



TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

TMAP TAX UPDATE FOR 16 April to 15 May 2017

Prepared by



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SUPREME COURT

Clarifying the grounds to apply the 10-year prescriptive period

In this case, the BIR issued VAT and income tax assessments to the taxpayer after the lapse of the 3-year prescriptive period.

Citing an earlier case, the Supreme Court held that the entry of wrong information due to mistake, carelessness, or ignorance, without the intent to evade taxes does not constitute a false return.

Further, the waivers that were executed did not comply with the regulatory requirements for issuing the same (i.e., failure to provide the office accepting the waiver with a third copy). Thus, the 10-year prescriptive period will not apply. (*CIR vs. Philippine Daily Inquirer, Inc.*, G.R. No. 213943 dated 22 March 2017)

Abatement is approved via termination letter

SC denied taxpayer's claim that it had settled its tax liabilities thru abatement and affirmed the tax assessment against it. This is because the taxpayer had not presented a termination letter from the BIR. Under the guidelines, the last step in the tax abatement process is the issuance of the termination letter which proves the approval of the taxpayer's application for tax abatement. In this case, taxpayer presented a BIR certificate recognizing their payment of certain taxes but failed to present a termination letter. Thus, SC did not consider taxpayer's application for abatement to have been approved. (*Asiatrust Development Bank, Inc. vs. CIR*, G.R. No. 201530 dated 19 April 2017)

COURT OF TAX APPEALS

Respect the response period

CTA held that the CIR violated the company's right to due process, resulting to the nullification of the FLD issued. This is because the FAN/FLD was issued a mere nine (9) days after the PAN was received by the taxpayer. RR No. 12-99 provides for a 15-day period for the taxpayer to respond to or protest the PAN. Failure of the tax authority to observe the lapse of said period prior to issuing the FAN deprives the taxpayer of due process. (*CIR vs. Merial Philippines, Inc.*, CTA EB No. 1398 dated 9 May 2017)

BUREAU OF INTERNAL REVENUE

More accredited PERA investment funds

This circular publicizes the additional PERA Unit Investment Trust Funds (UITFs)/investments products of Metropolitan Bank and Trust Company. (*Revenue Memorandum Circular No. 30-2017 dated 12 April 2017*)

Don't accept checks from a closed bank

BIR advises all Revenue Collection Officers Special Collection Officers and Collection Officers not to accept checks, as well as taxpayer's checks, drawn from the Rural Bank of Goa (Camarines Sur), Inc. (a closed bank) in payment of internal revenue taxes. (*Revenue Memorandum Circular No. 32-2017 dated 10 April 2017*)

Leeway for when the system is down

All taxpayers who are mandated to use the Electronic Filing and Payment System (eFPS) are now allowed to file their BIR Form Nos. 2550Q, 2550M and 2551M thru the eBIRForms facility, as well as to pay the corresponding taxes due therefrom, if any, thru “over-the-counter” transaction with any Authorized Agent Bank falling under the jurisdiction of the Revenue District Office where the taxpayers are registered without the corresponding payment of penalties for late filing, until 26 April 2017. (*Revenue Memorandum Circular No. 33-2017 dated 26 April 2017*)

Clearing up the message

Clarifying paragraph 6 of RMC 28-2017, what should be filed together with the required attachments is not a signed copy but a copy of the electronically filed ITR with Filing Reference Number and a copy of the electronically file ITR thru eBIRForms facility. It also enumerated deadline dates for the filing. (*Revenue Memorandum Circular No. 34-2017 dated 26 April 2017*)

Essence of CGT on sale of real property

In order to be liable for the payment of capital gains tax (CGT) there must be presumed gain from the sale, exchange or disposition of the real property.

The mere issuance of tax declaration in the absence of any sale, exchange or other form of conveyance is not subject to CGT. The payment of CGT is dependent and is a direct consequence for sale, transfer or exchange and the profit or gain that was presumed to have been realized by the seller by means of said transfer. (*Revenue Memorandum Circular No. 35-2017 dated 27 April 2017*)

March 2017 sugar prices

This circular publicizes the consolidated price of sugar at mill site for the month of March 2017 for purposes of imposing the one percent (1%) Expanded Withholding Tax on sugar prescribed under Revenue Regulations (RR) No. 2-98, as amended by RR 11-2014. (*Revenue Memorandum Circular No. 37-2017 dated 4 May 2017*)

RR No. 2-2012 is unconstitutional

On the Supreme Court decision in the case of “Finance Secretary Cesar B. Purisima and Commissioner of Internal Revenue Kim S. Jacinto-Henares vs. Representative Camelo F. Lazatin and Ecozone Plastic Enterprises Corporation”, Supreme Court ruled that Revenue Regulations (RR) No. 2-2012 is invalid and unconstitutional because it illegally imposes taxes upon Freeport Economic Zone enterprises, which, by law, enjoy tax-exempt status, and it effectively amends the law (i.e., Republic Act No. 7227, as amended by RA 9400), thereby encroaching upon the legislative authority reserved exclusively for Congress by the Constitution. (*Revenue Memorandum Circular No. 38-2017 dated 5 May 2017*)

IRR of PwD Law

This issuance provides for the rules and regulations implementing RA No. 10754, entitled “An Act Expanding the Benefits and Privileges of Persons with Disability (PWD)” Relative to the Tax Privileges of Persons with Disability and Tax Incentives for Establishments Granting Sales Discount, and Prescribing the Guidelines for the Availment Thereof, Amending RR No. 1-2009, with the following salient provisions:

- a) Enumerated the establishments from which PwDs may claim the discount which includes all drugstores, hotels, restaurants, theaters and recreation centers, among others;
- b) The 20% discount on purchases of PwDs shall be based on the price less 12% VAT as provided in the computation;

- c) Procedure for the availment by establishments of sales discount as deduction from gross income (i.e., listing the name of the PwD and the PwD identification card number);
- d) Prohibition on availment of double discounts;
- e) Exemption from value-added tax (VAT) on sale of goods or services to qualified person with disability; and
- f) Additional exemptions of benefactors of qualified persons with disability. (*Revenue Regulations No. 5-2017 dated 20 April 2017*)