



# TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES INC.



## TAX UPDATE FOR JULY 2014

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### SUPREME COURT DECISIONS

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#### ***Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 189440, 18 June 2014**

Reiterates the mandatory and jurisdictional nature of the 120+30 day period provided under Section 112(C) of the Tax Code, as held by the Supreme Court in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*<sup>i</sup> and *Commissioner of Internal Revenue v. San Roque Power Corporation*.<sup>ii</sup> The issue of prescription can still be raised for the first time in an appeal before the CTA *En Banc*. The CTA did not acquire jurisdiction over the claim when the taxpayer's right to file the judicial claim has already expired.

#### ***Taganito Mining Corporation v. Commissioner of Internal Revenue*, G.R. No. 197591, 18 June 2014**

Reiterates ruling in *Commissioner of Internal Revenue v. San Roque Power Corporation*. The rule must be that during the period 10 December 2003 (when BIR Ruling No. DA-489-03 was issued) to 6 October 2010 (when the *Aichi* case was promulgated), taxpayers-claimants need not observe the 120-day period before it could file a judicial claim for refund of excess input VAT before the CTA. Before and after the aforementioned period, the observance of the 120-day period is mandatory and jurisdictional.

### COURT OF TAX APPEALS DECISIONS

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#### ***National Power Corporation v. Province of Quirino and FE. B. Mangacat*, CTA AC Case No. 108, 18 June 2014.**

A province may impose a franchise tax on businesses enjoying a franchise. It is settled that a taxpayer may be covered by this imposition when the two requisites concur:

- (1) it has a "franchise" in the sense of a secondary or special franchise; and
- (2) it is exercising its rights or privileges under this franchise within the territory of the local government concerned.

Even after the enactment of the EPIRA Law on June 26, 2001 and notwithstanding the transfer of Napocor's electrical transmission function to TRANSCO, Napocor may still be held liable for franchise tax for performing its missionary electrification function under Section 70 of the EPIRA Law.



## TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES INC.



There is a difference in the issuance of assessment and the filing of protest under the NIRC of 1997 and the LGC of 1991. The only condition that Section 195 of the LGC requires with regard to the notice of assessment is that said notice should state the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Section 228 of the NIRC requires more, i.e. the factual and legal bases of the assessment.

***Kabalikat Para sa Maunlad na Buhay Inc. v. Commissioner of Internal Revenue, CTA Case No. 8336, 20 June 2014.***

While Section 30(G) exempts, among others, the income received by civic league or organization not organized for profit but operated exclusively for the promotion of social welfare, a perusal of the said Section shows that the same is exempted only from taxes imposed under Title II of the Tax Code. Since VAT is found under Title IV of the Tax Code, Petitioner is not exempted from VAT.

***Commissioner of Internal Revenue v. Thomas C. Ongtenco, CTA EB Case No. 995 (CTA Case No. 8190) 30 June 2014.***

The performance of the functions of a director of a corporation is not considered as being done "*in the course of trade or business*" as understood in the aforementioned Section 105. Accordingly, the interest income from the said loan paid by ICC to respondent is not subject to VAT, simply because the act of extending a loan of respondent cannot be considered as an "*incidental*" transaction in the context of Section 105 of the Tax code.

The term "relevant supporting documents" under Section 228 of the Tax Code should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

***Nokia (Philippines), Inc. v. Commissioner of Internal Revenue, CTA Case No. 8481, 2 July 2014.***

The relevant supporting documents that a taxpayer must submit in support of its administrative claim pertain to documents that the taxpayer deems necessary to sufficiently bolster its claim. Albeit, the Commissioner or her authorized representative is allowed to request the submission of additional documents from the taxpayer, the former cannot dictate upon the latter what documents to submit.

Based on the foregoing, it now becomes petitioner's choice to either (1) elevate its refund claim to the CTA after the lapse of 120-day period from the submission of what it considered to be complete documents or (2) comply with the BIR's request for additional documents. If petitioner chooses to comply with the BIR's request and submit additional documents prior to the filing of judicial claim, then the counting of the 120-day period shall be reckoned from the time it submitted the additional documents.



## TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES INC.



***Deutsche Knowledge Services, Pte. Ltd. v. Commissioner of Internal Revenue, CTA Case No. 8443, 7 July 2014.***

In order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the Tax Code, the following requisites must be met:

1. the services by a VAT-registered person must be other than processing, manufacturing or repacking of goods,
2. the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations;
3. ***the recipient of such services is doing business outside the Philippines.***

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.

***South Entertainment Gallery, Inc., CTA Case No. 8257, 9 July 2014.***

The presentation of the Registry Return Card merely creates a disputable presumption that the Formal Letter of Demand ("FLD") with the assessment notice was received by petitioner in the regular course of mail. The Commissioner presented a witness who attested that he received mail matters from the postman for distribution to the addressee-tenants of SM City Pampanga. He gives them to the contractor personnel of SM City Pampanga who, in turn, delivers the same to the addressee-tenants. However the witness presented actually has no hand on the personal delivery of mails to the addressee-tenants of SM City Pampanga. Aside from the testimony of this witness, there was no proof to show the actual receipt of petitioner of the FLD. In addition, the witness was not even proven as the person authorized to receive letters on behalf of petitioner and he cannot even at least affirm or acknowledge that, indeed, petitioner received the subject FLD. Accordingly, petitioner's right to due process in the issuance of the subject assessment was deemed violated.

***PLDT v. City of Tuguegarao, CTA AC No. 103 (Civil Case No. 11-635), 11 July 2014***

Petitioner PLDT filed before the RTC of Makati City a case to assail the decision of the City Treasurer of the City of Tuguegarao which denied its protest contesting the alleged deficiency local franchise taxes. PLDT availed of the remedy under Section 195 of the Local Government Code ("LGC") which provides that a taxpayer dissatisfied with a local treasurer's denial of or inaction on his protest over an assessment shall have 30 days within which to file an appeal to the court of competent jurisdiction.

Considering that in the subject petition/"appeal", PDT prayed that respondent City Treasurer be ordered to perform certain acts and also to refrain from doing a certain act; and considering the allegations laid down by PLDT in the petition/"appeal" concerning its rights under the LGC and ordinance, the Court is convinced that the case is essentially a principal action for Injunction.

Applying the provisions of BP 129 (Judiciary Reorganization Act of 1980), it is clear that a writ of injunction issued by the RTC of Makati City is enforceable only within the NCR. Hence the RTC of Makati has not



# TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES INC.



jurisdiction to enjoin, restrain, or control the acts of respondent City Treasurer of the City of Tuguegarao as the aforesaid city is considered part of the Second Judicial Region.

## **BUREAU OF INTERNAL REVENUE ISSUANCES**

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***Revenue Memorandum Order No. 23-2014 dated 20 June 2014*** - clarifies and consolidates the obligations of government agencies, bureaus and instrumentalities as Withholding Agents.

***Revenue Memorandum Order No. 27-2014 dated 21 July 2014*** - amends certain provisions of Revenue Memorandum Order No. 10-2005 relative to the policies and procedures in the accreditation of Cash Register Machine (CRM), Point of Sale (POS), other sales machines including sales receipting system software and registration for use.

RMO 27-2014 amended the provisions of RMO 10-2005 as to the Policy and Procedures of Revocation of Registration/Post-Audit of Provisional Permit to Use.

***Revenue Memorandum Circular No. 55-2014 dated 17 June 2014*** - clarifies the livestock and poultry feeds or ingredients used in the manufacture of finished feeds to be exempt from VAT under Sec. 4.109-1(B)(1)(b) of Revenue Regulations No. 16-2005.

To give effect to the legislative intent that only livestock and poultry feeds or ingredients used in the manufacture of finished feeds are exempted from VAT, it is hereby clarified that the sale or importation of ingredients which may also be used for the production of food or human consumption shall be subject to VAT. Thus to be exempt, there must be a showing that the livestock and poultry feeds or ingredients is unfit for human consumption or that the ingredient cannot be used for the production of food for human consumption as certified by the Food and Drug Administration (FDA).

***Revenue Memorandum Circular No. 56-2014 dated 1 July 2014*** - extends the deadline for submission of sales reports for the months of May and June 2014 via the enhanced and integrated Electronic Accreditation and Registration (eAccreg) and Electronic Sales Reporting (eSales) Systems from 30 June 2014 to 31 July 2014. All taxpayers with CRM and POS machines and other sales machines with manually issued Permits to Use are mandated to re-register in the enhanced and integrated eAccreg and eSales Systems on or before 31 July 2014. Sales for the month of July shall be reported on or before the 8th day (for taxpayers whose last digit of the 9-digit TIN is even number) or 10th day (for taxpayers whose last digit of the 9-digit TIN is odd number) of August 2014.

***Revenue Memorandum Circular No. 57-2014 dated 15 July 2014*** - clarifies the provisions of Revenue Regulations No. 1-2013 that all National Government Agencies are mandated to enroll with and use the



# TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES INC.



Electronic Filing and Payment System (eFPS) in their filing of their applicable tax returns within the prescribed periods.

***Revenue Memorandum Circular No. 58-2014 dated 22 July 2014*** - published the full text of Supreme Court Resolution dated 25 June 2014 on the withholding of tax from the Special Allowance for the Judiciary (SAJ). The Supreme Court Resolution approved the withholding and remittance of the correct amount of tax required to be deducted and withheld from the SAJ of officials and employees, as well as the withholding of the corresponding taxes from the following:

- (1) The monthly SAJ of incumbent justices, judges and Judiciary officials with the equivalent rank of a Court of Appeals justice or Regional Trial Court judge;
- (2) The monthly special allowance in an amount equivalent to the SAJ being received by judiciary officials not included in item no. 1; and
- (3) The additional allowance from the surplus of the SAJ Fund that may be authorized to be given to judiciary officials and employees who are not direct beneficiaries under Republic Act No. 9227.

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<sup>i</sup> G.R. No. 184823, 6 October 2010.

<sup>ii</sup> G.R. Nos. 187485, 196113, and 197156, 12 February 2013.