TMAP TAX UPDATES

(December 16, 2022 – January 15, 2023)

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DISCUSSION

A. SUPREME COURT DECISIONS

1. A The 15-day period provided under Revenue Regulations No. 12-99 for a taxpayer to reply to a PAN should be strictly observed by the BIR.

On January 7, 2009, Prime Steel received the PAN. In response thereto, Prime Steel filed a reply on January 22, 2009. Without waiting to receive Prime Steel's reply, the BIR issued the FAN on 14 January 2009, albeit it was received by Prime Steel only on 12 February 2009.

The Court held that the sending of a PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment and the BIR must strictly comply with the requirements laid down by the law and by its own rules. The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without the need for the issuance of a FAN. The 15-day period provided under Revenue Regulations No. 12-99 for a taxpayer to reply to a PAN should also be strictly observed by the BIR. The Court highlighted that only after receiving the taxpayer's response or in case of the taxpayer's default can the BIR issue the FLD/FAN.

Here, there can be no substantial compliance with the due process requirement when the BIR completely ignored the 15-day period by issuing the FAN even before Prime Steel was able to submit its Reply to the PAN. (Prime Steel Mill, Inc. v. CIR, G.R. No. 249153, September 12, 2022)

2. The phrase “when the relevant sales were made” refers to zero-rated sales, and not to the purchase of goods and services from which it is incurred input VAT.

The main issue, in this case, is whether or not Maibarara complied with the requirements to claim a refund or tax credit under Section 112(A), in particular, the existence of zero-rated sales or effectively zero-rated sales, to which the input taxes it incurred may be attributed.

The Court held that any claim for refund or tax credit of unutilized input VAT must be attributable to zero-rated or effectively zero-rated sales. The phrase “when the relevant sales were made” refers to zero-rated sales, and not to the purchase of goods and services from which it incurred input VAT.

Here, Maibarara’s Accounting Manager, admitted that it had no sales during the taxable year 2011 and started selling during the first quarter of 2014. Maibarara has no zero-effectively zero-rate sales during the first to fourth quarters of the taxable year 2011. Thus, there is no output VAT against which the input VAT is deducted. Hence, the input VAT incurred from the first to the fourth quarter of the taxable year 2011 attributable thereto cannot be refunded. (Maibarara Geothermal Inc. v. CIR, G.R. No. 250479, July 18, 2022)

B. COURT OF TAX APPEALS DECISION

1. The actual date of filing is crucial for purposes of counting the 120-day period for the CIR to act on the claim, and ultimately, in determining the Court's jurisdiction.

The taxpayer claims that it refiled its administrative claim on February 26, 2016 is not a bare allegation. The fact that the second filing was not stamped-received on its face does not automatically mean it was not filed at all. The taxpayer also claims that the 120-day period from the filing of the administrative claim and submission of complete documents in support thereof is reckoned from February 26, 2016.

While the Court En Banc agrees that re-filing of administrative claims within the prescriptive period is not prohibited, taxpayers are cautioned to act judiciously and with circumspect, considering that the actual date of filing is crucial for purposes of counting the 120-day period for the CIR to act on the claim, and ultimately, in determining Court's jurisdiction. To uphold that Lantro's claim that it re-filed its administrative claim on February 26, 2016, without any showing that it categorically and definitely abandoned its initial administrative claim, will give rise to an undesirable precedent and practice, wherein a taxpayer claimant may refile its administrative claim, without first withdrawing its earlier claim. (Lantro Philippines, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 2406 (CTA Case No. 9436), December 20, 2022)

2. The sale of services to foreign shipping companies doing business outside the Philippines qualifies as VAT zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended.

The CIR claims that services rendered by BW Shipping to foreign shipping companies cannot qualify for VAT zero-rating because the recipients of services rendered by BW Shipping were doing business in the Philippines.

The Court in Division correctly found taxpayer's sale of services to foreign shipping companies doing business outside the Philippines for TY 2015 qualifies as VAT zero-rated sales under Section 108 (B) (2) of the NIRC of 1997, as amended.

BW Shipping was able to establish that its foreign clients are NRFCs doing business outside the Philippines as evidenced by the following documentary evidence: (1) Certificates of Non-Registration of Company issued by the Securities and Exchange Commission, (2) Certificates of Registration, (3) Articles of Association, and (4) Memorandum of Association. (Commissioner of Internal Revenue vs. BW Shipping Philippines, Inc., CTA EB 2481 & 2482 (CTA Case No. 9660), December 22, 2022)

3. Section 281 of the Tax Code provides that all violations of any provision of this Code shall prescribe after (5) years.

On October 26, 2022, the taxpayer was charged for violation of Section 255 of the Tax Code for failure to supply correct and accurate information in his VAT return by stating in the entry fields of the said return the word "exempt" when in truth and in fact said accused is not exempted.

The issue here is whether or not the criminal action has prescribed. The Court ruled that in resolving the issue of prescription, the following should be considered: (1) The period of prescription for the offense charged; (2) the time the period of prescription starts to run;

and (3) the time the period of prescription was interrupted." Here, the criminal action has already prescribed. Section 281 of the Tax Code provides that all violations of any provision of this Code shall prescribe after (5) years. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings. The prescription shall be interrupted when proceedings are instituted and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy. The term of prescription shall not run when the offender is absent from the Philippines.

The BIR referred the Joint Complaint-Affidavit to the Department of Justice for preliminary investigation on July 5, 2012 (the date when the violation of the law was discovered and the institution of judicial proceedings for its investigation and punishment). Thus, the period to file information against the taxpayer is five (5) years from then, or until July 5, 2017. The Information was filed only on October 26, 2022. As such, the criminal action has already prescribed. (People of the Philippines vs. Ziegfried Loo Tian, CTA Crim. Case No. 0-942, December 23, 2022)

4. The delivery date of pleadings to a private courier is not equivalent to the filing date in court.

This is a Motion for Reconsideration (MR) filed by the BIR assailing the Decision of the CTA which ruled in favor of the taxpayer.

The BIR received the assailed Decision on September 30, 2022. Counting fifteen (15) days therefrom, he had until October 17,2022 to file his MR thereto. However, the BIR sent his MR through private courier on October 17,2022. Said private courier delivered and the CTA received such motion on October 18,2022.

In denying the MR, the Court ruled that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court. In such cases, the date of actual receipt by the court , and not the date of delivery to the private courier, is deemed the date of filing of that pleading. As such, the BIR belatedly filed such MR on October 18,2022, leading to the finality of the assailed Decision. (Ritegroup Incorporated v. Commissioner of Internal Revenue, CTA Case No. 9708, January 9, 2023)

5. The taxpayer's income from casino gaming operations pursuant to the Junket Agreements with PAGCOR is not subject to corporate income tax.

The taxpayer argues that the income from junket gaming operations is properly classified as income from casino operations which falls under Section 13(2) of P.D. No. 1869, as amended, and is exempt from corporate income tax. It insists that it is a PAGCOR licensee/contractee by virtue of the Junket Agreement where it was granted authority to conduct junket and e-junket gaming operations at PAGCOR's Casino Filipino-Midas. As such, it claims that it is entitled for refund or issuance of tax credit certificate representing erroneously, wrongfully, illegally, or excessively paid corporate income tax on e-junket gaming revenues for taxable year 2015.

In ruling in favor of the taxpayer, the Court ruled that its income from casino gaming operations pursuant to the Junket Agreements with PAGCOR is not subject to corporate income tax as it is classified as "income derived from gaming operations" pursuant to Section 13(2) of the PAGCOR Charter. (Prime Investment Korea, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2483, January 9, 2023)

6. The 180-day period referred to in Section 228 of the Tax Code, as amended, and in Section 2.1.4 of RR No. 12-99, as amended by RR No. 18- 2013, is confined only to the period within which either the CIR or his/her duly authorized representative may act on the initial protest against the Final Assessment Notice (FAN)/Formal Letter of Demand (FLD).

The taxpayer claims that the counting of the 180-day period provided under Section 228 of the Tax Code, as amended, is reckoned from the time the request for reconsideration was sent to the Commissioner of Internal Revenue (CIR).

In denying the MR, the CTA En Banc ruled that the 180-day period under Section 228 of the Tax Code, as amended, and in Section 2.1.4 of RR No. 12-99, as amended by RR No. 18- 2013, is confined only to the period within which either the CIR or his/her duly uthorized representative may act on the initial protest against the FAN/FLD). The pertinent portion of RR No. 12-99, as amended by RR No. 18-2013, is clear that the 180-day period is counted from the date of the filing of the protest, and not from the filing of the administrative appeal. (Commissioner of Internal Revenue v. Ruben U. Yu, CTA EB No. 2354 (CTA Case No. 9595), January 9, 2023)

7. The CTA adhered to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable as animated by the constitutional prohibition on double jeopardy enshrined in Section 21, Article III of the 1987 Constitution.

This is a criminal case against the taxpayer's president. In prior decision, the CTA ruled that the taxpayer is not mandated by law to pay its IT due for taxable year 2008. Hence, its president may not be held criminally liable for the offense charged because of these reasons are: one, the BIR conducted an illegal examination against the taxpayer in TY 2008; two, the prosecution failed to present in evidence, the FAN issued by the BIR against the taxpayer; and three, no valid service of the FLD was made by the BIR against the taxpayer.

Displeased with the decision, the BIR filed a Motion for Reconsideration (MR) in a bid to reconsider the CTA's decision acquitting the taxpayer for a criminal charge.

Subsequently, the BIR's MR was denied by the CTA. The Court adhered to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable. This principle is animated by the constitutional prohibition on double jeopardy enshrined in Section 21, Article III of the 1987 Constitution. As it stands, the proscription against double jeopardy presupposes that an accused has been previously charged with an offense, and the case against him is terminated either by his acquittal or conviction, or dismissed in any other manner without his consent. *(People of the Philippines v. Cosco Petroleum Company, Inc. Michael C. Cosay, Santiao, Pili, Camarines Sur, CTA Crim. Case No. O-804, January 10, 2023)*

C. REVENUE MEMORANDUM CIRCULAR

1. REVENUE MEMORANDUM CIRCULAR NO. 154-2022 (December 16, 2022) – This supersedes the provisions of RMC No. 142-2019 circularizing the Electronic Documentary Stamp Tax (eDST) System's Balance Adjustment facility as an option for recovery of erroneously deducted DST.

This supersedes the provisions of RMC No. 142-2019 circularizing the Electronic Documentary Stamp Tax (eDST) System's Balance Adjustment facility as an option for recovery of erroneously deducted DST.

The following procedures in availing the balance adjustment facility shall be observed:

1) A written request for adjustment in the taxpayer's ledger balance shall be filed by the taxpayer-user with the Chief, Miscellaneous Operations Monitoring Division (MOMD), Collection Service (CS) located at the National Office of the BIR, together with all the necessary documentary proofs on the incident(s) that gave rise to the erroneous deduction of DST from the taxpayer's ledger balance.

2) Within twenty-four (24) hours from receipt of the written request, the MOMD shall check the completeness of the documentary proofs submitted by the taxpayer-user and, if determined complete, shall endorse the taxpayer's request to the Chief, Administrative Systems Division (ASD) using the Balance Adjustment Recovery Data Request Form (Annex "A").

3) The ASD shall validate/verify the request of the taxpayer and the results of such validation/verification shall be indicated in the space provided for under the same data request form. The accomplished data request form shall be returned by the ASD to the MOMD within five (5) days from receipt of the same.

4) The MOMD shall then forward the data request form to the Assistant Commissioner (ACIR), CS for review and approval or denial thereof.

5) Upon receipt of the data request form from the ACIR, CS, the MOMD shall perform the following:

    a) The MOMD shall notify the taxpayer-user, in writing or through email, the results of the request for balance adjustment within one (1) working day from receipt of the duly accomplished request form from the ACIR, CS.

    b) In case of approval, the Chief, MOMD shall approve the taxpayer-user's request in the "Balance Adjustment Details" facility of the eDST System indicating briefly the reasons for adjustment in the box provided for.

    c) In case of denial, the reason(s) for the denial of the taxpayer's request shall be clearly stated in the notice to the taxpayer.

2. REVENUE MEMORANDUM CIRCULAR NO. 158-2022 (December 27, 2022) – This clarifies the effect of non-submission of a cooperative of the Taxpayer Identification Number (TIN) of its members within six (6) months from issuance of its Certificate of Tax Exemption (CTE) pursuant to Item A3 of RMC No. 124-2020 and corresponding penalties to be imposed thereof.

The Circular is issued to provide specific circumstances which constitute “justifiable reasons”.

The following shall be considered justifiable reasons within the purview of RMC No. 124-2020:

1) The TIN not submitted pertains to inactive members, provided these inactive members have already been delisted pursuant to Memorandum Circular (MC) No. 2022-14 of the Cooperative Development Authority (CDA).

2) The "List of Active Members with TIN and Inactive Members" must therefore be submitted even prior to the prescribed due date for its submission, which is a year after the CTE issuance to support the failure to complete the TIN of members; and

3) The failure was due to "force majeure" (e.g. state of emergency, state of calamity as declared by the National Government and the concerned Local Government Unit). However, once the "force majeure" ceased to exist, the submission should immediately be done.

In case the above-mention circumstances constituting justifiable reasons ceased to exist, failure to provide TIN of active members shall be subject to penalties.

All cooperatives which have been issued CTE (original application) despite non-submission of the TIN of their ACTIVE members are still required to submit to the Revenue District Office (RDO) concerned the TIN of the said members following the six-month grace period unless the non-submission falls within justifiable reasons as mentioned above.

All cooperatives are mandated to submit the List of Active Members with TIN and Inactive Members pursuant to MC No. 22-14 of the CDA, to the concerned RDO within thirty (30) days from the effectivity of this RMC, otherwise, it will be subject to the penalties as herein imposed.

Failure to submit the TIN of their active members will not qualify the cooperative for the renewal of their CTE.

3. REVENUE MEMORANDUM CIRCULAR NO. 3-2023 (January 10, 2023) – This prescribes the policies and guidelines on the Online Registration of Books of Accounts.

All books of accounts shall be registered online with the BIR’s Online Registration and Update System (ORUS). Instead of the manual stamping of books of accounts, a Quick Response (QR) Code shall be generated, which can be validated online.

The manners of bookkeeping or maintaining of books of accounts is summarized as follows:

For New Business Registrants

Type of Books of Accounts	Deadline for Registration	Frequency
Manual Books of Accounts	Before the deadline for filing of the initial quarterly Income Tax return or the	Before the full consumption of the pages of the previously registered books

	annual Income Tax return, whichever comes earlier	

For Existing Business Taxpayers or Subsequent Registration

Type of Books of Accounts	Deadline for Registration	Frequency
Manual Books of Accounts	Before use of the books	Before the full consumption of the pages of the previously registered books
Permanently Bound Loose leaf Books of Accounts	Within fifteen (15) days after the end of each taxable year or within 15 days from the closure of business operations, whichever comes earlier, unless extended by the Commissioner or his duly authorized representative, upon request of the taxpayer before the lapse of the said period.	Annually
Computerized Books of Accounts	Within thirty (30) days from the close of each taxable year or within 30 days from the closure of operations, whichever comes earlier, unless extended by the Commissioner or his duly authorized representative, upon request of the taxpayer before the lapse of the said period.	Annually

New sets of manual books of accounts (BAs) are not required to be registered every year. However, the taxpayers may opt to use new set of books of accounts yearly. Hence, new sets of manual BAs shall be registered before its use.

4. REVENUE MEMORANDUM CIRCULAR NO. 4-2023 (January 10, 2023) – This clarifies the base amount for the imposition of the 20% penalty relative to the early withdrawal of Personal Equity and Retirement Account (PERA) for assets, accounts and sub-accounts classified as unqualified.

Pursuant to Section 10(C) of Revenue Regulations (RR) No. 17-2011, the early withdrawal penalty, composed of the 20% of the gross income earned by the PERA for the entire duration and the 5% tax credit availed, shall be imposed on any early withdrawal not within the circumstances enumerated under Section 10 (B) of the aforesaid regulations. Any loss incurred on PERA sub-accounts shall not be deducted from the gross income earned.

Under “unqualified early withdrawal”, the withdrawal of a sub-account will result to the automatic termination of all other sub-accounts. An illustration on the computation of Early

Withdrawal Penalty (EWP) and PERA proceeds upon termination of the account is provided in the Circular.

For the purpose of the Regulation, it is reiterated that the PERA Administrator shall be responsible for administering, overseeing and maintaining of accounts/sub-accounts of the contributor's PERA; and shall compute and withhold the EWP from the proceeds due to the contributor, consistent with the above provisions, for reporting and remittance to the BIR pursuant to RR No. 2-2022 and Revenue Memorandum Circular No. 45-2022.

5. REVENUE MEMORANDUM CIRCULAR NO. 5-2023 (January 13, 2023) – This provides the transitory provisions for the implementation of the quarterly filing of VAT returns starting January 1, 2023 pursuant to Section 114(A) of the 1997 Tax Code, as amended by RA No. 10963 (TRAIN Law).

VAT-registered taxpayers are no longer required to file the Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for transactions starting January 1, 2023 but will instead file the corresponding Quarterly Value-Added Tax Return (BIR Form No. 2550Q) within twenty-five (25) days following the close of each taxable quarter when the transaction transpired.

In order to avoid confusion during the initial implementation, particularly for the taxpayers that are under fiscal period of accounting, the following transitory provisions are provided:

Quarter Ending	Transactions Covering the Month of			Filing of 2550Q for the Quarter Ending		
	December 2022	January 2023	February 2023	December 2022	January 2023	February 2023
January 31, 2023	Required to file 2550M not later than January 20, 2023	Not applicable	Not Required to File 2550M	Not applicable	Required to file 2550Q not later than February 27, 2023*	Not applicable
February 28, 2023	Required to file 2550M not later than January 20, 2023	Not Required to File 2550M	Not applicable	Not applicable	Not applicable	Required to file 2550Q not later than March 27, 2023*
March 31, 2023	Not applicable	Not Required to File 2550M	Not Required to File 2550M	Required to file 2550Q not later than January 25, 2023	Not applicable	Not applicable

D. REVENUE MEMORANDUM ORDER

1. REVENUE MEMORANDUM ORDER NO. 55-2022 (December 15, 2022) – This suspends all audit and other field operations of the BIR effective December 16, 2022

This suspends all field audits and other field operations of the BIR relative to examinations and verifications of taxpayers' books of accounts, records, and other transactions for the period December 16, 2022 to January 8, 2023. Likewise, no written orders to audit and/or investigate taxpayers' internal revenue tax liabilities shall be served, except in the following cases:

- Investigation of cases prescribing on or before April 15, 2023;
- Tax evasion cases;
- Processing and verification of Estate Tax returns, Donor's Tax returns, Capital Gains Tax returns, and Withholding Tax returns on the sale of real properties or shares of stocks together with the Documentary Stamp Tax returns related thereto;
- Examination and/or verification of internal revenue tax liabilities of taxpayers retiring from business;
- Monitoring of privilege stores (tiangge); and
- Other matters/concerns where deadlines have been imposed.

In general, examiners and investigators shall make use of this period to do office work on their cases and to complete the report on those with already completed fieldwork.