



TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.



TMAP TAX UPDATES FOR SEPTEMBER 2014

(Prepared by SyCip Salazar Hernandez & Gatmaitan)

SUPREME COURT DECISIONS

Taganito Mining Corporation vs. CIR (G.R. No. 197591, June 18, 2014)

The Court, in the 2010 *Aichi* case, ruled that the observance of the 120-day period is a mandatory and jurisdictional requisite to the filing of a judicial claim for refund before the CTA. Consequently, non-observance thereof would lead to the dismissal of the judicial claim due to the CTA's lack of jurisdiction. The Court, in the same case, also clarified that the 2-year prescriptive period applies only to administrative claims and not to judicial claims.

In the case of *CIR vs. San Roque Power Corporation (San Roque)*, the Court, however, recognized an exception to the mandatory and jurisdictional treatment of the 120-day period as pronounced in *CIR v. Aichi Forging Company of Asia, Inc. (Aichi)*. In *San Roque*, the Court ruled that BIR Ruling No. DA-489-03 dated December 10, 2003 – wherein the BIR stated that the “taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review” – provided taxpayers-claimants the opportunity to raise a valid claim for equitable estoppel under Section 246 of the NIRC of 1997, as amended.

Reconciling the pronouncements in the *Aichi* and *San Roque* cases, the rule must therefore be that during the period December 10, 2003 (when BIR Ruling No. DA-489-03 was issued) to October 6, 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 (*i.e.*, December 10, 2003 to October 6, 2010), the observance of the 120-day period is mandatory and jurisdictional to the filing of such claim.

San Roque Power Corporation vs. CIR (G.R. No. 205543, June 30, 2014)

It is still necessary for the Court to explain how BIR Ruling No. DA-489-03 is an exception to the strict observance of the 120+30 day periods for judicial claims. BIR Ruling No. DA-489-03 affected only the 120-day period as the BIR held therein that “a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review. Neither is it required that the Commissioner should first act on the claim of a particular taxpayer before the CTA may acquire jurisdiction, particularly if the claim is about to prescribe.” Consequently, BIR Ruling No. DA-489-03 may only be invoked by taxpayers who relied on the same and prematurely filed their judicial claims before the expiration of the 120-day period for the CIR to act on their administrative claims, provided that the taxpayers filed such judicial claims from December 10, 2003 to October 6, 2010. BIR Ruling No. DA-489-03 did not touch upon the 30-day prescriptive period for filing an appeal with the CTA and cannot be cited by taxpayers who belatedly filed their judicial claims more than 30 days after

receipt of the adverse decision of the CIR on their administrative claims or the lapse of 120 days without the CIR acting on their administrative claims.

CIR vs. United Salvage and Towage (Phils.), Inc. (G.R. No. 181836, July 9, 2014)

While the CTA is not governed strictly by technical rules of evidence, as rules of procedure are not ends in themselves but are primarily intended as tools in the administration of justice, the presentation of Preliminary Assessment Notices (PANs) as evidence of the taxpayer's liability is not mere procedural technicality. It is a means by which a taxpayer is informed of his liability for deficiency taxes. It serves as basis for the taxpayer to answer the notices, present his case and adduce supporting evidence. More so, the same is the only means by which the CTA may ascertain and verify the truth of the party's claims.

Bank of the Philippine Islands vs. CIR (G.R. No. 197515, July 2, 2014)

Under the then applicable Section 319(c) [now, 222(c)] of the NIRC of 1977, as amended, any internal revenue tax which has been assessed within the period of limitation may be collected by distraint or levy, and/or court proceeding within 3 years following the assessment of the tax. The assessment of the tax is deemed made and the 4-year period for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer.

CIR vs. Team Sual Corporation (G.R. No. 205055, July 18, 2014)

Under Section 112(C) of the NIRC of 1997, as amended, in case of failure on the part of the CIR to act on the application, the taxpayer affected may, within 30 days after the expiration of the 120-day period, appeal the unacted claim with the CTA. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "a specific period" required by law, such "inaction shall be deemed a denial" of the application for tax refund or credit. In *Commissioner of Internal Revenue vs. San Roque Power Corporation*, it was emphasized that compliance with the 120-day waiting period is mandatory and jurisdictional.

Airlift Asia Customs Brokerage Inc. et. al. vs. Team Sual Corporation (G.R. No. 183664, July 28, 2014)

Customs Administrative Order No. 3-2006 (CAO 3-2006) requires "customs brokers desiring to practice their profession at the BOC [to] apply for accreditation and [to] obtain a Certificate of Accreditation before they may engage in customs brokerage practice." Although the BOC Commissioner has the mandate to enforce tariff laws and prevent smuggling, these powers do not necessarily include the power to regulate and supervise the customs broker profession through the issuance of CAO 3-2006. The BOC, like the BIR, performs a critical role in government revenue collection. The integrity and efficiency of transactions before both these agencies is important, and all persons dealing with them must strictly adhere to their respective rules and regulations. The similarity in the functions and concerns of the BOC and the BIR, however, does not support a grant of power to accredit customs brokers to the BOC Commissioner. Unlike the BOC Commissioner whose power over customs brokers was – at the very least – implied and indirect, the BIR Commissioner was given express and specific powers to accredit and register tax agents under Section 6(G) of the NIRC of 1997, as amended. Thus, CAO 3-2006 is void for being contrary to Section 19 of RA 9280 which provides that a customs broker "shall be allowed to practice the profession in any collection district without the need of securing another license from the [BOC]."

COURT OF TAX APPEALS DECISIONS

Nokia Philippines, Inc. vs. CIR (CTA Case No. 8304, August 12, 2014)

Based on Section 112(A) and (C) of the NIRC of 1997, as amended and pertinent jurisprudence, a taxpayer engaged in zero-rated or effectively zero-rated transactions is entitled to claim a refund or tax credit of input taxes attributable to such sales upon compliance with the following requisites:

1. There must be zero-rated sales or effectively zero-rated sales;
2. Input taxes were incurred or paid;
3. That such input taxes are attributable to zero-rated or effectively zero-rated sales;
4. That the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
5. The claim for refund was filed within the two (2) year prescriptive period.

As gleaned from *CIR vs. Aichi Forging of Company Asia, Inc.*, the 2-year prescriptive period is reckoned from the close of the taxable quarter when the sales were made.

Further, in claims for VAT refund, the alleged non-submission of complete supporting documents in the administrative level is NOT fatal to petitioner's judicial claim. This Court is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the Court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the Rules of Court. The question of whether or not the evidence submitted by a party is sufficient to warrant the grant of a claim for refund lies within the sound discretion and judgment of the Court.

CIR vs. Philex Mining Corporation (CTA EB No. 1064, August 13, 2014)

The Supreme Court in the case of *CIR vs. First Express Pawnshop Company, Inc.* held that it is the taxpayer and not the BIR who determines what relevant supporting documents to submit as basis of its claim, to wit:

“The term ‘relevant supporting documents’ 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.”

Camarines Sur II Electric Cooperative, Inc. vs. Provincial Assessor of the Province of Camarines Sur, et. al. (CTA EB No. 1014, August 13, 2014)

Tax exemptions for electric cooperatives under P.D. No. 269, as amended, have been validly repealed by R.A. No. 7160. In *Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA), et. al. vs. The Secretary, Department of Finance*, PHILRECA and its co-petitioners through a petition for prohibition asked the Supreme Court to declare Sections 193 and 234 of R.A. No. 7160 unconstitutional for alleged violation of the equal protection clause. They argued that these sections discriminate against electric cooperatives registered with the NEA under P.D. No. 269, and in favor of those registered with the Cooperative Development Authority under R.A. No. 6938. The Supreme Court held that there is

reasonable classification under the Local Government Code to justify the different tax treatment between electric cooperatives covered by P.D. No. 269, as amended, and electric cooperatives under R.A. No. 6938.

CIR vs. Goodyear Philippines, Inc. (CTA EB No. 1041, August 14, 2014)

A taxpayer must file both its administrative and judicial claims for refund within 2 years after payment of the taxes erroneously received by the BIR, otherwise, the right to appeal to the CTA would be forfeited. Well-settled is the rule that when the said 2-year period is about to prescribe and the claim for refund with CIR has not been acted upon, for the protection of the interest of the taxpayer, he should file a petition for review with the CTA within the 2-year period; otherwise, if the decision of the CIR is adverse and it was made after the 2-year period, he can no longer appeal the same to the CTA.

CIR vs. Abundance Providers and Entrepreneurs Corporation (CTA EB No. 999, August 18, 2014)

The appellate jurisdiction of the CTA is not limited only to decisions of the CIR involving disputed assessments or claims for refunds, but also those involving “other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue” which includes the authority to determine the validity of a warrant of distraint and levy issued by the CIR.

Unimaster Conglomeration Inc. vs. Tacloban City Government et. al. (CTA EB No. 901, August 22, 2014)

Section 234(a) of R.A. No. 7160 provides that when the beneficial use of a real property owned by the Republic or any of its political subdivision, is vested to a taxable person, the real property is subject to tax. Since the Province of Leyte, Privatization and Management Office and Philippine Tourism Authority are co-owners of the hotel and petitioner, a domestic private corporation is the lessee of the hotel, the assets are taxable. Logically, petitioner, the beneficial user of the real properties, is liable to real property tax under Section 234(a) of R.A. 7160.

Coral Bay Nickel Corporation vs. CIR (CTA Case No. 7895, September 1, 2014)

Pursuant to Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1), (2)(c) and (3), 237 and 238 of the same Code, and Section 4.113-1(A)(1), B(1) and 2(c) of RR No. 16-2005, any VAT-registered person claiming VAT zero-rated direct export sales must present at least three types of documents, to wit: (1) sales invoice as proof of sale of goods; (2) export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (3) bank credit advice, certificate of bank remittance or any other documents proving payment for the goods in acceptable foreign currency or its equivalent in goods and services. Only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

AFP General Insurance Corporation vs. CIR (CTA Case No. 8191, September 1, 2014)

While it is the CIR's burden to prove that the taxpayer willfully filed false tax returns, the latter has the burden to prove not only that the assessment was erroneous, but also to adduce the correct taxes to be paid by it.

The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the CIR is wrong but the taxpayer is right; otherwise, the presumption in favor of the correctness of tax assessment stands.

Transitions Optical Philippines, Inc. vs. CIR (CTA Case No. 8442, September 1, 2014)

CIR vs. Kudos Metal Corporation provides the requirements or the procedure for the proper execution of waivers in accordance with RMO No. 20-90 and Revenue Delegation Authority Order No. 05-01, to wit:

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after _____ 19 ____", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
3. The waiver should be duly notarized.
4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.
5. Both the date of execution by the taxpayer and date of acceptance by the BIR should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.

Belle Bay City Corporation vs. Central Board of Assessment Appeals, City Assessor and City Treasurer of Parañaque City (CTA Case No. 1038, September 2, 2014)

A taxpayer's failure to question the assessment before the Local Board of Assessment Appeals renders the assessment of the local assessor final, executory and demandable. Such failure precludes the taxpayer from questioning the correctness of the assessment, or from invoking any defense that would reopen the question of its liability on the merits.

Ong Beng Gui vs. CIR (CTA Case No. 8410, September 8, 2014)

In *CIR vs. Smart Communication, Inc.*, the Supreme Court explained why the withholding agent may file a refund claim:

“[A] withholding agent has a legal right to file a claim for refund for two reasons. First, he is considered a “taxpayer” under the NIRC as he is personally liable for the withholding tax as well as for deficiency assessments, surcharges, and penalties, should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law. Second, as an agent of the taxpayer, his authority to file the necessary income tax return and to remit the tax withheld to the government impliedly includes the authority to file a claim for refund and to bring an action for recovery of such claim.

In this connection, it is however significant to add that while the withholding agent has the right to recover the taxes erroneously or illegally collected, he nevertheless has the obligation to remit the same to the principal taxpayer. As an agent of the taxpayer, it is his duty to return what he has recovered; otherwise, he would be unjustly enriching himself at the expense of the principal taxpayer from whom the taxes were withheld, and from whom he derives his legal right to file a claim for refund.”

Avon Products Manufacturing, Inc. vs. CIR (CTA Case No. 8378, September 9, 2014)

In *Bank of the Philippine Islands vs. CIR*, the Supreme Court held that a Revenue Memorandum Circular is merely an administrative interpretation of the law which cannot be given effect if it is contrary to the Revenue Regulations.

BIR ISSUANCES

REVENUE REGULATIONS NO. 6-2014 issued on September 8, 2014 prescribes the mandatory use of electronic BIR Forms in filing all tax returns by non-electronic Filing and Payment System filers particularly accredited tax agents/practitioners, accredited printers of principal and supplementary receipts/invoices, and One-Time transaction taxpayers.

REVENUE REGULATIONS NO. 7-2014 issued on September 8, 2014 prescribes the affixture of Internal Revenue Stamps on imported and locally manufactured cigarettes and the use of the Internal Revenue Stamp Integrated System for the ordering, distribution and monitoring thereof.

REVENUE MEMORANDUM CIRCULAR NO. 63-2014 issued on August 8, 2014 circularizes BIR Form No. 0217 – Application for Contractor’s Final Payment Release Certificate (Formerly BIR Form No. 2555) May 2014 Version.

Per Memorandum of Agreement between the Department of Public Works and Highways (DPWH) and the Department of Finance (DOF), all contractors engaged by the government to construct infrastructures and other projects are required to file the said form to the BIR 30 days before filing a claim for the release of final payment by the DPWH.

Contractors whose principal place of business is registered under the jurisdiction of the RDO in Metro Manila shall file their application with the Audit Information, Tax Exemption and Incentives Division (AITEID) located in the BIR National Office, while contractors whose principal office of business is registered under the jurisdiction of the RDO outside the Metro Manila shall file their application with the RDO having jurisdiction over their principal place of business.

REVENUE MEMORANDUM CIRCULAR NO. 64-2014 issued on August 11, 2014 publishes the full text of the memorandum from the Office of the Presidential Assistant for Rehabilitation and Recovery Infrastructure Cluster dated June 11, 2014, entitled “Minimum Performance Standards and Specifications for Public Biddings.”

Said memorandum contains the Architectural, Structural, Electrical, and Mechanical Design Standards; Water Pumping System and Fire Protection System, to serve as reference in the preparation of design plans for the rehabilitation and reconstruction of Typhoon Yolanda-damaged office buildings and other vertical structures.

REVENUE MEMORANDUM CIRCULAR NO. 66-2014 issued on August 27, 2014 amends Revenue Memorandum Circular (RMC) No. 55-2014 relative to the requirement of the Food and Drug Administration Certification for importations of livestock and poultry feeds or ingredients.

The pertinent portion of said RMC was amended to read as follows:

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 production of food for human consumption shall be subject to VAT. Thus, for the sale or importation of any of the following feed ingredients:

- 1) Whey powder
- 2) Skimmed milk powder
- 3) Lactose
- 4) Buttermilk powder
- 5) Whole milk powder
- 6) Palm Olein

and such other feed ingredients and additives used in the manufacture of finished feeds which may hereinafter be determined by competent authority to have possible utilization for human consumption, there must be a showing that the same is unfit for human consumption or that the ingredient cannot be used for production of food for human consumption as certified by the Food and Drug Administration.

REVENUE MEMORANDUM CIRCULAR NO. 70-2014 issued on September 9, 2014 clarifies the requirements for the issuance of Certifications on Outstanding Tax Liabilities/Delinquency Verification Slips for purposes of processing the payment of claims for tax refund, cash conversion of Tax Credit Certificates and VAT monetization.

REVENUE MEMORANDUM CIRCULAR NO. 73-2014 issued on September 15, 2014 clarifies the appropriate withholding tax rates pertaining to dividend payments to Philippine Central Depository Nominees by the issuers of nominees. A declaring (issuer) corporation is required to withhold appropriate taxes based on Sections 24(B)(2), 25(A)(2), 25(B), 27(D)(4), 28(A)(7)(d) and 28(B)(1) of the Tax Code in relation to Section 57 of the same Code.

REVENUE MEMORANDUM ORDER 33-2014 issued on September 11, 2014 amends the policies, guidelines and procedures in the issuance of the Importer's Clearance Certificate and Customs Broker's Clearance Certificate relative to the accreditation as an importer/customs broker.

The pertinent portion reads:

“A. AMENDMENTS ON DOCUMENTARY REQUIREMENTS

1. Certified true copy of Business Name registration shall not be required from a customs broker who has no trade name when he/she registered with the BIR.
2. Applicants which are BOI/PEZA-registered entities or those located at Freeport or special economic zones enjoying tax incentives shall be required to submit their respective Certificates of Registration issued by the concerned Investment Promotions Agencies (IPAs), in addition to the regular requirements.
3. Applicants for ICC or BCC which are newly-registered with the BIR or one which was never accredited by the BOC as either importer or broker shall be required to submit printer's delivery receipt and proof of filing tax returns through the BIR's electronic filing and payment system for at least two consecutive months. Proof of single importation done shall no longer be required from applicants who are considered new importers/customs brokers.

B. OTHER POLICY AMENDMENTS

1. Individual applicants with severe medical condition shall be allowed to be represented by his/her appointed “attorney-in-fact”, supported by a duly notarized “Special Power of Attorney” and a medical certificate issued by the attending physician under oath, endorsed by any government physician.
2. Authorized officer of the non-individual applicant shall mean any of the officers listed in the Corporation's latest General Information Sheet (GIS) filed with the Securities and Exchange Commission (SEC). However, in the event the board authorized any person other than those officers indicated in the GIS, that person shall be required to execute a sworn statement that he/she shall likewise be jointly or severally liable or responsible in the event problems shall arise with the filed application.”