



TMAP Tax Updates
16 November 2020 to 15 December 2020
Prepared by: Sun Life Philippines



Court of Tax Appeals Cases

Marketing Convergence Inc. vs. CIR

CTA Case No. 9379

16 November 2020

The authority to conduct assessments is vested by the Tax Code on the Commissioner or his duly authorized representative. The term "duly authorized representative" under Section 6(A) of the Tax Code which may authorize examination of taxpayers, refers to a Revenue Regional Director or other tax officials with the rank equivalent to a division chief or higher. On the other hand, Section 13 of the Tax Code clearly provides that a Revenue District Officer may examine/assess taxpayers pursuant to a Letter of Authority signed by the Revenue Regional Director. Since the revenue officers who examined the books of the taxpayer are different from the ones named in the letter of authority and their authorization to examine was not signed by either the Commissioner or his duly authorized representative, CTA held that the assessment is void.

Robbie Stylographic and Development Corporation vs. CIR

CTA Case No. 9774

17 November 2020

Based on the Revised Rules of the Court of Tax Appeals (RRCTA), CTA is not bound by the issues raised by the parties but may also rule on related issues necessary to achieve an orderly disposition of the case.

In order for a Revenue Officer to validly examine taxpayers and perform tax assessment and collection functions, the said Revenue Officer must first be clothed with authority to do so by the way of a valid letter of authority.

Philippine Geothermal Production Company, Inc. vs. CIR

CTA Case No. 9440

18 November 2020

In the refund of input VAT, it is critical that the input VAT to be refunded is supported with invoices/receipts that comply with all the mandatory invoicing requirements. Otherwise, the refund for input VAT will be disallowed.

Progressive Grains, Milling Corp., vs. COC

CTA Case No. 9487

18 November 2020

CTA decided to apply equity in the case considering the peculiar facts attendant. They cited as basis Article 9 of the Civil Code which mandates courts to make a ruling despite the "silence, obscurity or insufficiency of the laws", and the Supreme Court ruling that Philippine courts are both courts of law and equity and they are not powerless to determine a factual matter in accordance with both standards. CTA directed the petitioner to pay the assessed customs duties and after such payment, the respondent should release the white rice to the petitioner.

CIR vs. Max's Sta. Mesa, Inc.

CTA EB No. 2036

18 November 2020

After filing a protest against a FAN/FLD, a taxpayer has two options - a) file an appeal to CTA within 30 days upon the lapse of 180 days from the filing of the protest without any decision from the BIR, or b) continue to wait until BIR issues its final decision and file an appeal within 30 days from the date of such decision.

An assessment is void for failure of the BIR to observe due process since it issued the FLD on the very day that the taxpayer filed its protest to the PAN.

Tullett Prebon (Philippines), Inc. vs. CIR

CTA EB No. 2143

18 November 2020

Actions for tax refund are in the nature of a claim for exemption and the law is construed strictly against the taxpayer. Following this, the pieces of evidence presented entitling a taxpayer to an exemption are also strictly scrutinized and must be duly proven.

University of the Philippines System Admin vs. CIR

CTA EB No. 1946

18 November 2020

CTA upheld the assessment against the taxpayer based on the fact that the tax exemption provision under the UP charter law became effective only in May 2008 while the assessment covered the taxable year 2006. Hence, the governing law during the year under assessment is Section 30 of the Tax Code which provides that income of schools from activities conducted for profit shall be subject to tax.

CIR vs. Lapanday Holdings Corporation

CTA EB No. 1888

18 November 2020

CTA upheld the invalidity of the assessment because it was issued without a Letter of Authority (LOA) and with only a Letter Notice (LN). An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions, and such authorization is necessary before any assessment is done. Consequently, absent an LOA, the assessment is a nullity.

CIR vs. Toledo Power Company

CTA EB No. 2045

19 November 2020

CTA dismissed the case summarily because it was filed prematurely and the petitioner committed forum shopping. The decision or order which is appealable to the Court *En Banc* is that which has resolved the case with finality, and which, in effect, terminates or finally disposes of a case, as it leaves nothing to be done by the court as the case has finally been decided on the merits. In this case, what was appealed to the Court *En Banc* is not the Decision which has resolved the cases with finality considering that the petitioner filed an

MR with the Court in Division (as a result of the issuance of an Amended Decision). Compliance with the certificate of non-forum shopping is separate from and independent of the avoidance of the act of forum shopping itself. Forum shopping is a ground for summary dismissal of both initiatory pleadings without prejudice to the taking of appropriate action against the counsel or party concerned.

UPS-Delbros Transport Inc. vs. CIR

CTA EB No. 2026

19 November 2020

CTA upheld the simultaneous imposition of the deficiency and delinquency interests stating that they are different in nature. Deficiency interest is imposed for the shortage of taxes paid, while delinquency interest is imposed for the delay in payment of taxes.

Prime Investment Korea Inc. vs. CIR

CTA Case No. 9814

19 November 2020

Citing the 2014 case decided by the Supreme Court, CTA reiterated that income from junket operations of PAGCOR is subject to corporate income tax. Following this, the income from junket operations of PAGCOR's contractees and licensees, like the petitioner, are likewise subject to corporate income.

IMA Land Holdings Inc. vs. CIR

CTA Case No. 9505

23 November 2020

CTA canceled the assessment based on the lack of authority of the examiner and failure of BIR to observe the due diligence process. The examiner who conducted the audit and on whose findings the assessment was based was not authorized with an LOA. BIR also failed to observe the due diligence process when it issued the Final Letter of Demand (FLD) and Assessment Notices even before the issuance of the PAN. BIR deprived the taxpayer of the procedurally granted 15-day period to reply to the PAN.

Commissioner of Customs, BOC vs. RMJR Grains Center Corporation

CTA EB No. 2113

23 November 2020

CTA held that from 1 July 2012 to 24 July 2014, it was not necessary to secure an import permit to import rice following PH's responsibilities under the World Trade Organization Trade Agreement. Consequently, BOC's forfeiture of the respondent's imported rice was inappropriate.

Hotel Specialist (Tagaytay), Inc. vs. CIR

CTA EB No. 2084

25 November 2020

CTA did not allow the reduction of the income tax assessment in relation to the disallowed expenses whose withholding taxes were paid by the petitioner after it received the FDDA. The Court stated that the timing of the payment of the deficiency withholding taxes so that it can be allowed as a deductible expense for income tax purposes, is very specific, in particular "at the time of the audit investigation or reinvestigation/reconsideration".

Carmen Copper Corporation, vs. CIR

CTA EB No. 2161

25 November 2020

Actions for tax refund are in the nature of a claim for exemption and the law is not only strictly construed against the taxpayer but also the pieces of evidence presented entitling a taxpayer to an exemption is strictly scrutinized and must be duly proven. In this case, the petitioner failed to prove that it is entitled to the entire amount sought to be refunded in view of its failure to substantiate its zero-rated sales. In this regard, CTA highlighted that the party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon, and such evidence cannot be given piecemeal. When a party declares the completion of the presentation of his evidence, he is prevented from introducing further evidence, except in instances where the evidence is rebuttal in nature or newly discovered evidence.

National Development Company vs. CIR

CTA Case No. 9633

26 November 2020

CTA denied the VAT refund claim of the petitioner as the latter failed to show proof of the actual input VAT paid. Without proof of the actual input VAT incurred by the petitioner, there is no way for this Court to determine if an actual overpayment of VAT occurred arising from the petitioner's failure to utilize the standard input VAT of 7% on its sales to the government.

CIR vs. Ermilo Tan Ng Hua

CTA EB No. 2138

27 November 2020

Citing the relevant issuances relating to an LOA and an LN, CTA held that an LN cannot be converted into the LOA required under the law. Conversely, a valid LOA cannot be equated to or substituted by, a mere LN. In this case, the LN issued cannot be validly equated with or converted into, the requisite LOA. In the absence of such LOA, the revenue officer is deemed to have no authority to perform assessment functions against the taxpayer, and the subject tax assessments resulting from the said unauthorized investigation and/or audit are considered void and of no effect.

Princess O. Lubag vs. CIR

CTA EB No. 2124

1 December 2020

CTA denied the claim for refund of the petitioner on the basis that Filipinos working in Asian Development Bank (ADB) are still subject to Philippine taxes. It highlighted that in all of the agreements between the Philippine government and ADB, the former has always preserved its right to tax its subjects.

AIG Shared Services Corporation (Philippines) vs. CIR

CTA Case No. 9351

2 December 2020

CTA grant of input VAT refund to petitioner was only partial because it was not fully supported with valid substantiation. It is already settled that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under

substantive law but must likewise show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit and compliance with the invoicing and accounting requirements by the NIRC, as well as by revenue regulations implementing them.

The City of Manila and The City Treasurer's Office vs. AV Value Holdings Corporation
CTA EB No. 2112

2 December 2020

CTA *En Banc* denied the appeal of the petitioner on the basis that the latter failed to file the same on time. CTA emphasized that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional and as such, failure to appeal on time precludes the appellate court from acquiring jurisdiction over the case.

Hedcor Sabangan Inc. vs. CIR

CTA EB No. 2085

2 December 2020

CTA denied the VAT refund based on the petitioner's failure to present a certificate of compliance that was issued during the relevant period, as well as the impropriety of claiming a refund when its purchases should have been subject to zero-rated VAT.

Bank of the Philippine Islands, vs. CIR

CTA EB No. 2126

2 December 2020

CTA denied the claim for refund of the petitioner on the basis that it was the proper party to pay the DST on the loan agreements following RR No. 9-2000. There is likewise no *solutio indebiti* since the petitioner had the duty to pay the DST.

Luzviminda Land Holdings, Inc. CIR

CTA Case No. 10035

3 December 2020

CTA held that the petitioner is entitled to the refund considering that the transaction fell under Section 40(C)(2) of the Tax Code and is thus exempt from capital gains tax and DST.

Chun Lang Chan vs. CIR

CTA Case No. 9758

3 December 2020

CTA held that the assessment against the taxpayer is void for failure to state the facts and law on which the same are based. In particular, the BIR merely reiterated in the FLD/Assessment Notices the findings in the PAN without addressing the petitioner's arguments in its Reply to PAN and thus violated the petitioner's right to administrative due process.

CIR vs. Marketing Convergence, Inc.

CTA EB No. 2109

3 December 2020

CTA *En Banc* upheld the decision of the First Division saying that the assessment is void as the officers who conducted the audit and issued the findings are not duly authorized by an LOA.

CIR vs. Colt Commercial, Inc.

CTA EB No. 2074

3 December 2020

CTA upheld the grant of refund to the taxpayer despite not having presented original or certified copies of the PEZA and SBMA certificates of registration of its clients and/or

customers. This is following the ruling of the Supreme Court that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment.

Rappler Holdings Corporation and Maria Ressa vs. Hon. Ana Teresa T. Cornejo-Tomacruz, Pasig RTC Judge and People of the Philippines

CTA Case No. 10323

4 December 2020

CTA denied the petition considering that there was no grave abuse of discretion on the part of RTC in issuing the resolutions denying the petitioner's request to travel. The denial was based on the ongoing factual circumstance of a pandemic which necessitated the imposition of community quarantine that restricted travels both within and outside the Philippines. Most countries in the world have also enforced similar preventive measures to contain the pandemic.

People of the Philippines vs. Cross Country Oil and Petroleum Corp., et. al.

CTA EB Crim No. 071

4 December 2020

The civil liability *ex delicto* survives the acquittal of the accused in instances when the acquittal is based on reasonable doubt and/or the court declares that the liability of the accused is only civil. In the instant case, the respondents were absolved from Section 255 of the Tax Code because the petitioner failed to prove that the respondent is required to pay the assessed deficiency taxes on the ground that the assessments issued by the BIR are null and void for want of a valid LOA. Neither did the Court in Division impose any civil liability against respondents. Clearly, the acquittal is based on the findings that respondents did not commit the crime charged. Thus, the civil liability *ex delicto* cannot be awarded.

Mandaluyong City Government vs. Republic of the Philippines (Department of Transportation) and Metro Rail Transit Corporation

CTA EB No. 2078

4 December 2020

CTA held that the Build, Lease, and Transfer Agreement between Metro Rail and the Republic of the Philippines is more of a financing scheme which then makes the Republic more of a beneficial owner. CTA also considered the fact that the MRT EDSA III real properties are intended for public use which makes them properties of the public dominion

and, therefore, are owned by the State or the Republic. Being properties of public dominion, it follows that the EDSA MRT III real properties are exempted from RPT.

Johnny M. King, Jr., vs. CIR

CTA Case No. 9753

4 December 2020

The assumption that a mailed letter is deemed received by the addressee in the course of the mail is merely disputable. The direct denial thereof shifts the burden to the sender to prove that the said letter was actually received by the addressee. In this case, the petitioner directly denied receiving the mailed PAN and the respondent failed to discharge the burden of proof to show that the petitioner received the subject PAN. Such failure violated the right to due process by the petitioner thus making the assessment void.

Loadstar Shipping Co., vs. CIR

CTA Case No. 9902

7 December 2020

Following RR No. 8-2013, BIR notices may be served either through personal service or substituted service and it does not limit the service to specific persons in the company. Such formal requirement in the service is different from the Rules of Court, which requires that the service be made to certain authorized officers of the company.

CIR vs. Bahay Bonds 2 Special Purpose Trust administered by the Land Bank of the Philippines

CTA EB No. 2142

7 December 2020

Following the tax exemption provision in RA No. 8763, the interest earned on Bahay Bonds are held by the CTA to be exempt from income tax and thus upheld the refund claim of the respondent.

CIR vs. CTA Special Third Division and Kilusang Magkaibigan Multi-Purpose Cooperative
CTA EB No. 2060
7 December 2020

CTA En Banc held that since it exercises appellate jurisdiction over the decisions or resolutions on motions for reconsideration or new trial issued by the CTA Divisions, it also has authority or jurisdiction on petitions for certiorari relative to the decisions and resolutions issued by the latter. Nonetheless, the CTA En Banc denied the petition based on both formal and substantive merits of the case.

Arrow Freight Corporation vs. CIR
CTA Case No. 9809
7 December 2020

CTA granted the claim for refund of the petitioner to the extent that it was supported by the appropriate documents (i.e., fully accomplished BIR Form No. 2307). It did not give credence to the respondent's allegation of a deficiency income tax liability on the basis that the latter failed to present any evidence to substantiate such allegation.

Roy M. Garchitorena vs. COC
CTA Case No. 9972
9 December 2020

CTA reversed the forfeiture order of the Bureau of Customs on the basis that the latter failed to establish that the petitioner willfully defrauded the government with respect to the value of the imported item.

Teloworks Philippines, Inc., vs. CIR
CTA Case No. 9380 CTA Case No. 9380
11 December 2020

CTA denied the claim for refund of the petitioner on the basis that the latter failed to establish that its sales are subject to zero-rated VAT. The petitioner failed to establish that

the services it provided were rendered here in the Philippines and it also failed to substantiate the sales with official receipts.

Philippine Airlines, Inc. vs. CIR

CTA EB No. 2166

11 December 2020

CTA held that the same-day filing of an administrative claim and judicial claim of refund does not comply with the procedural requirement of "prior filing" of its administrative claim with the BIR. Such arrangement falls short of the requirement stated in Section 229 of the NIRC of 1997, as amended, and is ultimately fatal to the petitioner's claim.

Wells Fargo Enterprise Global Services, LLC-Philippines vs. CIR

CTA EB No. 2087

14 December 2020

Sales of goods and services between two PEZA-registered entities are VAT-exempt which means that the seller cannot charge VAT nor can the buyer claim input VAT. In case of an erroneous payment of VAT on these sales, the proper recourse is for the buyer to claim a refund from the supplier for the charged input VAT.

Bureau of Internal Revenue Issuances

Revenue Memorandum Circular No. 121-2020 - *Circularizes the pilot implementation of Online Application for Tax Clearance for Bidding Purposes and Tax Compliance Verification Certificate (eTCBP/TCVC) through the Bureau's official electronic-mail address*

The issuance announces the availability of the Online Application for Tax Clearance for Bidding Purposes (TCBP) and Tax Compliance Verification Certificate (eTCBP/TCVC) in the BIR website. The e-TCBP-TCVC portion under the eServices in the BIR website will guide the taxpayers on the step-by-step procedure depending on their taxpayer status.

For Large Taxpayers, the main difference with the current process is that after accomplishing the forms and paying the necessary fees (i.e., certification fee and DST), the scanned copies of said documents will all be submitted to the centralized email etcbp@bir.gov.ph with the subject "LTCED_Application for TCBP".

On the other hand, non-large taxpayers have an additional requirement of securing the TCVC before processing the TCBP. Nonetheless, similar to the above, once the required forms are accomplished and the necessary fees have been paid, the scanned copies of these documents shall be emailed to etcvc@bir.gov.ph with the prescribed subject line. Only after securing the TCVC will they be able to process the TCBP in the same manner as above but using the prescribed subject line.

Revenue Memorandum Order No. 42-2020 - *Prescribes the guidelines in the submission of the Monthly Report on Issuance/Denial of Tax Exemption of Cooperatives and Non-Stock, Non-Profit Associations/Organizations*

This issuance requires regional directors to submit monthly summary reports of both issued and denied Certificates of Tax Exemption of cooperatives and non-stock, non-profit organization/association.

Revenue Memorandum Order No. 43-2020 - *Streamlines the process of issuing Tax Residency Certificates (TRCs), amending RMO No. 51-2019*

This issuance seeks to provide a more simplified processing of the TRCs by introducing the use of BIR Form No. 0902 and requiring the assigned case officer to inform the applicant of any deficiency in the application within 3 days from the receipt.

Revenue Memorandum Order No. 44-2020 - *Amends the provisions of RMO No. 15-2019 on the establishment of standard taxpayer feedback system*

This issuance provides for additional details on the implementation of the standardized feedback system such as the exact items that the survey form wishes to measure as well as the office responsible to process the survey forms of Large Taxpayer Division Office (LTDO) No. 123 – Cebu and LTDO No. 127 Davao City.

Revenue Memorandum Circular No. 126-2020 - *Circularizes the Consolidated Price of Sugar at Millsite for the Month of October 2020*

Revenue Memorandum Circular No. 127-2020 - *Suspends all audit and other field operations of the Bureau of Internal Revenue effective December 15, 2020*

Revenue Memorandum Circular No. 128-2020 – Circularizes Joint Memorandum Circular (JMC) No. 003.2020 (Implementing Rules and Regulations of Heated Tobacco Products and Vapor Products as Prescribed by Republic Act Nos. 11346 and 11467)

Revenue Memorandum Circular No. 129-2020 – Publishes the full text of the Memorandum of Agreement between the Bureau of Internal Revenue and the Maritime Industry Authority (MARINA)

The MOA documents the sharing of information between BIR and MARINA in compliance with the Data Privacy Law.

Revenue Memorandum Circular No. 130-2020 – Prescribes the policies and guidelines in the conduct of online meetings/ conference with taxpayers

This issuance limits the conduct of online meetings/conferences only in relation to an ongoing assessment. There must be a prior request by the taxpayer for an online meeting/conference via the BIR eAppointment System or submission of a duly accomplished BIR VIRTUAL MEETING AGREEMENT. All online meetings/conferences shall be hosted by BIR and invitations shall be sent using BIR email addresses.

Revenue Memorandum Circular No. 131-2020 – Circularizes the flyers for professionals, corporations and online sellers

The issuance publishes the information materials containing the tax obligations and procedural requirements for self-employed professionals, corporations, and online sellers.

Revenue Memorandum Circular No. 132-2020 – Prescribes the new BIR Form No. 2200-C (Excise Tax Return for Cosmetic Procedures) January 2018 Version

Revenue Memorandum Circular No. 133-2020 – Allows manual filing of tax returns and manual payments of taxes due thereon during unavailability of the Electronic Filing and Payment System due to typhoon Rolly and Ulysess

This issuance provides the concerned taxpayers an extension of fifteen (15) days on deadlines falling between November 15 and 30, 2020 to manually file returns and manually

pay the corresponding taxes due thereon without the imposition of corresponding penalties.

Revenue Memorandum Circular No. 134-2020 – *Allows the acceptance of tax returns of National Government Agencies mandated to file tax returns thru the eFPS in areas affected by Typhoon Rolly in Bicol Region*

Revenue Memorandum Circular No. 135-2020 – *Notifies the loss of six (6) sets of unused/unissued BIR Form No. 2298 – Product Replenishment Certificate*