



TMAP TAX UPDATES

JULY 16, 2018 TO AUGUST 15, 2018

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COURT OF TAX APPEALS EN BANC DECISIONS

CIR v. China State Philippines Construction Corporation (CTA EB No. 1558 dated July 16, 2018)

THE ISSUANCE OF LOA COVERING THE AUDIT OF “UNVERIFIED PRIOR YEARS” IS A PROHIBITED PRACTICE. The basis of this proposition is Section C of RMO No. 43-[19]90 which provides that a LOA should cover only cover one taxable period not exceeding one taxable year. Accordingly, assessments for taxable years which are not specified in the LOA are void.

A PARTY MAY NOT CHANGE HIS THEORY OF THE CASE ON APPEAL. The CTA *En Banc* ruled that because of the failure of the CIR to raise before the CTA in Division that the returns filed by the Company for TY 2006 are false, the CIR can no longer raise it as a defense on the Court *En Banc*.

CIR vs. T Shuttle Services, Inc. (CTA EB No. 1565 dated July 16, 2018)

THE CTA HAS JURISDICTION OVER THE DETERMINATION OF THE VALIDITY OF A WARRANT OF DISTRRAINT AND LEVY ISSUED BY THE CIR. The issue is properly included in Section 7(a)(1) of Republic Act No. 1125, as amended, and Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals as “other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.”

THE PRESENTATION OF REGISTRY RETURN RECEIPTS IS NOT SUFFICIENT TO PROVE THAT THE COMPANY ACTUALLY RECEIVED THE PAN AND FAN AND THE LACK OF DEFINITE CATEGORICAL DEMAND TO PAY THE ASSESSED AMOUNT ON OR WITHIN THE DATE CERTAIN RENDERS THE ASSESSMENT VOID.

National Grid Corporation of the Philippines v. Central Board of Assessment (CTA EB No. 1459 dated July 16, 2018)

THE REMEDY OF APPEAL UNDER SECTION 226 OF THE LGC OF 1991 MAY BE AVAILED OF BY HAVING TO PAY UNDER PROTEST THE RPT SUBJECT OF ASSESSMENT. The requirement of payment under protest is the norm in appeal of assessments of RPT to the LBAA and this is well established by several cases decided by the Supreme Court.

Section 252 of the LGC of 1991 emphatically directs that taxpayer/real property owner questioning the assessment should pay the tax due before his protest can be entertained.

CIR v. GIC Private Limited (CTA EB No. 1477 dated July 16, 2018)

WHEN THE TAXPAYER IS FOUND TO BE EXEMPT FROM INCOME TAX UNDER SECTION 32 (B) (7) (a) OF THE NIRC, AS AMENDED, REFUND OF THE SUBJECT FINAL TAXES IN FAVOR OF THE TAXPAYER IS IN ORDER AND CIR IS WITHOUT ANY LEGAL RIGHT TO RETAIN THE FINAL TAXES FROM THE INTEREST INCOME REALIZED FROM TAXPAYER’S INVESTMENT IN PHILIPPINE TREASURY BONDS.

COURT OF TAX APPEALS DECISIONS

Monarch Agricultural Products Inc vs CIR (CTA Case No. 9834 dated July 20, 2018)

WITHDRAWAL OF APPEAL IS A MATTER OF RIGHT WHEN SUMMONS HAS YET TO ISSUE AND NO ANSWER HAS YET BEEN FILED. An appeal may be withdrawn at any time before filing of the appellee's brief or answer by the respondent.

People of the Philippines vs. Izumo Contractors, Inc. (CTA Crim. Case No. O-526, O-527, O-528 & O-529 dated July 24, 2018)

AN ASSESSMENT IS NOT NECESSARY BEFORE FILING A CRIMINAL COMPLAINT. The CTA reiterated the Supreme Court's decision that when fraudulent taxes are involved, a proceeding in court for the collection of such taxes may be begun even without an assessment.

ELEMENTS OF FOR THE CRIMINAL LIABILITY UNDER SEC. 255 OF THE NIRC:

1. The accused is a person required to supply correct and accurate information;
2. The accused failed to supply correct and accurate information, at the time or times required by law, or rules and regulations;
3. That the failure to supply correct and accurate information was willful; and
4. In case of corporate taxpayers, that the accused is the responsible officer.

Duty Free Philippines Corporation vs. BIR (CTA Case No. 9355 dated July 26, 2018)

THE CTA HAS NO JURISDICTION ON DISPUTES SOLELY BETWEEN TWO GOVERNMENT ENTITIES. Under PD 242, disputes "solely" between two government agencies and offices, including GOCCs, involving questions of law, should be submitted to and will be settled and adjudicated by the Secretary of Justice.

MTI Advance Test Development Corporation v. CIR (CTA Case No 9494 dated July 26, 2018)

REQUISITES IN ORDER TO BE ENTITLED TO REFUND OR TAX CREDIT OF INPUT TAX DUE OR PAID ATTRIBUTABLE TO ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES.

For a taxpayer to be entitled to a refund or tax credit the following basic requisites must be sufficiently established:

1. That the claim for refund must be filed within two-year prescriptive period;
2. That there must be zero-rated or effectively zero-rated sales;
3. That input taxes were incurred or paid;
4. That such input taxes are attributable to zero-rated or effectively zero-rates sales; and;
5. That input taxes were not applied against any output VAT liability.

REQUISITES IN ORDER FOR THE SUPPLY OF SERVICES TO BE VAT ZERO-RATED. For the supply of services to be VAT zero-rated, the following requisites must be satisfied:

1. The services must be other than processing, manufacturing or repacking or goods;
2. The payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and
3. The recipient of such service is doing business outside the Philippines.

South Luzon Tollway Corporation vs. CIR (CTA Case No. 9272 dated July 27, 2018)

FAILURE TO STATE THE DUE DATE FOR THE PAYMENT OF TAX LIABILITIES RENDERS THE ASSESSMENT VOID. The CTA cited the Supreme Court decision, CIR vs. Pascor Realty, which states that an assessment must contain a demand for payment of the taxes within a specific period. The requirement to indicate a fixed and definite period or a date certain to which a

taxpayer must pay the assessed deficiency tax liabilities is indispensable to the validity of the assessment. Otherwise, confusion would arise regarding the period within which to make an assessment or protest the same, or whether interest and penalty may be accrued thereon.

LEGAL INTEREST MAY NOT BE IMPOSED ON TAX REFUNDS UNLESS THERE IS A CLEAR STATUTORY AUTHORITY THEREON AND WHEN THERE IS NO ARBITRARINESS IN THE DENIAL OF THE REFUND BY THE CIR.

Semirara Mining and Power Corporation v CIR (CTA Case No. 9133 dated July 27, 2018)

TAXPAYER IS ENTITLED TO THE REFUND OF THE ILLEGALLY COLLECTED OR ERRONEOUSLY PAID VAT. CIR's basis in imposing VAT on the taxpayer was RR No. 2-2012, which was later declared by the Supreme Court as unconstitutional. RR No. 2-2012 directly contravenes the tax exemption s granted to the taxpayer under PD No. 972. Since the said RR is of no force and effect, CIR's imposition of VAT on taxpayer's importation of diesel is without valid basis. As such, the payment of VAT by the taxpayer on its importation is erroneous and illegal.

Taganito Mining Corp v. CIR (CTA Case No. 9057 dated July 27, 2018)

A BOI-REGISTERED TAXPAYER IS SUBJECT TO VAT AT ZERO PERCENT RATE ON ITS LOCAL PURCHASES OF GOODS AND SERVICES. NO OUTPUT SHALL BE SHIFTED TO OR PASSED ON TO IT, AND CONVERSELY, NO INPUT SHALL BE PAID BY IT FROM SAID PURCHASES. Where taxpayer, whose local purchases of goods and services are subject to VAT at zero percent (0%) rate, paid the input VAT, notwithstanding that under the law it is VAT zero-rated, the said input VAT cannot be offset against its output VAT but the latter's recourse is to seek reimbursement from supplier who shifted to it the output VAT.

TAX CODE DOES NOT DECREE THAT INPUT TAX BE DIRECTLY ATTRIBUTABLE TO THE TAXPAYER'S ZERO-RATED SALES. Input taxes that bears a direct or indirect connection with a taxpayer's zero-rate sales satisfies the requirement of the law.

Pilipinas Shell Petroleum Corporation vs. CIR (CTA Case No. 9104 dated July 27, 2018)

REQUISITES FOR THE ENTITLEMENT TO THE REFUND OF ERRONEOUSLY OR ILLEGALLY COLLECTED TAX:

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 supervening cause that may arise after payment.

Section 209 further requires that an administrative claim for refund must first be lodged with the CIR before the taxpayer may seek judicial intervention for the claim for refund and credit.

EXCISE TAXES ERRONEOUSLY PAID MAY BE THE SUBJECT OF REFUND. The statutory taxpayer, who paid the excise taxes on petroleum products sold to international carriers for their use and consumption outside the Philippines is entitled to refund based on Section 135 of the NIRC.

Loadstar International Shipping, Inc. vs. CIR (CTA Case No. 9176 dated July 30, 2018)

THE TAXPAYER ONLY HAS THIRTY DAYS FROM RECEIPT OF THE FDDA WITHIN WHICH TO APPEAL THE DECISION TO THE CTA. The 30-day period within which to appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the CTA of its jurisdiction to entertain and determine the correctness of the assessments. The period imposed is mandatory and not merely directory.

8199 Convenience Corporation v CIR (CTA Case No. 8853 dated July 31, 2018)

THE TAXPAYER HAS THE BURDEN OF PROVING THAT HE SUBMITTED THE REQUIRED DOCUMENTS, OR THAT IT INDEED REQUESTED AN EXAMINATION TO BE CONDUCTED IN HIS OFFICE AND THAT THE CIR APPROVED ITS REQUEST. CIR has the power to summon the taxpayer to appear at a time and place specified in the summons and to produce its books of accounts and other relevant records. The CIR properly assessed the taxpayer base on the best evidence obtainable rule because the taxpayer failed to submit supporting documents despite CIR's request to do so.

Advance World System, Inc. v. CIR (CTA Case No. 8977 dated July 31, 2018)

THERE IS NO SIMULTANEOUS AVAILMENT OF INCENTIVES WHERE TAXPAYER'S ENTITLEMENT TO THE INCENTIVE AROSE FROM PROJECTS/ACTIVITIES IN DIFFERENT LOCATIONS DULY REGISTERED IN DIFFERENT AUTHORITIES, AND PURSUANT TO DIFFERENT LAWS. A taxpayer who is both BOI-registered and PEZA-registered can avail of the Income Tax Holiday on the activities registered with the BOI, and those registered with the PEZA. Taxpayer's entitlement to the incentive arose from projects/activities in different locations duly registered with different authorities. Also, the incentive was granted pursuant to different laws. Thus, there was no simultaneous availment of the Income Tax Holiday incentive for the same project/activity in the same site/location.

Miffi Logistics Co., Inc. vs. CIR (CTA Case No. 9122 dated August 1, 2018)

THE THIRTY DAY PERIOD TO APPEAL TO THE CTA SIMILARY APPLIES TO THOSE CASES FALLING UNDER "OTHER MATTERS". The validity of the Warrant of Distrainment and Levy falls under the "other matters" under Section 11 and Section 7(a)(2) of the RRCTA.

THE FAN/FLD WITH DETAILS OF DISCREPANCY WHICH MERELY REFLECTS THE COMPUTATIONS OF PETITIONER'S ALLEGED DEFICIENCY INCOME TAX LIABILITIES AND FAILED TO STATE THE FACTS AND CIRCUMSTANCES WHICH CONSTITUTE THE ALLEGED VIOLATIONS IS A CLEAR CONTRAVENTION OF DUE PROCESS. Settled is the ruled that the taxpayer should be informed in writing of the law and the facts on which the assessment is made. In addition, allegations of fraud or any other circumstance that would justify the exceptional period of ten years to assess the income tax liabilities must also be included in the FAN/FLD.

THREE INSTANCES WHERE A COLLECTION CASE MAY BE FILED IN COURT WITHOUT A CORRESPONDING ASSESSMENT:

1. Filing of a false return;
2. Filing of a fraudulent return; and
3. Failure to file a return.

Orient Overseas Container Line Ltd. v. CIR (CTA Case No. 9179 dated August 2, 2018)

THE ABSENCE OF AUTHORITY ON THE PART OF THE REVENUE OFFICERS WHO CONDUCTED THE EXAMINATION OF THE TAXPAYER'S BOOKS OF ACCOUNTS AND OTHER ACCOUNTING RECORDS WILL RESULT TO INVALIDITY OF SUCH DEFICIENCY TAX ASSESSMENTS. Only the CIR or his duly authorized representatives who can authorize the examination of taxpayers for purposes of assessment of any deficiency taxes. Unless duly authorized by the CIR himself or by his duly authorized representatives, an examination of the taxpayer by a revenue officer cannot be validly made.

Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ vs CIR (CIR Case No. 9025 dated August 3, 2018)

THE RIGHT OF THE TAXPAYER TO DETERMINE WHEN IT HAS TO SUBMIT COMPLETE DOCUMENTS IN SUPPORT OF ITS CLAIM FOR VAT REFUND IS NOT ABSOLUTE. Claim for tax refund or credit, like tax exemption, is construed strictly against the taxpayer. One of the conditions for judicial claim of refund or credit under the VAT system is compliance with the 120+30-day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30-day period necessary for such a claim to prosper.

Erwin Casaclang vs. CIR (CTA Case No. 9091 dated August 6, 2018)

COMPENSATION INCOME OF RESIDENT CITIZENS IS SUBJECT TO GRADUATED INCOME TAX RATES UNLESS EXEMPTED UNDER TREATY. With the Philippines' reservation in the ADB charter maintaining the Philippines' right to subject to income tax the compensation of resident citizens employed by the government and/or international organizations, such as ADB, the income of ADB is exempt but not the income derived by the Filipinos from ADB. Accordingly, RMC 21-13 which provides that only officers and staff of the ADB who are not Philippine nationals shall be exempt from income tax should be made to apply prospectively in the interest of social justice and equity.

Clark Water Corporation vs. CIR (CTA Case No. 9286 dated August 8, 2018)

A REGISTERED CLARK FREEPORT ENTERPRISE IS ENTITLED TO THE 5% PREFERENTIAL TAX REGIME AS LONG AS ITS SALES WITHIN THE CUSTOMS TERRITORY DO NOT EXCEED THE 30% THRESHOLD. Should a freeport zone-registered enterprise's income from sources within the Customs Territory exceed thirty percent of its total income from all sources, then the enterprise shall be subject to income tax laws of the Customs Territory.

Deutsche Knowledge Services Pte. Ltd. v. CIR (CTA Case No. 9079 dated August 8, 2018)

TAX REFUNDS ARE IN THE NATURE OF TAX EXEMPTIONS AND ARE TO BE CONSTRUED STRICTISSIMI JURIS AGAINST THE ENTITY CLAIMING THE SAME. There is a need to employ a stricter standard in determining whether the evidence filed by the taxpayer is sufficient to support his claim for refund or issuance of tax credit certificate. Taxpayer must be able to provide sufficient evidence to prove its claim, otherwise, its arguments cannot be given due course.

SR Metals, Inc. vs CIR (CTA Case No. 9256 dated August 8, 2018)

SIMULTANEOUS APPLICATION OF DEFICIENCY INTEREST AND DELINQUENCY INTEREST IS ALLOWED UNDER THE LAW. Nowhere in the provision of the NIRC does it provide that simultaneous imposition of a deficiency and delinquency interest is prohibited. The deficiency interest is applied when there is a nonpayment of tax due from the date prescribed for its payment until the amount is fully paid. On the other hand, delinquency interest is applied when there is a failure to pay a deficiency tax, or any surcharge or interest thereon on the due date.

Shenilyn Abalos, et. al. vs. CIR (CTA Case No. 9089 dated August 10, 2018)

BOTH THE ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND MUST BE FILED WITH THE CIR AND THE CTA WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD FROM THE DATE OF THE PAYMENT OF TAX. Proof of filing of claims for refund must be submitted. Petitioners in this case failed to prove that the administrative claims were filed within the two-year prescriptive period because the administrative claims that were allegedly filed were not identified, marked and formally offered. In addition, failure to provide proof of entitlement to tax refund, due to failure of providing evidence that the income tax has been paid, is fatal to a claim for refund.

Vestas Services Philippines, Inc., v. CIR (CTA Case No. 8877 dated August 15, 2018)

THE COUNTING OF THE 120 DAY PERIOD SHOULD NOT COMMENCE WHEN THE ALLEDGED ADDITIONAL DOCUMENTS WERE BELATEDLY FILED, BUT FROM THE EXPIRATION OF THE 30-DAY PERIOD TO SUBMIT THE SUPPORTING DOCUMENT. The rule is that from the date an administrative claim for excess unutilized VAT is filed, a 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.

Sonoma Services, Inc. v. CIR (CTA Case No. 9249 dated August 15, 2018)

IN CASE THE CORPORATION IS ENTITLED TO A TAX CREDIT OR REFUND OF THE EXCESS ESTIMATED QUARTERLY INCOME TAXES PAID, THE EXCESS AMOUNT SHOWN ON ITS FINAL ADJUSTMENT RETURN MAY BE CARRIED OVER AND CREDITED AGAINST THE ESTIMATED QUARTERLY INCOME TAX LIABILITIES FOR THE TAXABLE QUARTERS OF THE SUCCEEDING TAXABLE YEARS. There are two options available to the corporation whenever it overpays its income tax for the taxable year: (1) to carry over and apply the overpayment as tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (also known as automatic tax credit) until fully utilized (meaning, there is no prescriptive period); and (2) to apply for a cash refund or issuance of a tax credit certificate within the prescribed period.

REVENUE ISSUANCES

Revenue Regulations No. 17-2018 (10 July 2018)

Amends Section 13 of Revenue Regulations No. 12-2018 particularly on the valuation of gifts made in property

Section 13 of RR. No. 12-2018, is amended to read as follows:

"SECTION 13. VALUATION OF GIFTS MADE IN PROPERTY _ The valuation of gifts in the form of property shall follow the rules set forth in Section 5 of these regulations: Provided, That the reckoning point for valuation shall be the date when the donation is made."

Revenue Regulations No. 18-2018 (3 August 2018)

Amends specific provisions of RR No. 8-2016 particularly certain guidelines on the processing of applications for Tax Clearance for bidding purposes

Items 4.4.1 and 4.4.2 (c) of RR No. 8-2016 shall be amended to read, respectively, as follows:

"4.4.1 All applications for the issuance of Tax Clearance in accordance with the requirements under RA No, 9184 and EO No. 398 shall be manually filed with the Collection Division of the Revenue Regional Office where the taxpayer or partnership/corporation is currently and duly registered or with the concerned office under the Large Taxpayers service if the taxpayer is classified as Large taxpayer, until such time that an on-line application for this purpose has been made available for use of prospective bidders."

"4 4.2

xxx xxx xxx

c. For those with previously issued Tax Clearance for bidding purposes, the requested Tax Clearance shall only be issued if they are found to be regular eFPS users from the time of enrollment up to the time of filing of application. The regular usage of eFPS shall not apply to new applicants. The submission of the new applicant's latest income tax and business tax returns not filed and paid through the Bureau's eFPS shall suffice.

"

Revenue Regulations No. 18-2018 (9 August 2018)

Amends RR No. 13-2018 particularly on the use of invoices/receipts of previously-registered VAT taxpayers who are now non-VAT taxpayers

Section 13 of RR No. 13-2018 is hereby amended by providing deadline on the use of stamped Non-VAT invoices/receipts to read as follows:

"SECTION 13. TRANSITORY PROVISIONS. –

xxx xxx xxx

A number of unused invoices/receipts, as determined by the taxpayer with the approval of the appropriate BIR Office, may be allowed for use, provided the phrase "Non-VAT registered as of (date of filing an application for update of registration). Not valid for claim of input tax." shall be stamped on the face of each and every copy thereof, until new registered non-VAT invoices or receipts have been printed and received by the taxpayer or until August 31, 2018, whichever comes first. Upon receipt of newly-printed registered

non-VAT invoices or receipts, the taxpayer shall submit, on the same day, a new inventory list of, and surrender for cancellation, all unused previously-stamped invoices/receipts."

Revenue Memorandum Order No. 35-2018 (17 July 2018)

Amends certain provisions of Section II No. 8 or RMO No. 15-2003, particularly on the Standard Checklist of Documents and Section III.8.8.4 of RMO No. 69-2010 on the issuance of manual serially numbered Memorandum of Assignments to all One Time Transaction (ONETT) cases.

The ONETT teams are directed to fill-up the Assignment/Routing Slip which will be serially numbered. The issuance of the MOA will be discontinued. The revised Checklist of Documentary Requirements for ONETT shall be used to efficiently process and facilitate the issuance of Electronic Certificate Authorizing Registration (eCAR)

Revenue Memorandum Order No. 34-2018 (24 July 2018)

To amend the thresholds for the issuance of Electronic Letters of Authority (eLAs) prescribed in Item No. II of RMO No. 32-2018 and prescribing additional policies for the issuance of the eLAs for Office Audit, the Order provides:

- Electronic Letters of Authority (eLAs) shall be issued to cover the audit/investigation of taxpayers for tax returns for taxable year 2017 under the jurisdiction of the Regional Office with gross sales/receipts as follows:

Area	Gross Sales/Receipts
Revenue District Offices (RDOs) under RR Nos. 5, 6 (except RDO No. 36 – Puerto Princesa), 7 and 8	Ten Million Pesos (₱ 10,000,000.00) and below
RDOs under RR Nos. 1, 4, 9A (except RDO Nos. 35 – Romblon, 37 – Occidental Mindoro and 63 – Oriental Mindoro), 9B (except RDO No. 62 – Marinduque), 11, 12, 13, 16 and 19	Five Million Pesos (₱ 5,000,000.00) and below
RDO No. 36	Three Million Pesos (₱ 3,000,000.00) and below
RDOs under RR Nos. 2, 3, 10, 14, 15, 17 and 18, including RDO Nos. 35, 37, 62 and 63	Two (2) Million Pesos (₱ 2,000,000.00) and below

- eLA shall be issued only to taxpayers who have not been audited/investigated for the last three (3) years
- Additional policies and procedures are provided for the Chief, Assessment Division or office audit.

