



TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.



TAX UPDATE FOR JUNE 2014

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SUPREME COURT DECISIONS

Commissioner of Internal Revenue v. The Insular Life Assurance Co. Ltd., G.R. No. 197192, 04 June 2014

Reiterates the ruling in *Republic of the Philippines v. Sunlife Assurance Company of Canada* that registration with the Cooperative Development Authority (CDA) is not necessary in order for a cooperative to be exempt from the payment of documentary stamp taxes (DST) on policies of insurance or annuities granted under Section 199 of the National Internal Revenue Code (Tax Code). No tax provision requires a mutual life insurance company to be registered with the CDA in order to enjoy exemption from DST. Revenue Memorandum Circular No. 48-91, which requires the submission of the Certificate of Registration with the CDA before issuance of a tax exemption certificate cannot prevail over the clear absence of an equivalent requirement under the Tax Code.

Visayas Goethermal Power Company v. Commissioner of Internal Revenue, G.R. No. 197525, 04 June 2014

Reiterates the ruling in *Aichi* and *San Roque* that the observance of the 120 day + 30 day period is mandatory and jurisdictional except for VAT refund claims for input taxes attributable to zero-rated sales for the period 08 June 2007 to 12 September 2008.

COURT OF TAX APPEALS DECISIONS

Adelardo K. Pagente v. Hon. Esmeralda M. Tabule, et. Al. CTA EB No. 1030 (CTA Case No. 8280) 03 June 2014

Petitioner cannot question the authority of the Regional Director, who was relieved of his post through an RTAO, to issue a Preliminary Assessment Notice (PAN) and argue that the resulting Formal Letter of Demand (FLD) is invalid. The lack of authority of the Regional Director does not qualify as “other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue” as provided in Section 7(1) of the Act Creating the Court of Tax Appeals (CTA) because Petitioner is actually questioning the finality of a tax assessment against him. The assessment had become final executory and unappealable because of his failure to file a timely protest. The CTA explained that what qualifies as “other matters” based on Supreme Court decisions include the following: (1) prescription of the period to collect the assessment, (2) validity of a warrant of distraint and levy, and (3) validity of a waiver of the statute of limitations.

The CTA ruled that a PAN was issued by a *de facto* Regional Director does not by itself make the PAN invalid as it has been held that “the official acts of a *de facto* judge are just as valid for all purposes as those of a *de jure* judge, so far as the public or third persons who are interested therein are concerned.

Officemetro Philippines, Inc. v. Commissioner of Internal Revenue CTA Case No. 8382 (Third Division), 03 June 2014

Under Section 204(A) of the Tax Code, a compromise settlement is perfected and consummated upon approval by the Evaluation Board. Since the Evaluation Board has not acted on the compromise settlement, the assessment stands and the payment made by Petitioner shall be considered as initial payment of the assessed deficiency taxes.

Medicard Philippines, Inc. v. Commissioner of Internal Revenue CTA Case No. 8382 (Third Division), 05 June 2014

A Health Maintenance Organization (HMO) is a service contractor liable for VAT on gross receipts, that is, the membership fees received at the time of enrollment of the members. The VAT exemption of medical and hospital services will not apply because no portion of the membership fees are “money held in trust” for hospitals and doctors.

Revenue Memorandum Circular No. 08-06 (RMC No. 08-06) which requires: (1) filing of an Information Return on or before 28 February 2006 for its earnings as of 31 January 2006; (2) billing of the unpaid amount not later than 31 January 2006; and (3) recording of the amounts receivable as of 31 January 2006, to apply the old 10% VAT rate is invalid because it is in effect retroactively applying the 12% VAT to receipts which were received during the time when the prevailing VAT rate was 10%.

The HMO prayed for the waiver of surcharge and penalties because the huge VAT assessment impacts on its economic stability but the CTA found no legal basis for granting the waiver.

Metro Pacific Corporation v. Commissioner of Internal Revenue, CTA Case No. 8318 (Second Division), 11 June 2014

The book value of unlisted shares was treated as the fair market value in the unlisted shares. The excess of the book value of the shares over the actual consideration was deemed a donation under Section 100 of the National Internal Revenue Code. The Court simply reasoned that a plain reading of Section 100 of the National Internal Revenue Code shows that no exemption/exception was stated therein. If the legislature intended an exception/exemption to Section 100 of the National Internal Revenue Code, it could have clearly stated such exception/exemption.

The CTA ruled also that:

(a) the cases of *Abello v. Commissioner of Internal Revenue* (CTA Case No. 4296, 7 October 1991) and *Commissioner of Internal Revenue v. B.F. Goodrich Philippines, Inc.* (G.R. No. 104171, 24 February 1999) are not applicable because the cases were promulgated prior to the issuance of RR No. 06-08 and Revenue Memorandum Circular No. 25-11 (RMC No. 25-11). In *Abello* (campaign contributions) and *B.F. Goodrich* (sale of real property) the Supreme Court explained that bona fide transactions made in the ordinary course of business, at arm’s length, and free from donative intent, are considered as made for full and adequate consideration.

(b) RMC No. 25-11 is merely an interpretative rule which provides guidelines to the law which the administrative agency is enforcing. It does not increase the burden of those governed. Therefore, its applicability needs nothing further than its bare issuance. No prior notice or hearing is necessary.

(c) BIR Ruling No. DA (DT-065) 715-2009 obtained by petitioner for the transaction is a ruling of first impression. Since it was signed only by the Assistant Commissioner for Legal Service, it was issued in violation of Section 7 of the National Internal Revenue Code (non-delegation of the Commissioner's authority to issue rulings of first impression) and therefore invalid. Consequently, petitioner cannot rely on the non-retroactivity of revocation of BIR rulings.

DEPARTMENT OF FINANCE ISSUANCES

Department Order No. 044-2014 dated 17 June 2014 Re: Post-Entry Audit Guidelines

- 1) Importers and import entries subjected to post-entry audit shall be identified by the Fiscal Intelligence Unit of the Department of Finance (DOF-FIU) through a computer-aided risk management system based on information such as compliance track records of the importers and the risk of erroneous classification, misdeclaration, or undervaluation of certain imported products.
- 2) Upon the selection of the importer or import entry to be subjected to post-entry audit, the DOF-FIU shall inform the BIR of the selection and of the grounds therefor. The BIR may then issue a Letter of Authority against the importer concerned in accordance with the provisions of the NIRC.
- 3) Upon determination by the DOF-FIU of any deficiency in the duties declared and paid on the importation of goods, the DOF-FIU shall notify the importer concerned by sending Post-Entry Audit Findings (PEAF) to the importer's address stated in the subject import entry.
- 4) The PEAFF shall specifically indicate the import transactions covered, the amount of deficiency duties, and the basis of the findings. It shall likewise indicate that the same shall be submitted to the BOC and the BIR, unless the deficiencies are satisfactorily explained by the importer.
- 5) The importer concerned shall be allowed to file only one Reply to the PEAFF within a non-extendible period of 30 calendar days from the receipt of the PEAFF. The Reply shall be executed personally (if the importer is a natural person), by any partner (if the importer is a partnership), or by an officer duly authorized by the board of directors (if the importer is a corporation). The Reply shall state whether the importer admits, or disagrees with, each of the findings in the PEAFF and include the reasons therefor.
- 6) Documents supporting the Reply to the PEAFF shall be certified true copies of documents: If the supporting documents have been previously filed with any government agency, the documents must be certified true and correct by the government agency concerned. Otherwise, the documents must be certified true and correct by the person or entity which executed the documents.
- 7) The DOF-FIU shall not hold a conference with the importer and broker or any of their representatives regarding any finding stated in the PEAFF.
- 8) If the DOF-FIU accepts the explanation in the Reply, it shall so notify the importer concerned, copy furnished the BOC and the BIR.
- 9) If the importer concerned admits the findings in the PEAFF, fail to refute the findings, or fail to file a Reply within the period required, the DOF-FIU shall submit a Final Audit Report and Recommendation (FARR), with the PEAFF and the Reply attached, to the BOC and/or BIR. The DOF-FIU may also submit to the BOC a report on the broker if it finds prima facie evidence that the broker committed violations of the Tariff and Customs Code in relation to the transactions under consideration.
- 10) Within 5 days from receipt of the FARR, the Commissioner of Customs (COC) shall issue a collection letter/formal assessment of deficiency duties directing the importer to pay the deficiency duties and the appropriate fines and penalties within 10 working days from receipt thereof. The COC shall immediately revoke the accreditation privileges granted to the importer and avail of administrative and judicial remedies upon the failure of the importer to pay the deficiency duties and penalties.

- 11) Within 5 days from receipt of the FARR, the Commissioner of Internal Revenue (CIR) shall act on the findings stated in the FARR in accordance with the provisions of the NIRC. Upon the failure of the importer to pay the deficiency taxes and penalties, the CIR shall likewise take appropriate action in accordance with the provisions of the NIRC and also inform the Commissioner of Customs of such failure. The COC shall then immediately impose the sanctions described above.

BUREAU OF INTERNAL REVENUE ISSUANCES

Revenue Memorandum Circular No. 52-2014 dated 2 June 2014 - Further clarifications on the issues and concerns in the implementation of the Mobile Revenue Collection Officers System (MRCOS)

Revenue Memorandum Circular No 51-2014 dated 6 June 2014 - Clarifying the Inurement Prohibition under Section 30 of the NIRC

In order for an entity to qualify as a non-stock and/or non-profit corporation/association/organization exempt from income tax, its earnings or assets shall not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. The following are considered “inurements” of such nature:

- 1) Payment of compensation, salaries, or honorarium to its trustees or organizers;
- 2) Payment of exorbitant or unreasonable compensation to its employees;
- 3) Provision of welfare aid and financial assistance to its members;
- 4) Donation to any person or entity (except donations made to other entities formed for the purpose/purposes similar to its own);
- 5) Purchase of goods or services for amounts in excess of the fair market value of such goods or services from an entity in which one or more of its trustees, officers or fiduciaries has an interest;
- 6) Distribution of its remaining assets to its trustees, organizers, officers or members upon liquidation. (The assets must be dedicated to corporation’s/association’s/organization’s exempt purpose and its constitutive documents must expressly provide that in the event of dissolution, its assets shall be distributed to one or more entities formed for the purpose/purposes similar to its own, or to the Philippine government for public purpose.

Revenue Memorandum Circular No. 50-2014 dated 9 June 2014 - Reiteration and Clarification on the Requirement of Issuance of Withdrawal Certificate for Every Removal of Petroleum or Petroleum Products

Every transfer/shipment of petroleum or petroleum products whether from the refinery or storage facility shall be accompanied by a Withdrawal Certificate (WC). A WC must be issued for each and every removal in case of transfer from one depot to another. The WC shall at all times accompany each and every removal of petroleum or petroleum products regardless of the mode of conveyance.

All WCs shall be supported by Sales Invoice, Delivery Invoice and/or internal transfer documents and must be certified correct by the Revenue Officer on Premise (ROOP).

Any petroleum or petroleum product unaccompanied by an official WC shall be considered illegally removed and subject to confiscation or forfeiture.

Revenue Memorandum Circular No. 48-2014 dated 9 June 2014 - Extending Deadline of Electronic Sales (eSales) Reports as Transitory Procedure Using the Enhanced and Integrated Electronic Accreditation and Registration (eAccReg) and eSales Systems for the month of May 2014 to 30 June 2014. Thereafter, reporting

of monthly sales will remain on or before the 8th (for taxpayers with TIN ending with an even number) or 10th (for taxpayers with TIN ending with an odd number) day of the month following the sales period.

All taxpayers with CRM/POS machines with manually issued Machine Identification Numbers are required to use the eAccReg and eSales Systems on or before 01 July 2014.

Revenue Memorandum Circular No. 54-2014 dated 11 June 2014 - Clarifying Issues Relative to the Application for VAT Refund/Credit under Section 112 of the Tax Code, as amended

The 120-day + 30-day periods are mandatory:

- 1) Any VAT-registered person whose sales are zero-rated or effectively zero-rated may file his administrative claim for VAT refund or credit at anytime within 2 years after the close of the taxable quarter when the sales were made.
- 2) The Commissioner of Internal Revenue (CIR) shall have 120 days from the date of submission of complete documents to decide on the claim.
- 3) If the claim is not acted upon by the CIR within 120 days, the inaction shall be deemed a denial of the claim.
- 4) The taxpayer can file an appeal with the CTA in 1 of 2 ways: (1) within 30 days after the CIR denies the claim within the 120-day period, or (2) within 30 days from the expiration of the 120-day period if the CIR does not act on the claim.
- 5) For claims made between 10 December 2003 and 6 October 2010, the taxpayers need not wait for the lapse of the 120-day period before it could file an appeal with the CTA.
- 6) The claim must be supported by the appropriate documents listed in the Checklist of Mandatory Requirements for Claims for VAT Credit/Refund and the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents and that the said documents are the only documents which the taxpayer will present in support of the claim.
- 7) No other documents shall be accepted/required from the taxpayer. The claim shall be denied if the taxpayer failed to submit complete supporting documents.