TMAP TAX UPDATES
(June 16, 2022 – July 15, 2022)

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DISCUSSION

SUPREME COURT DECISIONS

1. It is only after the notice of tax lien is annotated on the pertinent title that a judgment creditor's rights can be affected and the tax lien may be considered to retroact to the date of assessment.

The Bureau of Internal revenue (BIR) sought to collect the tax liabilities of Tico Insurance Company, Inc. (Tico) pursuant to assessment notices served on January 31, 2000 through a tax lien on Tico's condominium units. However, prior to the annotation of said tax lien on February 15, 2005, Tico's condominium units have already been sold on execution to its judgment creditors, Glowide Enterprises, Inc. (Glowide) and Pacific Mills, Inc. (Pacific Mills).

The Supreme Court held that while a tax lien retroacts to the time when the tax assessment was made, it shall not be valid against a judgment creditor until the notice of tax lien has filed with the Register of Deeds and annotated on the affected title. In this case, the BIR's tax lien could only be enforceable against Glowide and Pacific Mills when it was annotated on the title on February 15, 2005. Since the rights of Glowide and Pacific Mills over the condominium units retroact to December 22, 2000, the date of inscription of their notice of levy, the condominium units may no longer be considered Tico's property when the BIR annotated its tax lien in 2005.

After the sale of the condominium units, rights over the condominium units have already vested upon Glowide and Pacific Mills, subject only to Tico's right of redemption. *(Bureau of Internal Revenue v. Tico Insurance Company, Inc., Glowide Enterprises, Inc., and Pacific Mills, Inc., G.R. No. 204226, April 18, 2022)*

COURT OF TAX APPEALS DECISIONS

1. The receipt of a Formal Assessment Notice/Formal Letter of Demand (FAN/FLD) before the Preliminary Assessment Notice (PAN) is a fatal infirmity which renders an assessment void for violation of the taxpayer's right to due process. It is not cured by the filing of the protest to the FAN/FLD.

The Court of Tax Appeals (CTA) declared the assessment against Tektite Insurance Brokers, Inc. (Tektite) void for violating due process. The Commissioner of Internal Revenue (CIR) issued the FAN/FLD (and Tektite received the FLD/FAN) five days before it received the PAN, which violated the taxpayer's right under Revenue Regulations No. 12-99. The receipt of a FAN/FLD before the PAN is a fatal infirmity and is not cured by the filing by Tektite of a protest to the FAN/ FLD. Non-compliance with statutory and procedural due process renders the FAN/FLD null and void. *(Commissioner of Internal Revenue v. Tektite Insurance Brokers, Inc., CTA EB Case No. 2443, June 20, 2022)*

2. An assessment is void for violating the taxpayer's right to due process when the FLD/FAN merely reiterated the findings in the PAN without giving any reason for rejecting the refutations and explanations provided in the taxpayer's Reply to PAN.

The assessments contained in the FLD/FAN were exactly the same as those stated in the PAN. The only differences are: (1) the assessment numbers were indicated; and (2) the amounts of interest were adjusted. The basic tax due remained the same. It is evident that the CIR merely reiterated the same findings as stated in the PAN without giving any reason for rejecting the refutations and explanations as well as consideration of the request for clarification made by Morning Star Milling Corporation (Morning Star) in the latter's Reply to the PAN.

Furthermore, the Final Decision on Disputed Assessment (FDDA) as well as the CIR's Decision are both bereft of any sufficient explanation or information as to how the figures reflected in the assessments were arrived at. Neither do they contain any reason for rejecting Morning Star's contention or request for clarification in its Reply to PAN.

Morning Star was thus left unaware on how the CIR appreciated the explanations or defenses it raised against the PAN, in clear violation of its right to administrative due process, thereby rendering the subject assessments void. *(Commissioner of Internal Revenue v. Morning Star Milling Corporation, CTA EB Case No. 2419, June 21, 2022)*

3. *Alkylate* is subject to excise tax pursuant to Section 148 (e) of the NIRC of 1997, as amended.

Section 148 (e) of the NIRC of 1997, as amended provides that naphtha, regular gasoline, and other similar products of distillation are subject to excise tax. Petron Corporation (Petron) argued that *alkylate* is not taxable under the said provision.

The CTA, however, noted that Petron's expert witness confirmed that isobutane, a raw material in the production of *alkylate*, is a product of distillation. Based on this, the CTA ruled that while *alkylate* is not directly produced through the process of distillation, one of its raw materials is a product of distillation.

The CTA held that *Alkylate* first passes through the process of distillation as the same cannot come into existence without its raw material isobutane. In other words, while it is true that alkylation, not distillation, is required to produce *alkylate*, it is without doubt that isobutane – one of the raw materials of *alkylate*, is a product of distillation. Simply put, there can be no *alkylate* without isobutane, which is a product of distillation. Therefore, Petron is not entitled to the refund of the excise taxes paid on its *alkylate* importations. *(Petron Corporation v. Commissioner of Internal Revenue, CTA EB Case No. 2425, June 21, 2022)*

4. There is no legal basis for the CIR's assertion that the reglementary period for filing a Motion for Reconsideration of an assailed Decision should be counted not from his actual receipt, but from the receipt of the BIR Litigation Division.

The CIR received a copy of the assailed Decision on July 14, 2020 but the BIR Litigation Division only received a copy on July 15, 2020. Therefore, when the CIR filed his Motion for Partial Reconsideration (MPR) on July 30, 2020, the 15-day reglementary period for filing such Motion had already lapsed.

There is no legal basis for the CIR's assertion that the reglementary period for filing his MPR to the assailed Decision should be counted not from his actual receipt, but from the receipt of the BIR Litigation Division.

The CIR even admits in his Amended Petition for Review that the MPR's belated filing was due to the BIR's own error. As alleged by the CIR himself, the BIR's centralized receiving section for its Legal Group, the BIR's Internal Investigation Division (IID) failed to affix the actual receiving date to CIR's copy of the assailed Decision. *(Commissioner of Internal Revenue v. Procter & Gamble Philippines, Inc. (as the assignee of Procter & Gamble Distributing (Philippines), Inc.), CTA EB Case No. 2422, June 22, 2022)*

5. In a claim for tax refund or credit on input tax attributable to zero-rated sales, a BOI-registered enterprise is not required to prove that its direct export sales to foreign entities were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

Sales by and to a BOI-registered enterprise are transactions considered as export sales under the Omnibus Investment Code (OIC); hence, subject to 0% VAT under Section 106 (A)(2)(a)(5) of the NIRC of 1997, as amended.

A BOI-registered enterprise is not required to prove that its sales are paid for in acceptable foreign currency and accounted for in accordance with BSP rules and regulations since Section 106 (A)(2)(a)(5) of the NIRC of 1997, as amended, does not impose such requirements.

The direct export sales of Carmen Copper Corporation (CCC) to foreign entities are actual shipments of goods outside the Philippines. Since CCC is a BOI-registered enterprise, its direct export sales qualify as export sales under the OIC and thus, are subject to 0% VAT under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended. CCC correctly invoked Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, and asserted that it need not comply with the substantiation requirements for export sales required under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Vital in determining CCC's entitlement for tax refund on input tax attributable to its zero-rated sales are the existence of evidence proving the sales of goods through sales invoices and actual shipment of goods from the Philippines to a foreign country through bills of lading, inward letters of credit, landing certificates, and other commercial documents. The case was remanded to the Court in Division to determine if the CCC was able to present such evidence. *(Carmen Copper Corporation v. Commissioner of Internal Revenue, CTA EB Case No. 2428, June 22, 2022)*

6. Since the Revenue District Officer unilaterally extended the period for the submission of additional supporting documents, the reckoning of the 180-day period for the CIR to act on the request for reinvestigation shall be based on such extended period.

Solutions Using Renewable Energy, Inc. (SURE) submitted additional documents supporting its request for reinvestigation on April 11, 2014, well within the 60-day period counted from the time it filed its request. However, on June 11, 2014, SURE received a letter from Revenue District Officer (RDO) Josephine S. Virtucio stating that the 60-day period had lapsed but, in the spirit of due process, SURE is being given an additional period of 15 days from receipt of the letter to submit the relevant supporting documents. Pursuant to the directive of RDO Virtucio, SURE re-submitted on June 25, 2014 the additional documents supporting its request for reinvestigation.

The CTA held that, given the above circumstances, the reckoning of the 180-day period for the CIR to act on the request for reinvestigation should be on June 25, 2014, following the extended period granted by RDO Virtucio. It cannot be ignored that it was the letter of RDO Virtucio that prompted SURE to re-submit its additional supporting documents despite the fact that it had already submitted the same earlier. The CTA set aside the CIR's defense that the government cannot be estopped by the mistakes or errors of its agents and held that such rule on estoppel cannot be used to perpetrate injustice. In the instant case, to follow the CIR's reasoning would cause grave prejudice to SURE, who was led to believe that the 180-day period should be reckoned from the re-submission of the supporting documents on June 25, 2014. *(Commissioner of Internal Revenue v. Solutions Using Renewable Energy, Inc.*, *CTA EB Case No. 2387, June 23, 2022)*

7. The CTA retains jurisdiction over a Petition for Review even if the taxpayer subsequently paid the disputed deficiency tax assessments.

Zenith Foods Corporation (Zenith) was assessed in 2008 for deficiency taxes for calendar year 2004 in the amount of Php8,406,714.79. In 2010, Zenith filed its protest against the FLD/FAN and thereafter, paid the amount of Php352,295.56 as its supposed full settlement of the assessed deficiency taxes.

In 2015, the BIR Regional Director rendered an FDDA and the Bureau of Customs issued a Notice of Dis-Accreditation – both against Zenith. Zenith filed a Petition for Review with the CTA to challenge the deficiency tax assessments issued against it by the BIR.

However, to avert its dis-accreditation as importer, Zenith paid the assessed deficiency taxes for calendar year 2004 in the amount of Php13,628,099.53, as reflected in the FDDA. Zenith filed an administrative refund claim for the PhP13,628,099.53 it paid and subsequently filed a Supplemental Petition for Review to pray for the cancellation of the deficiency tax assessments and ask for a tax refund or the issuance of the corresponding tax credit certificate.

The CTA held that it still has jurisdiction over the Petition for Review despite Zenith's payment of the assessed deficiency taxes after the filing of the Petition since the assessment remains disputed. The CTA noted that the payment by Zenith was made without conceding to any tax liability. *(Commissioner of Internal Revenue v. Zenith Foods Corporation, CTA EB Case No. 2409, June 23, 2022)*

8. Light Rail Manila Corporation (LRMC), which operates LRT1, is considered a common carrier and is exempted from payment of business tax under Section 133(j) of the Local Government Code (LGC).

The CTA found that LRMC falls under the definition of a common carrier. LRMC is engaged in the development, construction, operation, maintenance, repair, and management of railways and railroad projects and other transport systems for the private and public sector.

To simply equate the concept of a common carrier to ownership of a facility or vehicle used for transportation restricts its definition as contemplated under Article 1732 of the Civil Code as well as the notion of "public service" under Section 13 of Commonwealth Act No. 146 or the Public Service Law. Both law and jurisprudence have made it so that the full determination of what a common carrier is, should not be resolved by checking off a closed list of legal requirements but rather, by looking at the prevailing realities of each case.

LRMC satisfied all the requirements for it to be considered a common carrier and thus, it is exempt from the payment of local business taxes under Section 133(j) of the LGC. This conclusion is further bolstered by its continuous filing of quarterly percentage tax returns or the so-called "common carrier's tax" to the national government. The exemption of common carriers from payment of percentage tax in the LGC is rooted precisely from the fact that the national government already imposes and collects their quarterly gross receipts by virtue of Section 117 of the National Internal Revenue Code (NIRC) of 1997, as amended. *(City of Caloocan and Hon. Analiza E. Mendiola, in her capacity as the City Treasurer of Caloocan City v. Light Rail Manila Corporation, CTA EB Case No. 2446, June 30, 2022)*

9. The charge of willful failure to pay tax cannot prosper (and no civil liability for deficiency taxes may be adjudged) if the prosecution does not present proof of the taxpayer's receipt of the letter of authority (LOA) and assessment notices.

The CTA held that it was not shown that the failure of the accused to pay deficiency tax liabilities was willful since the prosecution failed to prove the taxpayer's receipt of the LOA and the assessment notices.

Although the records support the prosecution's claim that the LOA, PAN, FLD with Assessment Notices, Preliminary Collection Letter (PCL), and Final Notice Before Seizure (FNBS) were sent via registered mail to accused's address, no competent proof of actual receipt was shown.

When mail matter is sent *via* registered mail, it is the registry receipt issued by the mailing office and the affidavit of the person mailing which prove that service was made through registered mail. Absent one or the other, or worse both, there is no proof of service.

As there is no evidence proving the accused's receipt of the PAN and FAN, the accused's right to due process was violated, resulting in the nullity of the FAN and FLD as well as the subsequent collection of the amounts assessed therein through PCL, FNBS, and Warrant of Distraint and Levy. In which case, no civil liability for deficiency taxes may be adjudged against accused. *(People of the Philippines v. Robiegie Corporation and Grace G. Sucksuphan, CTA Crim. Case No. O-639, June 30, 2022)*

10. Even if the taxpayer's Articles of Incorporation state that its business purpose is to engage in business process outsourcing using computer based IT enabled systems, the taxpayer must still prove that the services it rendered to its clients fall in the category of "other than processing, manufacturing, or repacking of goods" and are being performed in the Philippines to establish that its export services are subject to 0% VAT.

While it is established based on its Articles of Incorporation that the purpose of AMMEX I-Support Corporation (AMMEX) is to engage in business process outsourcing using computer based IT enabled systems, the CTA held that, since it failed to submit as evidence its service agreements with its clients, there is no proof that the services of AMMEX to its clients fall in the category of "other than processing, manufacturing, or repacking of goods" and are being performed in the Philippines. *(Ammex I-Support Corporation v. Commissioner of Internal Revenue, CTA Case No. 9773, July 14, 2022)*

REVENUE REGULATIONS

1. Revenue Regulations No. 5-2022

Implementing the Estate Tax Exemption Under Republic Act No. 11597, Otherwise Known "An Act Providing for the Revised Charter of the Philippine Veterans Bank, Repealing for the Purpose Republic Act No. 3518, as Amended, Otherwise Known as 'An Act Creating the Philippine Veterans Bank, and For Other Purposes'"

This implements the exemption from estate tax of transfers by a veteran of his/her common or preferred shares with the Philippine Veterans Bank (Veterans Bank) pursuant to Section 5 (b) of RA 11597. More specifically, all transfers made by a veteran of his/her common or preferred shares in Veterans Bank to his/her widow, orphan, or compulsory heir by way of succession or donation *mortis causa* shall not be subject to estate tax.

The term "veteran or veterans" shall include primarily any person who served in the regularly constituted air, land, or naval services of arms, or in such non-regularly organized military units in the Philippines during World War II, and whose services with such units are duly recognized by the Republic of the Philippines or the Government of the United States of America, and those veterans referred to under Republic Act (RA) No. 6948, as amended by RA No. 7696 and RA No. 9396. The term also includes the widow, orphan, or a compulsory heir of a deceased veteran, as determined under existing laws.

Before any transfer of shares in Veterans Bank is registered in its books, an electronic Certificate Authorizing Registration (eCAR) or Tax Clearance Certificate (TCC) must be secured from the Revenue District Office where the estate of the decedent is registered.

2. Revenue Regulations No. 6-2022

Removal of 5-Year Validity Period on Receipts/Invoices

In line with the Ease of Doing Business Act, the 5-year validity period of a Permit to Use and/or system-generated receipts/invoices and the principal and supplementary receipts/invoices issued under an Authority to Print has been removed. The phrase stating the 5-year validity period of receipts/invoices receipts shall also be omitted and/or disregarded.

3. Revenue Regulations No. 7-2022

Tax Incentives Under the Renewable Energy Act of 2008 and the Policies and Guidelines for the Availment Thereof

This provides the guidelines on the availment of tax incentives under the Renewable Energy Act of 2008. It elaborates on the available types of fiscal incentives and describes the required certifications, registrations, and accreditations from government agencies for renewable energy (RE) developers and manufacturers, fabricators and suppliers of locally produced RE equipment.

For RE developers utilizing both RE sources and conventional energy, incentives can be claimed in proportion to the RE component. A certification from the Department of Energy distinguishing the equipment and facilities using RE resources is required to avail of the benefits.

Unless otherwise provided by law, the registration/accreditation to avail of incentives under the Renewable Energy Act of 2008 shall result to disqualification from availment of other tax and non-tax incentives under the NIRC of 1997, as amended by Republic Act No. 11534 (CREATE Act).

4. Revenue Regulations No. 8-2022

Prescribing Policies and Guidelines for the Implementation of Section 237 and 237-A of the National Internal Revenue Code, as Amended by RA 10963, Otherwise Known as the Tax Reform for Acceleration and Inclusion or TRAIN, Through the Use of the Electronic Invoicing/Receipting System (EIS)

The following taxpayers are mandated to issue electronic receipts or sales/commercial invoices:

1. Taxpayers engaged in the export of goods and services;
2. Taxpayers engaged in electronic commerce; and
3. Taxpayers under the Large Taxpayers Service.

The abovementioned taxpayers are required to: (i) issue e-Receipts/e-Invoices to their customers/buyers; (ii) register their Computerized Accounting System/Cash Register Machines/Point-of-Sales Systems and cause the certification of Sales Data Transmission System; and (iii) transmit sales data covered by e-Receipts/e-Invoices using the Sales Data Transmission System into the EIS.

5. Revenue Regulations No. 9-2022

Prescribing Policies and Guidelines for the Admissibility of Sales Documents in Electronic Format in Relation to the Implementation of Section 237, Issuance of Receipts or Sales or Commercial Invoices, and 237-A, Electronic Sales Reporting System of the National Internal Revenue Code of 1997, as Amended by RA No. 10963, Otherwise Known as the Tax Reform for Acceleration and Inclusion or the "TRAIN Law"

This provides the policies and guidelines for the admissibility of electronic sales documents and data in the verification of sales and purchases of the following taxpayers, especially during audit or in the processing of VAT refund claims:

1. Taxpayers engaged in the export of goods and services;
2. Taxpayers engaged in e-commerce;
3. Taxpayers under the Large Taxpayers Service; and
4. Taxpayers authorized by the BIR to issue electronic sales invoices/official receipts through the web-based facility of the Electronic Invoicing/Receipting and Sales Reporting System (EIS) of the BIR.

Electronic documents shall be admissible provided that such documents comply with the information requirements under existing revenue issuances and Section 113 of the Tax Code. The requirement of stamping the term "zero-rated sales" on the face of the receipt is no longer needed, provided that there is separate reporting to the EIS for each sales classification, specifically, vatable, zero-rated, and exempt.

Taxpayers authorized to use the EIS are not required to submit printed copies of invoices they issue for their sales. For purposes of claiming input VAT or deductible expenses for income tax, only purchases data that are validated in the EIS shall be allowed. Receipts and invoices presented by the taxpayer-claimant representing purchases but which are not reported in the EIS by the supplier shall be construed as unreported sales and shall be subject to further investigation.

The covered taxpayers are required to retain the original form or digital copies of the sales and purchases data in accordance with Sections 235 and 237 of the NIRC of 1997, as amended, to be able to provide the same upon demand for verification and validation.

Revenue officers may also access the Computerized Accounting System and Point-of-Sale system of taxpayers to validate the sales data transmitted to the EIS.

6. Revenue Regulations No. 10-2022

Prescribing the Guidelines and Procedures for Requesting Mutual Agreement Procedure (MAP) Assistance in the Philippines

This sets out the Mutual Agreement Procedure (MAP), a mechanism that allows competent authorities of contracting states in a Double Taxation Agreement to resolve disputes in interpreting treaty provisions. It enumerates the scenarios requiring MAP assistance, the composition of the MAP Team, the instructions in initiating a MAP Request, and other steps in the MAP process.

7. Revenue Regulations No. 11-2022

Prescribing the Guidelines and Procedures for the Spontaneous Exchange of Taxpayer Specific Rulings

This prescribes the guidelines for the Spontaneous Exchange of Taxpayer Specific Rulings or the "Transparency Framework" which provides tax administrations with access to timely information on rulings that have been granted to a foreign related party or a permanent establishment (PE) of their resident taxpayer. The information is used in conducting risk assessments and addressing base erosion and profit shifting concerns. The spontaneous exchange of rulings encompasses both past and future rulings in line with Double Taxation Agreements, Tax Information Exchange Agreements or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

This revenue issuance also provides a template for Information Exchange and lists the potential exchange jurisdictions on different types of rulings.

The responsible office for the spontaneous exchange of rulings is the International Tax Affairs Division (ITAD) of the BIR through its Exchange of Information (EOI) Section. The EOI Section of ITAD is tasked to ensure that the information to be exchanged is transmitted to the pertinent jurisdictions in a timely manner depending on whether they are past or future rulings. Past rulings are to be transmitted as soon as possible after identifying the potential exchange jurisdictions, while future rulings are to be transmitted as soon as possible and no later than three months after their issuance.

REVENUE MEMORANDUM CIRCULARS

1. Revenue Memorandum Circular No. 80-2022

Circularizing the Lists of Withholding Agents Required to Deduct and Remit the 1% or 2% Creditable Withholding Tax (CWT) for the Purchase of Goods and Services under Revenue Regulations No. 31-2020.

The BIR announced the release of the additional list of withholding agents who are required to deduct and remit either the 1% or 2% CWT from the income payments to their suppliers of goods and services pursuant to Revenue Regulations No. 31-2022. This circular also enumerates the withholding agents that were deleted from the existing list.

The commencement or termination of the obligation to deduct and remit the corresponding CWT, as the case may be, shall become effective on July 1, 2022.

2. Revenue Memorandum Circular No. 82-2022

Clarification on the Service of Letter of Authority Pursuant to Revenue Audit Memorandum Order (RAMO) No. 1-2000

RAMO No. 1-2000 has been amended by RAMO No. 1-2020, deleting the requirement that an electronic Letter of Authority (eLA) must be served to a taxpayer within 30 days from the date of its issuance. Currently, there is no longer a period within which to serve the eLA. It is, however, emphasized that it should be served immediately upon issuance or assignment. What is crucial is the completion of the audit process within a period of 180 days for RDO cases or 240 days for LT cases from the date of issuance of the eLA. Hence, an eLA is considered valid and enforceable despite its

service beyond the 30-day period from its date of issuance as long as the 180-day/240-day period to complete the audit process has not yet expired.

3. Revenue Memorandum Circular No. 83-2022

Publishing the Full Text of the May 18, 2022 Letter from the Food and Drug Administration (FDA) of the Department of Health (DOH) Endorsing Updates to the List of VAT-Exempt Medicines under RA No. 11534 Known as the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act

In connection with the list of VAT-exempt medicines under the CREATE Act, the letter of the FDA endorses for inclusion certain medicines prescribed for diabetes, hypertension, and mental illness, for deletion certain medicines for cancer and kidney diseases, and for correction medicine for kidney diseases.

4. Revenue Memorandum Circular No. 84-2022

Prescribing the Template for Sworn Declaration to be Executed by the Registered Business Enterprise (RBE) in Relation to Q and A No. 36 of RMC No. 24-2022

The prescribed template of Sworn Declaration to be executed by the duly Registered Business Enterprise (RBE) shall state the goods and/or services purchased to be used directly and exclusively in the registered project or activity. The declaration is to be furnished to the RBE's supplier prior to a sale transaction so that it may avail of VAT zero-rate incentives.

REVENUE DELEGATION AUTHORITY ORDER

1. Revenue Delegation Authority Order No. 7-2022

Amending Revenue Delegation Authority Order (RDAO) No. 4-2018, Relative to the Delegation of Authority to Sign and Approve Assessment Notices & Reports of Investigation of the Divisions under the Large Taxpayers Service (LTS)

RDAO No. 4-2018 which delegated the authority of the CIR to sign FANs and FLDs to the Deputy Commissioner of Operations is now repealed. The authority of the CIR to sign FANs and FLDs is now reverted to the Assistant Commissioner of the Large Taxpayers Service (LTS) or, in his/her absence, the concerned HREA at the LTS as previously provided under RDAO No. 7-2007 dated August 13, 2007.

The authority to sign and approve FDDAs remains with the CIR.