 2018 -** The article discusses the probable option that a taxpayer may take in case of unacted VAT refund claims filed with the BIR.

COURT ISSUANCES

I
Significant Court of Tax Appeals Decisions

Letter issued by the Bureau of Internal Revenue (BIR) categorically declaring that the taxpayer's failure to submit supporting documents in connection with its request for reinvestigation constitutes the final decision of the Commissioner of Internal Revenue (CIR) that is appealable to the CTA.

The taxpayer received a Formal Letter of Demand (FLD) from the BIR which it timely protested. After filing the protest letter, it then received a letter dated January 11, 2012 from the BIR stating that since it failed to submit supporting documents, the assessment has become final and executory. Thereafter, the BIR issued a Warrant of Distraint and/or Levy and later, a Demand Letter dated September 17, 2012, stating that the taxpayer's internal revenue tax liabilities remains unpaid and must be paid immediately. Thus, on October 18, 2012, the taxpayer filed a Petition for Review before the CTA.

The CTA dismissed the case for lack of jurisdiction ruling that the July 11 letter constitutes the final decision of the CIR that is appealable to the CTA. Considering that the taxpayer failed to appeal the January 11 letter to the CTA within thirty (30) days from its receipt, the Petition was belatedly filed, and the CTA did not acquire jurisdiction over the case. *(Solid-One Mills, Phils. Inc. v. Commissioner of Internal Revenue, CTA EB No. 1562 (CTA Case No. 8559), 01 June 2018).*

Dissent of Justice Manahan: The Demand Letter dated September 17, 2012 should be the one considered final decision appealable to the CTA. In determining a final decision appealable to the CTA, the unifying rule is that there must be finality in the tenor of the language which should be communicated unequivocally to the taxpayer. The September 17 letter states in part "otherwise, we shall be constrained to enforce collection through administrative remedies without further notice". In contrast, pertinent part of the January 11 letter states "In view of the foregoing, your case will be forwarded to the Collection Division, for the enforcement of collection in accordance with law." The January 11 letter is not a final decision as it did not contain any definitive call for payment but rather a general threat to refer the case to the Collection Division for enforcement of collection.

Note: The differing opinion of the justices creates confusion to taxpayers. When should a taxpayer elevate a case to the CTA? In this case, the wordings of the January 11 and the September 7 letters are the same. They call for a demand to pay. Whether the January 11 letter is just a threat is a matter of interpretation. But it is clear that there is a demand to pay and collection proceedings will proceed "without further notice".

Letter of Authority (LOA) cannot be dispensed with just because none of the financial books or records kept by the taxpayer were examined.

Applying the Supreme Court ruling in the Medicard case (G.R. No. 222743), the CTA reiterated that after an LN has been served to a taxpayer, an LOA is still required for further assessment and examination. Without such an LOA, the resulting assessment or examination is a nullity. *(Phjlippine International Air Terminals Co. Inc. v. Commissioner of Internal Revenue, CTA Case No. 9181, 06 June 2018).*

The presumption of falsity of returns cannot arise by mere assertion that the BIR imposed surcharge against a taxpayer.

The CTA ruled that the presumption of falsity of returns cannot arise by mere assertion that the BIR imposed surcharge against a taxpayer. There is a prima facie evidence of a false return if there is a substantial underdeclaration of taxable sales, receipt or income. The failure to report sales, receipts or income in an amount exceeding 30% of that declared in the returns constitute substantial underdeclaration. In this case, there is no showing that the taxpayer has substantially underdeclared its sales, receipt or income. Hence, in the absence of proof of substantially underdeclared sales, receipt or income, the presumption of falsity of returns cannot be applied. *(Commissioner of Internal Revenue v. Ludo & Luym Corporation, CTA EB NO. 1559 (CTA Case No. 8613), 08 June 2018).*

Note: There are some CTA decisions that distinguishes between a false and fraudulent return when it comes to the intent of the taxpayer. In those decisions, the court ruled that there is no need to prove intent to defraud for a return to be considered false.

In an assessment, it is required that the BIR not only issue the Preliminary Assessment Notice (PAN), and the Formal Assessment Notice (FAN) /Formal Letter of Demand (FLD) in writing to taxpayers, but also that the same be received by the latter.

The BIR argued that due process requirements were observed as the PAN and the FAN were served to taxpayer through registered mail. However, while it appears that the BIR did indeed send the notices to taxpayer via registered mail, there is no proof that the taxpayer actually received them. As borne out by the record of the case, the taxpayer did not receive the PAN and the FAN as the notices that the BIR sent were returned to sender. Thus, the assessment is null and void for lack of due process. *(Commissioner of Internal Revenue v. AA Commercial, CTA EB NO. 1476 (CTA CASE NO. 8290), 11 June 2018).*

In cases where both taxpayer and the BIR caused the infirmities in the waivers, the validity of the waivers must be upheld.

Citing the ruling in the Next Mobile, Inc. case (G.R. No. 212825), the court upheld the validity of the waivers despite the defects, due to the fact that both the taxpayer and the BIR caused the infirmities in the two waivers, RMO No. 20-09 requires that the fact of receipt by the taxpayer of his/her file copy should be indicated in the original copy. However, BIR delivered the waivers to a wrong address and to another taxpayer. On the other hand, it was the taxpayer who prepared the two waivers wherein the phrase "All Internal Tax Liabilities for the calendar year ending 2011" was indicated, instead of specifying the kind and amount of tax due as required by RMO No. 20-09. Clearly, this infirmity is attributable to taxpayer. *(Trinity Franchising and Management Corporation v. Commissioner of Internal Revenue, CTA Case No. 9177, June 13, 2018).*

Note: In the Next Mobile, Inc. case, the Supreme Court ruled that the general rule is that when a waiver does not comply with the requisites for its validity specified under RMO No. 20-90 and RDAO 01-05, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to the peculiar circumstances in that case, where both BIR and the taxpayer apparently contributed to the defects in the waivers, the Supreme Court took the case as an exception to the general rule and declared the Waivers valid.

In the subsequent case of Commissioner of Internal Revenue v. Philippine Daily Inquirer (G.R. No. 213943), the Supreme Court held that the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01 which were issued by the BIR itself. A waiver of the statute of limitations is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.

The CIR's power to interpret tax laws falls under the exclusive appellate jurisdiction of the CTA under "other matters".

The propriety or correctness of the CIR's interpretation of tax laws, subject to review by the Secretary of Finance being the head of the department which oversees the BIR, falls under the exclusive appellate jurisdiction of the CTA under "other matters" arising under the Tax Code or other laws or portions thereof administered by the BIR. *(Petron Corporation v. Commissioner of Internal Revenue, et. al., CTA EB NO. 1499 (CTA Case No. 8544), June 4, 2018).*

Warrant of Distraint and Levy (WDL) constitutes an act of the CIR on "other matters" arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue which may be the subject of an appropriate appeal before the CTA.

The BIR issued FAN which the taxpayer timely protested. Thereafter, on October 23, 2012, the BIR issued a WDL on which the taxpayer likewise timely protested. Upon receipt of the WDL, the taxpayer once again appealed for reinvestigation but the BIR issued a letter on November 25, 2013 denying the request for reinvestigation with a statement that the same constitutes a final decision on the matter. Thus, the taxpayer filed an appeal to the CTA on December 10, 2013.

The BIR argued that the appeal was belatedly filed since the 30-day period should have commenced on the date of receipt of the WDL, and not on the receipt of the November 25 BIR letter.

The CTA Third Division ruled that the appeal was timely filed where the court considered the letter denying the request for reinvestigation as the reckoning point to file an appeal with the CTA. The CTA En Banc however reversed the Decision of the CTA Third Division and ruled that the receipt of the WDL must be the reckoning period to file the Petition for Review. The CTA En Banc ruled that if one would consider the subsequent replies of the BIR as the reckoning point of the jurisdictional period to file an appeal, then it would be in effect a never ending question as to which of the subsequent replies would be the reckoning period. It would also be a means for the taxpayer to extend a decision that is, in the eyes of the law, already considered to have attained finality, which in this case, is the WDL. *(Commissioner of Internal Revenue v. Mannasoft Technology Corporation, CTA EB Case No. 1637 (CTA Case No. 8745), June 19, 2018).*

Note: This is one of the rare cases where the CTA En Banc reverses a decision of the CTA Division. In gist, when a WDL is received, the remedy is an appeal to the CTA. You cannot file a request for reinvestigation from a WDL.

There is no logical relationship between a negative cash balance and treating the same as sales subject to tax.

The BIR issued an assessment against the taxpayer alleging, among others, that it had undeclared sales based on a negative cash balance found during the tax audit. The taxpayer appealed the case to the CTA where the court ruled that there is no logical relationship between a negative cash balance and treating the same as sales subject to tax. When a cash account shows a negative balance, it only means that there had been more cash disbursements as compared to cash receipts for a certain period. Cash disbursements are made to pay off purchases and other expenditures, while cash is received when sales, among others, have been made. *(Parity Packaging Corporation v. Commissioner of Internal Revenue, CTA Case No. 9318; June 20, 2018).*

If pleadings or other documents are filed via registered mail, the date of mailing shall be considered as the date of filing.

If pleadings or other documents are filed via registered mail, then the date of mailing shall be considered as the date of filing. Since Petitioner received the FAN on April 18, 2013, it had until May 20, 2013 to file a protest (May 18, 2013 fell on a Saturday). Petitioner's Protest, which was filed via registered mail on May 17, 2013, was timely filed. It is inconsequential that the same was actually received by the BIR on July 4, 2013.

Further, the court found that the FAN did not contain an unequivocal demand for payment at a certain date. An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. In this case, there is no indicia of any definite period or a date certain within which Petitioner must pay the alleged deficiency assessment. The due dates on the enclosed assessment notices were left blank or unaccomplished. The subject FAN cannot be deemed a valid formal assessment notice absent a specific date or period within which the alleged tax liabilities must be settled or paid. *(Lorenzo Shipping Corporation v. Commissioner of Internal Revenue, CTA Case No. 8694; June 28, 2018).*

While a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption.

Taxpayer received PAN and FLD which it timely protested. It then received a Preliminary Collection Letter (PCL), despite not having received a Final Decision on Disputed Assessment (FDDA) from the BIR. Upon personal inquiry with the BIR, the taxpayer discovered that an FDDA was issued but the same was served through registered mail at the taxpayer's old address. Thus, to avoid further delay, the taxpayer personally claimed the FDDA. It also received the Final Notice Before Seizure (FNBS) on the same day. The taxpayer then filed its Petition for Review with the CTA within thirty (30) days from its actual receipt of the FDDA.

The CTA ruled that the Petition was timely filed having been filed within thirty (30) days from taxpayer's actual receipt of the FDDA. While a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption. The facts to be proven to raise this presumption are: 1) the letter was properly addressed with postage prepaid; and 2) that it was mailed. Here, the letter was not properly addressed to the taxpayer's correct and registered principal office. As such, there can be no presumption that the taxpayer duly received the FDDA. Consequently, the taxpayer had 30 days from the actual receipt of the FDDA to file appeal to the CTA. *(One World Connections, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8820; June 21, 2018).*

Note: Taxpayers must be careful when to personally receive a copy of a document that was mailed by the BIR as it can trigger the counting of the 30 day period of appeal to the CTA.

As long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.

Taxpayer argued that the FAN issued by the BIR is invalid since it was issued on the same day it filed its protest to the PAN. Further, it maintained that its right to due process was violated when the BIR blatantly disregarded the merits of its reply to the PAN which is further highlighted by the fact that the allegations contained in the PAN and the FAN were not only similar but identical, only differing in interest and surcharges; thus, effectively depriving it of the opportunity to be heard.

The CTA ruled that so long as the parties are given the opportunity to explain their side, the requirements of due process are satisfactorily complied with. In this case, the taxpayer was afforded the opportunity to respond to the PAN and eventually protest the FAN. The difference in the BIR's appreciation of the taxpayer's reply which led

to the assessment of the taxpayer's deficiency taxes is not violative of due process. *(One World Connections, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8820; June 21, 2018).*

Note: Under RMO No. 26-2016, protest against a PAN is optional, not mandatory. FLD/FAN shall be issued fifteen (15) days from date of receipt by the taxpayer of the PAN, whether the same was protested or not. Note further that under RR 18-2013, if the taxpayer responds within fifteen (15) days from date of receipt of the PAN, an FLD/FAN shall be issued within fifteen (15) days from filing/submission of the taxpayer's response.

BIR Issuances

RMC No. 51-2018, June 08, 2018

This revenue memorandum circular amends RMC No. 69 - 2017 re: registration and tax compliance requirements of individuals under a Job Order or Service Contract Agreement with the Departments and Agencies of the Government, Instrumentalities, LGUs, State Colleges and Universities, including GOCCs and GFIs, in line with Republic Act No. 10963 (TRAIN LAW) as implemented by RR No. 8 – 2018 and RR No. 11-2018.

The table below summarizes the details on the registration, filing and payment requirements for each type of taxpayers.

Individuals under a Job Order or Service Contract Agreement with the Departments and Agencies of the Government Instrumentalities, LGUs, State Colleges and Universities, including the GOCCs and GFI	Registration Fee (RF) /Annual RF	COR	Percentage / VAT	Bookkeeping	Invoicing	1701 ITR	1701Q	2551Q/2550M/ 2550Q	Expanded Withholding Tax		Business Tax	
									Gross Income < 3,000,000	Gross Income > 3,000,000	Percentage Tax	VAT
Professionals and Other Supplier of Services deriving gross receipts of P250, 000 and below in any 12-month period from *lone payor.*	✓	x	✓*	x	x	✓	x	✓	x	x	3%	x
Other Supplier of Services deriving gross receipts above P250, 000 in any 12-month from *lone payor.*	✓	✓	✓*	✓	✓*	✓	✓	✓*	2% or 10%**	10%	3%	5% or 12%
Professionals deriving gross receipts above P250, 000 in any 12-month period from *lone payor.*	✓	✓	✓*	✓	✓*	✓	✓	✓*	5% or 10%**	10%	3%	5% or 12%
Other Supplier of Services receiving income from *multiple payor* and/or other source of income.	✓	✓	✓	✓	✓	✓	✓	✓	2% or 10%**	10%	3%	5%
Professionals receiving income from *multiple payor* and/or other source of income.	✓	✓	✓	✓	✓	✓	✓	✓	5% or 10%**	10%	3%	5%

*May avail of the substituted filing on Percentage Tax/VAT return and substituted official receipts.
**10% creditable withholding tax rate shall be withheld, if the payee failed to submit sworn declaration; or if the payee is VAT-registered regardless of amount of gross receipts/sales.

Note: No creditable withholding of percentage tax, and the taxpayer is also not required to file quarterly percentage tax return if he opted to avail of the 8% income tax rate.

RMC No. 53-2018, June 13, 2018

This amends RMC No. 17 – 2018, specifically the deadline for the processing of pending VAT refund/ credit claims filed prior to the effectivity of RMC No. 54 – 2014.

In order to give sufficient time to all concerned offices to complete the processing, review and approval of all pending VAT claims filed prior to the effectivity of RMC No. 54 - 2014, the deadline has been moved from June 30, 2018 to December 14, 2018.

RMC No. 54-2018, June 21, 2018

Beginning January 1, 2018, the effectivity date of the TRAIN Law, the interest rate imposed under Section 249(A) of the Tax Code shall be 12 % per annum, until a new interest rate shall be prescribed by the BSP. Thus, in an amendment of a return where an additional tax is due per amended return, 25% penalty and 12% interest shall be imposed based on the additional tax to be paid.

The BIR clarifies that penalties per Revenue Memorandum Order (RMO) No. 7-2015 which updates the Schedule of Compromise Penalties specified in RMO No. 19-2007, are only amounts suggested by the BIR in settlement of criminal liability for violations committed by taxpayers, the payment of which are consensual in nature, and may not therefore be imposed or exacted on the taxpayer. Thus, in the event that a taxpayer refuses to pay the suggested compromise penalty, the violation shall be referred to the appropriate office for criminal action.

RMC No. 55-2018, June 21, 2018

The functions of the Office of the Regional Director relative to the approval and signing of decisions on administrative cases under RAO No.3-2014, as amended by RAO No. 4-2017.

The Regional Director shall:

1. Approve and sign Decisions on Light Offenses, emanating from the Legal Division, with an imposable penalty of REPRIMAND;
2. Initial and recommend the approval of Decisions, emanating from the Legal Division, where the respondent is found guilty for the same Light Offense for 2nd or 3rd time; and
3. Initial and Recommend the approval of Decisions, emanating from the Legal Division, finding the respondent guilty for Simple Dishonesty;

The recommendation for approval of the Decision in appropriate cases shall be indorsed to:

- The Office of the Deputy Commissioner-Legal Group (ODCIR-LG for Decisions imposing a penalty of Suspension of One (1) Day to Thirty (30) Days: or
- Office of the Commissioner of Internal Revenue (OCIR) for Decisions imposing a penalty of Suspension of more than Thirty (30) Days or Dismissal from the service, through the internal Affairs Service.

RMC 62-2018, June 28, 2018

The rules and requirements on the withdrawal from the bank deposit account/s of a deceased depositor/joint depositor without the required electronic Certificate Authorizing Registration, are as follows:

1. The executor, administrator or any of the legal heir/s of a decedent who, prior to death, maintained bank deposit/s may be allowed withdrawal from the said bank deposit account/s within one (1) year from the date of death of the depositor/joint depositor but the amount withdrawn shall be subject to six percent-(6%) final withholding tax;
2. For joint account, the final withholding tax shall be based on the share of the decedent in the joint bank deposits;
3. Prior to such withdrawal, the bank shall require the executor, administrator, or any of the legal heir/s withdrawing from the deposit account to present a copy of the Tax Identification Number (TIN) of the estate of the decedent and BIR Form No. 1904 of the estate, duly stamped received by the concerned Revenue District Office (RDO) of the Bureau of Internal Revenue in accordance with the existing guidelines on the issuance of TIN;
4. The bank shall issue the corresponding BIR Form No. 2306 certifying the withholding of six percent (6%) final tax, file the prescribed quarterly return on the final tax withheld and remit the same on or before the last day of the month following the close of the quarter during which the withholding was made;
5. All withdrawal slips to be used for purposes of implementing Section 27 of the TRAIN Law shall contain the following terms and conditions: (a) A sworn statement by any one of the surviving joint depositor/s to the effect that all the other joint depositor/s is/are still living at the time of withdrawal; and (b) A statement that the withdrawal is subject to six percent (6%) final withholding tax.

Bank deposits already declared for estate tax purposes and is/are indicated in the eCAR issued by the concerned RDO to the executor, administrator, or any of the legal heirs of the decedent, presented to the bank for withdrawal of the said bank deposits shall no longer be subject to the six percent (6%) final withholding tax.

RMO 30-2018, June 27, 2018

This revenue memorandum order prescribes the policy regarding the processing of claims for refund of Capital Gains Tax (CGT) or Creditable Withholding Tax (CwT) in cases where the taxpayer/claimant's registration and the location of the property fall under the jurisdiction of different Revenue District Offices (RDOs). In case of erroneous payment of CGT or CWT, the processing of claims for refund and the issuance of corresponding eLA shal1 now be under the RDO having jurisdiction over the place where the subject property is located regardless whether or not the claimant is its registered taxpayer.

SEC Issuances

OGC Opinion No. 18-11, June 5, 2018

Langdon & Seah Asia Company Limited (LSACL), a company organized under Hong Kong laws, and licensed by the SEC to do business in the Philippines as ROHQ, is contemplating a merger with its affiliate, Arcadis Asia Limited (AAL), a company likewise organized under Hong Kong laws. AAL will be the surviving corporation while LSACL will be the absorbed corporation. On the effect of the SEC registration of the ROHQ, the SEC opined as follows:

- Section 132 of the Corporation Code is applicable as the proposed merger is between LSACL, a foreign corporation doing business in the Philippines as a ROHQ and AAL, a foreign corporation organized under Hong Kong Laws. Thus, LSACL shall file with the Commission within sixty (60) days after such

merger becomes effective, a copy of the articles of merger duly authenticated by the proper official or officials of the country or state under the laws of which merger was effected.

- As the absorbed corporation, LSACL shall file a petition for withdrawal of its license and submit documents required by the Commission to legally effect the withdrawal of a foreign corporation's license to transact business in the Philippines.
- If AAL will continue the business of LSACL in the Philippines, it must file its own application for a license to do business in the Philippines in compliance with Sections 123, 124, 126 and 128 of the Corporation Code of the Philippines. It must also comply with all the requirements prescribed by the Company Registration and Monitoring Department of the Commission (CRMD).

OGC Opinion No. 18-10, June 4, 2018

The Securities and Exchange Commission issued this opinion in response to a letter dated February 15, 2017 on the issues whether or not Medtronic Philippines Inc., (Medtronic-PH) can be classified as a foreign company engaged in business in the Philippines, and whether or not it is allowed to engage in direct selling its product to end-users. The SEC explained and ruled that:

- The primary test under Philippine jurisdiction in determining the nationality of a corporation in the incorporation test. Since Medtronic-PH was registered and incorporated under the Philippine Law, it is considered as a Philippine national and not as a foreign corporation.
- However, the control test must be used to determine compliance with the provisions of the Constitution and of other laws on nationality. Under the control test, the nationality of the corporation depends on the nationality of the controlling stockholders. As such, Medtronic-PH is considered a foreign-owned corporation under the Control Test and the FIA as it is 99.99% owned by Medtronic-US, a US based manufacturing company.
- Upon careful perusal of the primary purpose of Medtronic-PH as stated in its Articles of Incorporation, it is empowered to sell its product at wholesale, not retail. If Medtronic-PH sells directly on retail basis its product to the end-users, such sale/s on retail would be considered an *ultra vires* act, or an act beyond the corporate powers conferred to it by the State.
- Under Medtronic-PH's primary purpose clause, it can only sell at wholesale. Further, an entity engaged in retail business must be a Filipino national under the Retail Trade Liberalization Act of 2000 (RA 8762), unless it falls under the exceptions.

Article Written

Lifted from Business Mirror: Tax Law for Business, March 8, 2018

Taxpayer's Recourse on BIR's Unacted VAT Refund Claims

By: Rodel C. Unciano

Prior to the amendments introduced by the Tax Reform for Acceleration and Inclusion (TRAIN) law, the 1997 Tax Code was clear that a taxpayer may elevate to the Court of Tax Appeals (CTA) its claim for refund or tax credit of unutilized input tax attributable to VAT zero-rated sales in case the Commissioner fails to act on the said claim within 120 days from the submission of complete documents.

Section 112(c) of the old Tax Code provides that in case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the commissioner to act on the application within the period prescribed by law, the taxpayer affected may, within 30 days from the receipt of the decision denying the claim or after the expiration of the 120-day period, appeal the decision or the unacted claim with the CTA.

Under the TRAIN law, the Tax Code provision on the taxpayer's right to appeal an unacted claim to the CTA was deleted, with a proviso, however, that failure on the part of any official, agent, or employee of the Bureau of Internal Revenue (BIR) to act on the application within the 90-day period shall be punishable, which under Section 269 of the Code, could be imprisonment of up to a period of 15 years.

Following the provisions of the TRAIN law, it is only when there is a full or partial denial of the claim for tax refund that the taxpayer affected may, within 30 days from the receipt of the decision denying the claim, appeal the decision with the CTA. The law is not clear whether an unacted claim may already be elevated to the courts in case the commissioner fails to act on it within the 90-day period.

Understandably, Revenue Regulations 13-2018, which implements the value-added tax (VAT) provisions of the TRAIN law, did not clarify this, since it is not clear in the law in the first place. So also, Revenue Memorandum Circular 17-2018, which laid down the guidelines in VAT refund claims, is likewise silent on this issue.

So then, what will be the recourse of a taxpayer whose claim for VAT refund with the BIR is unacted by the commissioner?

Interestingly, in CTA Case 8752, involving an inaction of the commissioner of the Bureau of Customs on a refund claim of allegedly erroneously paid Customs duties, the CTA has ruled that the case was properly elevated to the CTA, following the provisions of solutio indebiti under Article 2154 of the Civil Code. In this case, it was argued that the inaction of the Commissioner is not appealable to the CTA, citing as basis Section 7(a) 4 of Republic Act 1125, as amended by RA 9282.

The CTA asserted its jurisdiction on the issue. The court finds it anomalous, if not highly iniquitous, if the claimant is totally without recourse but to await the decision of the commissioner of Customs, which may or may not be forthcoming. Such inaction can deprive lawful tax refund claimants of positive and expedient relief from the courts of justice.

Will this ruling be applicable to VAT refund claims not acted upon by the commissioner of Internal Revenue? Following the rationale of the tax court in CTA Case 8752, it would seem that the court will take a positive stand on this issue. Truly, the taxpayer claimant cannot be forever awaiting for the decision of the commissioner.

BDB Law's "Tax Law for Business" appears in the opinion section of Business Mirror every Thursday.

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