



TMAP TAX UPDATES

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COURT OF TAX APPEALS EN BANC DECISIONS

CIR v. Philippine National Bank (CTA EB No. 1615 dated April 25, 2018)/ *Philippine National Bank v. CIR* (CTA EB No. 1617 dated April 25, 2018)

BASIC REQUISITES FOR A TAX REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE OF UNUTILIZED EXCESS CWT. For a taxpayer to be entitled to a refund or an issuance of tax credit certificate for its unutilized excess CWT, the following basic requisites must be sufficiently established:

1. The claim for refund must be filed within the two-year prescriptive period;
2. The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom;
3. The income upon which the taxes were withheld must be declared as part of the gross income of the recipient;
4. The amount claimed was not carried over to the succeeding taxable quarter/period; and
5. When the claim involves prior year's excess CWT applied to the current income tax liability, the prior year's excess CWT must be substantiated by certificates of withholding tax.

CIR v. Premium Leisure Corp. (CTA EB No. 1702 dated April 25, 2018)

RECEIPT BY A STOCKHOLDER, WHETHER CORPORATE OR INDIVIDUAL, OF LIQUIDATING DIVIDENDS IS NOT SUBJECT CGT BUT TO ORDINARY INCOME TAX. The basis for this position is Section 73 of the Tax Code as implemented by Section 8 of RR 6-2008 and the leading case of *Wise & Co., Inc. vs. Meer* which was reiterated in the 2008 case of *Fernando v. Spouses Lim*.

Te Deum Resources, Inc. v. City of Davao (CTA EB Case No. 1692 dated May 8, 2018)

DIVIDENDS AND INTEREST INCOME ON MONEY MARKET PLACEMENTS ARE NOT SUBJECT TO LOCAL BUSINESS TAX, UNLESS LEVIED ON BANKS AND OTHER FINANCIAL INSTITUTIONS INCLUDING NON-BANK FINANCIAL INTERMEDIARIES. The CTA En Banc reversed the Decision of the Second Division imposing local business tax on dividends and interest received by a holding company on the ground that under the common limitations under Section 133(a) of the Local Government Code, the Local Government cannot impose income tax, except when levied on banks and other financial institutions.

To be considered as a non-bank financial intermediary, a taxpayer must meet all the following requisites.

1. The taxpayer must be authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities.
2. The principal functions of the taxpayer "include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others".
3. The taxpayer must perform any of the following functions on a regular and recurring, not on an isolated basis, to wit:
 - a. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend

- these funds to another person or entity, and in the process acquire debt or equity securities;
- b. Use principally the funds received for acquiring various types of debt or equity securities;
- c. Borrow against, or lend on, or buy or sell debt or equity securities;
- d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers; and
- e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.

***Local Board of Assessment Appeals of the Province of Bulacan vs. Central Board of Assessment Appeals* (CTA EB Case No. 1505 dated May 10, 2018)**

THE CTA HAS JURISDICTION TO ENTERTAIN PETITIONS FOR CERTIORARI QUESTIONING INTERLOCUTORY ORDERS ISSUED BY THE CENTRAL BOARD OF ASSESSMENT APPEALS (CBAA). The CTA, by constitutional mandate, is vested with jurisdiction to issue writs of *certiorari* on interlocutory orders issued by the CBAA. While there is no express grant of such power, with respect to the CTA, following Section 1, Article VIII of the 1987 Constitution, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the CBAA in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the CTA.

However, mere abuse of discretion is not enough, it must be grave. The CTA En Banc found there was no grave abuse of discretion because there was no violation of petitioner's right to due process.

COURT OF TAX APPEALS DECISIONS

***Grandworth Resources Corporation v. CIR* (CTA Case No. 8765 dated April 17, 2018)**

A PRELIMINARY COLLECTION LETTER MAY CONSTITUTE A FINAL DECISION ON DISPUTED ASSESSMENT THAT IS APPEALABLE TO THE CTA IF THERE IS A THREAT OF SUMMARY REMEDIES FOR COLLECTION. The tenor and language of the said letter strongly suggests a character of finality. The fact that the letter reiterated petitioner's tax deficiency assessment and requested for the payment thereof with the warning that "*otherwise, we [respondent] shall be constrained to enforce collection hereof thru administrative summary remedies provided for by law, without further notice*" certainly indicates that it was the CIR's final action regarding petitioner's request for reconsideration.

***Lepanto Consolidated Mining Company v. CIR* (CTA Case No. 8970 dated April 18, 2018)**

EXCEPTIONS EXTENDING THE PRESCRIPTIVE PERIOD TO ASSESS MUST BE STRICTLY CONSTRUED. The fact of receipt by the taxpayer of his/her file copy of the waiver of the prescriptive period must be indicated in the original copy to show that the taxpayer was notified of

the acceptance of the BIR and the perfection of the agreement. This will constitute sufficient evidence of the waiver. Otherwise, the prescriptive period is not deemed waived.

Bonifacio Corporation v. CIR (CTA Case No. 9068 dated April 19, 2018)

THE CTA CAN RESOLVE AN ISSUE WHICH WAS NOT RAISED BY THE PARTIES. The lack of authority of the Revenue Officers who conducted the audit investigation was not raised in the Petition or in the proceedings. Nevertheless, under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

THE LETTER OF AUTHORITY MUST SPECIFY THE NAME OF THE REVENUE OFFICER CONDUCTING THE AUDIT INVESTIGATION; OTHERWISE, THE ASSESSMENT IS VOID. There must be a grant of authority before any revenue officer can conduct an examination or assessment. In case there is a change in the assigned revenue officer, a new LOA must be issued authorizing the new officer to conduct the audit investigation. The authority of revenue officers to conduct audit investigation goes into the validity of an assessment; thus, any assessment arising from the conduct of audit examination of a taxpayer's books of accounts by a revenue officer who is not duly authorized to do so is a complete nullity.

Colt Commercial Inc. v. CIR (CTA Case No. 9205 dated April 20, 2018)

THE RULE THAT THE CTA SHALL CONSIDER NO EVIDENCE WHICH HAS NOT BEEN FORMALLY OFFERED ADMITS OF AN EXCEPTION. The following requirements must be present for the exception to apply: first, the evidence must have been duly identified by testimony duly recorded; and, second, the same must have been incorporated in the records of the case. The evidence that was not formally offered was the Quarterly VAT return pre-marked by the independent CPA and identified in his Judicial Affidavit.

Yusen Logistics Center, Inc. v. CIR (CTA Case No. 9109 dated April 26, 2018)

THE CIR'S FAILURE TO PROVE THE ACTUAL RECEIPT OF THE FLD/FAN BY PETITIONER OR BY ITS AUTHORIZED REPRESENTATIVE IS FATAL AS TO RENDER THE ASSAILED ASSESSMENT VOID. While a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion and a direct denial thereof shifts the burden to the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. The FLD/FAN was mailed and was not returned to sender. However, the CTA found that the note in the registry return receipt itself which reads: "a registered article must not be delivered to anyone but the addressee, or upon the addressee's written order, in which case the authorized agent must write the addressee's name on the proper space and then affix legibly his own signature below it" was not observed.

Clark Water Corporation v. CIR (CTA Case No. 9286 dated May 3, 2018)

THE SALE OF SERVICES BY A FREEPORT ZONE REGISTERED ENTERPRISE IS NOT SUBJECT TO VAT IF THE INCOME FROM SOURCES WITHIN THE CUSTOMS TERRITORY DOES NOT EXCEED 30% OF ITS TOTAL INCOME FROM ALL SOURCES.

Duty Free Philippines Corporation v. CIR (CTA Case No. 9355 dated May 8, 2018)

DISPUTES AND CLAIMS SOLELY BETWEEN GOVERNMENT OFFICES, BUREAUS, AGENCIES AND INSTRUMENTALITIES, INCLUDING GOCCS, FALL WITHIN THE INITIAL JURISDICTION OF THE DOJ. Duty Free is an agency attached to DOT which is a national government agency while respondent BIR is a bureau under the supervision of DOF, which is also a national government agency. The opposing parties are both agencies of the government. Hence, the jurisdiction on the VAT refund claim belongs to the Secretary of Justice and the disputes should be resolved pursuant to PD 242 in accordance with the 2017 Supreme Court decision in PSALM v. CIR.

AGC Flat Gas Philippines v. Bureau of Customs (CTA Case No. 8752 dated May 9, 2018)

THE CTA HAS JURISDICTION OVER REFUND CLAIMS OF PEZA-REGISTERED ENTERPRISES OF ERRONEOUSLY PASSED-ON CUSTOMS DUTIES NOT ACTED UPON BY THE COMMISSIONER OF CUSTOMS IF SUCH CLAIMS ARE FILED WITHIN SIX YEARS FROM DATE OF PAYMENT. It would be anomalous, if not highly iniquitous, if a taxpayer is totally at the mercy of the Commissioner of Customs and be left without recourse but to await his decision which may or may not be forthcoming. Following the Civil Code provisions on *solutio indebiti*, refund claims of PEZA-registered enterprises of erroneously passed-on customs duties not acted upon by the Commissioner may be filed with the CTA within six years from date of payment of the passed-on customs duties.

Philip Morris Philippines Manufacturing, Inc. v. CIR (CTA Case No. 8791 dated May 9, 2018)

IN CLAIMING A REFUND OF EXCISE TAXES PAID IN ADVANCE FOR LOCALLY MANUFACTURED PRODUCTS WHICH WERE SUBSEQUENTLY EXPORTED, THE TWO (2)-YEAR PERIOD TO FILE THE ADMINISTRATIVE AND JUDICIAL CLAIMS AS PROVIDED IN SECTIONS 204 AND 229 OF THE NIRC OF 1997, AS AMENDED, APPLIES. When a taxpayer paid advance excise taxes on goods locally manufactured, such taxes were collected legally. However, when the goods locally manufactured were subsequently exported, the advanced excise taxes paid became erroneously collected. Thus, in claiming a refund for such advance excise taxes paid, the two-year period to file the administrative and judicial claims as provided in Sections 204 and 229 of the Tax Code applies. However, the CTA did not specify if the 2 year-period should be counted from the date of payment of the advance excise tax or from the date of exportation when the tax became erroneously collected.

The principle of *solutio indebiti* is not applicable to the advance payment of excise taxes on goods locally manufactured because the duty to pay excise tax in advance is imposed by RR 3-2008.

Fortich v. Leonida (CTA Case No. 9036 dated May 10, 2018)

A WAIVER IS DEFECTIVE IF DATE OF ACCEPTANCE AND FACT OF RECEIPT BY THE TAXPAYER OF THE ACCEPTED WAIVER IS NOT INDICATED ON THE BIR COPY OF THE WAIVER. ABSENCE OF LOA VIOLATED PETITIONER'S RIGHT TO DUE PROCESS. Estoppel cannot apply in such a case as it was solely the BIR who caused the defects in the waiver, and hence, it must bear the consequences thereof. It cannot shift the blame to the taxpayer. A waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed. The records of the case are bereft of any indication that a LOA was issued to Petitioner.

REVENUE ISSUANCES

Revenue Regulations No. 16-2018 (25 May 2018)

Amends Revenue Regulations (RR) No. 10-2015 as amended by RR Nos. 12-2015, 14-2015 and 6-2016 on the use of non-thermal paper for all Cash Register Machines (CRMs)/Point-of-Sales (POS) machines and other invoice/receipt generating machine/software

Revenue Memorandum Circular No. 30-2018 (3 May 2018)

Amended the documentary requirements for new business registrants as listed in annexes A1 to A3 of RMC No. 93-2016, as amended by RMC No. 137-2016. The changes are as follows:

1. Books of Accounts are no longer required in securing a Certificate of Registration (COR) and Authority to Print (ATP).
2. For authorized representatives of a taxpayer to be able to transact with the BIR, the following shall be required:
 - a. For an individual taxpayer:
 - i. Special Power of Attorney; and
 - ii. Identification Card of the authorized representative.
 - b. For a non-individual taxpayer:
 - i. Board Resolution indicating the name of the authorized representative;
 - ii. Secretary's Certificate; and
 - iii. Identification Card of the authorized representative.

Books of Account for new business registrants shall be registered by the taxpayer within 30 days from the date of business registration. Authorized representative who will transact with the BIR shall be required to present, on behalf of an individual taxpayer, special power of attorney and identification card of the authorized person; on behalf of a non-individual taxpayer, Board Resolution, Secretary's Certificate and Identification Card of the authorized person.

Revenue Memorandum Circular No. 33-2018 (17 May 2018)

Notifies the entry into force, effectivity and applicability of the Renegotiated Philippines-Thailand Double Taxation Convention

Revenue Memorandum Circular No. 34-2018 (17 May 2018)

Notifies the entry into force, effectivity and applicability of the Philippines-Sri Lanka Double Taxation Agreement

Revenue Memorandum Circular No. 36-2018 (21 May 2018)

Extends the validity period of Certificate of Accreditation issued to developers/dealers/suppliers/vendors/pseudo-suppliers of Cash Register Machines (CRM), Point-of-Sale (POS) Machines and/or other sales machine/receipting software

Revenue Memorandum Circular No. 38-2018 (23 May 2018)

Reiterates the guidelines in registration, updates and other tax compliance requirements of candidates, political parties/party list groups and campaign contributors

Revenue Memorandum Circular No. 39-2018 (24 May 2018)

Reiterates the imposition of Value-Added Tax on goods disposed of or existing as of the date of change in or cessation of status of a person as VAT-registered taxpayer pursuant to Sec. 4.106-8 of RR No. 16-2005, implementing Sec. 106(C) of the Tax Code of 1997, as further amended by R.A. 10963, otherwise known as the TRAIN Law

Revenue Memorandum Order No. 19-2018 (25 April 2018)

- Policies, guidelines and procedures in registering new business prescribed under Revenue Memorandum Order (RMO) No. 6-2018 are revised;
- Implements the “Single Window” process flow in the registration of new businesses;
- Delineates the respective responsibilities of concerned offices/units for the “Single Window” process flow;
- Mandates the designation of a “New Business Registrant Officer” and the provision of a “New Business Registrant Counter” in the frontline service area of the RDO to exclusively cater to new business registrants;
- Authorizes the Revenue Collection Officer to accept payments of Registration Fee, Documentary Stamp Tax and penalties related to registration;

Revenue Memorandum Order No. 20-2018 (3 May 2018)

To provide a better control and monitoring mechanism in the cancellation of Tax Credit Certificates (TCCs) and the release of funds for approved requests for cash conversion, the Order prescribes the following in relation to the processing of TCCs for cash conversion:

- revised guidelines, policies and procedures;
- updated functions and responsibilities of each office involved; and
- documentary requirements.

Revenue Memorandum Order No. 21-2018 (15 May 2018)

Amends Section IV.C.4 of RMO No. 22-2016 to allow acceptance by Revenue Officers of certificate of remittance signed by the cashier and countersigned by the manager with bank seal from Authorized Agent Bank in connection with the verification of collection/payment of taxes.



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