TAX MANAGEMENT ASSOCIATION
OF THE PHILIPPINES, INC.

TAX UPDATES FOR THE MONTH OF JUNE

By

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SUPREME COURT DECISIONS
Mitsubishi Corporation- Manila Branch vs. Commissioner of Internal Revenue
GR No. 175772, June 5, 2017

Petitioner paid income tax on its income from OECF-funded project as well as branch profit remittance tax from the same project. Believing that these taxes clearly fall within the ambit of the tax assumption provision under the Exchange of Notes, Petitioner filed for a claim for refund.

As explicitly worded, the Philippine Government particularly assumed all fiscal levies imposed in the Republic of the Philippines on Japanese firms and national operating as suppliers, contractors or consultant and/or in connection with any income that may accrue from the supply of products of Japan and services of Japanese nationals provided under the OECF Loan. The subject taxes herein clearly fall within the tax assumption provision. Considering that the taxes were paid when they were clearly not due, the BIR erroneously collected such amount and the taxes must be refunded.

The administrative issuance of the BIR which shifted the power to refund to the executing agency cannot override the clear mandate to the Tax Code which vest upon the BIR the authority to refund taxes.

However, considering that this is not a tax exemption but a tax assumption, the BIR is not without recourse as it can collect from the executing agency.

COURT OF TAX APPEALS DECISIONS

Commissioner of Internal Revenue vs. Total Philippines Corporation
CTA EB No. 1367, 25 May 2017

Defective waiver cannot be rendered valid by estoppel if benefit to the taxpayer is not significant

In previous decisions, the court has ruled that receiving and accepting reduced assessment after a waiver is executed and accepted, and paying portions of the reduced assessments binds taxpayer to the new assessment. It follows that the taxpayer recognized the validity of executed waivers. The taxpayer cannot thereafter question the validity of waivers, specially, after it received and accepted certain benefits as a result of the execution of the waivers.

For this principle to apply, the benefit received as a result of reduced assessment must be substantial in amount. In case reduction of assessed amount is not substantial, validity of waivers cannot be assumed even with partial payment of the newly computed reduced tax assessment. In the case at bar, the amount assessed in the FAN does not indicate a reduction from the amount in the PAN.

Furthermore, the fact that taxpayer never questioned the waivers in its protest to the PAN should not be used against taxpayer. It must be emphasized that a protest to the PAN is not the same as the protest required to be filed as an answer to the FAN. In fact, a PAN may or may not even be protested to by the taxpayer. Government's right to assess the taxpayer prescribes in 3 years, counted from the date of the last day of filing or from the date of actual filing, whichever is later.

However, in accordance with the provisions of Section 222 (b) and (d) of the 1997 NIRC, these prescriptive periods may be suspended by the execution of a waiver of the statute of limitations. A waiver being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed, and executed before the expiration of the 3-year period for assessing taxes.

Application of the doctrine of estoppel as an exception to the statute of limitations on the assessment of taxes is not allowed since there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. The doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy.

Vestas Services Philippines, Inc. v Commissioner of Internal Revenue
CTA Case No. 8888, May 26, 2017

30-day period to appeal denial/inaction of claim for refund is both mandatory and jurisdictional

In order for judicial claims for VAT refund to be considered as timely filed, the taxpayer should strictly follow the "120+30" rule under Section 112 (C) of the NIRC of 1997, as amended. Section 112 (C) states that the taxpayer affected "may", within 30 days from 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. Contention that the requirement of judicial recourse within 30 days is only directory and permissive, as indicated by the use of the word "may" in Section 112 (C) is not correct. The law is clear, plain and unequivocal to declare that the 30-day period to appeal is both mandatory and jurisdictional. The law does not make the 120+30 day periods optional just because the law uses the word "may". The word "may" simply means that the taxpayer may or may not appeal the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period.

Hon. Commissioner Kim S. Jacinto-Henares, Hon. Ricardo B. Espiritu, Revenue District Officer, RDO 50 vs. IP Contact Center Outsourcing, Inc.
CTA EB No. 1415 re: CTA Case No. 8537
05 June 2017

Validity of waiver cannot be questioned if both parties are *in pari delicto*

A waiver of the statute of limitations must be carefully and strictly construed considering that it is a derogation of the taxpayer's right to security against prolonged and scrupulous investigations. Hence, it should strictly follow the format and requisites as prescribed in BIR issuances.

However, if both the BIR and the taxpayer did not challenge the waiver's defect in order to pursue their own interest, they are already estopped from raising the issue of the waiver's defect.

In this case, the first waiver was issued beyond the prescription period. The Court, however, noted that, by virtue of the waiver, the taxpayer was given time to submit additional documents and argue its case. It was also able to defer payment of the assessed taxes. Yet, the taxpayer challenged the validity when the effect is not in its favor. The BIR, on the other hand, despite having knowledge of the rules governing waivers, did not raise the issue on the defect and proceeded to issue an assessment. Considering that a waiver of statute of limitations is, in law and in fact, a bilateral agreement between the CIR and the taxpayer, both of them should thus be held responsible in ensuring that their agreement faithfully complies with the law. Failing which, they should both suffer the consequences.

BJ Well Services Company (Philippines), Inc. vs. Commissioner of Internal Revenue
CTA Case No. 8859
05 June 2017

Documentation of input VAT from prior periods in a claim for VAT refund

A taxpayer claiming a refund of excess input VAT attributable to its zero-rated sales, is required to comply with all the VAT invoicing requirements. Hence, the Court correctly disallowed input taxes that failed to comply with the invoicing requirements. The Court found that some of the official receipts and invoices submitted by Petitioner failed to state petitioner's TON, address, VAT amount, date or a combination thereof.

Further, the Court was correct when it disallowed input VAT carry over where the Petitioner failed to present VAT invoices or receipts to prove the existence of such input VAT. Pursuant to Section 110 (A) (1) and (B), input tax is creditable against the output tax if it is evidenced by a VAT invoice or official receipt. Failure to support prior year's input VAT with the corresponding invoices and official receipts can result to a denial of the claim for refund of input VAT from current period.

Tax refunds/credits are construed strictly against the taxpayer. Tax refunds are in the nature of tax exemptions, hence the taxpayer has the burden of proof through submission of evidence that he has complied with the requirements in the NIRC and revenue regulations.

City Treasurer of Manila vs. Philippine Beverage Partners, Inc., substituted by Coca-Cola Bottlers Philippines, Inc.
CTA EB No. 1342 re: CTA AC No. 122, 13 June 2017

RTC proceedings does not toll the running of the prescriptive period to collect local taxes

The company appealed the local business tax assessment to the Regional Trial Court (RTC). It took the RTC 6 years to decide on the case. If during the 6-year period, the local government did not institute any measure to collect the tax from the company, the period to collect shall be deemed prescribed.

Section 1949 of the Local Government Code of 1991, as amended, provides for a period of five (5) or ten (10) years, depending on the existence of fraud or intent to evade tax, for assessment of local taxes, fees, or charges, subject to the suspension of the running of said prescriptive period in situation enumerated.

In the case at bar, the Court En Banc holds that the pendency of the proceedings at the RTC is not such an instance which will suspend the running of the prescriptive period for assessment of local taxes, fees, or charges. Considering more than five (5) years has already lapsed from the dates when the LBT were due, the company correctly concluded that the assessment has already prescribed.

Toda Holdings Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his official capacity as the City Treasurer of Davao City
CTA AC No. 152
14 June 2017

Dividends and income from money market placements from government owned shares not subject to LBT

Section 133 (o) of the Local Government Code (LGC) limits the taxing powers of local government units (LGUs). No local business taxes (LBTs) shall be imposed on taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and LGUs.

In this case, the LBT was imposed on the dividends and money market placement earnings from the dividends derived from the San Miguel Corporation (SMC) shares. Since the SMC shares are owned by the government, any earnings of the SMC shares therefore belong to the government. Any local tax imposed on SMC, is deemed imposed on the national government.

This is clearly in violation of Section 133 (o) of the LGC. Hence, the erroneously paid local business tax must be refunded.

REVENUE MEMORANDUM ORDERS

Revenue Memorandum Order No. 12-2017
May 16, 2017

Guidelines and Procedure to Streamline the Process and Issuance of Certificate of Tax Exemption (CTE) and Electronic Certificate Authorizing Registration (eCAR) for Transfers of Raw Lands to Community/Homeowners Associations for Socialized Housing Projects

The processing of Certificate of Tax Exemption (CTE) and electronic Certificate Authorizing Registration (eCAR) for transfers of raw lands to community/homeowners associations for Socialized Housing Projects (SHP) has been streamlined.

SHPs under the Community Mortgage Program (CMP) have the primary objective to assist depressed areas residents to own the places they occupy. Participants of CMP are exempt from Capital Gains Tax (CGT) and creditable withholding tax but not from documentary stamp tax. Application for the issuance of CTE shall be filed with the Office of the Commissioner.

The documentary requirements must be fully complied with for the processing of the application (Please see Table I for the documentary requirements). Processing, approval and issuance of eCAR shall be completed by the RDO within 5 working days from the date of submission of the CTE. Issued eCAR shall contain information that the raw lands are intended for a Community Mortgage Program. CTE is a sufficient basis for the issuance of eCAR by the concerned RDO officer. No other documents shall be required from the taxpayer/landowner requesting for eCAR.

	Table 1. Documentary requirements for the processing of the CTEs and eCARs
1	Original Certification signed by the President of the SHFC that the subject property qualifies and is actually a CMP project;
2	Certified true copy of the Deed of Sale executed by the landowner in favor of the community/homeowner association;
3	Certified true copy of the Master List of Beneficiaries;
4	Certified true copy of the Transfer Certificate of Title/Original Certificate of Title and latest Tax Declaration of the property;
5	Extrajudicial Settlement of Estate, if title of property is still the name of the deceased owner; and
6	Evidence of tax payments.

REVENUE MEMORANDUM CIRCULARS

Revenue Memorandum Circular Nos. 42 and 43-2017
9 June 2016

BIR Form 2305 for claiming PWDs as dependents
BIR has issued a new version of Form 2305 for the declaration of persons with disability (PWD) as dependents. The new version provides for the columns for claiming of a PWD as dependent to entitle the taxpayer to the additional exemption pursuant to RA No. 10754 (An Act Expanding the Benefits and Privileges of PWD).

To claim the PWD as dependent, the following documents shall be submitted by the employees to their employers, for the first year of claiming the exemption and three years thereafter or upon renewal of the PWD ID whichever comes first:

1. Duly accomplished BIR form No. 2305;
2. Photocopy of PWD Identification Card issued by the PDAO or the C/MSWDO of the place where the PWD resides or the NCDA;
3. Sworn Declaration/ Identification of Qualified Dependent PWD, Support and Relationship;
4. Birth Certificate of PWD;
5. Medical Certificate attesting to disability issued in accordance with the IRR of RA 10754; and
6. Brgy. Certificate attesting to the fact that the PWD is living with the benefactor.

Employers shall ascertain if the claimed PWD qualifies as an additional dependent by satisfying the following conditions, regardless of age:

1. Filipino citizen;
2. Within 4th civil degree of consanguinity or affinity to the taxpayer/benefactor;
3. Not gainfully employed; and
4. Chiefly dependent upon and living with the taxpayer/benefactor.

The maximum number of qualified dependents remains at four (4).

BIR RULINGS

BIR Ruling Nos. 268 and 269-2017
05 June 2017

Importation of cargo vessels for LPG transport/hauling services is VAT exempt

Section 109 (1) (T) of the 1997 Tax Code, as amended, provides that sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations shall be exempt from the value-added tax.

In relation to the above-cited provision, Section 4.109-1 (B) (1) (t) of RR No. 16-2005 as amended by RR No. 15-2015, provides that VAT exemption for these importations shall be subject to the strict compliance of the conditions contained in the letter of approval issued by Maritime Industry Authority (MARINA) for the importation of the vessel.

In the case at bar, the vessel is newly imported and is backed up with an authority to import issued by MARINA. Hence, it is assumed that the vessel complies with the conditions imposed by MARINA.

SECURITIES AND EXCHANGE COMMISSION

Nationality requirement for an online English tutorial and diving school

SEC-OGC Opinion No. 17-05
08 June 2017

Educational institutions are subject to the 40% foreign ownership requirement under the Consitution. There are, however, exceptions such as in the case of schools established by religious orders and mission boards, and those established for foreign diplomatic personnel and their dependents and for other temporary residents.

The entity subject of the opinion is a domestic corporation catering purely to foreign clients abroad who wish to enhance their English language skills through informal on-line tutorial class instruction.

Applied to the case of the company offering online courses, if the school shall issue any Certificate of Training or Diploma for Program Completion to their successful online students, it will be considered as engaged in formal technical vocational education, hence, under the jurisdication of TESDA. It follows that, being an educational institution, it must comply with the 60%-40% Filipino-foreign ownership requirement, subject to limitation and exceptions prescribed by law.

The rule also applies if the school provides diving lessons, and regardless of whether the students are Filipinos or foreigners, or whether the courses are conducted online or within a regular classroom atmosphere.