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TMAP TAX UPDATES

MAY 16 TO JUNE 15, 2018

Prepared by:



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COURT OF TAX APPEALS DECISIONS

Non-Receipt of the PAN and FAN/FLD Renders the Assessment Void

Commissioner of Internal Revenue vs AA Commercial

CTA EB No. 1476

June 11, 2018

Section 228 of the NIRC of 1997 requires that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. Due process requires that the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) must be received by the taxpayer. Mere issuance of the PAN and FAN/FLD shall not constitute receipt of the assessment notices.

In this case, the BIR sent thru registered mail the PAN and FAN. However, the BIR failed to prove that indeed the PAN and FAN were received by the Company. Instead, based on the Philippine Postal Corporation's records, the mail was returned to the sender on the reason that the Company already moved out of the office address indicated in the PAN/FAN. The Company knew of the assesment only when it received the BIR's Preliminary Collection Notice.

Since the PAN and FAN were not actually received by the Company, the assessment was considered null and void for lack of due process.

Assessment without valid Letter of Authority is Void

Nikken Philippines, Inc. vs Commissioner of Internal Revenue

CTA EB No. 1569

June 7, 2018

The Letter of Authority (LOA) is the proof that the person/s named therein is/are authorized to conduct the necessary investigation/audit. Absent the necessary issuance of LOA specifically naming the person to whom the case will be reassigned, there is no authority to conduct the investigation/audit. An audit conducted by an examiner without an authority is considered null and void.

In this case, the audit/investigation was done by the revenue officer (RO) and group supervisor (GS) pursuant to a Memorandum of Referral signed by the Revenue District Officer, instead o the Revenue Regional Director as required under Section 13 of the NIRC. No LOA was offered in evidence showing that the RO and GS's authority to examine the books of accounts and other accounting records of the Company or to continue any investigation against the Company.

Since the RO and GS acted without authority when they conducted the audit, the assessment is null and void.

Late filing of petition bars a court to decide on a case

Solid-One Mills, Phils., Inc. vs. Commissioner of Internal Revenue

CTA EB No. 1562

June 1, 2018

Pursuant to Section 11 of RA 1125, as amended by RA 9282, any party adversely affected by a decision, ruling or inaction of the CIR may file and appeal with the CTA within 30 days after the receipt of such decision or ruling.

Relative to this, before the Court En Banc may give consideration to the issues raised by a petitioner, it is mandatory for it to first determine whether it may validly decide on the merits of the case by determining whether it has jurisdiction therefor.

In this present case, records reveal that petitioner received a letter which categorically stated that the assessment had already become final and executory. Considering that this letter constitutes a final decision, petitioner had 30 days to file its petition for review. However, petitioner failed to do so. Since the petition was belatedly filed, the CTA did not acquire jurisdiction over the case and has no power to decide upon the issues presented.

Mere assertion cannot give rise to the presumption of falsity of returns

Commissioner of Internal Revenue vs. Ludo & Luym Corporation

CTA EB No. 1559

June 8, 2018

The 10-year prescriptive applies in case of fraud or false return. There is a prima facie evidence of a false return if there is a substantial underdeclaration of taxable sales, receipt or income. The failure to report sales, receipt or income in an amount exceeding 30% of what is declared in the returns constitute substantial underdeclaration.

In this case, there is no showing that the Company has substantially underdeclared its sales, receipt or income. The presumption of falsity of returns merely arise since a 50% surcharge was previously imposed by the BIR Commissioner against the Company.

Since there was no under declaration of sales by more than 30%, there can be no presumption of false return. Thus, the 10-year prescriptive period cannot be applied.

When the law is clear, no explanation is required

Splash Corporation vs. Commissioner of Internal Revenue

CTA Case No. 8904

June 11, 2018

Section 6 of RA No. 7459 clearly states that any income derived from the sale of the patented products shall be exempt from the payment of income taxes for a period of 10 years from the date of the product's first sale on a commercial scale, subject to the rules and regulations of the Department of Finance. This is to promote, encourage, develop and accelerate commercialization of technologies developed by local researchers.

The technologies, their manufacture or sale, shall also be exempt from payment of license, permit fees, customs duties and charges on imports.

In this case, the BIR alleged that the income tax exemption privilege is for the benefit of the inventor and not for the benefit of the company (herein petitioner) commercializing the invention. However, the law is clear that it exempts the income on the inventions from taxes. Hence, regardless if it is the Company who is earning the income from the invention, such income shall still be exempt from income tax.

TRAIN Law should be applied prospectively

Batangas Electric Cooperative 1 (BATELEC 1) vs. Commissioner of Internal Revenue

CTA Case No. 8423

June 1, 2018

Prior to the TRAIN Law amendment, Section 249 (B) and (C)(3) of the NIRC of 1997, as amended, provides that the deficiency interest on any deficiency tax shall be assessed from the date prescribed for its payment until the full payment thereof, while the assessment of the delinquency interest that is imposed upon failure to pay a deficiency tax, or any surcharge or interest thereon, shall be reckoned from 'the due date appearing in the notice and demand

of the Commissioner until the amount is fully paid. However, under the TRAIN Law, there shall be no case that the deficiency and the delinquency interest prescribed under Subsections (B) and (C) of Section 249 of the 1997 NIRC be imposed simultaneously.

Thus, in this case, the Cooperative is seeking to clarify if indeed the delinquency and deficiency interests it was assessed and accordingly, paid is valid.

The TRAIN Law provides that it shall take effect on January 1, 2018. Also, the TRAIN Law is not a curative law as the tax code provisions imposing deficiency and delinquency interests was not previously declared invalid by the Supreme Court. . Thus, the rule on non-imposition of deficiency and delinquency interests simultaneously cannot be applied retroactively.

REVENUE REGULATIONS

Type of paper and additional information required on CRM/POS machines or other invoice/receipt generating machines

Revenue Regulations No. 16-2018
May 25, 2018

From the previous requirement to use non-thermal paper only, all taxpayers using CRM/POS machines or other invoice/receipt generating machine/software shall now have the option to use the type of paper required in their business, provided the 10-year period for retention and preservation of accounting records shall still be complied.

In addition, the information required to be printed on the tape receipt now includes the serial number of the CRM/PoS machine.

In lieu of the tape receipt, the buyers/customers who maybe needing proof of such payment to be able to claim for expense (for income tax purposes) or input tax (for VAT purposes), may request for issuance of a manual invoice or receipt. Whenever so requested by the buyer/ customer, the seller shall issue the manual receipt/invoice, whichever is applicable, to replace the previously issued tape receipt. Sales generated from CRM / POS machines where tape receipts issued were replaced by manual invoice/ receipt shall be deducted from the sales to be reported in the eSALES system of the BIR. This deduction shall be reflected as an adjustment in the CRM Sales Book/Back end report.

The returned tape receipt shall be attached to the duplicate copy of the manually issued invoice/receipt and shall be the basis in adjusting the sales. However, the sales that were replaced with manual invoice/ receipt shall still be included but separately indicated in the Summary List of Sales (SLS) required to be submitted by VAT registered taxpayers.

REVENUE MEMORANDUM CIRCULARS

Extended validity date of Certificate of Accreditation issued to Developers/Dealers/suppliers/ Vendors/Pseudo-suppliers of CRM, Pos Machines and/or other Sales Machine/Receipting Software

Revenue Memorandum Circular No. 36-2018
May 21, 2018

All developers/ dealers/ suppliers/ vendors/ pseudo- suppliers of CRM, POS and/or other Sales Machines/ Receipting Software with valid Certificate of Accreditation issued on or before July 31, 2013 and issued on August 1, 2013 to July 31, 2014 shall now be valid until July 31, 2020. Previously, these are valid only until July 31, 2018 and July 31, 2019, respectively.

All Certificates of Accreditation issued on August 1, 2015 and onwards shall still follow the five-year validity period based on actual Date of Issuance.

New daily minimum wage rates in Region XII and Region IV-A

Revenue Memorandum Circular Nos. 37-2018 and 44-2018

May 23, 2018 and June 5, 2018

Pursuant to recently issued wage orders, below are the new minimum wage rates in Region XII and Region IV-A:

Region XII (Wage Order No. RB XII-20)

Sector/ Industry	Previous Minimum Wage Rates	Increase	New Minimum Wage Rates
Non-Agriculture	P 295.00	P 16.00	P 311.00
Agriculture/ Retail/ Service Establishment	P 272.00	P 18.00	P 290.00

Region IV-A (Wage Order No. RB IVA-18)

Covered Areas	Adjustment	New Minimum Wage Rate
Areas currently receiving P 378.50	P 21.50	P 400.00
Areas currently receiving P 356.50 and P 302.50	P 14.00 to P 16.50	P 370.00 to P 319.00
Areas currently receiving P 283.00	P 20.00	P 303.00

Under the current rules, minimum wage earners are exempt from the payment of income tax on their statutory minimum wage rates, holiday pay, overtime pay, night shift differential and hazard pay. They shall be subject to income tax only on their other taxable income.

Disposal of goods intended for sale or use in business of a de-registered VAT taxpayer

Revenue Memorandum Circular No. 39-2018

May 24, 2018

Pursuant to the RA 10963 (TRAIN Law), the VAT threshold was increased to P 3,000,000. Taxpayers who are previously VAT registered and whose gross sales/receipts in the preceding year did not exceed P3,000,000 have the option to update their registration from VAT to Non-VAT.

Thus, the BIR reiterated the current rule on 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. The BIR emphasized that goods or properties originally intended for sale or use in business, including capital goods, disposed of or existing as of the date of change of status are subject to VAT. Thus, the taxpayer is required to file quarterly VAT return and pay the corresponding VAT due thereon.

Issuance of TIN to Corporations and Partnerships

Revenue Memorandum Circular No. 41-2018

May 24, 2018

A corporation shall exist for a period of not more than 50 years from the date of incorporation unless sooner dissolved or unless said period is extended.

In line with this rule on corporate term, the following rules on the issuance of TIN to corporations/partnerships are clarified:

- Corporation with an extended corporate life shall not to be issued a new TIN being still the same entity. However, the corporation shall update its registration record by submitting BIR Form No. 1905, attaching a copy of the newly issued SEC Certificate of Registration (COR) and the Amended Articles of Incorporation bearing the same name as proof of its corporate life extension.
- Corporation whose corporate terms have lapsed without being renewed or extended shall be issued a new TIN once re-registered with SEC. Though the corporation may have the same corporate name as reflected in the SEC COR, said corporation is a new corporation bearing a new SEC registration number.

The old TIN of the “old” corporation shall be used in the process of liquidation/winding up of the said “old” corporation. The new TIN shall be used by the “new” corporation in its future transactions. In case the “old” corporation is classified as a Large Taxpayer (LT), the registration of the “new” corporation shall be made also with the LT division where the “old” corporation is registered.

- In mergers, the surviving corporation shall retain its TIN while the TIN of the merged corporation shall be cancelled.
- A corporation or partnership that has been issued a second or new SEC COR to correct typographical errors (Corporate Name errors, etc.) shall not be issued a new TIN but the corporation/partnership shall update its registration with the BIR to update the corrected name.

Suspension of UEE date entry module in filing of BIR Form 2305 and 2305 Batch Validation File

Revenue Memorandum Circular No. 42-2018

May 25, 2018

Under the TRAIN Law, deduction for personal and additional exemptions for individual taxpayers have been repealed effective January 1, 2018. Thus, taxpayers with dependents are no longer required to update their registration for additional exemptions.

Pursuant to this, electronic filing of BIR Form 2305 is no longer required. Update on employee registration for change in registered name or employer shall now be filed manually.

FAQs on RR No. 8-2018 and RR No. 11-2018

Revenue Memorandum Circular No. 50-2018

June 8, 2018

Below are the significant updates on the implementation and clarifications on RR No. 08-2018 and RR No. 11-2018:

Withholding tax rates (Self-employed taxpayers)

Individuals who render services that are within those mentioned under “professional fees, talent fees, etc. for services rendered” of RR 8-2018 shall be subjected to 5%/10% withholding tax rate. Withholding tax rates for service providers/

suppliers of service that are not identified as professional services under RR No. 8-2018 shall be subject to 2% withholding tax.

Premium Payments on Group Health Insurance for Employees

Pursuant to RMC No. 50-2018, the premium on health card paid by the employer for all employees, whether rank and file or managerial/supervisory, under a group insurance shall be included as part of other benefits of these employees which are subject to the P90,000 threshold. Individual premiums paid for employees holding managerial or supervisory functions shall be subject to fringe benefits tax.

Previous rulings by the BIR provides that premium payments made by employers for the benefit of its eligible employees (managerial and rank-and-file) are not subject to withholding tax on compensation nor to fringe benefits tax pursuant to Sec. 33 (c) of the 1997 NIRC.

Due dates for BIR 0619E/0619F

For EFPS filers, deadline for the monthly remittance of creditable and final withholding tax (BIR Forms 0619E and 0619F) shall follow the EFPS staggered filing deadlines depending on the grouping of the taxpayer.

Excess over “de minimis” benefits

The benefits given in excess of the maximum amount allowed as “de minimis” benefits shall be included as part of other benefits subject to the P90,000 ceiling. Any amount in excess of the P90,000 shall be subject to income tax, and consequently to the withholding tax on compensation.

Previously, RMC No. 20-2011 clarified that excess over “de minimis” benefits thresholds shall be subject to fringe benefit tax if received by a managerial or supervisory employee.

Director’s Fees

Fees paid to a director who is not an employee of the income payor shall be subject to creditable withholding tax prescribed for professionals, and shall be subject also to the applicable business tax. Thus, director’s fees are now subject to either percentage tax or value added tax depending on the amount of gross receipts during the year.

Processing Time for Issuance of eCAR

Revenue Memorandum Circular No. 48-2018

June 6, 2018

Electronic Certificate Authorizing Registration (eCAR) for sale/ exchange/ donation of real properties shall be processed within the below prescribed period:

Transactions	Processing Time from the Submission of Complete Documentary Requirements (working days)
Individual Taxpayer/Corporation with One (1) Deed of Sale/Exchange/Donation:	
a. One (1) to Three (3) properties	3 days
b. Four (4) to Ten (10) properties	5 days
c. Eleven (11) to Fifty (50) properties	10 days
d. More than Fifty (50) properties	20 days

Real Estate Developer – One (1) Deed of Sale/Exchange involving Multiple Properties:	
a. One (1) to Ten (10) properties	5 days
b. Eleven (11) to Fifty (50) properties	10 days
c. More than Fifty (50) properties	20 days

REVENUE MEMORANDUM ORDER

Availment of 8% income tax rate option for self-employed individuals

Revenue Memorandum Order No. 23-2018

May 21, 2018

Pursuant to TRAIN Law as implemented by RR No. 08-2018, a self-employed individual/professional whose gross sales/receipts and other income does not exceed P3M shall have the option on an annual basis to pay 8% income tax, in lieu of the graduated income tax and percentage tax.

New business registrant shall elect the 8% income tax rate upon its registration using BIR form No. 1901 and/or 1701Q, or on its initial quarter return (BIR Form No. 2551Q and/or 1701Q) of the taxable year after the commencement of a new business/ practice of profession. Existing individual business taxpayers may do so by filing BIR form 1905 (Application for Registration Information Update) with the COR at the beginning of the taxable year, or 1st Quarterly Percentage Tax Return and/or 1st Quarterly Income Tax Return. Graduated income tax rates shall apply for non-election as prescribed above.

Qualified taxpayers who availed of the 8% option are required to:

- File Quarterly Income Tax Return, unless exempted by any revenue issuances:
- File Annual Income Tax Return (FS is not required to be attached)
- Signify the intention to avail the 8% income tax rate every taxable year
- Maintain books of accounts and issue receipt/invoices.

Publication of Top Withholding Agents

Revenue Memorandum Order No. 26-2018

June 5, 2018

Under RR No. 11-2018, the top withholding agents, who are required to withhold 1% on purchases of goods and 2% on purchases of services, shall be published in newspaper of general circulation and in the BIR website. This shall serve as their “notice” as top withholding agents. The obligation to withhold starts on the first day of the month following the month of publication.

Pursuant to RMO No. 26-2018, below shall be the publication dates and corresponding effectivity date of withholding on purchases of goods and services by the top withholding agents:

Publication	Effective Date of Withholding
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June 15	July 1
December 15	January 1

BIR ADVISORIES

Refiling and/or amending of 1st Quarter BIR Forms 1601EQ/1601FQ by eFPS users

eFPS users who filed the Quarterly Remittance Returns of CWT and FWT (BIR Forms 1601EQ and 1601FQ, respectively) prior to April 26, 2018 and May 3, 2018, and who have encountered below issues are advised to re-file and/or amend their 1st Quarter Remittance Return of Creditable Income Taxes Withheld (BIR Form 1601EQ) and Final Income Taxes Withheld (1601FQ):

- No value in the files of tax returns/ inability to view anything in the tax returns
- Printed copy of the tax return does not reflect the name of the taxpayer

