



TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

TAX UPDATES FOR JANUARY 2016

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BIR ISSUANCES

Revenue Regulations No. ("Rev. Regs.") 15-2015 (December 28, 2015)

Amending Section 4.109-1 (B)(1)(s), (t) and (u) of Rev. Regs. 16-2005 and declaring as exempt from value-added tax ("VAT") the following transactions: (a) transport of passengers by international carriers doing business in the Philippines as the same is subject to Common Carrier's Tax (Percentage Tax on International Carriers) under Section 118 of the National Internal Revenue Code of 1997, as amended ("NIRC"); and (b) sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof from domestic or international transport operations, provided, however, that the exemption from VAT on the importation and local purchase of passenger and/or cargo vessels shall be subject to the requirements on restriction on vessel importation and mandatory vessel retirement program of MARINA.

Revenue Memorandum Order No. ("RMO") 4-2016 (January 25, 2016)

Amending certain provisions of RMO 20-2007 on Simplified Processing of Applications for Compromise and Abatement Cases to further facilitate and expedite the processing of applications for compromise settlement and abatement or cancellation of internal revenue tax liabilities filed by all concerned taxpayers.

All recommendations for denial of applications for compromise settlement, abatement or cancellation of internal revenue tax liabilities issued by the Regional Evaluation Board (REB) or LTS sub-TWC, for abatement cases, or the LTS Evaluation Board (LTSEB), for compromise settlement cases, shall be considered final and the outstanding tax liabilities and/or penalties shall be immediately collected from the concerned taxpayer-applicant.



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Revenue Memorandum Circular No. 9-2016 (January 28, 2016)

Clarifying taxability of Non-Stock Savings and Loans Associations (NSSLAs) as follows: (1) NSSLAs are exempt from income tax with respect to income received, including interest on deposits with any bank. However, income derived from any of its properties, real or personal or any activity conducted for profit regardless of the disposition thereof is subject to the applicable income tax and other internal revenue taxes; (2) as a non-bank financial intermediary, NSSLAs are generally subject to Gross Receipts Tax on income derived from its operations, unless otherwise exempt under special rules; and (3) NSSLAs are subject to DST, particularly on loan agreements, mortgages, pledges, foreclosures and sales, among others and shall be responsible for the remittance of the DST due, regardless of who will bear the burden of paying the tax.

NSSLAs are defined as “non-stock, non-profit organizations, engaged in the business of accumulating the savings of its members and using such accumulations for loans to members to service the needs of households by providing long-term financing for home building and development and personal finance.”

BIR RULINGS

BIR Ruling No. 109-16 (January 28, 2016)

Properties sold under the Community Mortgage Program are exempt from capital gains tax pursuant to Section 32(b) of Republic Act No. (“RA”) 7279, otherwise known as “Urban Development and Housing Act of 1992”. However, owner is liable to pay DST on documents conveying the property sold as the tax exemption clause of RA 7279 does not include exemption from DST.

BIR Rulings Nos. 567-12 (January 29, 2016); 034-12 (January 29, 2016)

Commissioner of Internal Revenue (“CIR”) grants request for authority to change inventory costing method used by a company in order to make its accounting method compatible with inventory costing method of its parent company and other affiliates and subsidiaries, taking into consideration that the change would still clearly reflect the income of the company.



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COURT OF TAX APPEALS ("CTA") DECISIONS

San Francisco Water District, Represented by its General Manager Engr. Elmer T. Luzon v. The Bureau of Internal Revenue of the Department of Finance, herein represented by its Revenue District Officer, Revenue District Office 104, Bayugan, Agusan Del Sur (CTA EB No. 1107, CTA AC No. 83, December 18, 2015)

This involves a petition seeking to nullify the Warrant of Garnishment issued by the Bureau of Internal Revenue ("BIR"). The taxpayer filed before the Regional Trial Court ("RTC") a petition for injunction of garnishment and transfer of taxpayer's fund. However, RTC dismissed the petition on the ground that jurisdiction to enjoin collection of taxes lies with CTA. Taxpayer filed a *petition for review* before the CTA, which affirms RTC's dismissal for lack of jurisdiction.

CTA en banc held that it has no jurisdiction to take cognizance of the cases decided by RTC involving petitions for injunction to restrain the collection of national internal revenue taxes. Moreover, acting on CIR's Motion for Reconsideration, it held that the review of propriety of the warrant of garnishment necessarily includes review of petition for injunction to restrain collection of tax, which CTA has no jurisdiction.

Commissioner of Internal Revenue v. Euro-Philippines Airline Services, Inc., CTA EB Case No. 1106 (CTA Case No. 8281, December 22, 2015)

Litigants cannot raise an issue for the first time on appeal as this would contravene the basic rules of fair play and justice. The CIR belatedly raised in her Motion for Reconsideration that the presentation of VAT official receipts with the word "zero-rated" imprinted thereon is indispensable to cancel the VAT assessment against taxpayer. This argument was not raised before the administrative level and has likewise failed to raise the same defense during the trial of this case.

People of the Philippines v. Efren O. Docena et al. (CTA EB Criminal Case No. 030, CTA Criminal Case No. O-087, January 4, 2016)

Accused was acquitted for failure of prosecution to prove the element of "willful non-payment of tax." To be deemed a criminal act, the act of non-payment of tax must be "willful," a voluntary, intentional violation of a known legal duty. Willfulness connotes the existence of "knowledge" and "voluntariness," that is, the taxpayer is aware or knows its/his/her tax liability but voluntarily and intentionally refuses to pay.



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Willfulness involves the mental state of the offender. The fact that both accused acted in good faith and with best efforts to comply with demand to pay the assessed deficiency tax will show the absence of the element of willfulness.

Phil. Gold Processing & Refining Corporation v. Commissioner of Internal Revenue (CTA EB Case No. 1192, CTA Case No. 8301, January 4, 2016)

A Board of Investment certification alone is insufficient to prove export sales. Export sales are determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of products exported and that sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents.

AFP General Insurance Corporation v. Commissioner of Internal Revenue (CTA EB No. 1223, CTA Case No. 8191, January 4, 2016)

BIR has three years to assess internal revenue taxes, counted from the date of actual filing of return or from last day prescribed by law for filing of such return, whichever comes later. Since prescription is a matter of defense, the burden is on taxpayer to prove that full period of limitation has expired, and this requires him to positively establish the date the period started running, and when the same was fully accomplished.

Commissioner of Internal Revenue v. South Entertainment Gallery, Inc. (CTA EB Case No. 1246, CTA Case No. 8257, January 4, 2016)

If taxpayer denies receipt of Formal Assessment Notice ("FAN"), it is essential for CIR to prove the fact of mailing through the registry receipt issued by the Bureau of Posts or the registry return card, which would have been signed by taxpayer's authorized representative or a certification issued by the Bureau of Posts and any other pertinent document which is executed with the intervention of the Bureau of Posts that mail matter was served upon taxpayer's authorized representative. It is not enough that registry return card was presented by the CIR. Such should have been signed by taxpayer's authorized representative.



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Commissioner of Internal Revenue v. CE Casecan Water and Energy Company, Inc.
(CTA EB No. 1265, CTA Case No. 8620, January 14, 2016)

The 120-day period starts and continues to run from date of filing of administrative claim for refund if taxpayer submitted its supporting documents to substantiate its claim on same date of filing.

The determination of what are "complete documents" lies with the taxpayer. In the instant case, taxpayer submitted its supporting documents with its administrative claim. The BIR did not make any request for additional documents. Thus, the running of the 120-day period commenced and continued to run from the date taxpayer filed its administrative claim for refund together with the supporting documents.

Commissioner of Internal Revenue v. Ayala Corporation (CTA EB No. 1152, CTA Case No. 8262, January 14, 2016)

In a claim for refund/tax credit of unutilized creditable withholding taxes, taxpayer need not present proof of actual remittance of tax withheld to the government. Proof of remittance is the responsibility of withholding agent and not of payee. Payers of withholding taxes are by themselves constituted as withholding agents of BIR. The taxes they withhold are held in trust for the government. In the event that withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent [taxpayer who seeks refund] who has been duly withheld taxes by withholding agents acting under government authority. Therefore, taxpayer who seeks refund has no control over remittance of taxes withheld from its income by withholding agent or payor who is agent of taxpayer seeking refund.

Non-submission of supporting documents in administrative level is not fatal to a claim for refund. Judicial claims are litigated *de novo* and decided based on what has been presented and formally offered by the parties during the trial. Pieces of evidence submitted in the administrative proceeding have no evidentiary value unless presented and formally offered before the Court.

Commissioner of Internal Revenue v. Yumex Philippines Corporation (CTA EB No. 1139, CTA Case No. 8331, January 19, 2016)



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CTA is not precluded from ruling on issues not stipulated by the parties. In deciding a case, CTA may not limit itself to issues stipulated by parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The determination as to whether or not the Preliminary Assessment Notice (“PAN”) and FAN were valid and correct entails resolving the issue of whether or not said assessments were properly issued in accordance with requirements of due process.

The 15-day period of taxpayer to respond to PAN is an essential part of due process requirements in issuance of deficiency tax assessments. The act of simply mailing the PAN and FAN to taxpayer on separate dates is not enough to satisfy requirements of due process. Receipt by taxpayer of PAN and opportunity to respond thereto within 15 days from receipt thereof are essential parts of requirements of due process which the CIR cannot simply ignore.

Next Mobile Inc., v. Commissioner of Internal Revenue (CTA Case No. 8516, December 22, 2015)

The Supreme Court emphasized the importance of complying requirement to send a PAN to taxpayer as an integral part of due process in issuance of a deficiency tax assessment. Failure of CIR to strictly comply with requirements laid down by law and its own rules is a denial of taxpayer’s right to due process. In instant case, PAN was issued on March 25, 2010 and received by petitioner on April 6, 2010. However, even before filing its protest to PAN, petitioner received FAN dated April 14, 2010 on April 15, 2010. Therefore, respondent issued and mailed FAN before considering protest to previously-issued PAN, depriving petitioner of its right to due process.

Coral Bay Nickel Corporation v. Commissioner of Internal Revenue (CTA Case No. 8641, January 4, 2016)

Authority to Print (“ATP”) need not be reflected in invoices or receipts because there is no law or regulation requiring it. However, it is incumbent upon petitioner to show proof that it has secured ATP from BIR.

Deutsche Knowledge Services Pte. Ltd v. Commissioner of Internal Revenue (CTA Case No. 8243, January 4, 2016)

In order to be entitled to a refund or tax credit of input VAT payments attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied: (1)



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taxpayer must be VAT-registered; (2) there must be zero-rated or effectively zero-rated sales; (3) input taxes were incurred or paid; (4) such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales; (5) input VAT payments were not applied against any output VAT liability; and (6) claim for refund was filed within the two-year prescriptive period.

To be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC Certificate of Non-Registration of Corporation/Partnership and Certificate/ Articles of Foreign Incorporation/ Association/Registration.

Philippine Airlines, Inc., v. Commissioner of Internal Revenue (CTA Case No. 8362, January 4, 2016)

Both the claim for refund with BIR and subsequent appeal to the CTA must be filed within the two-year period from date of payment of tax.

In order for taxpayer to be exempted from taxes, duties, charges, royalties, or fees on importation of its commissary and catering supplies, it must be able to prove that: (1) it paid its corporate income tax and VAT liabilities for subject period of importation; (2) imported articles, supplies or materials are intended to be used in its transport and non-transport operations and other activities incidental thereto; and (3) imported articles, supplies or materials are not locally available in reasonable quantity, quality or price.

Iconic Beverages, Inc., v. Commissioner of Internal Revenue (CTA Case No. 8607, January 6, 2016)

Taxpayer must support its claim that royalties were passive income, and not earned in active pursuit or performance of its primary purpose. Tax assessments are presumed correct and made in good faith. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of assessment in evidence, a prima facie case of liability on part of taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties.



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Taxpayer should signify in its return the intention to elect the optional standard deduction. Otherwise, it shall be considered to have availed of other deductions allowed in Section 34 of NIRC.

Deficiency interest is imposed upon any tax that is still due and unpaid to government while delinquency interest is the interest imposed on failure to pay (i) the amount of tax due on any return required to be filed, or (ii) the amount of tax due for which no return is required, or (iii) deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner. In instant case, taxpayer was imposed deficiency interest counted from April 15, 2010 or deadline for filing of income tax return until payment thereof and delinquency interest counted from January 9, 2013 or when the disputed assessment becomes final until payment thereof.

Artdepot, Inc., v. Commissioner of Internal Revenue (CTA Case No. 8548, January 6, 2016)

Validity of Warrant of Distraint and/or Levy rests upon validity of tax assessment. Thus, to proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative the cardinal principle in administrative investigations that taxpayers should be able to present their case and adduce supporting evidence. Since subject delinquency tax assessments are deemed invalid, the Warrant of Distraint and/or Levy enforcing collection of the said assessment is likewise invalid.

R.A. Oben Holdings, Inc., v. Commissioner of Internal Revenue (CTA Case No. 8723, January 6, 2016)

As a general rule, a taxpayer may modify, change, or amend any of its return, statement or declaration filed in any office authorized to receive the same under Section 6(A) of NIRC. However, it should be done before any notice for audit or investigation of the subject return, statement or declaration has been actually served upon the taxpayer.

Landbank of the Philippines v. Commissioner of Internal Revenue (CTA Case No. 8684, January 21, 2016)

The ONETT Computation Sheet is not the assessment contemplated under Section 228 of the NIRC, as amended, that would require a protest from petitioner. While it states the computation of tax liabilities, which a taxpayer is required to pay, it does not



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formally inform petitioner of its tax liabilities and there is no formal demand to pay the same. Without the formal demand for payment, petitioner has no way to determine the period within which to protest the tax liabilities made by respondent. After all, the issuance of an assessment is vital in determining the period of limitation regarding its proper issuance and the period within which to protest it.

PNOC Development and Management Corporation v. Commissioner of Internal Revenue (CTA Case No. 8649, January 22, 2016)

Deficiency interest under Section 249 (B) of the NIRC should be applied only whenever there is deficiency income tax, a deficiency estate tax, and a deficiency donor's tax.

Colgate-Palmolive Philippines, Inc., v. Commissioner of Customs (CTA Case No. 7806, January 26, 2016)

Royalties and license fees are added as part of dutiable value when (1) fees are *related to the goods being valued* (relationship); (2) fees are *paid by the buyer* directly or indirectly (payment); and (3) the payment is a *condition of sale of the goods* to the buyer (condition).

VAT on importation of goods are imposed on total value used by Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges. These other charges include arrastre and wharfage fees.

Toenec Philippines, Inc., v. Commissioner of Internal Revenue (CTA Case No. 8653, January 27, 2016)

Liability to pay donor's tax is not transferable. Burden to pay donor's tax is imposed upon donor and not upon donee. While imposition of tax is a matter of law, mere exigency and convenience may not be used as an excuse to collect donor's tax from a donee simply because the latter is located in the Philippines.

Enjoy Hotels, Inc., v. Commissioner of Internal Revenue (CTA Case No. 8545, January 28, 2016)

Imposition of deficiency interest under Section 248 (B) of NIRC commences "from the date prescribed for its payment until the full payment thereof", and that the imposition of the delinquency interest under Section 249 (B) shall commence only from the time



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when the concerned taxpayer failed to pay the assessment tax within the time allowed as stated in the formal letter of demand.
