TMAP TAX UPDATES

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TO
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LAW OFFICES

Contents

COURT OF TAX APPEALS DECISIONS

Assessment

BIR only has three (3) years, counted from the date of actual filing of the return or from the last day prescribed by law for the filing of such return, whichever comes later, to assess a national internal revenue tax or to begin a court proceeding for the collection thereof without an assessment

Philippine Communications Satellite Corporation v. Commissioner of Internal Revenue, CTA Case No. 9219, September 11, 2019

In the present case, petitioner executed a Deed of Absolute Sale of the TMC property in favor of Fortune Enrichment Resources Holdings and Development Corporation on June 29, 2007. Then, after paying the EWT in the amount of P1,556,180.0062 and DST in the amount of P391,545.00 as calculated in the ONNET Computation Sheet issued by BIR RDO No. 41 - Mandaluyong City, a Certificate Authorizing Registration was issued on July 2, 2007 authorizing the registration of the transfer of the TMC property. Subsequently, a Tax Clearance Certificate dated July 3, 2007, was issued by BIR RDO No. 41 - Mandaluyong City, confirming that all internal revenue taxes due for the purpose of transferring the registration of the TMC property have already been settled.

In this case, Petitioner's VAT return for the second quarter was filed on July 24, 2007. Respondent CIR therefore has until July 25, 2010, three (3) years from the close of taxable quarter, within which to assess petitioner for any deficiency internal revenue taxes. By executing the waiver on January 10, 2011, only the assessment for the fourth quarter of taxable year 2007 is considered extended since it was filed on January 28, 2008. Stated simply, respondent's assessment with regard to the TMC property has already prescribed.

Criminal

The nullity of the alleged tax deficiency assessments and other notices issued by the BIR has rendered the alleged acts or omission of the accused from which the civil liability allegedly arises nonexistent

People of the Philippines v. Rosalinda Valisno Cando, Owner of GASAT EXPRESS, Quirino Hi-way, Sto. Cristo, San Jose Del Monte, Bulacan, CTA Crim. Case No. 0-634 For: Violation of Section 255, National Internal Revenue Code of 1997, as amended, September 11, 2019

The failure of the BIR to prove that the accused received the LOA, PAN, FAN and FLD has rendered the alleged deficiency tax assessments null and void. Thus, the invalidity of said assessments has further cast doubt to the liability of the accused for such deficiency tax assessments as charged in the Information.

Refund/issuance of TCC

The interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997, as amended), in the Filinvest case was deemed constituted as part of the NIRC as of December 23, 1994 up to the present.

Eagle II Holdco, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9637, September 10, 2019

To reiterate, in Filinvest, the Supreme Court in 2011 found that the instructional letters as well as the journal and cash vouchers evidencing the advances extended to affiliates in 1996 and 1997 qualified as loan agreements which are subject to DST. Furthermore, prospective application of decisions is applicable only when an old doctrine of the Supreme Court is overruled by a subsequent decision adopting a new doctrine.

In this case, there is no previous doctrine issued by the Supreme Court that is overruled by the doctrine enunciated in the Filinvest case. In the Filinvest case, the Supreme Court had carefully scrutinized the wording of the law and relevant regulations before it reached its conclusion regarding the taxability of intercompany advances as loan agreements subject to DST, albeit evidenced only by instructional letters and journal and cash vouchers. Thus, the Supreme Court, for the first time, declared that intercompany advances as evidenced by instructional letters and journal and cash vouchers are subject to documentary stamp tax based on the said legal provision. Accordingly, the doctrine laid down in the Filinvest case may be retroactively applied to this case without violating the principle of non-retroactivity of laws and rulings.

Assessment

It is indubitable that the Taxpayer's Verification Notice, which is a mere notice, could not substitute the Letter of Authority

Chem Insurance Brokers & Services Corporation v. Commissioner of Internal Revenue, CTA Case No. 9656, September 09, 2019

The records show that what petitioner initially received was a TVN that authorized RO Pimentel to verify the supporting documents and/or pertinent records of petitioner. It was issued by the ROO, not by the CIR or RRD. While authority was indeed given to RO Pimentel, this is not the authority contemplated in the NIRC where the RO is tasked to make an examination of the taxpayer's records for the purpose of collecting the right amount of tax. A mere notice will not suffice and this is not the equivalent of the requisite LOA.

As a result of the lack of this essential grant of authority, petitioner's assessment by the respondent is thus, as stated, null and void.

Assessment

In the absence of a proper Letter of Authority, the assessment or examination is a complete nullity

First Philippine Power Systems, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9067, September 09, 2019

The rationale for requiring a valid LOA as a prerequisite to a valid assessment is not that difficult to perceive - it is to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same rime responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.

In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, the Supreme Court held that there must be a grant of authority before any revenue officer can conduct an examination or assessment and that the said authorized revenue officer must not go beyond the authority granted.

Assessment

Intra-company transactionsare not "services performed for another person

Mercury Group of Companies v. Commissioner of Internal Revenue, CTA Case No. 9531, September 06. 2019

Sec. 108 of the 1997 NIRC, as amended, defines gross receipts as the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

As explained, the management fee from Trinity and Insurance Divisions are only recorded for monitoring purposes as intra-company transactions. However, petitioner and these divisions are treated as one entity for financial reporting and income tax purposes. Being considered as one and the same entity, the services rendered by petitioner to these divisions are not "services performed for another person" as contemplated in the 1997 NIRC, as amended, for the same to be subjected to VAT. As such, petitioner cannot be made liable for VAT on the management fee.

Refund/issuance of TCC

The proper party to seek the tax refund or credit should be the suppliers

Coral Bay Nickel Corporation v. Commissioner of Internal Revenue, CTA EB Case Nos. 1909 and 1910, September 05, 2019

We should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner.

Thus, the Court En Banc holds that Coral Bay is not the proper party to seek the present judicial claim for tax refund and/or credit. In the event that Coral Bay actually paid the said input tax, its recourse is to seek reimbursement thereof against its supplier and not against the Government.

Criminal Case

An assessment is not necessary prior to the filing of a criminal complaint

People of the Philippines v. Enviroaire, Inc. represented by Tyrone N. Ong & Arlene Chua, CTA Crim. Case No. 0-408, September 04, 2019

In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation, et al*, the Supreme Court held that an assessment is not necessary before the filing of criminal complaint because the latter is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code.

Assessment

A FAN without a definite due date for payment is not valid

Benchmark Marketing Corp. v. Commissioner of Internal Revenue, CTA Case No. 9296, September 04, 2019

The two different due dates indicated in the VAT and EWT assessment notices leaves the taxpayer in a quandary as to when payment should be made. Thus, similar to when no due date is indicated in the FAN, as in the Fitness By Design case, two (2) due dates indicated in the FANs negate the respondent's demand for payment of the deficiency tax liabilities. Absent such demand, the assessments for VAT and EWT are fatally infirm.

Assessment

Only certain items of the income of FCDUs are exempt from tax, and not the entire income of such FCDU.

United Coconut Planters Bank v. Commissioner of Internal Revenue, CTA EB Case Nos. 1790 and 1792, September 03, 2019

The miscellaneous income of P23,710,017.10 earned by UCPB's FCDUs were not classified as offshore income or onshore interest income and therefore, not tax exempt. Not being tax exempt, Section 121 of the NIRC of 1997, as amended, applies to the miscellaneous income which shall be subject to GRT at the rate of 5% pursuant to Section 121 of the NIRC of 1997, as amended, it being other items treated as gross income.

Refund/issuance of tax credit

R.A. No. 6426 remains the governing law on the exemption from estate tax of foreign currency deposits

Estate of Mr. Charles Marvin Romig represented by its sole heir, Mrs. Maricel Narciso Romig v. Commissioner of Internal Revenue, CTA Case No. 9626, September 02, 2019

In this case, the decedent is an American citizen but a resident of the Philippines who left properties in the country, including the subject foreign currency deposit account with HSBC. Consequently, petitioner may now claim exemption from estate tax of its foreign currency deposit with HSBC as long as the deposit is eligible or allowed under R.A. No. 6426, as amended.

Considering that HSBC was granted by the BSP with EFCDU Authority, petitioner's USD deposit with HSBC is eligible or allowed under R.A. No. 6426, as amended. Thus, petitioner's foreign currency deposit with HSBC is exempt from estate tax.

Assessment

It is required to issue the Notice of Informal Conference, the PAN and the FAN in writing to the taxpayer and that the taxpayer must actually receive the same for such notices to be valid

IBM Plaza Condominium Association, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8740, September 02, 2019

Section 3 of RR 12-99 provides for the due process requirement in the issuance of deficiency tax assessments. It prescribes the mode of procedure for service of the notices, specifically Section 3.1.4 of the said regulation provides that if FAN was served by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand showing his name, signature, designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself, and date of receipt thereof.

Considering that the BIR has miserably failed to discharge its burden of proving that the notices were duly served on the taxpayer's duly authorized representatives, it is thus a necessary conclusion that the said assessment is not validly issued, therefore, it is void.

Assessment

Final withholding VAT for payments to nonresidents for use of their property rights or for services rendered in the Philippines shall be withheld at the time of payment

Jobstreet.com Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9483, September 02, 2019

Verily, Section 114(C) of the NIRC of 1997, as amended, in relation to Section 4.114-2(b) of Revenue Regulations No. 16-200534 provides for the time of withholding VAT on payments made to, among others, non-residents, to wit:
"SEC. 114. Return and Payment of Value-Added Tax. - XXX (C) Withholding of Value-added Tax. -The Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and services which are subject to the value-added tax imposed in Sections 106 and 108 of this Code, deduct and withhold the value-added tax due at the rate of five (5%) of the gross payment thereof:

Provided, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to twelve (12%) withholding tax at the time of payment. For purposes of this Section, the payor or person in control of the payment shall be considered as the withholding agent. The value-added tax withheld under this Section shall be remitted within ten (10) days following the end of the month the withholding was made. (Emphases supplied)

Refund/Issuance of Tax Credit

A prior application for tax treaty relief is not required before a taxpayer can avail of the preferential tax treatment under the various Philippine tax treaties

Commissioner of Internal Revenue v. DGA Ilijan B.V., CTA EB Case No. 2008, September 02, 2019

The State's compliance with tax treaty obligations must take precedence over the objective of a mere administrative issuance.

This is the import of the Supreme Court's ruling in Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue12 as reiterated and applied in the subsequent case of CBK Power Company Limited v. Commissioner of Internal Revenue. The Supreme Court already definitively settled such issue. Needless to say, this Court has no other option but to faithfully uphold and apply the same. The Supreme Court, by

tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings. Consistent with the foregoing, DGA Ilijan B.V.'s failure to file a tax treaty relief application (TTRA) before the date of the transaction does not deprive it of its entitlement to tax treaty relief provided under the Philippines-Netherlands Tax Treaty.

Assessment

The determination of the type of documents needed to support the protest rests solely on the taxpayer

Commissioner of Internal Revenue v. Bisazza Philippines, Inc., CTA EB Case No. 1870, September 02, 2019

The BIR cannot demand what type of supporting documents should be submitted. More importantly, on the basis thereof, the High Court recognized that "attaching" supporting documents to the protest constitutes, in effect, the "submission" of the same as of the filing of the said protest.

A perusal of the Protest/Request for Reconsideration filed on February 17, 2011 25 shows that respondent attached supporting documents thereto. 26 Thus, it also cannot be said that respondent failed to submit relevant supporting documents that would render the subject tax assessments final. Consequently, the Court in Division had jurisdiction over the case a quo.

Refund /Issuance of Tax Credit

Exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer.

Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership, CTA EB NO. 1768, August 30, 2019

Jurisprudence dictates that a claim for refund should prove every aspect of its claim. It would not be proper to simply allow and compel a tax credit or refund in the amount it claims without proving the amount of its claim. After all, "tax refunds are in the nature of tax exemptions," and are to be construed strictissimi juris against the taxpayer.

In this case, the court found that the invoices and official receipts had failed to comply with the substantiation requirements because either the VAT was not separately indicated therein or that the transactions were supported only by a statement of account or a transaction receipt and not by valid VAT invoices and official receipts.

Assessment

The change in ownership of one corporation and, consequently, a change in its name, does not result in the transfer of ownership of its assets

Provcince of Pangasinan v. Team Sual Corporation, CTA EB NO. 1883, August 30, 2019

An authorized change in the name of a corporation has no more effect upon its identity as a corporation than a change of name of a natural person has upon his identity. It does not affect the rights of the corporation or lessen or add to its obligations. After a corporation has effected a change in its name it should sue and be sued in its new name

Whether there was a transfer of ownership or title of real property in this case is the determination whether indeed petitioner merely changed its corporate name or is a separate corporate entity.

Refund /Issuance of Tax Credit

A claim for refund or credit with the BIR and the subsequent appeal to this Court must be filled within two (2) years from the date of payment of the tax.

PTT Philippines Trading Corporation v. Commissioner of Customs, CTA CASE NO. 9132, August 29, 2019

To be entitled to a refund of erroneously or illegally collected tax, the following requisites must be complied with: (1) that the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and (2) that the claim for refund or credit has been filed within two years from the date of payment of tax, or penalty, regardless of any supervising cause that may arise after payment.

Refund /Issuance of Tax Credit

The power to enact, amend, or repeal laws belong exclusively to Congress

PTT Philippines Trading Corporation v. Commissioner of Customs, CTA CASE NO. 9132, August 29, 2019

Tax exemptions are granted for specific public interests that the Legislature considers sufficient to offset the monetary loss in the grant of exemptions. To limit the tax-free importation privilege of FEZ enterprises by requiring them to pay subject to a refund clearly runs counter to the Legislature's intent to create a free port where the "free flow of goods or capital within, into, and out of the zones" is ensured.

The State's inherent power to tax is vested exclusively in the Legislature. We have since ruled that the power to tax includes the power to grant tax exemptions. Thus, the imposition of taxes, as well as the grant and withdrawal of tax exemptions, shall only be valid pursuant to a legislative enactment.

Refund /Issuance of Tax Credit

Petroleum and petroleum products brought into the Freeport and Economic Zone and which remain therein are not taxable importations.

PTT Philippines Trading Corporation v. Commissioner of Customs, CTA CASE NO. 9132, August 29, 2019

Goods brought into and traded within an [Freeport and Economic Zone] are generally beyond the reach of national internal revenue taxes and customs duties enforced in the Philippine customs territory. This is consistent with the incentive granted to Freeport and Economic Zones exempting the importation itself from taxes and duties.

Therefore, the act of bringing the goods into an [Freeport and Economic Zone] is not a taxable importation. As long as the goods remain (e.g., sale and/or consumption of the article within the [Freeport and Economic Zone]) in the [Freeport and Economic Zone] or re-exported to another foreign jurisdiction, they shall continue to be tax-free. However, once the goods are introduced into the Philippine customs territory, it ceases to enjoy the tax privileges accorded to FEZs. It shall then be considered as an importation subject to all applicable national internal revenue taxes and customs duties".

Assessment

Service by the BIR of assessment notices to a taxpayer's old address despite having earlier knowledge about its new address is not valid notice for purposes of tax assessment.

Commissioner of Internal Revenue v. Daewoo Engineering & Construction Company Limited, CTA EB NO. 1799, August 29, 2019

Evidence show that respondent's previous address was at 29th Floor, Enterprise Center, Tower I, 6766 Ayala Avenue Makati City. On December 2, 2009, respondent filed with the BIR an Application for Registration Information Update (BIR Form No. 1905) with notation that its principal office would be transferred to 15th Floor, the Taipan Place F. Ortigas Jr. Road, Ortigas Center, Pasig City. Even prior to the filing of such Application for Registration Information Update, petitioner's Follow-Up Letter dated October 15, 2009 already indicated respondent's new business address in Pasig City. All these are indicia that as early as 2009, petitioner already had knowledge of respondent's new address in Pasig City. But for reasons only known to him, petitioner mailed the PAN with Details of Discrepancy dated October 8, 2010 to respondent's old address in Makati City.

Besides, the PAN mailed to respondent's old address in Makati City was "returned to sender" per the document issued by the Philippine Postal Corporation. This notwithstanding, petitioner still mailed the FAN with Details of Discrepancy dated February 11, 2011 to respondent's old address in Makati City.

Given that the subject PAN and FAN respectively dated October 8, 2010 and February 11, 2011 were mailed by petitioner to respondent using the latter's old address in Makati City despite prior information about its new address in Pasig City as early as 2009, such serious flaw effectively precluded respondent from being informed of the factual and legal grounds of such notices, as well as foreclosed its right to intimate protestations thereto, rendering the subject assessment void and without legal effect, justifying its cancellation and withdrawal.

Refund /Issuance of Tax Credit

The 30-day period for petitioner to file its Petition for Review should be counted from the expiration of the 120-day waiting period

IBEX Philippines, Inc., v. Commissioner of Internal Revenue, CTA EB NO. 1850, August 28, 2019

For all administrative claims for refund that were filed prior to June 11, 2014, the date of issuance of RMC No. 54-14, the taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other additional documents to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing.

In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must be respected.

Assessment

RMO No. 43-90 mandates that the BIR is required to issue a new LOA in cases of reassignment or transfer of the investigating RO to another revenue office.

FPIP Property Developers and Management Corporation v. Commissioner of Internal Revenue, CTA CASE NO. 8980, August 28, 2019

In this case, RO Reynoso Bravo testified that while he was authorized to conduct the audit, he was not able to finish the same due to his re-assignment to the Large Taxpayer Division-Makati after petitioner's execution of the third Waiver. RO Josa Gomez, by virtue of the Memorandum of Assignment (MOA) No. LOA-116-2013-042630 issued by Mr. Cesar Escalada, Chief, Regular LT Audit Division 1 on February 25, 2013, continued the audit under the supervision of Group Supervisor Olivia Aviles. Such examination ended with the issuance of the FLD/FAN and the FDDA.

Note that RO Josa Gomez and RO Felina Guimbao who recommended the issuance of PAN, FLD with FAN and FDDA against petitioner through memorandum report, were not among those named as examiners in the LOA issued for TY 2009

Thus, absent the necessary issuance of a new LOA specifically naming the person to whom the case will be reassigned with the corresponding annotation per RMO No. 43-90, there is no authority to conduct the investigation/audit. Consequently, the assessment is null and void. And a void assessment bears no valid fruit.

Assessment

A taxpayer has thirty (30) days to appeal from the receipt of the denial of the local treasurer or from the lapse of the sixty (60) day period within which to appeal with the court of competent jurisdiction

Public safety Mutual Benefit Fund, Inc. v. Rosette F. Laquian acting City Treasurer, San Juan City, CTA AC NO. 214, August 27 2019

In this case, Petitioner filed its protest to the assessment on December 29, 2016. Counting 60 days from the filing of the protest, respondent has 60 days or until February 28, 2016 to decide on the protest. As no decision was issued on February 28, 2016, petitioner has 30 days or until March 26, 2016 to file an appeal with the RTC. However, petitioner only filed its petition on February 20, 2018. Thus, said petition is filed out of time.

Violation of Tax Code

Extinction of the penal action does not carry with it the extinction of the civil liability

Romulo L. Neri v. People of the Philippines, CTA EB CRIM. NO. 046, August 27, 2019

In this case, petitioner was acquitted of the crime of failure to supply correct and accurate information in his income tax return for taxable year 2009. However, the Court in Division found petitioner liable for civil liability for taxable year 2009 amounting to Php474,381.63.

The Court En Banc found that petitioner sufficiently explained the discrepancy in Note 6 and Line 29 of his amended ITR. The proven income items of the petitioner amount to Php14,095,952.45 while that declared in Line 29 of the amended ITR is greater at Php14, 117,945.36. This warrants the reversal of the Court in Division's finding of civil liability against the accused for taxable year 2009.

Assessment

A taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment.

Commissioner of Internal Revenue v. Rieckermann Philippines, Inc., CTA EB NO. 1855, August 27, 2019

In this case, Petitioner claims that with the failure of Respondent to appeal to the court a quo within thirty (30) days following the lapse of the 180-day period provided under Section 228 of the NIRC of 1997, as amended, the deficiency assessments already became final, executory and demandable.

However, the Supreme Court ruled that where there was inaction on a disputed assessment, Respondent chose the second option under Section 228 of the NIRC of 1997, as amended. It opted to await the final decision on the protested assessment. On September 03, 2013, Respondent received the Final Decisiondated August 28, 2013 signed by Regional Director Jonas DP. Amora. Accordingly, Respondent timely filed a "Petition for Review" with the Second Division on October 03, 2013, preventing the assessment from becoming final, executory and demandable.

Others

The power to tax of provinces, cities and municipalities is limited by the law that granted it, the 1991 LGC

Makati City v. Metro Pacific Tollways Development Corporation, CTA EB NO. 1754, August 27, 2019

The rule is that a statute should be so construed not only to be consistent with itself but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system. The rule is expressed in the maxim, interpretare et concordare legibus est optimus interpretandi, or every statute must be construed and harmonized with other statutes as to form a uniform system of jurisprudence.

If the business of a holding company is in the same class as that of a bank or other financial institutions, the Makati City tax ordinance could simply have included holding companies in its Section 3A.02(h), instead of placing them all by themselves in Section 3A.02(p) and then making the tax rates in either Section 3A.02(h) or (g) applicable to them. That holding companies, exclusively, were placed in a separate section, shows that they comprise a category distinct from the class of 'banks and other financial institutions' as defined by Section 131(e) of the LGC. That holding companies were subjected to a tax on dividend income which the LGU is not authorized and is in fact prohibited from levying on businesses other than banks and financial institutions, shows a deliberate intent to circumvent the prohibition laid down by Section 133(a) that the taxing powers of LGUs shall not extend to the levy of income tax, except on banks and other financial institutions.

Assessment

if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.

Commissioner of Internal Revenue v. FEATI University Inc., CTA EB NO. 1857, August 27, 2019

In the present case, FEATI denies receiving the assessment notice, and the CIR was unable to present substantial evidence that such notice was, indeed, received by FEATI or its authorized representatives. It is not enough that the registry return card was presented by the CIR to prove proper service of FAN. Such should have been signed by FEATI's authorized representative. A perusal of the records shows that the registry return card was signed by Mr. Rommel Abella, who is not authorized by FEATI to receive the mail matter on its behalf. Even the testimony of Mr. Gabriel Intengan, FEATI's Vice-President and Chief Operations Officer from 2003 to 2012, as well as the General Information Sheet for year 20119 of FEATI only prove that Mr. Rommel Abella is not authorized by FEATI to receive the mail matter on its behalf.

In the light of the foregoing events, the improper service of FAN leads to the conclusion that no valid assessment was issued.

Refund/Issuance of Tax Credit

The lack of objection to hearsay testimony may result in its being admitted as evidence

Commissioner of Internal Revenue v. Macquarie Offshore Services PTY. LTD. – Philippine Branch, CTA EB NO. 1936, August 22, 2019

In this case, the CIR raised the admissibility of MOSPLPB's pieces of evidence since the witnesses therein allegedly have no personal knowledge of the facts and contents of the documentary exhibits. However, the former Third Division ruled that the objection of the CIR as to the admissibility of MOSPLPB's pieces of evidence to prove zero-rated sales in the 1st quarter of FY 2011 was made beyond the period to object, thus, considered waived.

The Court ruled that the general rule is that hearsay evidence is not admissible. However, the lack of objection to hearsay testimony may result in its being admitted as evidence. 11 The lack of objection may make any incompetent evidence admissible.

Assessment

Any reassignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A.

Commissioner of Internal Revenue v. Orient Overseas Container Line, Ltd, CTA EB NO. 1956, August 22, 2019

In all tax assessments, the audit investigation must be conducted by a duly designated RO tasked to perform audit and examination of taxpayers' books, pursuant to an LOA issued by the Regional Director. In case of re-assignment or transfer of cases to another RO, a new LOA with a corresponding notation thereto must be issued.

In this case, the CIR failed to comply with the issuance of a new LOA, despite the reassignment of the investigation to a new RO. No new LOA was issued to RO Sison in relation to the investigation of OCCLL's tax liability. Thus, the investigation conducted by RO Sison was without the requisite authority.

Refund/Issuance of Tax Credit

The Court of Tax Appeals has exclusive jurisdiction to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue.

Commissioner of Internal Revenue v. Macquarie Offshore Services PTY. LTD. – Philippine Branch, CTA EB NO. 1936, August 22, 2019

In the present case, the Court in Division ruled that the CTA has jurisdiction to determine the validity or constitutionality of a particular administrative tax rule or regulation but then declined to pass upon the validity or constitutionality of RMC No. 17-2013 as it found that petitioner failed to exhaust administrative remedies. According to the Court in Division, petitioner should have filed an appeal with the Secretary of Finance to question the validity or constitutionality of RMC No. 17-2013 before going to this Court.

However, the Supreme Court ruled that the CTA may pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer for the purpose of claiming a tax refund. In such instances, the CTA is merely lawfully exercising its power to pass upon matters brought before it in accordance with its mandate provided under Section 7 of RA No. 1125, as amended

Refund/Issuance of Tax Credit

A claim for refund or credit shall be filed within two years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.
Croma Medic Inc. v. Commissioner of Internal Revenue, CTA EB NO. 9584, August 16, 2019

Perusal of the records show that the final withholding tax was remitted to the BIR on April 12, 2016. Consequently, petitioner had until April 13, 2018 within which to file its claim for refund both with the BIR and the corresponding appeal before this Court. By filing its administrative claim for refund on April 18, 2016 and the present Petition for Review on May 3, 2017, petitioner clearly complied with the two-year prescriptive period mandated under the aforequoted sections of the NIRC

Refund/Issuance of Tax Credit

Tax refunds are in the nature of tax exemptions and are to be construed strictissimi juris against the entity claiming the same. *Croma Medic Inc. v. Commissioner of Internal Revenue, CTA EB NO. 9584, August 16, 2019*

In this case, Petitioner attempted to offer its Revised Monthly Remittance Return of Final Income Taxes Withheld (1601F) marked as Exhibit "P-3-a", the same was however denied admission by this Court. Since evidence, documentary or testimonial, cannot be given probative value unless offered and admitted by the court, the denied exhibit cannot be considered by this Court as part of petitioner's evidence.

As such, by failing to provide the Original Monthly Remittance Return of Final Income Taxes Withheld (1601F) for the month of March with the corresponding payment confirmation receipt filed through the eFPS, this Court cannot clearly ascertain how much final tax were withheld and remitted by the petitioner on its dividends.

Therefore, Petitioner is not entitled to refund for failing to prove that there was indeed erroneous remittance of final withholding tax on dividends to the BIR.

BIR ISSUANCES

RR No. 9-2019 (published in Malaya Business Insight on August 28, 2019)

Thisrevenue regulation amends Sections 2, 3 and 7 of RR No. 5-2017 relative to the rules and regulations implementing RA No. 10754 entitled "An Act Expanding the Benefits and Privileges of Persons with Disability" relative to the tax privileges of PWD and tax incentives for establishments granting sales discount and prescribing the guidelines for the availment thereof, amending RR No. 1-2009.

RMO No. 47-2019 issued on September 05, 2019

This RMO modifies and drops the Alphanumeric Tax Code (ATC) on Final Withholding Tax on Amounts Withdrawn from Decedent's Deposit Account and Excise Tax on the Performance of Services on Invasive Cosmetic Procedures pursuant to RR No. 8-2019 and RR No. 2-2019.

RMC No. 92-2019 issued on September 05, 2019

This RMC publishes the full text of the RA No. 11346 entitled "An Act Increasing the Excise Tax on Tobacco Products Imposing Excise Tax on Heated Tobacco Products and Vapor Products, Increasing the Penalties for Violations of Provisions on Articles Subject to Excise Tax, and Earmarking a Portion of the Total Excise Tax Collection from Sugar-Sweetened Beverages, Alcohol, Tobacco, Heated Tobacco and Vapor Products for Universal Health Care, Amending for this Purpose Sections 144, 145, 146, 147, 152, 164, 260, 262, 263, 265, 288 and 289, Repealing Section 288(B) and 288(C), and Creating New Sections 263-A, 265-B and 288-A of the NIRC of 1997, as Amended by RA No. 10968 and for Other Purposes".

SEC ISSUANCES

SEC MEMORANDUM CIRCULARS

Series of 2019

Subject: Prohibition on Unfair Debt Collection Practices of Financing Companies (FC) and Lending Companies (LC)

SEC OPINIONS

SEC-OGC Opinion No. 19-29
Wholly or Partly Nationalized Activity; Anti-Dummy Law

Upon evaluation of Ambica's purpose clause and based on its disclosed customers, Ambica is deemed not to be engaged in retail trade because it is selling on a wholesale basis; hence, its sales are not direct to the general public.

Ambica is also not subject to the foreign equity restriction for domestic market enterprises under the FIA since its paid-up capital is P63,500,000 or more than the paid-in-equity capital threshold of USD200,000.00.

Consequently, the Anti-Dummy Law does not apply to Ambica, since it is note engaged in a wholly or partly nationalized activity.