TMAP TAX UPDATES

(December 16, 2023 – January 15, 2024)

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DISCUSSION

A. COURT OF TAX APPEALS DECISION

1. Association dues, membership fees, and other assessments/charges are not subject to income tax because they do not constitute profit or gain.

This is an assessment case pertaining to the registration fees, sponsorship fees, and other collections received by the taxpayer.

The taxpayer argued that it was able to prove that the income being assessed by BIR was not derived from its real or personal properties or from any activity conducted for profit. It also claims that its receipts pertaining to registration, sponsorships, and other collections are not subject to VAT.

The Court held that it is undisputed that the taxpayer qualified as a business league, chamber of commerce, or board of trade not organized for profit, whose net income does not inure to the benefit of any private stockholder, or individual. Such fact, however, does not automatically exempt taxpayer from paying taxes. Only its income derived from its not-for-profit activities is exempt, while its income from activities conducted for profit are subject to income tax, regardless of disposition thereof.

Here, the Court cited BIR vs. First E-Bank Tower Condominium Corp. (G.R. No. 215801 & 218924, January 15, 2020) wherein it held that association dues, membership fees, and other assessments/charges are not subject to income tax because they do not constitute profit or gain as they are collected purely for the benefit of the condominium owners and are the incidental consequence of a condominium corporations's responsibility to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance.

Considering that the fees are not considered income but only form part of capital, it is but logical that the same is also not derived from activities conducted for profit.

As to VAT, the Court held that VAT is imposed on gross receipts derived from sale or exchange of services which include the performance of all kinds of services for another for a fee, regardless of whether or not the person engaged therein is a non-stock, non-profit private organization and irrespective of the disposition of its net income. Therefore, taxpayer's receipts pertaining to registration, sponsorships, and other collections were found to be paid in exchange for services or some kind of benefit from the taxpayer. *(Contact Centers Association of the Philippines, Inc. (CCAP), vs. Commissioner of Internal Revenue, CTA EB No. 2405, December 15, 2023)*

2. CWT Certificates with lacking and/or inaccurate TIN may be the subject of disallowance in a claim for refund.

This is a claim for refund on excess and unutilized Creditable Withholding Tax ("CWT"). The taxpayer argues that the Court-Commissioned ICPA erred in disallowing the CWT certificates with no payor's TIN indicated or those where the taxpayer's TIN was either not indicated or incorrect. It further argues that there is nothing in Sections 2.58(B) and 2.58.3, RR No. 2-98, as amended which states that the income payor's and/or income payee's TIN is an essential requisite for the validity of a CWT certificate.

The Court, however, disagrees with the taxpayer. It bears reiterating that a claim for tax refund or credit like a claim for tax exemption, is construed strictly against the taxpayer. TIN serves as identification of taxpayers in relation to their payment with the BIR. Thus, the lack thereof or failure to indicate the correct TIN, even with the taxpayer's name, would make it difficult to verify if, indeed, the taxpayer paid the correct amount to the government. Thus, it was proper for the ICPA to disallow taxpayer's CWT for being supported by CWT certificates either with no payor's TIN or with incorrect or without the taxpayer's TIN. *(GHD PTY Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 10187, December 19, 2023)*

3. The city in which the franchise holder has its principal office and exercises the said privilege has the power to impose franchise tax on the latter's gross receipts, even when the source thereof is beyond the territorial limits of the said city

This is a franchise tax assessment case on gross receipts earned by CASURECO II. The Province of Camarines Sur assessed CASURECO II for franchise tax on gross receipts earned within the province. Similarly, since the principal office of CASURECO III is located in Naga, the City Treasurer of Naga demanded the payment of franchise tax based on CASURECO II's gross receipts earned from City of Naga and also from the nine (9) municipalities in the province of Camarines Sur.

Due to conflicting claims on franchise tax on gross receipts, CASURECO II asked the intervention of the Court to clarify to whom payment should be made.

The Court held that according to Article 226 (a) and (b) of the IRR of Local Government Code ("LGC") in relation to Section 137 of the LGC, a province is authorized to impose a tax on "businesses enjoying a franchise" based on the incoming receipt, or realized, within its territorial jurisdiction. However, a province cannot impose a tax on business enjoying franchise operating within the territorial jurisdiction of any city located within the province.

Thus, the city in which the franchise holder has its principal office and exercises the privilege has the power to impose franchise tax on gross receipts, even when the source thereof is beyond the territorial limits of the said city. Here, the City of Naga has power to assess and collect the franchise tax since the subject privilege is exercise by CASURECO II in Naga City, wherein it has its principal office. *(The Local Government Unit of Camarines Sur v. Camarines Sur II Electric Cooperative, Inc. [CASURECO II] and the Local Government Unit of Naga City, CTA Case No. AC-264, December 19, 2023)*

4. Statement of accounts ("SOA") cannot be treated as notice of assessment for purposes of applying Section 195 of the LGC of 1991.

This is a claim for refund on local business tax ("LBT") allegedly erroneously and illegally collected by the City Treasurer of Manila against the taxpayer. During the renewal of the taxpayer business permits and licenses, the City Treasurer of Manila issued statement of accounts ("SOA") indicating the computation of LBT that needs to be paid.

The taxpayer then paid under protest the LBT with prayer for refund. Since there was no action on the taxpayer's administrative claim for refund, the taxpayer filed a judicial claim for refund before the Regional Trial Court ("RTC"). The RTC however dismissed the case for being filed out of time.

Not agreeing with the decision of the RTC, the taxpayer appealed to the CTA and argued that the the SOAs cannot be considered as Notice of Assessmnt ("NOA"). As such, the

period under Section 196 of the LGC should apply instead of the period provided for under Section 195.

The Court ruled in favor of the taxayer. Section 195 of the LGC is clear that a NOA shall be issued by the local treasurer or his duly authorized representative when there is a finding that correct taxes, fees, or charges have not been paid by the taxpayer. The NOA should state the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests, and penalties.

In the case at bar, the subject SOAs failed to comply with the requirements of a NOA under Section 195 of the LGC of 1991. The SOAs do not state the factual and legal bases of the tax, fee, or charge as well as the amount of deficiency, surcharges, interests and penalties. While the SOAs reflect various line items with corresponding amounts (e.g.,"x x x COMMON CARRIER," "Garbage Fee," "R E SUB LESSOR"), there are columns without titles or headers to indicate what the amounts stated therein represent. It is only in the official receipts that the particulars, the amount of taxes and fees, surcharge/interest were reflected and became known to the taxpayer. Although the SOAs state that, "This Statement is valid until 1/31/2020," it cannot be considered as the due date for payment. For having failed to comply with the law, the subject SOAs cannot be deemed as NOAs in this case.

Considering the absence of NOA in the instant case, this Court finds that Section 196 of the LGC of 1991 applies instead. *(Light Rail Manila Corp. v. Daza, CTA. AC No. 267, January 4, 2024)*

5. The BIR regulations additionally requiring an approved prior application for effective zero rating cannot prevail over the clear VAT nature of respondent's transactions

This is a claim for refund of unutilized input VAT credits attributable to the taxpayer's zero-rated sales, including services rendered to a company engaged in renewable energy. The BIR claims that the refund claim must be denied by reason of, amongst others, taxpayer's failure to file an Application for Zero-Rating on its effectively zero-rated transactions.

The CTA ruled in favor of the Taxpayer. The BIR regulations additionally requiring an approved prior application for effective zero-rating is not within the statutory authority granted by the legislature.

No prior approved application is required for a transaction to be treated as subject to the 0% VAT rate. As such, denying the Taxpayer's claim for a refund of the input VAT for the latter's failure to file the approved application for zero-rating on its effectively zero-rated transactions cannot be sustained. *(Air Drilling Associates Pte. Ltd. v. Commissioner of Internal Revenue, CTA Case No. 10399, January 4, 2024)*

6. Failure to submit relevant supporting documents will not automatically result in the assessment becoming final, executory, and demandable

This is an assessment issued by the BIR against the taxpayer for alleged deficiency internal revenue taxes.

During the hearing in the CTA Division, the court denied the CIR's argument that the assessment has become final and demandable due to the taxpayer's failure to submit all

relevant supporting documents within the sixty (60) day period from the filing of the protest. Not agreeing with the decision of the CTA Division, the CIR appealed to the CTA En Banc.

The CTA En Banc ruled in favor of the taxpayer. The failure of the taxpayer to submit the relevant supporting documents to support its protest should not automatically render the assessment final, executory and demandable. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the BIR's mercy, which may require the production of documents that a taxpayer cannot submit. Differently put, taxpayer will be at the BIR's mercy and the period within which they can elvate their case tot the CTA will never run, to their extreme prejudice.

A taxpayer's failure to submit the relevant supporting documents within the reglementary period would only render the assessment against it final, as opposed to being not only final but also executory and demandable.

Under Revenue Regulations No. 18-2013, the phrase "the assessment shall become final" shall mean that the taxpayer is barred from disputing the correctness of the issued assessment by the introduction of newly discovered or additional evidence, and the FDDA shall consequently be denied. In other words, the failure to submit relevant supporting documents will not automatically result in the assessment becoming final, executory, and demandable. The immediate consequence of such failure is that the protest will be denied and the issuance of the FDDA shall subsequently follow. The FDDA, however, may still be appealed to the CIR by way of a request for reconsideration, or to the CTA by way of a petition for review. *(Commissioner of Internal Revenue v. 8196 Convenience Corp., CTA EB No. 2648 (CTA Case No. 9818), January 5, 2024)*

7. A collection effort must be initiated by court proceedings or by distraint or levy thru the issuance of a warrant of distraint and/or levy

This is an assessment issued by the BIR against the taxpayer for alleged deficiency internal revenue taxes for taxable year 1999. On October 15, 2002, the BIR issued an FLD against the taxpayer which was followed up with two (2) informal collection notice dated November 6, 2003 and January 11, 2004, respectively. The BIR subsequently issued a warrant of garnishment on March 18, 2008.

The taxpayer filed its Petition before the CTA and argued that the CIR's issuance of Collection Notices is not considered as an act of collection and hence, the CIR is barred from collecting the taxes since the same has already prescribed.

The CIR, on the other hand, argued that it had five (5) years from assessment within which to collect the assessed amount, and considering that he sent Collection Notices to the taxpayer as early as November 6, 2003, his right to collect the assessed amount has not yet prescribed.

The tax court ruled in favor of the taxpayer and held that it cannot accept the BIR's contention that the collection efforts began upon the issuance of his November 6, 2003 letter. Nothing in the letter implies the initiation of collection efforts via distraint or levy. It is at most a reiteration of the BIR's demand for payment. Instead, the earliest issuance that can be considered to have validly initiated any collection effort was the Warrant of Garnishment dated March 18, 2008.

A collection effort must be initiated by court proceedings or, more relevant to the case bar, by distraint or levy. And distraint or levy are "validly begun" through the issuance of a WDL.

The aforementioned Warrant of Garnishment is thus the earliest valid collection effort initiated. The same was issued one thousand nine hundred and eighty-one (1,981) days after the issuance of the FLD. This is well beyond the three (3)-year period under Sec. 203 of the tax Code and almost half a year beyond the inapplicable five (5)-year period under Sec. 222 of the Tax Code. It was thus too late to interrupt the prescriptive period, whether one correctly pegs the end of said period on October 15, 2005 or insists on the later deadline of October 15, 2007. *(Canlubang Waterworks Corp. v. Commissioner of Internal Revenue, CTA Case No. 10682, January 10, 2024)*

B. REVENUE REGULATIONS

1. REVENUE REGULATION NO. 16-2023 (December 21, 2023) – This amends the provisions of RR No. 2-98, as Amended, to Impose Withholding Tax on Gross Remittances Made by Electronic Marketplace Operators and Digital Financial Services Providers to Sellers/Merchants

As a general rule, remittances of electronic marketplace operators and digital financial services providers to merchants shall be subject to creditable withholding tax as follows:

Withholding Tax Rate	Withholding Tax Base
One percent (1%)	On one-half (1/2) of the gross remittances by e-marketplace operators and digital financial service providers to the sellers/merchants for the goods/services sold/paid through their platform/facility

Exception: The withholding tax will not apply in the following instances:

1. Annual total gross remittances to an online seller/merchant for the past taxable year has not exceeded Php 500,000.00; or
2. Cumulative gross remittances to an online seller/merchant in a taxable year has not exceeded Php 500,000.00; or

3. Seller/merchant is exempt or subject to a lower income tax rate provided that the necessary certification, clearance, ruing, or any other document serving as proof of entitlement to the exemption or lower income tax rate is secured and presented to the e-marketplace operator or digital financial services provider.

Existing Withholding Tax Obligations:

This withholding tax imposition is in addition to the existing withholding tax obligations being imposed to the e-marketplace operators and digital financial services provider such as, but not limited to, withholding taxes on payment:

a. To transportation contractors; and
b. For commissions.

Mandatory Registration:

All online sellers/merchants shall register with the BIR on or before the commencement of business in an e-marketplace platform. E-marketplace operators shall likewise:

a. Require the submission of the online sellers'/merchants' Certificate of Registration or BIR Form No. 2303; and
b. Include the same as part of the e-marketplace operator's minimum seller/merchant accreditation requirements.

2. REVENUE REGULATION NO. 01-2024 (January 15, 2024) – This amends Section 2, Subsection 4.109-1(B)(p) of Revenue Regulations No. 08-2021, to implement the adjustment of the selling price threshold of the sale of house and lot, and other residential dwellings for value-added tax exemption purposes.

The new price threshold, for sale of house and lot and other residential dwellings for VAT-exemption purposes, rounded up is Three Million Six Hundred Thousand (Php3,600,000.00) Pesos from the current threshold amount of Php3,199,200.00, beginning January 1, 2024.

C. REVENUE MEMORANDUM CIRCULAR

1. REVENUE MEMORANDUM CIRCULAR No. 05-2024 (January 5, 2024) – This clarifies the proper tax treatment of cross-border services in light of the Supreme Court En Banc Decision in Aces Philippines Cellular Satellite Corp. v. Commissioner of Internal Revenue, GR. No. 22668

This clarifies the following:

a. That cross-border services are akin to that of *Aces v. CIR.*

International service provision (or cross-border services) includes the following or similar transactions:

- ✓ Consulting Services
- ✓ IT Outsourcing
- ✓ Financial Services
- ✓ Telecommunications
- ✓ Engineering and Construction
- ✓ Education and Training
- ✓ Tourism and Hospitality
- ✓ Other Similar Services

b. Tax treatment for Cross-Border Services

Income Tax: If the income-generating activities in the Philippines are deemed essential, the income derived from these activities would be considered as sourced from the Philippines. It is thus subject to income tax and FWT.

It is imperative to ascertain whether the particular stages occurring in the Philippines are so integral to the overall transaction that the business activity would not have been accomplished without them.

Value-Added Tax: If the service provider is outside the country but the service is utilized, applied, executed, or consumed for a recipient within the Philippines, VAT is applicable. Consequently, payment for such service shall be subject to final withholding VAT.

c. Tax treatment for Reimbursable/Allocable Expenses Between Related Parties

Rule: The reduction of expenses for a foreign corporation can be considered as income because it increases the foreign corporation's net income or profit.

Also, reimbursable/allocable expenses charged by a foreign corporation should contribute to the value/benefit received by a local company.

d. Tax treatment for Cross-Border Transactions with No Benefits Derived by the Philippine Company

Rule: It may be seen as an attempt to evade taxes or manipulate profits.

It follows the "source-based taxation principle" or that the source of income should be determined by the location of the business activity that generates the income, rather than the location of the payout or where it is physically received.

2. REVENUE MEMORANDUM CIRCULAR No. 07-2024 (January 11, 2024) – This reverses the VAT exemption of transactions specified under Section 109 (BB) of the Tax Code of 1997, as amended

The following transactions under Section 109 (BB) of the Tax Code of 1997, as amended, shall no longer be exempt from value-added taxes (VAT) effective January 1, 2024, to wit:

Sale or importation of the following:

(i) Capital equipment, its spare parts and raw materials, necessary for the production of personal protective equipment components such as coveralls, gown, surgical cap, surgical mask, N-95 mask, scrub suits, goggles and face shield, double or surgical gloves, dedicated shoes, and shoe covers, for COVID-19 prevention; and

(ii) All drugs, vaccines and medical devices specifically prescribed and directly used for the treatment of COVID-19; and

(iii) Drugs for the treatment of COVID-19 approved by the Food and Drug Administration (FDA) for use in clinical trials, including raw materials directly necessary for the production of such drugs.

Thus, the above transactions shall now be subject to VAT starting January 1, 2024.

3. REVENUE MEMORANDUM CIRCULAR No. 08-2024 (January 15, 2024) – This clarifies the provisions of Revenue Regulations No. 16-2023 imposing Withholding Tax on gross remittances made by electronic marketplace operators and digital financial services providers to sellers/merchants

Pursuant to Section 6 of RR No. 16-2023, the withholding tax obligation of e-marketplace operator and DFSPs shall take effect after fifteen (15) days following its publication in a newspaper of general circular or the Official Gazette, whichever comes first. RR No. 16-2023 was first published in Manila Bulletin on December 27, 2023. Thus, RR No. 16-2023 shall take effect on January 11, 2024.

4. **REVENUE MEMORANDUM CIRCULAR No. 09-2024 (January 15, 2024) – This clarifies surcharge computed in the filing of an amended return in the electronic Filing and Payment System (eFPS)**

While the eFPS is being enhanced to adjust the computation of the surcharge, eFPS users/taxpayers are advised to disregard the surcharge computed by the system when filing an AMENDED tax return. If there is an additional tax to be paid as a result of such amendment, pay only the basic tax, the computed interest and the compromise, provided, that the original tax return was filed on or before the set deadline.