TAX MANAGEMENT ASSOCIATION
OF THE PHILIPPINES, INC.

TAX UPDATES FOR MAY 2015

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Court of Tax Appeals Decisions

TOTAL (PHILIPPINES) CORPORATION VS. COMMISSIONER OF INTERNAL REVENUE (CTA EB Case No. 1154 dated 21 April 2015)

- ***Zero-rating status at the time of sales crucial in a refund claim***

The claim for refund was denied by the court for failure on the part of the company to prove the existence of excess or unutilized input tax attributable to zero-rated sales (i.e., sales to PEZA/CDC/BOI-registered entities). To establish the fact that the sales were made to PEZA-registered entities, and thus are VAT zero-rated, the taxpayer must submit Certificates of Registration, indicating that its customers are duly registered with PEZA/CDC/BOI during the period covered by the claim. For purposes of determining the zero-rated sales, the court cannot assume that the registrations cover the taxable year involved or are still valid at the time the sales were made.

Furthermore, the court emphasized that the input taxes must not only be duly substantiated but must also exceed the output tax. Under Section 112 of the Tax Code, it is only when the input tax attributable to zero-rated sales exceeds the output tax that a refund or credit is proper.

COMMISSIONER OF INTERNAL REVENUE VS. SARANGANI RESOURCES CORPORATION (CTA EB Case No. 1098 dated 28 April 2015)

- ***The 180-day period from submission of documents continues to run even if the protest is appealed to the office of the CIR***

Under RR No. 12-99, if the Commissioner or his duly authorized representative fails to act on thé taxpayer's protest within 180 days from date of submission of documents in support of the protest, the taxpayer may appeal to the CTA within thirty (30) days from the lapse of the 180-day period.

In this case, the taxpayer received a decision from the BIR Regional Office partially granting its protest based on the document submitted. The taxpayer opted to file a request for reconsideration to the office of the CIR. When the taxpayer elevated the case to the CIR, the 180-day period from the original protest is about to end (barely 18 days left). Instead of filing an appeal to the CTA, the taxpayer submitted additional documents with the CIR and erroneously counted another 180-day period for the CIR to render her decision. Only after the lapse of the new 180-day period did the taxpayer elevate the case to the CTA on appeal.

The CTA ruled against the taxpayer since the period to appeal to the CTA had already expired. The CTA clarified that the law provides only one "180-day period" from submission of documents for the CIR to decide on the protest.

Therefore, the CTA's decision is a reminder that an appeal to the CIR does not refresh the 180-day period and the period should still be counted from the date when the taxpayer submitted the relevant documents in support of its protest.

COMMISSIONER OF INTERNAL REVENUE VS. LAWL PTE. LTD. (CTA EB Case No. 1118 dated 12 May 2015)

- ***Erroneous tax payment is not limited to payment under mistake of fact***

The SC defined an *'erroneous or illegal tax'* within the scope of Section 229 of the NIRC as "one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal." There is a wrongful payment when what is paid, or part of it, is not legally due.

Tax payment under a mistake of fact is just an example of an "erroneous payment'. This does not imply that a claim for refund may be sustained only when the tax payment was made under a mistake of fact. Erroneous or wrongful payment includes excessive payment because they all refer to payment of taxes not legally due. Thus, the taxpayer's claim for tax credit/refund on erroneously collected internal revenue taxes arising from the application of tax treaty provisions was valid.

- ***Claim for refund filed with ITAD is valid if pertaining to tax treaty***

The CTA pointed out that although Sec. 204 in relation to Sec. 229 of the Tax Code states that the written claim for refund must be "filed with the Commissioner", it does not necessarily follow that all of such claims must be filed with the said office, so that the same may be considered as filed "with the proper authority". Par. III (E) (2.3) of RAO No. 11-00 specifically states that the ITAD is the office of the BIR tasked to process claims for tax refund arising from the application of tax treaty provisions. Thus, the taxpayer sufficiently complied with Sections 204(C) and 229 of the Tax Code, insofar as the filing of refund claim with the proper office is concerned.

BASES CONVERSION AND DEVELOPMENT AUTHORITY VS. COMMISSIONER OF INTERNAL REVENUE (CTA Case No. 8598 dated 28 May 2015)

- ***Income from the sale of portions of Metro Manila military camps by the BCDA is exempt from taxes***

The CTA upheld the exemption from all taxes and fees of the proceeds from the sale of portions of Metro Manila military camps by the Bases Conversion and Development Authority (BCDA) pursuant to Section 8 of RA No. 7227. To tax the transaction would diminish the proceeds of the sale which is intended for the development and conversion to productive civilian use of identified military bases. Since the sale was in the nature of an obligation imposed by law in order to fulfil a public purpose, the CIR has no power to tax an appropriation authorized by law.

- ***Choosing to carry-over the excess income tax is irrevocable***

The CTA did not grant the refund of BCDA because it had already elected to carry over the excess income tax in its 2011 Annual Income Tax Return. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed pursuant to Section 76 of the Tax Code.

Bureau of Internal Revenue Issuances

REVENUE REGULATIONS NO. 8-2015 (22 May 2015)

- ***Amendments on the definition of sugar for purposes of imposing advance business tax***

The definition of *'Raw Cane Sugar'* provided under RR No. 6-2015 has been amended to read, as follows:

> *"the natural sugar extracted from sugarcane through simple mechanical process by pressing for the juice; boiled to crystallize; filtered using centrifuge to separate the crystals, and dried, resulting to crystallized brown sugar (brown color due to natural molasses content present in sugar cane): Provided, that it shall refer to raw cane sugar produced from conducting only one (1) stage of filtering and centrifugal without any other further process applied, such as but not limited to washing, bleaching, etc.: Provided further, that its color is greater than 800 ICU and that its content of sucrose by weight in dry state corresponds to a polarimeter reading of less than 99.5°."* This includes *"muscovado which has standard specifications as produced, namely: Powder Class A – polarization of 86° minimum; Powder Class B – polarization of 77° minimum; and, Lump – polarization of 57° minimum."*

Only those falling under this definition are exempt from VAT or percentage tax. The Sugar Regulatory Authority (SRA) will be responsible for collecting samples and providing the BIR with a copy of test results.

'Sugar' refers to *"sugar other than Raw Cane Sugar x x x whose content of sucrose by weight, in the dry state corresponds to a polarimeter reading of 99.5° and above and/or whose color is 800 ICU or less."* Sugar produced from a sugar mill accredited by the BIR to be capable of producing sugar with polarimeter reading of 99.5° or above shall be prima facie presumed to be *'refined sugar'*. Finally, the term *'Sugar Owners'* shall refer to persons/entities that possess *"legal title over the sugar"*.

The other amendments pertain to: 1) the requirements and basis for determining amount of advance VAT payment; 2) exemptions from advance VAT; 3) credit for advance tax payments; and 4) unutilized advance tax payments. Violations of this regulation shall be subject to penalties under the Tax Code[1].

REVENUE MEMORANDUM CIRCULAR NO. 24-2015 (13 April 2015)

- ***BIR Form Nos. 2307 and 2316 in scanned copies***

The BIR, through a Circular, enumerated the guidelines on submission of scanned copies of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) and Certificate of Compensation Payment/Tax Withheld (BIR Form No. 2316) under RR No. 2-2015:

- Submission of the scanned copies of BIR Forms 2307 and 2316 took effect last 21 March 2015. For quarterly income tax return due for filing last 30 April 2015, taxpayers were still given the option to submit the required BIR Form No. 2307 in either scanned or hard copy. However, for quarterly filings

[1] Sections 254 and 275 of the Tax Code

with deadline falling beyond 30 April 2015, scanned copies of BIR Form No. 2307 must be submitted. For audit purposes, retention of the hard copy of said forms is still required as per RR No. 2-2006.

- Only one set of BIR Form No. 2307 is required for multiple income payments made by an income payor-withholding agent to the same income recipient/payee covering the same taxable period. This applies even if the income payments are subject to different creditable withholding tax rates.
- The BIR may issue a certified true copy of the scanned BIR forms subject to the payment of certification fee and a corresponding DST.
- Only an attorney-in-fact of an individual taxpayer under a notarized Special Power of Attorney (SPA) is duly authorized to sign the notarized certification and the label of the DVD-R containing soft copies of the scanned BIR Forms. For juridical persons or corporate entities, any of the principal officers designated through a Board Resolution may sign the certification and the label of the DVD-R.
- Taxpayers under the non-Large Taxpayers Services have the option to comply with the foregoing requirements under RR No. 2-2015. However, once they opt to submit scanned copies, they will not be allowed to file in hard copies anymore.
- Non-compliance with the requirements shall subject the concerned taxpayer to penalties provided under Sec. 250 of the Tax Code and RMO No. 7-2015, if applicable.
- Where several income payments were made by an income payor-withholding agent that are covered by separate BIR Form 2307 issued to the same income recipient for the same taxable period, the images of such certificates should be separately stored in the DVD-R using a sequential number annexed at the end of each file name.
- Taxpayers are allowed to store/save images of the forms in PDF format in the DVD-R with a minimum resolution of at least 200 dot-per-inch set to black and white.
- While there is no prescribed size of paper for purposes of printing the BIR Forms, the DVD-R should be single-sided and single-layered.

REVENUE MEMORANDUM CIRCULAR NO. 25-2015 (6 May 2015)

- ***Advance VAT or percentage tax on milling and refining sugar***

In cases where the taxpayer is engaged in integrated operation of milling and refining of sugar: a) The advance business tax (i.e., VAT or percentage tax) shall be imposed on raw sugar produced in the milling operations if it is sold to another person/entity; and b) If such raw sugar is just transferred to the refinery operation of the taxpayer for purposes of converting the same into refined sugar, only the advance business tax on the refined sugar shall be imposed.

To illustrate, ABC Corporation, a sugar refinery, processes and converts into refined the raw sugar owned by XYZ Corporation, a sugar miller, which already paid the prescribed advance business tax on raw sugar. Thus, XYZ shall pay the advance VAT due on the refined sugar, net of the advance VAT paid on the raw sugar, since XYZ is the owner of both the refined and raw sugar. However, if XYZ instead sold the raw sugar to ABC, the advance VAT on the resulting refined sugar shall be paid by ABC without the benefit of deduction of the advance VAT paid by XYZ, since ownership is already transferred to ABC. The advance VAT paid by XYZ shall be considered as ordinary input VAT by ABC, if separately billed, as output VAT, in the sales invoice issued by XYZ.

Advance payments of percentage taxes by non-VAT taxpayers are not allowable as input tax credits in the computation of the VAT liabilities of their clients-customers

Finally, the physical inventories of raw sugar and refined sugar covered by *quedans* dated before the effectivity of RR No. 6-2015 on 1 May 2015 are not subject to advance business tax.

REVENUE MEMORANDUM CIRCULAR NO. 26-2015 (6 May 2015)

- ***Alternatives in filing BIR Forms using electronic platforms***

With the exception of taxpayers not mandated to use eFPS/eBIR Forms, the following guidelines shall govern the filing of various BIR forms using BIR's electronic platforms:

1. Taxpayers filing with payment or no payment using the Offline eBIRForms for the forms listed below, shall follow the same procedures in Annex D of RMC No. 14-2015 and efile the encoded tax return form in "xml file" using the following email subject and address:

Form No.	eMail Subject	eMail Address
1601-C	RDO_1601C_TIN_taxable period	1601C@bir.gov.ph
1601-E	RDO_1601E_TIN_taxable period	1601E@bir.gov.ph
1601-F	RDO_1601F_TIN_taxable period	1601F@bir.gov.ph
1600	RDO_1600_TIN_taxable period	1600@bir.gov.ph
1602	RDO_1602_TIN_taxable period	1602@bir.gov.ph
1603	RDO_1603_TIN_taxable_period	1603@bir.gov.ph
1606	RDO_1606_TIN_taxable_period	1606@bir.gov.ph
2551M	RDO_2551M_TIN_taxable_period	2551M@bir.gov.ph
2551Q	RDO_2551Q_TIN_taxable_period	2551Q@bir.gov.ph
2550M	RDO_2550M_TIN_taxable_period	2550M@bir.gov.ph
2550Q	RDO_2550Q_TIN_taxable_period	2550Q@bir.gov.ph
1700	RDO_1700_TIN_taxable_period	1700v2013@bir.gov.ph
1701	RDO_1701_TIN_taxable_period	1701v2013@bir.gov.ph
1702EX	RDO_1702EX_TIN_taxable_period	1702EXv2013@bir.gov.ph
1702MX	RDO_1702MX_TIN_taxable_period	1702MXv2013@bir.gov.ph
1702RT	RDO_1702RT_TIN_taxable_period	1702RTv2013@bir.gov.ph
1701Q	RDO_1701Q_TIN_taxable_period	1701Qv2008@bir.gov.ph
1702Q	RDO_1702Q_TIN_taxable_period	1702Qv2008@bir.gov.ph

2. If the return is with payment, the taxpayer should print the eMail Notification from the BIR as proof of the efiled return together with the tax return, then manually make their payment to the Authorized Agent Bank/Collection Agent following existing procedures.

3. For taxpayers mandated to use the e-FPS but were unsuccessful in efiling after several attempts, they must print evidence/proof of such attempts in the form of a print screen with the message as given by the system. Furthermore, to be protected from penalties, they should either:

   - Report/call HELPDESK and get Trouble Ticket Log on or before the due date, or

   - Report to BIR Contact Center (981-8888) and get the Reference Number of the call.

   Nonetheless, taxpayers should manually file and pay on or before the due dates of the respective returns with proof of unsuccessful eFPS attempts and re-file electronically within 15 days after the statutory deadline set for the relevant returns, starting return period April 2015 which will be filed on May 2015.

4. Penalties imposed under RR No. 5-2015, on filing using a mode/venue different from that prescribed, shall be waived upon taxpayer's electronic re-filing.

REVENUE MEMORANDUM CIRCULAR NO. 28-2015 (17 April 2015)

- ***Implementation and use of LRA's PHILARIS for automated verification of eCARs***

BIR and Land Registration Authority ("LRA") released a Joint Memorandum Circular on the use of Philippine Land Registration and Information System ("PHILARIS") for the automated verification of eCARs. This covers all transactions involving transfers of real properties before the Registries of Deeds ("RD") and discusses the operating procedures and guidelines of the BIR and LRA in respect of the issuance and usage of eCARs.

The salient portions of the Circular are as follows:

- BIR shall provide the LRA with data relevant to an eCAR to be issued by directly updating the LRA-BIR eCAR Database. An eCAR shall only be issued by the BIR after the LRA-BIR eCAR database is updated.

- The eCAR shall contain a barcode after entry into the Electronic Primary Entry Book as a supporting document of a transaction.

- Only transactions with validated eCARs shall be approved by the RD.

- Offices that are yet to implement the eCAR system shall continue to manually prepare and issue CARs.

- There should be one eCAR per title in case of registered land and/or improvement(s) and one eCAR per tax declaration.

- All CARs issued within one year prior to the implementation of the eCAR system are still valid for presentation. Manually-issued CARs that are outstanding but not yet presented to the RD shall no longer be valid for presentation and shall be replaced with an eCAR.

- For estate and donor's taxes on transfers of real properties, eCARs shall be issued by the RDO having jurisdiction over the domicile/residence of the decedent/donor. For non-resident decedents/donors, eCARs shall be issued by RDO 39 - South Quezon City.

- Any subsequent modification by the BIR of an eCAR that has been entered in and verified by the RD shall not affect any transaction already approved by the RD.

REVENUE MEMORANDUM CIRCULAR NO. 30-2015 (28 May 2015)

- ***Provisional Permit to Use CRM/POS machine/other sales machine/receipting software***

To strictly implement the non-issuance of Provisional Permits to Use ("PTU") Cash Register Machine ("CRM")/Point-of-Sale ("POS")/other sales machine/receipting software and to ensure the conversion of PTUs from Provisional to Final, the BIR mandates that:

- Effective immediately, all Revenue District Offices ("RDOs") shall not accept applications for Provisional PTUs from prospective CRM/POS/other sales machine/receipting software users, until such time the Electronic Accreditation and Registration system shall be modified accordingly.

- RDOs and officers under the Large Taxpayer Service are directed to observe necessary evaluation procedures to convert existing Provisional PTUs to Final PTUs on or before 31 July 2015. Otherwise, the provisional PTUs shall be revoked.

- All concerned taxpayers are encouraged to acquire BIR-accredited CRM/POS/other sales machine/receipting software. The updated list of accredited CRM/POS/other sales machine and software with their corresponding supplier is posted on the BIR website for easy access.

- All existing Final PTUs and those Provisional PTUs that will be finalized on or before 31 July 2015 shall have a validity period of five (5) years effective 1 August 2015.

- New applications for accreditation of machine/software of suppliers/distributors/dealers/vendors shall be processed at the BIR-National Office only and shall have a validity period of five (5) years upon approval of the Final PTU.

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