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EXECUTIVE ISSUANCE

EO No. 5, Series of 2022 issued on September 16, 2022

- The Technical Education and Skills Development Authority (TESDA), which was formerly under the Department of Trade and Industry (DTI), is now transferred to the Department of Labor and Employment (DOLE) for policy and program coordination.
- The Secretary of Labor and Employment shall be the Chairperson of the TESDA Board pursuant to Section 7 of Republic Act (RA) No. 7796 or the TESDA Act of 1994 (TESDA Act). The TESDA Board and its Secretariat shall perform their respective functions in accordance with the provisions of the TESDA Act.
- The position classification and compensation structure applicable to the officials and employees of the TESDA shall comply with the salary standardization law and other applicable laws.

BIR ISSUANCES

REVENUE REGULATIONS (RR)

RR No. 12-2022 issued on September 13, 2022

- Lawyers or professional partnerships rendering actual free legal services are entitled to an allowable deduction from the gross income equivalent to the amount that could have been collected for the actual free legal services rendered, or ten percent (10%) of the gross income derived from the actual performance of the legal profession, whichever is lower.
- Free legal services shall refer to the appearance in court or quasi-judicial body for and on behalf of an indigent or pauper litigant and the preparation of pleadings or motions. It shall also cover assistance by a practicing lawyer to indigent or poor litigants in court-annexed mediation and other modes of alternative dispute resolution, including being appointed as *counsel de officio*.
- The Bureau of Internal Revenue (BIR) noted that the actual free legal services shall be exclusive of the minimum sixty (60)-hour mandatory legal aid services rendered to indigent litigants as required under the Rule on Mandatory Legal Aid Services for Practicing Lawyers under Bar Matter No. 2012 issued by the Supreme Court.
- In order to avail of the incentives, lawyers or professional partnerships shall attach to their income tax return for the period when the deduction was claimed the following documents:
    1. Certification from the Public Attorney's Office, the Department of Justice or accredited association of the Supreme Court indicating that:
        - The legal services to be provided are within the services defined by the Supreme Court;
        - The agencies cannot provide the legal services to be provided by the private counsel; and
        - The legal services were actually undertaken (including the number of hours actually provided by the lawyer or professional partnership if the Certification is coming from an association and/or organization duly accredited by the Supreme Court).
    2. Accomplished BIR Form No. 1701 (for individual lawyers) or 1702-EX (for general professional partnerships), particularly Schedules 5 and 2 on "Special Allowable Itemized Deductions"; and
    3. Sworn statement of the lawyer or managing partner (in case of professional partnerships) as to the amount that could have been collected for the actual free legal service.

REVENUE MEMORANDUM CIRCULAR (RMC)

RMC No. 121-2022 issued on August 22, 2022

- The suspension of field audit and other field operations on all outstanding Letters of Authority (LOA)/Audit Notices, and Letter Notices pursuant to RMC No. 77-2022 shall be lifted on a per Investigating Office upon approval by the CIR of the Memorandum Request from the (1) Regional Director, (2) Head Revenue Executive Assistant (HREA), Enforcement & Advocacy Service, and (3) HREA, Large Taxpayers Service – Regular/Excise/Programs & Compliance Group.
- Upon approval of the Memorandum Request, the concerned Investigating Office shall immediately resume its field audit and other field operations.
- However, no new LOAs, written orders to audit and/or investigate taxpayers' internal revenue tax liabilities shall be issued and/or served, except: (1) in those cases enumerated under RMC No. 77-2022; and, (2) in case of reissuance/s to replace previously issued LOA/s due to change of revenue officer and/or group supervisor.

RMC No. 122-2022 issued on August 22, 2022

- Online Registration and Update System (ORUS) will allow taxpayers to register, update and transact registration-related transactions online.
- This RMC is issued to advise all clients of the BIR to update their registration records to be able to enroll in ORUS.
- All taxpayers who intend to transact online with the BIR through ORUS and those who are currently transacting manually for their registration-related transactions shall update their registration records, such as e-mail address and contact information through the use of the S1905 – Registration Update Sheet (RUS).
- The designated e-mail address should be the taxpayer's official e-mail address.
- Registered taxpayers shall update their Head Office registration first before updating their branches. In case of employees, employers shall inform their employees regarding this requirement.

RMC No. 123-2022 issued on August 31, 2022

- The effectivity date of RR No. 6-2022 on the removal of the five (5) – year validity period on receipts/invoices is on July 16, 2022.
- All taxpayers who are or will be using Principal and Supplementary Receipts/Invoices shall be covered by RR No. 6-2022 or taxpayers with or who will apply for any of the following:
    - Authority to Print (ATP);
    - Registration of Computerized Accounting System (CAS)/Computerized Books of Accounts (CBA) and/or its Components; and
    - Permit to Use (PTU) Cash Register Machines (CRM) / Point-of-Sale (POS) Machines and Other Sales Receipting Software.
- Expired but unused receipts/invoices with a validity date of on or before July 15, 2022 are no longer valid for use.
- All unused and expired receipts/invoices shall be surrendered together with an inventory listing to the RDO where the Head Office or Branch is registered on or before the 10th day after the validity period of the expired receipts/invoices for the destruction of such receipts/invoices.
- Taxpayers with receipts/invoices with existing ATP expiring on or after July 16, 2022 may still issue such receipts/invoices until fully exhausted. The phrase, "THIS INVOICE/ RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE ATP" and the "Validity Period" reflected at the footer of the printed receipts/ invoices shall be disregarded.

- There is no penalty if the taxpayer with ATP expiring on or before July 15, 2022 failed to apply for subsequent ATP not later than the sixty (60) - day mandatory period prior to expiration.
- However, if taxpayer used or will use the receipts/invoices that expired prior to July 15, 2022, the taxpayer shall be subject to penalty amounting to PhP20,000 for the first offense and PhP50,000 for the second offense.
- The phrase, "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE ACKNOWLEDGMENT CERTIFICATE", as previously required in Revenue Memorandum Order (RMO) No. 9-2021 shall no longer be required to be reflected on the generated receipts/invoices.

COURT DECISIONS

CTA EN BANC DECISIONS

CIR v. Philippine Geothermal Production Company, Inc.
CTA EB No. 2453 promulgated on August 17, 2022

(Section 112 of the Tax Code, as amended, allows the allocation of creditable input taxes which cannot be directly or entirely attributable to zero-rated sales.)

Facts:

Philippine Geothermal Production Company, Inc. (PGPCI) filed an Application for Tax Credits or Refunds for its unutilized input taxes for the first quarter of taxable year (TY) 2014, which was denied by the BIR. On judicial appeal, the Court of Tax Appeals (CTA) Division granted PGPCI's claim for refund or issuance of Tax Credit Certificate (TCC), ruling that it is not required that the claimed input tax be directly attributable to zero-rated sales in order to be creditable.

On appeal to the CTA En Banc, the CIR argued that PGPCI failed to establish that its input value-added tax (VAT) is directly attributable to its zero-rated sales. Allegedly, to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer, or it must be directly used in the chain of production. The CIR further asserts that "the connection between the purchases and the finished product must be concrete and not imaginary or remote". According to the CIR, there is nothing in the decision of the CTA Division which shows the "direct attributability" of the purchases or input tax to the finished product whose sale is zero-rated.

Issue:

Has PGPCI established that the creditable input taxes are attributable to its zero-rated sales?

Ruling:

Yes.

An input VAT evidenced by a VAT invoice or official receipt is creditable against the output VAT not only on the purchase or importation of goods "for conversion into or intended to form part of a finished product for sale including packaging materials," but also those purchase or importation of goods for sale, for use as supplies in the course of business, and for use in trade or business for which deduction for depreciation or amortization is allowed under the National Internal Revenue Code (the "Tax Code"), as amended.

Section 110 of the Tax Code, as amended, did not limit itself to purchases or importation of goods which are to be converted into or intended to form part of a finished product for

sale, or to be used in the chain of production; but also includes purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed; as well as purchase of services for which VAT has been actually paid. Accordingly, provided that the subject input tax is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the Tax Code, as amended, the same may be creditable against the output VAT.

Moreover, Section 112 of the Tax Code, as amended, allows the allocation of creditable input taxes which cannot be directly or entirely attributable to zero-rated sales, the same shall be allocated proportionately on the basis of the volume of sales. Evidently, contrary to the CIR's allegation, the attribution of the input VAT to the zero-rated sales need not always be direct.

First Gen Hydro Power Corporation v. CIR
CTA EB No. 2456 promulgated on August 18, 2022

(Failure to present evidence due to the taxpayer's own negligent act is not a valid ground to remand the case to the CTA Division for reception of additional evidence)

Facts:

On March 28, 2018, First Gen Hydro Power Corporation ("First Gen Hydro") filed an application for tax credits or refund with the BIR for its alleged unutilized input VAT allegedly arising from its zero-rated sale of electricity to entities other than the National Power Corporation. The BIR denied such application. First Gen Hydro then filed a Petition for Review to assail the denial. The CTA Division denied First Gen Hydro's claim for refund for failure to prove compliance with the requisites for VAT refund.

On May 18, 2021, First Gen Hydro elevated the case to the CTA En Banc praying the remand of the case to the CTA Division for presentation of supplemental evidence, recall of witnesses, order the independent certified public accountant (ICPA) to present supplemental reports, and set commissioner's hearing for the marking of its supplemental documentary evidence. Moreover, First Gen Hydro argued that it has sufficiently complied with the requisites for claiming VAT refund under the Tax Code, as amended.

Issues:

1. Did the CTA Division err in denying the application for VAT Refund?
2. Should First Gen Hydro be allowed to present supplemental evidence?

Ruling:

1. No.

The CTA Division correctly observed that First Gen Hydro presented its case before the CTA Division as if it was an original action - as if its administrative claim before the BIR was never acted upon or that there was no decision for the CTA Division to review on appeal - despite BIR's denial of its administrative claim. First Gen Hydro not only failed to offer proof to debunk the BIR's findings, it also failed to pinpoint which of BIR's findings were not supported by factual or legal bases.

First Gen Hydro's sales cannot qualify for VAT zero-rating because the same were made prior to the issuance of the Certificate of Compliance (COC) from the Energy Regulatory Commission (ERC) on March 1, 2016. As a rule, for sales of electricity and generation services to entities other than National Power Corporation to qualify for VAT zero-rating, the VAT-registered taxpayer must comply with invoicing requirements under Sections

108(B)(3), 113, and 237 of the Tax Code, as amended, and must submit its COC issued by the ERC as required under the Electric Power Industry Reform Act of 2001.

2. No.

A motion for new trial may be filed after judgment but within the period of perfecting an appeal. On the other hand, a motion to reopen trial may be presented only after either or both parties have formally offered and closed their evidence, but before judgment.

First Gen Hyrdro's prayer to remand the case to the CTA Division for reception of additional evidence is akin to a motion for new trial. First Gen Hydro, however, is not proposing to present newly discovered evidence. The pieces of evidence sought to be presented are either evidence and/ or working papers contained in the BIR records or those which the ICPA had already looked into in the conduct of his examination. First Gen Hydro, thus, had the opportunity to present these documentary evidence during trial before the CTA Division. The Court should not reward First Gen Hyrdro by remanding the case to the CTA Division for its failure to present evidence for its own negligent act.

CIR v. Ruben U. Yu
CTA EB No. 2352 promulgated on August 16, 2022

(*The 180-day period referred to in Section 228 of the Tax Code, as amended, and in the mentioned RRs, is confined only to the period within which either the CIR or his/her duly authorized representative may act on the initial protest against the Final Assessment Notice (FAN)/Formal Letter of Demand (FLD). If the taxpayer opts to appeal to the CIR the final decision of the latter's duly authorized representative, the taxpayer's remaining option is to wait for the CIR's decision before elevating its case to the CTA.)*

Facts:

Ruben Yu is the proprietor of RYU Construction, an entity engaged in the construction business. He was assessed of deficiency income tax and VAT.

The timeline relevant to the case is as follows:

Date	Event	Days Lapsed
October 12, 2012	Ruben Yu received a Letter of Authority	
September 3, 2015	Ruben Yu received Preliminary Assessment Notice (PAN)	
November 4, 2015	Ruben Yu received FAN with FLD	
December 3, 2015	Ruben Yu filed a Request for Reinvestigation	29 days
August 22, 2016	Ruben Yu received a Revised FLD	
September 20, 2016	Ruben Yu filed a Request for Reconsideration	29 days
March 19, 2017	[Lapse of the 180-day period for the CIR to act on the protest]	180 days
April 17, 2017	Ruben Yu filed a Petition for Review with the CTA	29 days

The CTA Division granted Ruben Yu's Petition for Review and cancelled and set aside the revised FLD/FAN. The CIR elevated the case to the CTA En Banc and argued that Ruben Yu's Petition for Review was prematurely filed based on the timeline of events.

Issue:

Was Ruben Yu's Petition for Review prematurely filed?

Ruling:

Yes.

Ruben Yu's Petition for Review was prematurely filed; hence, the CTA in Division had no jurisdiction to take cognizance of the case.

RR No. 12-99, as amended by RR No. 18-2013, instructs that in case of the inaction of the CIR on the protested assessment, the taxpayer has two options, either: 1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or 2) await the final decision of the CIR on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt the decision, these options are mutually exclusive and resort to one bars the application of the other.

The 180-day period referred to in Section 228 of the Tax Code, as amended, and in the mentioned RRs, is confined only to the period within which either the CIR or his/her duly authorized representative may act on the initial protest against the FAN/FLD. If the taxpayer opts to appeal to the CIR the final decision of the latter's duly authorized representative, the taxpayer's remaining option is to wait for the CIR's decision before elevating its case to the CTA.

Date	Event	Days Lapsed
October 12, 2012	Ruben Yu received a Letter of Authority	
September 3, 2015	Ruben Yu received PAN	
November 4, 2015	Ruben Yu received FAN with FLD	
December 3, 2015	Ruben Yu filed a Request for Reinvestigation	29 days
February 1, 2016	**Ruben Yu to submit the required documents for Request for Reinvestigation**	**60 days**
July 30, 2016	**CIR to act on request for reinvestigation**	**180 days**
August 29, 2016	**Ruben Yu to file a Petition for Review with the CTA**	**30 days**
August 22, 2016	Ruben Yu received a Revised FLD	
September 20, 2016	**Ruben Yu filed a Request for Reconsideration**	**29 days**
March 19, 2017	[Lapse of the 180-day period for the CIR to act on the protest]	180 days
April 17, 2017	Ruben Yu filed a Petition for Review with the CTA	29 days

In this case, the revised FLD may be treated as a letter which contained a demand on the taxpayer for the payment of the revised or reduced assessment, hence appealable to the CTA in Division. Ruben Yu had the option to file an appeal with the CTA or to file a request for reconsideration. Ruben Yu chose to file a request for reconsideration.

In order for the CTA in Division to exercise jurisdiction over the Petition for Review, the appeal must have been brought within 30 days from receipt of CIR's decision on Request for Reconsideration. Here, the CIR has yet to issue his decision on Ruben Yu's Request for Reconsideration.

Ruben Yu's only option now is to wait for CIR's decision on his request for reconsideration given that the 180+30 day period is no longer available to him. As such, when Ruben Yu filed the Petition for Review in CTA within 30 days from the lapse of the 180 days counted from September 20, 2016, the same was still premature.

CIR v. Script2010, Inc.
CTA EB No. 2363 promulgated on August 25, 2022

(A party who wants to appeal an Amended Decision by the CTA Division must first file within 15 days from receipt of the adverse Decision a prior Motion for Reconsideration or Motion for New Trial with the CTA Division before he/she is allowed to file a Petition for Review before the CTA En Banc. Failing to comply with this requirement would result in such Decision becoming final and executory.)

Facts:

Script2010, Inc. (Script2010) is a corporation engaged in the business management and production of events and shows, design and development of merchandising and promotional materials, and related activities. After the administrative proceedings and when the case was elevated to the CTA, the CTA Division cancelled and set aside the assessment against Script2010 for violation of due process. The CIR elevated the case to the CTA En Banc.

In relation to the issue on the timeliness of CIR's Motion for Reconsideration, the relevant timeline is as follows:

Date	Event
February 20, 2020	CIR received the copy of CTA Division's Amended Decision
March 4, 2020	CIR filed a Motion for Extension of Time to File a Petition For Review
March 10, 2020	CTA Division denied the Motion for Extension of Time in a Resolution
June 8, 2020	CIR received the Resolution containing the denial of Motion for Extension of Time
June 23, 2020	CIR filed Motion for Reconsideration

In relation to the issue on due process, the relevant timeline is as follows:

Date	Event
December 29, 2014	Script2010 received PAN dated December 22, 2014
January 8, 2015	CIR issued FLD/FAN

Issues:

1. Was the CIR's Motion for Reconsideration before the CTA Division timely filed?
2. Was Script2010 denied of due process?

Ruling:

1. No.

Under the Revised Rules of the CTA, a party, who wants to appeal an Amended Decision of the CTA Division, must first file within fifteen (15) days from receipt of the adverse Decision a prior Motion for Reconsideration or Motion for New Trial with the CTA Division before

he/she is allowed to file a Petition for Review to the CTA En Banc. Failing to comply with this requirement would result in such Decision becoming final and executory.

Here, the relevant timeline of events is as follows:

Date	Event	Days Lapsed
February 20, 2020	CIR received the copy of CTA Division's Amended Decision	
March 4, 2020	CIR filed a Motion for Extension of Time to File a Petition For Review	13 days
March 6, 2020	**CIR to file a Motion for Reconsideration**	15 days after receipt of Amended Decision on February 20
March 10, 2020	CTA Division denied the Motion for Extension of Time in a Resolution	
June 8, 2020	CIR received the Resolution containing the denial of Motion for Extension of Time	
June 23, 2020	CIR filed Motion for Reconsideration	

It should be noted that an Amended Decision is an entirely new Decision which replaces the old Decision, to which a Motion for New Trial or Motion for Reconsideration may be filed again.

CIR used June 8, 2020 as the date of commencement of the 15-day period within which he could file his Motion for Reconsideration.

Clearly, the Amended Decision had already become final and executory with respect to CIR because he failed to timely file a Motion for Reconsideration or Motion for New Trial from receipt of the Amended Decision. Failing on this step rendered his Petition for Review before the Court En Banc invalid.

2. Yes.

The BIR should allow a taxpayer the opportunity to contest a PAN within 15 days from receipt thereto. The BIR should wait until such period expires before it issues a FLD/FAN. Failing this would mean that it has prematurely decided on or, worse, did not consider the taxpayer's response to the PAN at all, which are clear violations of due process in tax assessment proceedings.

Here, the relevant timeline is as follows:

Date	Event	Days Lapsed
December 29, 2014	Script2010 received PAN dated December 22, 2014	
January 8, 2015	CIR issued FLD/FAN	5 days
January 13, 2015	**Script2010 to file a Reply to the PAN**	15 days after receipt of PAN on December 29, 2014

Hence, until January 13, 2015, the CIR was not allowed to issue a FLD/FAN. Acting otherwise would clearly be a violation of Script2010's right to due process in tax assessment proceedings, as CIR would be prematurely deciding on or not considering Script2010's Reply to the PAN and its pieces of evidence.

CIR v. Red Ribbon Bakeshop
CTA EB No. 2491 promulgated on September 2, 2022

(Reassigning or transferring ROs originally named in the LOA and substituting or replacing them with new ROs without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his/her duly authorized representatives to grant the power to examine the books of accounts of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90)

Facts:

Red Ribbon received a LOA dated September 15, 2010 authorizing certain revenue officers (RO) Paz, Aguila, Maddela, Manieigo, Parungai and Ramirez (collectively the "RO Paz Group") as well as group supervisor (GS) Samoy to examine its books. On February 25, 2015, a Memorandum of Assignment (MOA) was issued to replace the RO Paz Group with a new set of officers, namely, RO Arriola and GS Balbido. A PAN, FAN and Final Decision on Disputed Assessment (FDDA) were later issued by the CIR which were all timely protested by Red Ribbon. A Petition for Review was subsequently filed with the CTA.

The CTA Division ruled that the MOA cannot be treated as a LOA in this case since the MOA was only signed by Mr. Cesar D. Escalada who is the Chief of the BIR's Regular Large Taxpayers (LT) Audit Division 1 and is not one of the authorized representatives of the CIR to issue an LOA.

Issue:

Were the ROs authorized to conduct the examination?

Ruling:

No.

Under jurisprudence, the Supreme Court emphasized that the practice of reassigning or transferring ROs originally named in the LOA and substituting or replacing them with new ROs to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his/her duly authorized representatives to grant the power to examine the books of accounts of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990..

In this case, the MOA was issued authorizing the new set of ROs to conduct the said audit investigation, the said MOAs were only signed by Mr. Cesar D. Escalada - the Chief of the BIR's Regular LT Audit Division 1, who is not one of the authorized representatives of CIR to issue and sign an LOA, i.e., the Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR. Simply put, none of the aforesaid MOAs can be regarded as a valid LOA within the context of the law and the prevailing jurisprudence.

The absence of a new or separate LOA specifically identifying the new ROs who would continue the audit examination of Red Ribbon's books of accounts for TY 2009, rendered them without authority to conduct such audit investigation. Hence, the resulting assessments are null and void.

Pulp Specialties Philippines, Inc. v. CIR
CTA EB No. 2575 promulgated on August 31, 2022

(*In claims for refund of unutilized input VAT, the 30-day period provided by law is counted from the receipt of the CIR's decision/ruling, or from the lapse of the 120-day period, whichever is sooner. Thus, a judicial claim filed in a period less than or beyond the said 120+30-day period is outside the jurisdiction of the CTA.*)

Facts:

Pulp Specialties Philippines, Inc. (PSPI) filed with the BIR an administrative claim for the refund of unutilized input VAT for the period from August 1, 2003 to December 31, 2004.

The relevant timeline is as follows:

Date	Event	Days Lapsed
August 30, 2005	PSPI filed an administrative claim for refund of unutilized input VAT for the period from August 1, 2003 to December 31, 2004.	
August 18, 2018	PSPI received the BIR's Denial Letter dated August 16, 2018	
September 27, 2018	PSPI filed a judicial claim with the CTA	30 days

The CTA Division dismissed the Petition for Review on jurisdictional ground considering that the same was filed way beyond the period to appeal.

Issue:

Was PSPI's judicial claim with the CTA Division filed out of time?

Ruling:

Yes.

Section 112(A) and (C) of the Tax Code, as amended, provide for the time periods for the filing and processing of administrative claim and judicial claim for tax refund or credit. The administrative claim for tax refund or credit must be filed with the BIR within two years after the close of the taxable quarter when the sales were made.

In case of an adverse decision or ruling, or inaction of the CIR, the taxpayer is given a period of 30 days from receipt of the decision or ruling, or the expiration of the 120-day period fixed by law, to file a Petition for Review with the CTA. The 30-day period provided by law is counted from the receipt of the CIR's decision/ruling, or from the lapse of the 120-day period, whichever is sooner. Thus, a judicial claim filed in a period less than or beyond the said 120+30-day period is outside the jurisdiction of the CTA.

Here, the relevant timeline is as follows:

Date	Event	Days Lapsed
August 30, 2005	PSPI filed an administrative claim for refund of unutilized input VAT for the period from August 1, 2003 to December 31, 2004.	
December 28, 2005	**End of the 120-day period within which the CIR should act on the administrative claim**	**120 days**

January 27, 2006	**PSPI to file a judicial claim with the CTA**	**30 days**
August 18, 2018	PSPI received the BIR's Denial Letter dated August 16, 2018	
September 27, 2018	PSPI filed a judicial claim with the CTA	More than 12 years from December 28, 2005

For PSPI's failure to comply with the 120+30-day mandatory period, the CTA En Banc found that the CTA Division correctly dismissed PSPI's judicial claim, which was filed out of time. Hence, the CTA Division did not acquire jurisdiction over the case.

CTA DIVISION DECISIONS

People v. Remedios De Juan Pensotes
CTA Crim. Case No. O-685 promulgated on August 22, 2022

(Tax cases are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court does not exceed 5 years. Further, the period of prescription for a tax case shall only be tolled by the filing of an information with the CTA.)

Facts:

Pensotes, a resident citizen and a single proprietor doing business under the name and style of RJP International Trading Construction and General Services (RJP), was charged for violating Section 255 of the Tax Code for her alleged willful failure to supply correct and accurate information (sales amounting to PhP66,424,849.99) in her Income Tax Return (ITR) for TY 2007.

The BIR's investigation was prompted by a Manila Standard Today news article regarding the retired Philippine National Police (PNP) officials' alleged overpricing of repairs of light armored vehicles in 2007, which led to the discovery of PNP's service contracts with Pensotes.

The BIR evaluated and compared the sales declared by Pensotes in her 2007 Audited Financial Statements (AFS) and ITR vis-à-vis PNP's purchases from RJP per copies of voucher and sales invoices submitted by Pensotes, and discovered that Pensotes deliberately failed to declare her correct tax base for TY 2007.

Issue:

Was the filing of the criminal action barred by prescription?

Ruling:

Yes.

Under Section 281 of the Tax Code, the period of prescription for the offense charged is five years. The Supreme Court, in the case of *Emilio E. Lim, Sr., et al. v. Court of Appeals, et al.* (G.R. Nos. L-48134-37, October 18, 1990), held that tax cases are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment, up to the filing of the information in court does not exceed 5 years. Further, the period of prescription for a tax case shall only be tolled by the filing of an information with the CTA.

Here, the Joint Complaint-Affidavit for preliminary investigation was filed against accused only on April 26, 2012. The Department of Justice (DOJ) issued a Resolution finding probable cause against Pensotes on June 21, 2017. Consequently, the Information charging accused for violating Section 255 of the Tax Code was issued on same date of June 21, 2017. However, the said information was filed only on March 1, 2019, or only after more than six years and ten months from the filing of the Joint Complaint-Affidavit, which was way beyond the prescriptive period of five years under Section 281 of the Tax Code.

People of the Philippines v. Cosco Petroleum Company, Inc. & Michael Cosay
CTA Crim Case No. O-804 promulgated on September 21, 2022

(Proof of receipt of notices must be established by the BIR to uphold an assessment of taxes against a taxpayer.)

Facts:

Cosco Petroleum, through an alleged representative, Jocelyn Corpuz, received a LOA authorizing the examination of the books of Cosco Petroleum for TY 2008. Subsequently, a PAN was issued against Cosco Petroleum. An FLD was later issued on January 9, 2013.

On various dates, the BIR proceeded to collect the taxes due from Cosco Petroleum through the issuance of a Final Notice Before Seizure, Warrant of Distraint and/or Levy, and a Final Demand Before Suit. Cosco Petroleum failed to pay the taxes due arising from the assessment.

Due to this, a Complaint Affidavit for violation of Section 255 of the Tax Code was filed against Cosay, the president of Cosco Petroleum, before the DOJ for the repeated failure to pay taxes due for TY 2008 despite repeated demands from the BIR.

Cosco Petroleum argues that it did not receive any of the notices from the BIR. Cosco Petroleum further argues that the BIR must ensure actual receipt of the notices by the taxpayer, failing to do so constitutes a violation of due process on the part of the taxpayer.

Issue:

Is Cosay, as president of Cosco Petroleum, guilty beyond reasonable doubt of the offense charged?

Ruling:

No.

To sustain a conviction for willful failure to pay taxes punishable under Section 255, in relation to Sections 253(d) and 256 of the Tax Code, as amended, the prosecution must prove beyond reasonable doubt the existence of the following elements: first, a corporate taxpayer is required by the Tax Code, as amended, or by duly promulgated rules and regulations, to pay taxes due; second, such corporate taxpayer failed to pay said taxes; and third, such corporate taxpayer's president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation, willfully failed to pay said taxes.

In this case, Cosco Petroleum is not required to pay the assessed taxes since the assessment is void. Under the records, the LOA issued against Cosco Petroleum authorized a certain RO Vida to conduct the examination. However, in page 2 of the FLD, the investigation was made by a certain RO Gagalac, a person not named in the LOA. Therefore, making the assessment null and void.

Further, the FLD alluded Cosco Petroleum's period to pay the taxes stated therein to the enclosed FAN. However, the FAN referred to in such FLD was not presented as evidence by the prosecution. Lastly, the BIR failed to prove that the notices were received by Cosco Petroleum. The alleged representative (Jocelyn Corpuz) was not an employee or an authorized representative of Cosco Petroleum.

SECURITIES AND EXCHANGE COMMISSION ISSUANCES

SEC OGC Opinion No. 22-11 issued on August 19, 2022

Facts:

Mitsui & Co. (Asia Pacific) Pte. Ltd. (MAP), a corporation organized and existing under the laws of Singapore, is 100% owned by Mitsui Co. Ltd (Mitsui), a corporation organized and existing under the laws of Japan and serves as Mitsui's regional office in the Asia Pacific region.

Under the laws of Singapore, MAP is allowed to engage in any kind of business in general, except for business activities that require special license. Pursuant to the authority granted to MAP by virtue of its incorporation, (1) it is allowed to lend money to corporations, and (2) it is exempt from getting any license to lend money as long as MAP does not lend to individuals.

MAP has already lent money to members of the Mitsui Group, the Philippine-based companies in which Mitsui owns shares of stock, and it intends to continue doing so to companies within the Group whenever necessary.

MAP has also established a branch in the Philippines, Mitsui & Co. (Asia Pacific) Pte. Ltd Manila Branch (MAP Manila Branch).

Issue:

May MAP Manila Branch lend money to companies within the Mitsui Group without amending MAP Manila Branch's Securities and Exchange Commission (SEC) license?

Ruling:

Yes.

MAP Manila Branch may lend a part of its corporate funds to members of the Mitsui Group without amending its license since the said act is fairly incidental to the express powers granted to the MAP Manila Branch under its License to Transact Business.

As a branch office of a foreign company, MAP Manila Branch carries out the business activities of the head office and derives income from the host country. While branches are treated as business units for commercial and financial reporting purposes, the head office remains responsible and answerable for the liabilities of its branches which are under its supervision and control.

The authority, powers, and duties of a foreign corporation which intends to do business in the Philippines, such as a branch office, then are derived from its License to Transact Business. In this case, MAP Manila Branch's License to Transact Business does not expressly provide for lending funds to other members of the Mitsui Group. The management of a corporation, in the absence of express restrictions, has the discretionary authority to enter into contracts and transactions which may be deemed reasonably incidental to its business purposes.

However, the lending activity to be undertaken by MAP Manila Branch shall be strictly limited to members of the Mitsui Group and shall not be pursued as a regular and a separate business activity. It shall be resorted to only when need arises and shall only be done for the purpose of serving corporate ends.

SEC MC No. 7, series of 2022 issued on August 26, 2022

- These Rules have been issued pursuant to Section 15 of RA No. 905, also known as the PERA Act of 2008 and its Implementing Rules and Regulations and shall cover the list of securities that the SEC considered as qualified and/or eligible as PERA Investment Products ("SEC-eligible PERA Investment Products").
- The following securities, which are registered pursuant to the requirements of the Securities Regulation Code and Investment Company Act, are deemed to be eligible PERA investment products:
    (a) A newly formed mutual fund including any sub-fund of an umbrella fund and Exchange Traded Funds (provided (i) the Fund Manager should have a track record that for the past 5 years prior to its application it has been responsible for the operation and management of a registered mutual fund which has been offered to the general public, and (ii) the name shall contain the words "Personal Equity and Retirement Account" or "PERA");
    (b) REIT shares;
    (c) Corporate Bonds with an investible rating issued by an accredited Credit Rating Agency; and
    (d) Equity Securities, which form part of the PSE Dividend Yield Index (provided the PSE submits to the SEC a certification that the said equity securities meet the PERA requisites of being non-speculative, readily marketable, and with a track record of regular income payment to investors[1]).
- Further, there are also exempt securities which are considered as eligible PERA Investment products, to wit:
    (a) Government securities;
    (b) Securities issued by the Bangko Sentral ng Pilipinas (BSP); and
    (c) Corporate Bonds issued by Banks in compliance with the requirements of the BSP.
- The Rules also state that the SEC may qualify other securities to be eligible as PERA Investment products, provided that the product is demonstrated to be non-speculative, readily marketable, and with a track record of regular income payment to investors. The Rules further defined what "non-speculative", "readily marketable", and "track record of regular income payment" mean for the aforementioned purpose.
- The Rules provide that a security only loses its eligibility as a PERA investment product when it is declared as ineligible by the SEC under the following circumstances:
    (a) The Registration Statement pertinent to the security is suspended and revoked;
    (b) In the case of corporate bond, it is declared to be in default by a competent authority or person in accordance with the applicable laws, rules, and contracts;
    (c) In the case of corporate bond, its credit rating is downgraded to a non-investible grade; and
    (d) In the case of Philippine Stock Exchange index (PSEi) member security, it is removed from the PSEi.

[1] These are continuing requirements.

DEPARTMENT OF LABOR AND EMPLOYMENT ISSUANCE

DOLE Labor Advisory No. 17 issued on August 23, 2022

- In this advisory, the DOLE clarified the rules regarding the payment of wages in the event of suspension of work in the private sector by reason of weather disturbances and similar occurrences.
- Employers, in coordination with their internal management, are advised that they may, in the exercise of management prerogative, suspend work to ensure the safety and health of their employees during weather disturbances and similar occurrences.
- With regard the payment of wages, the following rules shall apply:
    - If unworked - The employee is not entitled to regular pay, except when there is a favorable company policy, practice, or collective bargaining agreement granting payment of wages on the said day or when the employee is allowed to utilize his/her accrued leave credits;
    - If worked - The employee is entitled to full regular pay provided that he/she has rendered work for not less than six (6) hours.
    - If less than six (6) hours of work, the employee shall only be entitled to the proportionate amount of the regular pay, without prejudice to existing company policy or practice more beneficial to the employee.
- To alleviate the plight of employees during weather disturbances and similar occurrences, employers may provide extra incentives or benefits to employees who reported to work on the said days.
- It was also highlighted in this advisory that Employees who fail or refuse to work by reason of imminent danger resulting from weather disturbances and similar occurrences shall not be subject to any administrative sanction.

DOLE DO No. 237-22 issued on September 19, 2022

- These Revised Rules superseded DOLE Department Order No. 202, Series of 2019.
- "Telecommuting" refers to a work arrangement that allows an employee to work from an alternative workplace, in whole or in part, with the use of telecommunication and/or computer technologies.
- These Rules provide guiding principles in the application of labor standards to telecommuting, which includes the following:
    - Work performed in an alternative workplace shall be considered as work performed in the regular workplace of the employer.
    - All time that an employee is required to be on duty and is permitted or suffered to work in the alternative workplace shall be counted as hours worked.
    - Telecommuting employees are not considered field personnel, except when their actual hours of work cannot be determined with reasonable certainty.
    - The employer shall ensure that telecommuting employees are given the same treatment as those employees working at the employer's regular workplace.
- An employer may offer its employees, on a voluntary basis, a telecommuting program upon such terms and conditions as they may mutually agree upon. Conversely, an employee or group of employees may also propose a telecommuting program to the employer.
- The "telecommuting program", which refers to the set of voluntarily agreed policies and guidelines adopted in accordance with these Revised Rules, any applicable collective bargaining agreement (CBA) or employment contract, or other company rules or regulations, shall contain provisions, including but not limited, on the following:
    - Requirements for eligibility;
    - Acceptable alternative workplace/s, including provisions for telecommunication, computer technology, facilities, and equipment;

  - Minimum requirements of computer hardware and software;
  - Occupational Safety and Health standards (even mental health programs);
  - Common performance standards for telecommuting employees and employees working at the employer's premises, appropriate means of communicating feedback to the concerned employee, and immediate interventions to address performance issues;
  - Appropriate work standards;
  - Data Privacy standards;
  - Emergency protocols;
  - Date of effectivity and duration of the telecommuting; and
  - Grievance machinery.
- The Revised Rules also tasks the employer to ensure that measures are taken to prevent the telecommuting employee from being isolated from the rest of the working community in the company by giving such employee the opportunity to meet, physically or through telecommunication, with colleagues on a regular basis and, when practicable, allow access to the employer's premises and company information.
- The Revised Rules now provide that facilities, equipment, and supplies necessary to implement a telecommuting program and to enable the employee to perform his or her work in an alternative workplace, including expenses for the acquisition, proper handling, usage, maintenance, repair and return thereof, are considered ordinary and necessary costs of the business of the employer.
- The Rules also provide that the employer shall notify the DOLE of the implementation of telecommuting through the Establishment Report System (https://reports.dole.gov.ph).

BUREAU OF CUSTOMS ISSUANCE

CMO No. 19-2022 issued on July 5, 2022

- This Order implements CAO No. 11-2019 on the Admission, Movement and Withdrawal of Goods in Free Zones, in relation to the BOC – Philippine Economic Zone Authority (PEZA) Joint Memorandum Order No. 2-2015.
- This Order covers the implementation of the e-ZTS for the transfer of goods from an Ecozone Export Enterprise (EEE) or an Ecozone Logistics Service Enterprise (ELSE) to another EEE or ELSE located in a different PEZA zone. The e-ZTS is aimed at automating the BOC-PEZA operations governing inter-zone transfer and the Bring-in and Bring-out of goods to/from the PEZA economic zones to other PEZA economic zones.
- All EEE/ELSE locators desiring to transfer their goods to other EEE/ELSE shall be required to post a General Transportation Surety Bond (GTSB). The GTSB shall be valid for a one-year period and there shall be no need for the Bureau to check on the GTSB value for "charging/debiting" or for crediting for every transfer of goods under this Order.

DEPARTMENT OF FINANCE ISSUANCES

DOF Opinion No. 13-2022 issued on July 20, 2022

Facts:

Dasmariñas Village Association, Inc. (DVAI) is a duly constituted non-stock, non-profit homeowners' association in the City Government of Makati (CGM), which is registered with the SEC, with the primary purpose of promoting and advancing the best interest, general welfare, prosperity and safeguard the well-being of the owners, lessees and occupants of the property in the Dasmariñas Village.

DVAI requested from the BIR a confirmatory ruling that DVAI's association dues, membership fees, other assessments and charges collected by DVAI as well as its rental income are exempt from income tax and VAT. DVAI's request is anchored on Section 18 of RA No. 9904 (Magna Carta for Homeowners and Homeowners' Associations) and Section 109 of the Tax Code, as amended.

BIR denied DVAI's request because BIR posits that the second condition under RMC No. 9-2013 is not present, because the certification of the CGM says that the latter does not really lack the resources to render basic services, but merely opted not to provide the same as they involve private properties.

Issue:

Is DVAI entitled to the exemption pursuant to Section 18 of RA No. 9904 as enunciated under RMC No. 9-2013?

Ruling:

Yes.

Under RMC No. 9-2013, in order to avail of the exemption, the following conditions must be present: 1) homeowners' association must be a duly constituted association; 2) the LGU having jurisdiction over the association must issue a certification identifying the basic services being rendered by the homeowners' association and therein stating its lack of resources to render such services, provided that such service must fall within the purview of the "basic community services and facilities"; and 3) proof that the income and dues are used for the cleanliness, safety, security and other basis services of the members.

Here, DVAI was able to prove the first and third conditions: that it is a duly constituted association under RA No. 9904 by submitting proof that it was registered with the SEC as a nonstock, nonprofit corporation, and it was certified by the HLURB that DVAI's records were transferred by SEC to HLURB; and that the rental income and dues collected are used in providing the basic community services needed by the members by submitting its financial statements detailing the its expenses for security services, garbage services, street repairs, among others.

As to the second condition, the DOF opined that the CGM's certification, which states that "CGM lacks resources due to the reason stated above, we would like to recommend the approval of their application for tax exemption", means that it did not appropriate funds and resources for the basic services to the members of DVAI since it involves private properties; and thus, the CGM admits that it has only been able to provide funds for basic services which these are most needed, i.e. public streets, sidewalks, parks, etc. As certified by CGM, DVAI's services (security and safety, general hygiene and sanitation, etc.) fall within the purview of the basic community services and facilities as provided by law.

DOF Opinion No. 14-2022 issued on August 12, 2022

Facts:

In BIR Ruling No. VAT-0331-2020, the BIR imposed VAT on the sale of trade related properties, namely a service gas stations with corresponding goodwill, by Filoil Energy Company, Inc. (FECI) pursuant to the Deed of Absolute Sale to Total Philippines Corporation (TPC). TPC claims that the transfer of goodwill is a transfer of a capital asset not subject to VAT.

Issue:

Is the sale of goodwill by FECI to TPC subject to VAT?

Ruling:

Yes.

The BIR correctly ruled that the VAT is imposable on the aggregate sales price of the trade-related properties comprised of the service gas stations and goodwill.

Trade-related properties are defined as "individual properties such as hotels, fuel stations, and restaurants that usually change hands in the marketplace while remaining operational." These assets include not only land and buildings, but also fixtures and fittings and a business component made up of intangible assets, including transferable goodwill.

The assignment of the goodwill of a company the same way it treated the main transaction. In this case, the main transaction between FECI, a VAT-registered company, and TPC, the herein sale of service gas stations, is a transaction deemed sale subject to VAT pursuant to Section 105 of the Tax Code. Consequently, the transfer of the attaching goodwill from FECI to TPC is necessarily also subjected to VAT.