



TMAP TAX UPDATES

JANUARY 16 TO FEBRUARY 15, 2018

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COURT OF TAX APPEALS DECISIONS

Review of unprotested assessment is not within tax court's jurisdiction

Light Rail Transit Authority v Commissioner of Internal Revenue

CTA Case No. 8746

January 17, 2018

Section 228 of the National Internal Revenue Code of 1997, as amended, prescribes that when protesting an assessment, the Commissioner or his duly authorized representative shall notify the taxpayer of his findings regarding proper taxes that should have been assessed. Taxpayers shall be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment is void.

Within the period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Assessments may be protested administratively by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment. All relevant supporting documents shall be submitted within 60 days from filing of the protest.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within 30 days from date of receipt thereof, the assessment shall become final, executory and demandable.

In this case, the taxpayer belatedly filed its protest against the assessment. Thus, the assessment already became final, executory, and unappealable upon the expiration of the 30-day period to protest. Once the case attained finality, the taxpayer is already precluded from disputing the correctness of the assessment.

Consequently, the court is already barred from determining the validity and correctness of the said assessment.

Failure to file a return as a stand-alone element is not enough to prove attempt for tax evasion

People of the Philippines v Maxima Laxamana Baluyot

CTA Case Nos. O-445, 446, 447, and 448

January 17, 2018

As prescribed under Section 254 of the NIRC of 1997, as amended, any person who willfully attempts in any manner to evade or defeat any tax imposed under this code or payment thereof shall be penalized for not less than P30,000 but not more than P100,000 and to suffer imprisonment of not less than 2 years but not more than 4.

To sustain a conviction for attempt to evade or defeat tax under the aforestated provision, the following elements must be established:

1. An attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof; and
2. Willful attempt to evade or defeat tax filing and payment.

In this present case at bar, it is well established that there is payment of income tax that is less than what is legally due from the accused, and failure to file an income tax return (ITR) for a taxable year. As to the second element, the prosecution failed to prove that there is "willfulness" or deliberate intent on the part of the accused to evade or defeat payment of income taxes. Failure to provide circumstantial evidences to prove the accused's willful intention shall be enough reason for the court to acquit accused of the charges of evasion.

Royalty income from active business is subject to regular income tax rate; deficiency interest and delinquency interest can be assessed simultaneously

CTA EB No. 1412, 1417
January 30, 2018

Royalty Income

Section 27(D) (1) of the NIRC provides that passive royalty income earned by a domestic corporation shall be subject to 20% final withholding tax. Such 20% final withholding tax can be applied only in case of passive income. Royalty income earned from active pursuits of business are subject to regular income tax.

In the case, the primary business of the taxpayer is manufacturing, buying, selling and dealing in alcoholic and non-alcoholic beverages. However, for the taxable year, its income include only royalty income earned from its trademarks and intellectual property rights. The licensing of the said trademarks and intellectual property rights were the only business activities of the taxpayer for the year. It did not engage in any business activity beyond the licensing out of trademarks and intellectual property rights.

Thus, it was ruled that the primary purpose of the taxpayer is the said licensing out of trademarks and intellectual property rights. Any income received therefrom is not passive income but an income earned from the taxpayer's active business subject to regular income tax rate of 30%.

Penalty Interest

Deficiency interest is different in nature from delinquency interest. Deficiency interest is imposed upon any tax that is still due and unpaid, while delinquency interest is imposed on failure to pay the amount of tax due on any return required to be filed, or the amount of tax due for which no return is required, or deficiency tax or any surcharge or interest thereon on the due date appearing on the notice and demand by the Commissioner. As such, the two penalty interests can be assessed simultaneously.

In the case, deficiency interest of 20% per annum was computed from the due date of payment of tax until full payment thereof. In addition, delinquency interest of 20% per annum was computed on the unpaid deficiency tax and penalties, including the 20% deficiency interest. The delinquency interest was computed from the due date of payment per BIR notice until full payment thereof.

PAN and FAN issued to a wrong address are void

CTA Case No. 8829
February 7, 2018

Receipt of Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) by the taxpayer is a pre-requisite for Warrants of Garnishment issued by the Commissioner of Internal Revenue. A PAN and FAN indicating a wrong address and therefore, were not duly received by the taxpayer, are considered null and void.

In the case, the taxpayer transferred its registered address from Makati City to Pasig City. Proper notices to the BIR for the change in address was done. The new address was already reflected in the Integrated Tax System (ITS) of the BIR. However, the PAN and FAN still failed to indicate the new address of the taxpayer. Thus, the PAN and the FAN issued by respondent were not received by petitioner because both documents reflect the wrong address.

REVENUE REGULATIONS

Revised excise tax rates on petroleum products

Revenue Regulations No. 2-2018

January 24, 2018

Pursuant to the TRAIN Law, the following shall be the applicable rate on refined and manufactured oils and motor fuels:

Products	Effectivity		
	January 1, 2018	January 1, 2019	January 1, 2020
Lubricating oils and greases Locally produced or imported oils Processed gas Waxes and petrolatum Denatured alcohol Asphalts	P8.00	P9.00	P10.00
Naphtha. Regular gasoline, pyrolysis gasoline Unleaded premium gasoline	P7.00	P9.00	P10.00
Kerosene	P3.00	P4.00	P5.00
Aviation turbo jet fuel, aviation gas, and kerosene when used as aviation fuel	P4.00	P4.00	P4.00
Diesel fuel oil Liquefied petroleum gas used for motive power Bunker fuel oil Petroleum coke	P2.50	P4.50	P6.00
Liquefied petroleum gas	P1.00	P2.00	P3.00
Naphtha and pyrolysis gasoline when used either in the productions of petrochemicals, refining of petroleum products, or as replacement fuel for natural gas fired plants; liquefied petroleum gas when used either in the productions of petrochemicals; petroleum coke when used as feedstock to any power generating facility	P0.00	P0.00	P0.00

Above revised excise tax rates shall not apply to lubricating oils and greases produced from basestocks and additives, and denatured alcohol mixed with gasoline on which the excise tax has already been paid. In case of the latter, only the alcohol content shall be subject to the tax.

Any excise tax paid on the purchased basestock (bunker) used in the manufacture of excisable articles and forming part thereof can be credited against the excise tax due thereon. For purposes of these regulations, any excess of excise taxes paid on raw materials resulting from manufacturing, blending, processing, storage and handling losses shall not give rise to a tax refund or credit.

The above scheduled increase in the excise tax shall be suspended when the average Dubai crude oil based on Mean of Platts Singapore (MOPS) for three months prior to the scheduled increase of the month reaches or exceeds eighty US dollars per barrel.

There shall be mandatory markings on all petroleum products. Further, manufacturers and/or importers shall provide themselves with counting or metering devices to determine volume of production and importation.

New rule on deductibility of expenses not subjected to withholding tax

Revenue Regulations No. 6-2018

January 19, 2018

RR 12-2013 has been revoked and the rule on deductibility of expenses upon payment of deficiency withholding tax has been reinstated.

RR 2-2018 reinstated the provisions of Section 2.58.5 of RR No. 14-2002, as amended by RR No. 17-2003 which allows the deduction provided the deficiency withholding tax is paid even at the time of audit or reinvestigation.

Pursuant to RR No. 06-2018, deduction from gross income will also be allowed in the following cases where no withholding of tax or incorrect withholding of tax was made:

- a. Payee reports the income, pays the tax due, and the withholding agent pays the tax including the interest and surcharges, *if applicable*, incidental to the failure to withhold the tax.
- b. Payee/recipient failed to report income on the due date, but the withholding agent/taxpayer pays the tax, including interest and surcharges, *if applicable*, incidental to the failure to withhold the tax.
- c. Withholding agent erroneously underwithheld the tax but pays the difference between the correct withholding tax and the amount of tax withheld including interest and surcharges, *if applicable*, incidental to the error in withholding.

Reinstating the Informal Conference Stage in Tax Assessment

Revenue Regulations No. 7-2018

January 31, 2018

The Informal Conference stage as part of the due process requirement in the issuance of deficiency tax assessment has been reinstated.

Pursuant to Revenue Regulations No. 07-2018, a Notice for Informal Conference must be issued to the taxpayer prior to issuance of Preliminary Assessment Notice. Through the issuance of Notice for Informal Conference, the taxpayer shall be informed in writing of the discrepancy or discrepancies in his payments of internal revenue taxes.

The "Informal Conference" shall last for not more than 30 days from taxpayer's receipt of the notice. If the taxpayer is still liable to deficiency taxes and the taxpayer is not amenable to the tax assessment after the "Informal

Conference” stage, the BIR shall endorse the case for issuance of deficiency tax assessment within 7 days from conclusion of Informal Conference.

REVENUE MEMORANDUM ORDER

Alphanumeric Tax Code (ATC) for excise tax on cosmetic procedures and estate tax on bank withdrawals, and DST

Revenue Memorandum Order No. 9-2018

February 6, 2018

Pursuant to RA No. 10963, the following new ATCs shall be used in the remittance of withholding tax on bank withdrawals and excise tax on cosmetic procedures:

ATC	Description	Tax Rate (/L)	Legal Basis	BIR Form
WI165	Final withholding tax on amounts withdrawn from decedent's deposit account	6%	Sec. 27 of RA No. 10963	1602/2306
WI800 WC800	Final withholding of excise tax on the performance of invasive cosmetic procedures <ol style="list-style-type: none">Individualcorporate	5%	Sec. 46 of RA No. 10963	1620-XC

For documentary stamp tax (DST), only the description of the previous ATCs were modified. Previous ATCs shall still apply. Please see full text of the memorandum order for complete list of ATCs for DST.

REVENUE MEMORANDUM CIRCULARS

Additional mandatory requirements for processing of Electronic Certificate Authorizing Registration (eCAR) of all Economic Zone Developers/Operators

Revenue Memorandum Circular No. 09-2018

January 17, 2018

RMC 09-2018 is issued to provide the following guidelines in determining the tax treatment of the transfer of property by Economic Zone Developer/Operator to another PEZA entity in relation to processing of eCAR.

1. In addition to the documentary requirements under RMO No. 15-2003, the following additional documentary requirements shall be submitted by all PEZA Ecozone developers/operators:
 - a. Certified true copy of the latest PEZA Certificate of Registration of the parties to the transaction;
 - b. Certified true copy of the PEZA registration agreement; and
 - c. Certified true copy of the PEZA certificate of available tax incentives as of the time of the transaction.

2. No further document shall be required in case of the following transfers:

- a. Transfers of property within the Special Economic Zone (SEZ) by an Ecozone developer/operator to a PEZA Economic Zone Facilities Enterprise, PEZA registered buyer, or non-PEZA registered buyer, and
- b. Transfers of property outside the SEZ by an Ecozone developer/operator, regardless of whether or not the buyer is PEZA registered.

BIR rules on timing of withholding on income payment by government

Revenue Memorandum Circular No. 10-2018

January 31, 2018

RMC 10-2018 is issued to clarify conflicts on the guidelines and procedure under the Government Accounting Manual (GAM) and those in the BIR regulations.

Section 4 of RR 12-2001, as amended, provides that payor's obligation to deduct and withhold tax arises at the time an income payment is paid or payable or their income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first.

Recording of an expense or asset for unpaid income, shall likewise oblige the payor to withhold in the last month of return period in which the income is claimed as an expense or amortized for tax purpose.

The Government Accounting Manual (GAM), however, provides an illustrative example whereby "Due to BIR" accounts were recognized only upon payment of the accounts payable to the income payee.

Given the inconsistency of the GAM rules and the BIR regulations on the timing of withholding, the BIR rules on withholding should prevail. For government projects, the obligation to withhold arises at the time the government agency books construction of PPE as Construction in Progress with appropriate asset classification.

BIR ADVISORIES

Monthly Filing of Expanded/Creditable and Final Withholding Tax Returns

Under the TRAIN Law (RA No. 10963), the final (BIR Form 1601-F/1602) and creditable withholding tax (BIR Form 1601-E/1606) returns (except for withholding tax on compensation and withholding VAT) shall be due quarterly on or before the last day of the month following the close of the calendar quarter (CQ).

Hence, following the TRAIN Law, filing and payment of expanded and final withholding tax returns should already be on a quarterly basis from the previous monthly filing and remittance.

However, pursuant to the BIR's advisory issued on January 31, 2018 and signed by Commissioner Dulay monthly remittance of taxes withheld is still required for the first two months of the quarter. This shall be done through BIR Form 0605 on or before the 10th day following the month of withholding. The taxes withheld in the third month shall be remitted using BIR Form 1601EQ or the applicable quarterly return.

Tax Type	Covered Period	Form to Use	Alphabet of Payees	Due date for filing & payment	
				Non-EFPS Filers	EFPS Filers
Expanded/ Creditable Withholding Tax (1601E/1606)	1 st month of the quarter	BIR Form 0605 • ATC – MC 200 • Tax Type - WE	None	10 th day of the following month	15 th day of the following month
	2 nd month of the quarter	BIR Form 0605 • ATC – MC 200 • Tax Type - WE	None	10 th day of the following month	15 th day of the following month
	Calendar Quarter	BIR Form 1601EQ	Yes (to include all income payments for the quarter)	Last day of the month following the close of the quarter	Last day of the month following the close of the quarter
Final Withholding Tax (1601F/1602)	1 st month of the quarter	BIR Form 0605 • ATC – MC 200 • Tax Type - WF	None	10 th day of the following month	15 th day of the following month
	2 nd month of the quarter	BIR Form 0605 • ATC – MC 200 • Tax Type - WF	None	10 th day of the following month	15 th day of the following month
	Calendar Quarter	BIR Form 1601FQ/1602Q	Yes for 1601F (to include all income payments for the quarter)	Last day of the month following the close of the quarter	Last day of the month following the close of the quarter

Regular income tax rates for employees of RHQs, ROHQs, OBUs, and Petroleum Contractors

January 31, 2018

BIR issued an advisory on the applicable income tax rates to employees of Regional Headquarters (RHQs) and Regional Operating Headquarters (ROHQs) of multinational companies; Offshore Banking Units (OBUs); and Petroleum Service Contractors and Subcontractors.

Pursuant to this advisory issued on January 31, 2018 and signed by Commissioner Dulay, all employees of these entities enjoying the preferential tax rate of 15% prior to 2018 are now subject to regular withholding tax on compensation. The withholding tax table as prescribed under Revenue Memorandum Circular No. 1-2018 shall be used.

Filing of percentage tax and withholding VAT returns

February 8, 2018

Taxpayers subject to the percentage taxes shall file and pay the tax within twenty-five (25) days after the end of each taxable quarter.

The following instructions must be observed:

1. All taxpayers subject to percentage tax pursuant to Section 116 of the Tax Code and those who will be subject thereto due to change of registration from VAT to Non-VAT, are required to pay the percentage tax on a quarterly basis using BIR Form No. 2551Q. There is no need to file and pay monthly percentage tax on their monthly gross receipts using BIR Form No. 2551M.

2. Taxpayers who are required to withhold Other Percentage Taxes and Value-added Tax shall continue to withhold and remit taxes on a monthly basis using BIR Form No. 1600 - Remittance Return of VAT and Other Percentage Taxes Withheld, considering that taxes withheld are held in trust for the government. Furthermore, BIR Form No. 1600 (Remittance Return of VAT and Other Percentage Taxes Withheld) shall still be used for VAT withheld on government money payments and payments to non-residents.

