MT&F

MATA-PEREZ · TAMAYO · FRANCISCO

ATTORNEYS AT LAW

TAX JOURNAL

NOVEMBER 2022

Highlights

BIR ISSUANCES

Revenue Regulations (RR)

Revenue Memorandum Circular (RMC)

COURT DECISIONS

Supreme Court

CTA En Banc

CTA Division

DOJ ISSUANCE

NPC ISSUANCE

- NPC Advisory Opinion No. 2022-011 – Personal Data Retention and Deletion (Page 28)
- NPC Advisory Opinion No. 2022-22 - Disclosure of Covid-19 Swab Test Results in Group Chat (Page 29)

BUREAU OF INTERNAL REVENUES ISSUANCES

REVENUE REGULATIONS

RR No. 13-2022 issued on October 7, 2022

- This Regulations clarifies the income tax treatment of equity-based compensation.

Highlights

- Equity-Based compensation cover all types of employee equity schemes that come in different forms such as stock options, restricted stock units, stock appreciation rights, and restricted share awards, which may or may not pertain to the shares of stock of the grantor itself, but which all have the common feature of being granted to existing employees of the grantor as a performance incentive for services rendered by the employees and are typically dependent on performance, outstanding business achievements award, exemplar organizational, technical or business accomplishments.
- Section 32 (A) of the National Internal Revenue Code, as amended, (the "Tax Code") defines "gross income" as all income derived from whatever source, including compensation for services in whatever form paid, including but not limited to, fees, salaries, wages, commissions, and similar items. As implemented, compensation includes payment in some form of medium other than money.
- Section 2.78.1 of RR No. 2-98, as amended, provides that compensation may be paid in money or in some medium other than money, as for example, stocks, bonds or other forms of property.
- Thus, equity grants under the applicable equity schemes of the grantor will give rise to a realized benefit on the part of the grantee-employees. The equity grants to be awarded to the employees are for the services being rendered by the said employees. Consequently, the equity grants under the equity plans, once exercised or availed of by the grantee-employees, are considered compensation to be taxed as such under Section 32 of the Tax Code, as amended, and implemented by RR No. 2-98, as amended. This rule will be applied regardless of the employment status of the grantee-employee who could either be rank-and-file or occupying a supervisory or managerial position considering that Section 32 of the Tax Code, as amended and all applicable issuances do not make a distinction for purposes of applying the tax implication on all forms of compensation, including equity-based compensation.

REVENUE MEMORANDUM CIRCULAR

Revenue Memorandum Circular No. 143-2022 issued on November 8, 2022

- This Circular clarifies the issues relative to RR No. 13-2022 on the income tax treatment of equity-based compensations.

Highlights

- Since there is no provision in RR No. 13-2022 expressly stating that it will be applied retroactively, RR No. 13-2022 shall be applied prospectively.
- Any exercise or availment of by employee-grantee of the granted equity-based compensation on or after October 29, 2022 shall be considered as compensation which shall be subject to withholding tax on compensation.

- Tax treatment:
  - Grant of Equity-Based Compensation:
    - Capital Gains Tax (CGT): no CGT shall be imposed, whether with or without an option price, since there is no capital gain on the part of the employer-grantor.
    - Documentary Stamp Tax (DST): no DST shall be imposed.
  - Sale or Transfer of Equity-Based Compensation
    - It is treated as a sale, barter or exchange of stocks not listed on the stock exchange.
    - If with consideration, it is subject to CGT under Section 24(C) of the Tax Code. If the equity-based compensation was granted for a price, the difference between the sales price and the option price shall be subject to CGT. If the same was granted without a price, the cost base of the option for purposes of computing the capital gains shall be zero.
    - If without consideration, it shall be treated as a donation of shares of stock subject to donor's tax. The basis shall be the fair market value (FMV) of the option at the time of donation.
  - Exercise of Equity-based Compensation
    - The difference between the book value/FMV of the shares, whichever is higher, at the time of the exercise of the equity-based compensation and the price fixed on the grant date, shall be considered as additional compensation subject to income tax and consequently, to withholding tax on compensation.
    - DST shall be imposed only upon the actual issuance of shares of stock to the employee-grantee (Sections 174 and 175 of the Tax Code).
    - If the equity-based compensation is transferable to employee-grantee's successor/heirs in case of death of employee-grantee, and such successor/heirs exercised the same within the prescribed exercise period, the difference between the book value/FMV of the shares, whichever is higher, at the time of the exercise of the granted equity-based compensation and the price fixed on the grant date, shall be considered as donation, and shall be subject to donor's tax.
  - Filing of Tax Returns
    - The employer-grantors shall file the following starting November 2022 (for equity-based compensation exercised starting October 29, 2022)
      - BIR Form No. 1601-C;
      - BIR Form No. 1604-C; and,
      - BIR Form No. 2316
    - Relative to the equity-based compensation exercised by their respective employee-grantees occupying managerial or supervisory position prior to RR No. 13-2022, the employer-grantors are still required to file the following:
      - BIR Form No. 1603Q;
      - BIR Form No. 1604-F; and,
      - BIR Form No. 2306.
  - Reportorial Requirements:
    - Grant of Equity-based Compensation
      - Within 30 days from the grant, the employer-grantor shall submit to the Revenue District Office (RDO) where it is registered a statement under oath stating the following:
        - Terms and conditions of the stock option
        - Name, TINs, position of the grantees
        - Book value, FMV, par value of the shares subject of the option at the grant date
        - Exercise price, exercise date and/or period
        - Taxes paid on the grant, if any

    - Amount paid for the grant, if any
- Exercise of Equity-based Compensation
    - During the exercise period, the employer-grantor shall file a report on or before the 10th day of the month following the month of exercise stating the following:
        - Exercise date
        - Name, TINs, position of those who exercised the option
        - Book value, FMV, par value of the shares subject of the option at the exercise date/s
        - Mode of settlement (i.e. cash, equity)
        - Taxes withheld on the exercise, if any.

COURT DECISIONS

SUPREME COURT DECISION

Bureau of Customs v. Biazon
G.R. No. 205836 promulgated on July 15, 2022 (Uploaded on November 24, 2022)

(Overtime work of employees of the BOC shall be paid by the BOC, and not by "importers, shippers or other persons served)

Facts:

In a Memorandum, addressed to former President Benigno S. Aquino III (Pres. Aquino) by Mr. Cesar V. Purisima, then-Secretary of Finance, it was reported that after discussion with airline companies and consultation with other executive departments, which includes the Bureau of Customs (BOC), they came to recognize that the payment by airline companies and other private entities of overtime pay rendered by government personnel was "a deterrent to the tourism industry," and was, as well, an "irregular activity."

Therefore, in response to the situation, and upon instructions of then Pres. Aquino, Biazon came up with administrative issuances, which include putting a stop to charging airline companies and other private entities served for overtime work rendered, which was to be charged, instead, against the national government.

Subsequently, BOC Employees Association (BOCEA) filed a petition seeking to invalidate the issuances which put an end to the long practice of BOC employees of charging overtime pay against private airlines and other private entities served. They alleged that the discontinuance of the practice of charging private entities for overtime work has "worsened the situation of the already economically dislocated customs personnel." Further, the BOCEA posits that the assailed administrative issuances are unconstitutional, patently illegal, and issued with grave abuse of discretion.

Issue:

Was there grave abuse of discretion in issuing the assailed administrative orders and memoranda?

Ruling:

No.

Section 3506 of the Tariff and Customs Code of the Philippines (TCCP) provides that Custom employees may be assigned by a Collector to do overtime work at rates fixed by the Commissioner of Customs when the service rendered is to be paid for by importers,

shippers or other persons served. The rates to be fixed shall not be less than that prescribed by law to be paid to employees of private enterprise.

However, Section 3506 of the TCCP has been repealed by Section 1508 of the Republic Act (RA) No. 10863. Section 1508 of RA No.10863 differs from Section 3506 of the TCCP in the following aspects: (1) overtime work shall now be paid by the BOC, and no longer by "importers, shippers or other persons served;" (2) the rate of service fees, including overtime pay, as fixed by the Commissioner of Customs explicitly requires approval by the Secretary of Finance; (3) the provision in Section 3506 of the TCCP stating that overtime pay in the BOC should not be lower than that paid to employees in private enterprises no longer appears in Section 1508 of RA No. 10863; and (4) Section 1508 contains a catch-all provision allowing the payment of additional service fees whenever applicable.

The new provisions of RA No. 10863 on overtime pay and other rules were adopted by Congress to protect and enhance government revenue, institute fair and transparent customs and tariff management that will efficiently facilitate international trade, prevent and curtail any form of customs fraud and illegal acts, and modernize customs and tariff administration consistent with international standards and customs best practices. Thus, Biazon validly exercised their ordinance-making authority.

CTA EN BANC DECISIONS

Ibex Philippines v. CIR
CTA EB No. 2533 promulgated on November 10, 2022

(The fact that the registered address is located in the Philippines and that it made purchases or incurred expenses in the Philippines, does not necessarily establish that the services rendered to a non-resident foreign corporation were performed in the Philippines.)

Facts:

On December 29, 2017, Ibex Philippines (Ibex) filed an administrative claim for refund under Section 112 (A), in relation to Section 112(C) of the Tax Code, covering the period from October 1, 2015 to June 30, 2016. Thereafter, the BIR denied Ibex's administrative claim. Thus, Ibex filed a Petition for Review before the Court of Tax Appeals (CTA). The CIR claimed that Ibex's judicial claim should be denied for its failure to substantiate its claim for refund at the administrative level. The CTA Division denied the Petition for Review for lack of merit.

On appeal, Ibex contends that it has complied with the requisites under Section 112 of the Tax Code and argues that a service agreement is not an indispensable requirement to prove that it performs call center services in the Philippines.

Issue:

Is Ibex entitled to its claim for refund?

Ruling:

No.

In order that the sale or supply of services may be subject to the value-added tax (VAT) rate of zero percent (0%) rate, the following essential elements must be established, to wit:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;

2. The services fall under any of the categories under Section 108(8)(2) of the Tax Code, as amended, or simply, the services rendered should be other than "processing, manufacturing or repacking goods";
3. The services must be performed in the Philippines by a VAT-registered person; and
4. The payment for such services should be in acceptable foreign currency accounted for in accordance with *Bangko Sentral ng Pilipinas* (BSP) rules.

Here, Ibex failed to establish that the subject services were actually rendered in the Philippines. The argument that Ibex's registered address is located in the Philippines and that it made purchases or incurred expenses in the Philippines does not necessarily establish that the services it rendered to a non-resident foreign corporation were performed in the Philippines.

More importantly, no proof of any service agreement or contract was adduced by Ibex. Hence, it cannot be ascertained whether the subject services were indeed performed in the Philippines.

Municipal (now City) Government of Taguig, Municipal (now City) Treasurer of Taguig, and their duly authorized representatives v. Veterans Federation of the Philippines
CTA EB No. 2522 promulgated on November 4, 2022

(The real property tax [RPT] is chargeable against the taxable persons who had actual or beneficial use and possession of the property.)

Facts:

The "Veterans Center" is a fifty (50)-hectare property located at Western Bicutan, Taguig, Metro Manila. The said property has been set aside, pursuant to Proclamation No. 192, to serve as a center for the different activities of Filipino war veterans, including Veterans Rehabilitation, Medicare and Training Center, headquarters for the various veterans' organizations, and other allied activities.

The Veterans Federation of the Philippines (VFP) received from the City Treasurer, a Warrant of Levy which provides that the Veterans Center was delinquent in paying RPT covering taxable years (TY) 1989 to 1999.

VFP claims that it is a government instrumentality exempt from payment of RPT. On the other hand, the City of Taguig claims that: 1) VFP is a non-stock, non-profit organization, not exempt from paying RPT; 2) VFP is a body corporate heavily engaged in the profitable business of leasing a vast portion of its land to commercial entities; 3) the tax declaration of the Veterans Center does not contain any annotation that it is exempt from payment of RPT; and 4) VFP falls under the definition of a Government Owned or Controlled Non-Stock Corporation (GOCC).

Issues:

1. Is VFP a GOCC which is subject to RPT?
2. Is VFP liable for RPT?

Ruling:

1. No.

In the case of *VFP v. Angelo T. Reyes, et al.,* the Supreme Court has already declared that VFP is a public corporation. Moreover, RA No. 2640 is entitled "An Act to Create a Public Corporation to be known as the Veterans Federation of the Philippines, Defining its Powers,

and for Other Purposes." Thus, any attempt to classify VFP as a GOCC would not be acceptable since the law which created the VFP had designated it as a public corporation.

A public corporation or a government instrumentality, such as VFP, is placed under the control and supervision of the Secretary of National Defense. Hence, it is outside the purview of local taxation under Section 133 of the Local Government Code (LGC). Thus, VFP is exempt from all taxes of any kind, whether national, local, or provincial taxes.

2. No.

The Veterans Center is owned by the Republic of the Philippines and, as such, is exempted from payment of RPT. Proclamation No. 192 is clear that the Veterans Center is not owned but is only administered by VFP, and its ownership remained with the Republic of the Philippines.

The tax declaration presented by the City of Taguig under the name of VFP is not enough to prove ownership of the Veterans Center since tax declarations are not conclusive proof of ownership.

Moreover, the RPT is chargeable against the taxable persons who had actual or beneficial use and possession of the property. VFP admits that the beneficial use of a portion of the Veterans Center was given to various taxable entities by virtue of lease agreements. Thus, the leased properties shall be taxable pursuant to the "Beneficial Use Doctrine" under Section 234(a) of the LGC, which exempts from RPT any real property owned by the Republic of the Philippines," unless the beneficial use of the property is transferred to a taxable person.

A government instrumentality is not a taxable person under Section 133(o) of the LGC. Thus, even if VFP has granted to other taxable entities the beneficial use of a portion of its properties, such fact does not lose its tax-exempt status. Hence, the assessed RPTs are owed by VFP's lessees, being the persons who had the beneficial use of the property.

Imelda Macanes, in her capacity as the Provincial Treasurer of Benguet and Merlita G. Tolito, in her capacity as the Officer-in-Charge of the Municipal Treasury Office of Bakun, Benguet v. Luzon Hydro Corporation
CTA EB No. 2407 promulgated on November 7, 2022

(Executive Order [EO] No. 88 was promulgated pursuant to Section 277 of the LGC, which refers to the authority of the President to condone or reduce the RPT and interest for any year in any province, city, or municipality. The exercise of the power requires no concurrent action from either or both branches of government.)

Facts:

In November 1996, the National Power Corporation (NPC) entered into a Power Purchase Agreement (PPA) for the design, construction, and operation of the Bakun Hydroelectric Powerplant (BHP) with different companies, including Luzon Hydro Corporation (LHC).

A Compromise Agreement was entered into by the NPC and the Province of Benguet in January 2013 effective from January 1, 2022 until February 5, 2026 ("2013 Compromise Agreement"), wherein the Province of Benguet agreed to adopt and apply the special assessment level of ten percent (10%) to "Future Assets" or "any and all properties classified as real property to be acquired, installed, built or constructed and are required to be declared… forming an integral part of the BHP facility".

In November 2015, LHC declared its machineries consisting of the tunnel, anchor blocks, HDPE pipes, and rock bolts with the Municipal Assessor's Office of Bakun, Benguet. The machineries are located at Mangta, Sinacbat, Bakun, and Benguet (Bakun property).

In 2016, after LHC declared the Bakun property, it was required to pay the assessed real property tax (RPT) based on an assessment level of 80% in the amount of PhP486,973.72, covering the back taxes from 2002 to 2015 and the amount due for 2016.

Thereafter, LHC paid under protest the said assessed RPT. In its protest, LHC demanded a refund of the RPT it paid since the subject properties should have been subjected to an assessment level of 10% based on the 2013 Compromise Agreement instead of the 80% assessment level imposed. Subsequently, LHC filed its Petition for Review with the Local Board of Assessment Appeals (LBAA).

In April 2018, the LBAA partially granted LHC's petition by declaring that LHC is liable to pay the subject RPT, not NPC, the 2013 Compromise Agreement does not include future properties and does not cover the subject Bakun Property; the 80% assessment level should be imposed on the subject Bakun property.

Upon appeal by LHC before the Central Board of Assessment Appeals (CBAA), the CBAA promulgated a Decision partially denying LHC's appeal with the exception that the LGU is ordered to recompute the RPT on the subject properties based on the provisions of EO No. 88, series of 2019, which provides for an assessment level of 15%.

Issues:

Was the CBAA wrong in applying EO No. 88 in the present case?

Ruling:

No.

In this case, the issue of applicability of EO No. 88, which provides for an assessment level of fifteen percent (15%), is inextricably intertwined with the issue of whether the assessment level to be imposed on the Bakun Property is ten percent (10%) or eighty percent (80%).

In this case, Macanes failed to file a Reply to dispute LHC's argument anent the applicability of EO No. 88.

Further, EO No. 88 was promulgated pursuant to Section 277 of the LGC, which refers to the authority of the President to condone or reduce the RPT and interest for any year in any province, city, or municipality. The exercise of power requires no concurrent action from either or both branches of government.

CIR v. Chevron
CTA EB No. 2452 promulgated on November 24, 2022

(In view of the Modified Enhanced Community Quarantine [MECQ] in Metro Manila and other parts of the country, Supreme Court [SC] Administrative Circular No. 43-2020 and 43A-2020 was issued suspending the reglementary periods for filing of petitions, appeals, complaints, motions and other court submissions from August 4 to 18, 2020 and declared its resumption on August 19, 2020. The remaining balance to file will start to run again on August 19, 2020.)

Facts:

On January 31, 2013, Chevron received a Letter Notice (LN) dated January 28, 2013 for calendar year (CY) ended 2011. A copy of the Preliminary Assessment Notice (PAN) dated

November 18, 2016 was subsequently received. After filing a letter seeking the cancellation of the PAN, a Final Assessment Notice (FAN) was issued on December 20, 2016. Thus, on February 2, 2017, Chevron filed its Protest to the FAN.

Thereafter, Chevron received a copy of the Final Denial Letter on March 10, 2017, informing Chevron that its request for reinvestigation could not be given favorable action for having been filed beyond thirty (30) days from receipt of the FAN. Thus, Chevron filed a Petition for Review with the CTA.

The CTA Division cancelled and set aside the FAN. On appeal, the CIR argues that the protest to the FAN was belatedly filed beyond the 30-day period under the Tax Code, as amended.

Issues:

1. Does the CTA have jurisdiction in the instant case?
2. Should the CTA Division decision be upheld?

Ruling:

1. Yes.

   The Motion for Reconsideration (MR) from the decision of the CTA Decision was timely filed. The CIR received the assailed Decision dated July 15, 2020 on July 29, 2020. Counting fifteen (15) days from said date, the CIR had until August 13, 2020 within which to file the motion for reconsideration pursuant to Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA).

   However, on August 2, 2020 and August 3, 2020, the Supreme Court issued SC Administrative Circular No. 43-2020 and 43A-2020, respectively, suspending the reglementary periods for filing of petitions, appeals, complaints, motions and other court submissions from August 4 to 18, 2020 and declared its resumption on August 19, 2020.

   Counted from July 30, 2020 to August 4, 2020 (start date of the period of suspension), the CIR had a remaining balance of ten (10) days within which to file an MR which started to run on August 19, 2020, thus, giving the CIR until August 28, 2020 as the last day to file an MR.

2. Yes.

   The assessments issued by the CIR are void and without any effect for having been issued in violation of Chevron's right to due process.

   Well-settled in jurisprudence is the importance of a Letter of Authority (LOA) in examining the books of accounts and other accounting records of taxpayers and in assessing internal revenue taxes and the distinction between an LN and an LOA giving emphasis on the necessity of the latter document before an audit or examination may be commenced. Revenue Memorandum Order (RMO) 32- 2005 provides that after an LN has served its purpose, the Revenue Officer (RO) should have properly secured an LOA before proceeding with the further examination and assessment of the taxpayer.

   Here, only a LN was issued. The CIR failed to prove that an LOA was issued prior to the assessment.

Commissioner of Customs v. Toyota Motor Philippines Corporation
CTA EB No. 2451 promulgated on November 24, 2022

(The CTA Division could directly review the actions or inactions of the District Collector of BOC and forego the review of the BOC Commissioner when there is unreasonable delay or official inaction of the District Collector would lead to prejudice. This is one of the exceptions to the doctrine of exhaustion of administrative remedies.)

Facts:

On March 17, 2011 and April 12, 2011, Toyota Motor Philippines Corporation (Toyota) filed with the District Collector of BOC – Collection District II-A (Port of Manila) a letter-request for a tax refund or credit which it paid on its Complete Built Up (CBU) and Knocked Down (KD) importation, respectively, from Japan during the period of January to June 2010. Toyota claimed that under EO No. 905 enacted on June 29, 2010, implementing the Japan-Philippines Economic Partnership Agreement (JPEPA), the applicable duty rate on motor vehicles with cylinder capacity above 3,000 cc is 0% effective January 1, 2010.

Because of the alleged inaction of the District Collector, Toyota filed its Petition for Review (Petition) on January 28, 2016. Trial ensued. The CTA Division partially granted Toyota's Petition. Both parties moved for reconsideration. The CTA Division denied the Commissioner of Customs (COC)'s MR and granted Toyota's MR. COC elevated the case to the CTA En Banc.

COC claims that the CTA Division did not validly acquire jurisdiction over the prior petition as RA No. 1125, as amended, only confers upon the CTA the power to review the decisions of the COC himself and that the provision on the "inaction" is applicable only to the CIR but not to the COC. Also, COC claims that EO No. 905 has no retroactive effect.

Issues:

1. Did the CTA Division have jurisdiction over Toyota's Petition despite failure to exhaust administrative remedies?
2. Can EO No. 905 be applied retroactively with respect to the subject imports of Toyota?

Ruling:

1. Yes.

   In the case of *The Bureau of Customs, et al. v. Jade Bros. Farm and Livestock, Inc.*, the Supreme Court categorically ruled that the CTA Division could already review the actions of the District Collector (and forego with the review of the BOC Commissioner) in certain circumstances, including when there is unreasonable delay or official inaction leading to prejudice.

   Here, the records of the case will show that Toyota filed its administrative claims on March 17, 2011 and April 12, 2011, respectively, and the petition was filed to the CTA Division on January 28, 2016. As correctly found by the CTA Division, more than four (4) years had lapsed from the filing of the administrative claims until Toyota decided to seek judicial intervention on the District Collector's inaction. By applying the exception to the doctrine of administrative remedies, there was an unreasonable delay on the part of the District Collector in resolving Toyota's claims to the latter's prejudice.

2. Yes.

   EO 905, which was signed on June 29, 2010 and published on July 1, 2010, is applicable to Toyota's importations from January to June 2010. It is the intention of the said EO to

implement the 0% duties on importations of motor vehicles with cylinder capacity exceeding 3,000 cc starting January 1, 2010.

Under the JPEPA, among the goods which the Philippines agreed to eliminate or reduce any rates on are motor vehicles and their parts imported from Japan. Moreover, in the JPEPA, the applicable duty rate on motor vehicles with cylinder capacity of above 3,000 cc shall be free starting from January 1, 2010.

CTA DIVISION DECISIONS

People of the Philippines v. Kjet Enterprises and Julie Grace Magahis y Rafon
CTA Crim. Case Nos. O-768 and O-769 promulgated on November 3, 2022

(Before substituted service can be resorted to, it is required that personal service be first proven to be impracticable. Substituted service may be made at the taxpayer's residential address by leaving a copy of the notice with a person of legal age residing therein.)

Facts:

Magahis is the sole proprietor of KJET, which is engaged in the business of retailing snacks and grocery items. A PAN was served on Magahis on April 20, 2015. Without any protest to the PAN, a FAN and Final Letter of Demand (FLD) was issued and served on Magahis on January 22, 2016. The PAN, FAN, and FLD were all allegedly served on Magahis via substituted service, through her father Esmeraldo Magahis (Esmeraldo). A Final Notice Before Seizure was issued against Magahis through registered mail. Later, the BIR issued a warrant of distraint and/or levy and several warrants of garnishment against Magahis against her bank accounts.

On December 13, 2018, A criminal complaint was filed against Magahis with the Department of Justice (DOJ). Magahis was accused of willfully and feloniously failing to pay her VAT and Income Tax liabilities, docketed as Criminal Case Nos. O-768 and O-769, respectively.

In both Criminal Case Nos. O-768 and O-769, warrants of arrest have been issued, but have been returned unserved because Magahis already ceased operations of her business without notifying the BIR. Thereafter, Magahis surrendered voluntarily and her bail bond was posted.

Magahis filed a Motion for Leave and filed a Demurrer to Evidence stating that the LOA, PAN and FAN were not validly served on her. She further contends that she did not willfully fail to pay taxes. The CTA Division denied the Demurrer essentially stating that the evidence is not insufficient to sustain the charges.

Issues:

1. Were the PAN, FAN and FLD properly served?
2. Is Magahis liable for violation of Section 255 of the Tax Code?

Ruling:

1. Yes.

Pursuant to RR No. 12-99, substituted service may be made at the taxpayer's residential address by leaving a copy of the notice with a person of legal age residing therein. However, before substituted service can be resorted to, it is required that personal service be first proved to be impracticable. Substituted service can be made by leaving the copy with a person of legal age residing therein.

Magahis' only defense is that she did not authorize her father Esmeraldo to receive the BIR's notices. An attempt to serve the BIR notices to Magahis was made at another known address which happens to be her place of residence. In such a case, RR No. 12-99, as amended, provides that substituted service only requires that "if the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein." Thus, the service of the notices to Esmeraldo is valid considering that he is a person of legal age residing therein.

Further, given that Magahis admitted that she did not notify the BIR of any change of KJET's registered address, and there is no evidence on record that the BIR was even notified that KJET had already closed its business at the said location, the BIR was justified in resorting to substituted service pursuant to its assessment of Magahis. Accordingly, the PAN, FAN, and FLD were deemed validly served on Magahis through her father.

2. Yes.

The elements of tax evasion are as follows: (1) the end to be achieved, i.e., the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being "evil," in "bad faith," "willful!," or "deliberate and not accidental"; and (3) a course of action or failure of action which is unlawful

Here, there appears to be a conscious effort on Magahis to evade the payment of taxes. First, by failing to inform the BIR of the closure of KJET's operations at its registered business address or any change thereto, Magahis already thwarted attempts of the BIR to serve her assessment notices. This becomes more glaring when prior to ceasing operations, a LOA was already served at Magahis' registered business address on August 2014. According to Magahis, KJET's operations at its business address was terminated only on 23 December 2014.

Second, despite valid substituted service of the PAN, FAN, and FLD, Magahis never protested nor paid any of the tax deficiencies assessed. It must be stressed that Magahis was served at her correct residential address.

Moreover, Magahis' insistence that she only came to know of the assessment during the case pendency is highly improbable. Even disregarding the substituted service of the subject notices, records reveal that ten (10) of Magahis' bank accounts in ten (10) different banks have already been garnished as early as 2016. Therefore, it is unbelievable that Magahis is ignorant of these garnishments against her own bank accounts all this time.

MSCI Hong Kong Limited v. CIR
CTA Case No. 10131 promulgated on November 2, 2022

(*In claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the Tax Code and other implementing rules and regulations.)*

Facts:

On March 28, 2019, MSCI Hong Kong Limited ("MSCI") filed with the BIR its Application for Tax Credits/Refunds for the refund of its excess and unutilized input VAT incurred on its purchases of goods and services for 2017, which are attributable to its zero-rated sales of services to nonresident foreign corporations (NRFC) engaged in business conducted outside the Philippines.

Thereafter, the BIR issued a Tax Verification Notice (TVN) against MSCI, directing RO Jonathan Ray Colobong to verify the supporting documents and/or pertinent records relative to the MSCI's claim, which the BIR denied for lack of legal and factual basis.

Hence, MSCI filed a Petition for Review before the CTA. MSCI claims that its sales of services to persons who are engaged in business conducted outside the Philippines are zero-rated sales, and that it paid or incurred input VAT which are properly substantiated in accordance with the law and regulations. On the other hand, the CIR argues that in an appeal on the denial of its administrative claim for refund, it is incumbent upon the taxpayer-claimant to show that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund.

Issue:

Is MSCI entitled to its claim for refund?

Ruling:

Yes.

In claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations.

The following essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%) under Section 108(B)(2) of the Tax Code:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;
2. The services fall under any of the categories under Section 1 08(B)(2),58 or simply, the services rendered should be other than "processing, manufacturing or repacking goods";
3. The services must be performed in the Philippines60 by a VAT-registered person; and,
4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.

In order to be considered as a NRFC doing business outside the Philippines, each entity must be supported, at the very least, by both a Certification of Non-Registration of Corporation/Partnership issued by the Philippine SEC (which establishes that the recipient of the service has no registered business in the Philippines, and that it is not engaged in trade or business within the Philippines; while the latter proves that the recipient of the service is indeed foreign), and proof of incorporation/registration in a foreign country.

Here, the Service Agreements also established that the services to be rendered by MSCI to its clients will be performed in the Philippines.

Furthermore, the foreign currency remittances referred to under Section 108(B)(2) must not only be duly accounted for in accordance with the rules and regulations of the BSP but must also be supported by official receipts that comply with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the Tax Code. Lastly, the sales invoices (Sis) and official receipts (Ors) must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238 of the Tax Code.

Here, MSCI submitted and complied with all of the foregoing; hence, it should be entitled to its claim for refund.

St. Timothy Construction Corporation, et al. v. BIR
CTA Case No. 10472 promulgated on November 3, 2022

(The CTA may take cognizance of a petition for certiorari to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction committed by the BIR in issuing a LOA against a taxpayer.)

Facts:

St. Timothy Construction Corporation, et.al (the "Corporations") received separate LOAs from the BIR. On October 26, 2020, believing that the LOAs were irregularly issued, the Corporations individually filed their Request for LOA Cancellation.

On December 26, 2020, the Corporations received the BIR's response letters, denying their requests for LOA cancellation with finality (assailed Resolutions). Thereafter, claiming that the BIR's replies/responses to their requests are already final, the Corporations filed the instant Petition for Review under Rule 65 before the CTA on February 22, 2021.

The Corporations argue that the law has not been observed by the BIR in the issuance of the subject LOAs. RMO No. 44-2010 provides that "The basis for the audit (i.e., regular audit program, special audit, etc.) shall be reflected in the Letter of Authority. The Corporations argue that no audit program was conducted by the BIR as the basis to issue the LOA.

Issues:

1. Did the BIR act with grave abuse of discretion in issuing the subject LOAs?
2. Was the Petition for Certiorari the correct remedy?

Ruling:

1. No.

   The Corporations failed to establish and prove that the BIR or any of its duly authorized representatives acted in a capricious, whimsical, arbitrary, or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction in the issuance of the LOAs.

   An annual audit program is not a condition precedent for the issuance of an LOA. An LOA can still be issued despite the absence of an annual audit program as clarified under RMC No. 006-13.

2. No.

   The Corporations failed to exhaust all other remedies available to them. A motion or request for reconsideration is a plain, speedy, and adequate remedy in the ordinary course of law. An appeal to the Revenue Regional Director or the Commissioner of Internal Revenue is also an available remedy.

   The Corporations cannot prematurely resort to a petition for certiorari before the Court on the wrong assumption that a plain reading of the assailed Resolutions hinted that they were already final. To reiterate, the Corporations ought to know that apart from the RDO, recourse to the RRD and the Commissioner of Internal Revenue, who have the authority to review the actions of their subordinates, is similarly available in this case.

Chang L. Mohammad, Sharalyn S. Pedrena, Johnny S. Yusup, Ferdaus A. Omar and Arman P. Daud v. Commissioner of Customs
CTA Case No. 10346 promulgated on November 4, 2022

(Forfeiture proceedings are in the nature of proceedings in rem, i.e., directed against the res or imported articles and entails a determination of the legality of their importation. Under jurisprudence, the Supreme Court ruled that forfeiture of seized goods is a proceeding against the goods and not against the owner.)

Facts:

Omar, Daud, and Mohammad traveled to and from Hong Kong. They returned to Manila, carrying unspent foreign currency in cash amounting to US $649,600.00—divided between Daud's (US $501,600.00) and Mohammad's (US $148,000.00) bags.

During their trip, Daud allegedly gave Mohammad a Customs Baggage Declaration Form (CBDF) to fill out for the foreign currency he was carrying in his backpack. However, Mohammad did not accomplish the said form as it was allegedly difficult for him to write while in transit and he also wanted to rest. Daud, on the other hand, filled out his CBDF for the foreign currency contained in his luggage. Daud allegedly requested Mohammad's help in hand-carrying Daud's luggage, which is why, upon arrival at Ninoy Aquino International Airport (NAIA) Terminal 3, Mohammad was already carrying two (2) bags.

At the Customs area, Mohammad filled out a CBDF and a Foreign Currency Declaration Form (FCDF), wherein he declared that he was carrying foreign currency in the amount of US $148,000.00. Upon inspection, however, it was discovered that Mohammad was, in fact, carrying a total of US $649,600.00 in the two (2) bags found in his possession. The Customs Officers then issued a Held Baggage Receipt (HBR) against the US $649,600.00 intercepted from Mohammad, for the reason that the amount was in excess of what was declared by the passenger.

The amount of US $148,000.00, which was declared by Mohammad, as well as the US $10,000.00, which under BSP Circular No. 308, Series of 2001, as amended, and the Manual of Regulations on Foreign Exchange Transactions (MORFXT) may be brought into the country without declaration, was not released to him that night, but only the following day.

On January 28, 2020, NAIA District Collector Talusan issued the Warrant of Seizure and Detention (WSD) against the subject's undeclared foreign currency of US $491,600.00, which was later affirmed by the Commissioner of Customs (COC).

Mohammad et al. argued that the COC erred in finding fraudulent intent on the part of Mohammad and, consequently, in affirming NAIA District Collector Talusan's denial of Mohammad et al.'s offer of settlement through payment of fine, pursuant to the first exception under Section 1124 of the Customs Modernization and Tariffs Act (CMTA).

On the contrary, the COC pointed out that even without the finding of fraud, Section 1124 of the CMTA does not automatically grant a right upon any claimant to demand the settlement of a pending seizure and forfeiture case. Such decision to accept an offer of settlement remains solely within the discretion of the District Collector or the COC, as the case may be.

Issues:

Was forfeiture of the amount in issue proper?

Ruling:

Yes.

Based on Section 1113(l)(2) of the CMTA, in relation to Section 4(2) of the BSP's MORFXT and, relatedly, Section 4.1 of the Customs Administrative Order No. 1-2017, any article sought to be imported found in the baggage or possession of a person arriving from abroad such as, in this case, foreign currency in excess of the US $10,000.00 threshold, is subject to forfeiture if the said person failed to declare the same to the Customs officer by presenting a duly accomplished FCDF, in addition to the CBDF.

Section 3(j), Rule 131 of the Revised Rules on Evidence, as amended, provides that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act is the taker and the doer of the whole act; otherwise, that thing which a person possesses, or exercises acts of ownership over, is owned by him. In this case, since the subject luggage containing foreign currency was in the possession of Mohammad at the time that it was found, such is deemed to belong to him. Without evidence to the contrary, as in this case, mere denial will not suffice.

Further, the Court also found Mohammad et al.'s actions, explanation and excuses as unusual in nature or vary from what is considered or accepted as normal activity that may be deemed red flags for fraud. The COC also noted that at the time of importation, reports and news had been circulating on large-scale smuggling of foreign currency into the country by suspected syndicates using travelers arriving at NAIA, and this prompted the BOC, in coordination with the AMLC, to probe attempts by suspected syndicates to bring in large sums of foreign currency into the country.

Forfeiture proceedings are in the nature of proceedings *in rem*, i.e., directed against the *res* or imported articles and entail a determination of the legality of their importation. Under jurisprudence, the Supreme Court ruled that forfeiture of seized goods is a proceeding against the goods and not against the owner.

In this proceeding, it is in legal contemplation the property itself which commits the violation and is treated as the offender, without reference whatsoever to the character or conduct of the owner.

BASF Philippines, Inc. v. CIR
CTA Case No. 10221 promulgated on November 3, 2022

(Nonpayment of input VAT does not translate to nonpayment of output VAT. It cannot be presumed that what were imported were immediately sold. A sales transaction can only be proved if the same is duly supported by documentary evidence such as invoices [for sale of goods] or ORs [for sale of services].)

Facts:

On 2017, BASF Philippines, Inc. (BASF) received the PAN and FAN. BASF timely protested the same. Later, a Final Decision on Disputed Assessment (FDDA) was issued. Then, BASF elevated the case before the CTA.

BASF argued that its right to due process was violated since the deficiency assessment is void. BASF asserts that the CIR failed to indicate in the FAN the definite amount of tax liability and failed to explain in the FAN the specific factual and legal basis relied upon for rejecting BASF's arguments.

In addition, BASF questioned the items of assessment as follows: 1) the undeclared sales due to third-party information (TPI) are void for being based on mere presumptions and unverified data; 2) the unaccounted sales due to undeclared importation was the result of

timing differences; and 3) the disallowed input tax is invalid because it complied with the invoicing requirements.

Issues:

1. Was BASF's right to due process violated?
2. Were the following items of assessment valid:
   i. Undeclared sales due to TPI;
   ii. Unaccounted sales due to undeclared importation; and
   iii. Disallowed input tax.

Ruling:

1. No.

In determining the validity of the assessment, what is crucial is the definiteness of the amount indicated in the FAN with respect to the deadline or due date provided.

As to the pertinent portion of the FAN, it reads: "*Please take note that the interest and the total amount due will have to be adjusted if paid beyond the date specified therein.*"

Here, the FAN clearly indicates the interest, which forms part of the total amount due, will only be adjusted if the taxpayer pays beyond the deadline or due date provided. Insofar as the total amount indicated in the FAN is concerned, it is undeniable that the amount of deficiency VAT plus interest is definite and certain on the due date provided therein. This is true despite a warning from the BIR that additional interest (consequently affecting the total amount due) shall continue to accrue beyond the due date. It is then not fair to fault the BIR for reminding the taxpayer of the consequences of a delayed settlement.

2. Yes, but only for the assessment on the disallowed input VAT.

The assessment on undeclared sales due to TPI is invalid. As a rule, the BIR is required to obtain sworn statements from the TPI sources to attest the veracity of the data provided. In this regard, the BIR must first send confirmation requests to the third-party sources, or coordinate with the RDO who has jurisdiction over the third-party sources, to course through the confirmation requests to the latter. RMO No. 13-2012 furthers that if the TPI source/s is/are located outside of the jurisdiction of the investigating or sending office, the BIR Confirmation Letters must be duly supported by registered return cards.

Here, while the BIR sent confirmation letters, the statement included in the letters did not satisfy the confirmation/verification requirement of the RMOs: "*If our Office does not receive any response from you within five (5) days from receipt of such correspondence, we will consider the figures in the TPI as true and correct.*"

The assessment on unaccounted sales due to undeclared importation is invalid. The CIR alleges that a comparison of the importations reported on BASF's VAT returns versus the data that the BOC furnished resulted in undeclared importation. Using the Cost Ratio Method, the grossed-up value of the undeclared importation resulted in a corresponding undeclared sale. These undeclared sales should be subjected to 12% VAT. BASF argues that the alleged undeclared importation was the result of timing differences.

Based on Sections 106 and 108 of the Tax Code, in the imposition or assessment of output VAT, it must be clear that there was a sale, either: 1) an actual or deemed sale for sale of goods and/or properties; or 2) a valuable consideration actually or constructively for sale of services. Hence, no imposition or assessment of output VAT can arise from an alleged undeclared sales arising from under-declaration of importation.

To clarify, importation refers to the act of bringing in of goods from a foreign territory into Philippine territory. Importation is imposed an input VAT of 12%. If the CIR is alleging that BASF has undeclared importation, logically it can only argue that BASF did not pay the corresponding input VAT. However, nonpayment of input VAT does not translate to nonpayment of output VAT. It cannot be presumed that what were imported were immediately sold. A sales transaction can only be proved if the same is duly supported by documentary evidence such as invoices (for sale of goods) or ORs (for sale of services).

The assessment on the disallowed input tax is valid. BASF argues that it complied with the invoicing requirements. In addition, BASF argues that the out-of-period invoices and ORs must not be disallowed as it is not claiming a VAT refund and the government is not prejudiced since claim is only delayed (and not advanced).

Section 110 of the Tax Code provides that an input tax evidenced by a VAT invoice (for sale of goods) or OR (for sale of services) shall be creditable against the output tax.

The VAT system is invoice-based, i.e., taxation relies on sales invoice or official receipts. Section 237 of the Tax Code uses the word "shall" which is imperative and operates to impose a duty which may be enforced. Every time a VAT invoice or OR is issued, regardless of whether it will be utilized as a tax credit against output VAT or for VAT refund, the invoicing requirements apply.

Here, based on verification of the ORs/invoices, BASF was not able to satisfy the above requirements. Among others, findings show that the receipts/invoices have no TIN and incomplete registered address or not under the registered name of the taxpayer. As to the out-of-period invoices/receipts, they were either: issued outside the taxable year that the claim was made or claimed in ahead of the actual date of the said invoices/receipts.

Holcim Philippines, Inc. v. The City of Manila and Josephine D. Daza, in her Capacity as the City Treasurer of the City of Manila
CTA AC No. 251 promulgated on November 18, 2022

(No assessment is involved in actions falling under Section 196 of the LGC; hence, the taxpayer is not under investigation or audit by the LGU. Aside from the compliance with the jurisdictional periods, Section 196 of the LGC only requires proving that the LGU illegally or erroneously collected a tax and that a refund thereof is the express remedy sought.)

Facts:

In January 2018, Holcim Philippines, Inc. (Holcim) executed a Certification stating its gross sales for CY 2017 amounting to PhP1,182,910.78 in connection with the renewal of its business permit. The City of Manila, through its treasurer Daza, issued a Statement of Account (SOA) for the 1st Quarter of CY 2018, holding Holcim liable for local business tax (LBT) amounting to PhP660,483.32. To guarantee its continuous operations, Holcim paid the assessed amount, but later on sought a partial refund of the amount of PhP331,204.67 deeming the same to have been collected illegally.

The City of Manila issued against Holcim SOAs for the 2nd and 3rd Quarters of CY 2018 in March and June 2018, respectively. Holcim paid the assessed similar account both times and requested partial refund for payments as well.

During trial, the witness for the City of Manila and Daza, Magdalena Afuang, its Local Treasury Operations Officer III, stated that *per* Holcim's business permit, it has been registered as a mere wholesaler, not a wholesaler of essential commodities. As such, Ms.

Afuang noted that it was not to be entitled to the preferential rate of LBT under Section 103 of the 2013 Omnibus Revenue Code of the City of Manila (ORCCM).

After the trial, RTC found Holcim to have failed in proving that it has registered as a wholesaler of an essential commodity which, in this case, is cement *per* its business permit for CY 2018 and the preceding years. The RTC also found Holcim's judicial action for refund dismissible for its failure to substantiate its claim at the administrative level.

Issue:

1. Is the nature of tax, fee, or charge being collected from Holcim required to be specified in the SOA?
2. Was Holcim able to prove it is entitled to the preferential rate?

Ruling:

1. No.

The Court reiterated the difference between Sections 195 and 196 of the LGC. Section 196 reveals that it does not require that the nature of tax or fee levied be specified, while Section 195 provides such degree of specificity as regards the issuance of a notice of assessment (NOA). In this case, Holcim grounded its whole case on Section 196 of the LGC yet based the City of Manila and Daza's violations on Section 195 of the LGC which deals with a completely separate matter.

The SOAs issued in connection with the renewal of Holcim's business permit are distinct from a NOA issued in connection with Section 196 of the LGC. It noted that the fact that the purpose of requiring tax authorities to properly inform the taxpayer of both the legal and factual bases, including the nature of the tax, fee or charge, of the assessment is to aid the taxpayer to make an effective and reasonable protest.

No assessment is involved in actions falling under Section 196 of the LGC; hence, the taxpayer is not under investigation or audit by the LGU. Aside from compliance with the jurisdictional periods, Section 196 of the LGC only requires proving that the LGU illegally or erroneously collected a tax and that a refund thereof is the express remedy sought.

Assuming *arguendo* that the requirements of Section 195 need to be satisfied, the City of Manila and Daza substantially complied therewith when Holcim was billed as "WHOLESALER", which can be reasonably assumed to fall under Section 102 of the ORCCM, in the SOAs.

2. No.

In order for Holcim to be entitled to the discounted tax rate under Section 103 of the ORCCM, it is incumbent upon Holcim to prove that it is engaged in business as a manufacturer, miller, producer, wholesaler, distributor, dealer or retailer of cement or other essential commodities.

However, the Court found that from the nature of its business, Holcim is *not exclusively* engaged in the sale and/or manufacture of cement. According to its amended Articles of Incorporation (AOI), it may engage in the sale and/or manufacture of all kinds of minerals and building materials. In connection with this, Holcim's Certification of its total gross receipts/sales for the CY 2017 did not indicate that its sales were derived *solely* from the sale of cement.

The Court then had no way to determine whether the preferential rate of LBT may be applied to even a portion of Holcim's revenue. Further, Holcim's evidence was severely lacking since it failed to rebut Ms. Afuang's testimony that Holcim applied for a permit to conduct business in the City of Manila as a WHOLESALER from 2004 to present as shown by its Business Identification Number and 2017 and 2018 business permits.

In view of the foregoing and the declaration of Holcim's own witness, Mr. Marion Castañeda, that Holcim's business, at least in Manila, is registered as "WHOLESALER" in general and "WAREHOUSING", the Court found that Holcim was not entitled to a preferential rate of LBT.

Pacific Ocean Manning, Inc. v. CIR
CTA Case No. 9901 promulgated on November 10, 2022

(In order to be considered as a nonresident foreign corporation doing business outside the Philippines, each entity must be supported at the very least by both an SEC Certification of Non-Registration of the Company and proof of incorporation or registration in a foreign country [e.g., Certificate of Incorporation, Memorandum of Association, and Articles of Incorporation].)

Facts:

Pacific Ocean Manning, Inc. (Pacific) duly filed its quarterly VAT returns for the taxable quarters in 2016. In 2018, Pacific filed administrative claim for refund of its excess input tax covering the period of 2016. Later, Pacific received a letter from the BIR denying the administrative claim. Pacific appealed the denial of its administrative claim to the CTA.

Pacific claims that it is entitled to an input VAT refund for services rendered to its nonresident foreign client, V. Ships UK, Ltd.

The CIR argues that Pacific is not entitled to refund. The CIR contends that normally, the recipient of services is also the payor of such services. The Manning Agency Agreement clearly provided that services were to be rendered to V. Ships UK, Ltd. However, in this case, the recipient of the services and the payor of such services are two different entities. Also, Pacific failed to show proof of incorporation of the non-resident foreign clients as required by jurisprudence.

Issue:

Does Pacific's sale of services qualify for VAT zero-rating?

Ruling:

No.

Based on Section 108(B)(2) of the Tax Code, the following elements must be satisfied for the sale of services to qualify for VAT zero-rating:

a. The service rendered must be other than "processing, manufacturing, or repacking of goods";
b. The service-recipient is a foreign corporation, and the said corporation is doing business outside the Philippines or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;
c. The service must be performed in the Philippines by VAT-registered persons; and
d. The payment for such service should be in acceptable foreign currency accounted for in accordance with BSP rules and regulations.

Here, as to the *first element*, Pacific failed to submit in evidence a complete Manning Agency Agreement between it and its client, V. Ships UK. Ltd., that the sale of services to which are the alleged zero-rated sales subject of the present claim for input VAT refund for the four (4) VATable quarters of TY 2016. The sole Manning Agency Agreement submitted only had an effectivity date of July 1, 2016. Hence, there is no way to establish the type and nature of services actually rendered by Pacific to V. Ships UK, Ltd. prior to said effectivity date.

Further, the sole Manning Agency Agreement clearly provided that Pacific's services were to be rendered to V. Ships UK, Ltd. and that, in exchange for these services, manning fees would be paid by V. Ships UK, Ltd. to Pacific. However, as duly found by the ICPA, payments for these services were not made by V. Ships UK, Ltd. but by V. Ships Crew, Ltd., and in relation to this, official receipts were issued to V. Ships Crew, Ltd. instead of V. Ships UK, Ltd. Consequently, this raises doubts as to whether the payment received by Pacific is actually for the services rendered to V. Ships UK, Ltd., which is subject of the Manning Agency Agreement.

As to the *second element*, in order to be considered as a nonresident foreign corporation doing business outside the Philippines, each entity must be supported at the very least by both an SEC Certification of Non-Registration of the Company and proof of incorporation or registration in a foreign country (e.g., Certificate of Incorporation, Memorandum of Association, and Articles of Incorporation). In this case, Pacific submitted the SEC Certificate of Non-Registration of V. Ships UK, Ltd and V. Ships Crew, Ltd. However, records show that Pacific failed to submit in evidence any proof that its foreign clients are not doing business in the Philippines. Pacific did not submit any Certificate of Incorporation, Memorandum of Association, Articles of Association, or any equivalent document in favor of V. Ships UK, Ltd. or V. Ships Crew, Ltd. that would establish that its clients are not doing business in the Philippines. Consequently, Pacific failed to prove compliance with the requirement that the service-recipient is a foreign corporation doing business outside the Philippines.

In essence, for failure to comply with the above requirements in Section 108(B)(2) of the Tax Code, Pacific's sales to its alleged foreign clients fail to qualify for VAT zero-rating.

Pilipinas Kyohritsu Inc., v. CIR
CTA Case No. 9581 promulgated on November 8, 2022

(A taxpayer cannot opt to wait for the CIR to issue a ruling on the said claims for input VAT refund or credit even after the lapse of the 120+30-day period before it can elevate its claim to the CTA.)

Facts:

On December 13, 2013, Pilipinas Kyohritsu Inc. (PKI) filed an application for refund of its unutilized and/ or unused input VAT covering the periods from January 1, 2012 to December 31, 2012. Thereafter, on March 23, 2017, the BIR denied the said application for refund. Hence, PKI filed the petition for review on April 21, 2017.

The BIR claimed that the CTA has no jurisdiction over the petition because the period to appeal has already prescribed.

Issue:

Is the petition filed on time?

Ruling:

No.

The CTA has exclusive appellate jurisdiction, inter alia, to take cognizance of decisions involving claims for refund of any internal revenue taxes and the concerned taxpayer or party adversely affected by the decision of the CIR, and may file an appeal with the CTA within thirty (30) days after the receipt of such decision or after the expiration of the period fixed by law for actions.

The law provides for two scenarios before a judicial claim for refund may be filed with the CTA: (1) there was a full or partial denial of the claim within the 120-day period, or (2) the lapse of the 120-day period without the CIR having acted on the claim. It is only from the happening of either one may a taxpayer-claimant file its judicial claim for refund or tax credit for unutilized input VAT. Consequently, failure to observe the said period renders the judicial claim premature, divesting the CTA of jurisdiction to act on it.

A taxpayer cannot opt to wait for the CIR to issue a ruling on the said claims for input VAT refund or credit even after the lapse of the 120+30-day period before it can elevate its claim to the CTA.

In this case, PKI should have filed its petition for review with the CTA not later than May 12, 2014. By awaiting the decision of the CIR on its administrative claim for refund which was dated February 28, 2017 and received by PKI on March 23, 2017, the filing of the petition for review on April 21, 2017 was already beyond the 120+30-day period under Section 112(C) of the Tax Code, as amended. Prescription has set in at the time of its filing,

Casas + Architects v. City of Makati
CTA Case No. 259 promulgated on November 24, 2022

(If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195 of the LGC. On the other hand, if no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies.)

Facts:

Casas+ Architects is a duly registered general professional partnership (GPP) existing under the laws of the Philippines. From 1998 to present, the City of Makati has assessed Casas+ Architects for local business taxes (LBT) as a "contractor" doing architectural services under Section 3A.02(g) of the Revised Makati Revenue Code (RMRC). From the second quarter of 2014 until the fourth quarter of 2015, Casas+ was assessed for and paid LBT as a "contractor" in the total amount of PhP2,525,103.20.

Within two (2) years from the payment of the LBT, Casas+ Architects filed its administrative claim for refund, which the City of Makati denied. The City of Makati held that the liability of Casas+ Architects is pursuant to Section 143(e) of the Local Government Code (LGC) and imposed under the RMRC.

On July 18, 2017, Casas+ Architects filed a Petition for Review before the RTC, which was granted. However, when the City of Makati filed their Motion for Reconsideration, the RTC granted the same, and issued a new Decision denying the Petition. The RTC ruled that the assessments were issued by the Office of the City Treasurer. As such, the RTC applied Section 195 of the LGC and stated that Casas+ Architects failed to comply with the requirement of assailing the assessment by way of a letter-protest or claim for refund within 60 days from the assessment and to bring the action in court within 30 days from the local treasurer's denial of the claim.

Hence, Casas+ Architects filed this Petition for Review with the CTA.

Issues:

1. Was RTC Makati incorrect in setting aside its Decision dated July 30, 2021, and in applying Section 195, instead of Section 196 of the LGC?
2. Is Casas + Architects purely engaged in the practice of its profession?
3. Is Casas + Architects entitled to the grant of refund?

Ruling:

1. Yes.

   Casas + Architects correctly invoked that the billing statements/assessments it was issued do not constitute "assessments" within the ambit of Section 195 of the LGC. The said billing statements/assessments were issued by the City of Makati after Casas+ Architects' renewal of its business permit for the years 2014 and 2015, not for deficiency taxes. Hence, Section 196 of the LGC governs Casas+ Architects' claim for refund.

   Under jurisprudence, if the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195 of the LGC. However, if the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer.

   On the other hand, if no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies.

   In this case, there was no prior investigation or examination of Casas+ Architects' books of accounts that resulted in a "finding" of deficiency taxes. Neither was there any letter of authority authorizing the examination of the books before the billing statements/assessments were issued. Clearly, their issuance was not triggered or preceded by a "finding" of deficiency or incorrect tax payments by the local treasurer after an examination of its books was conducted. Given the foregoing, Casas+ Architects properly applied Section 196 in its present claim for refund.

2. Yes.

   Casas+ Architects is involved in interior design and landscaping, which, as provided in RA No. 9266 and its Implementing Rules and Regulations, as adequately alleged, and proven by Casas+ Architects, are encompassed by the practice of architecture.

   In this case, the City of Makati anchored their claim on Casas+ Architects' financial statements and contended that its Statement of Comprehensive Income manifests that it was maintaining a significant number of laborers and construction workers. However, the City of Makati failed to present any proof that Casas+ Architects employed laborers and construction workers. On the other hand, Casas+ Architects presented evidence to prove that it is not involved in interior decoration but in interior design and that they do not employ laborers and construction workers.

3. Yes.

   To be entitled to a refund under Section 196 of the LGC, the taxpayer must comply with the following procedural requirements: (1) file a written claim for refund or credit with the local treasurer, and (2) file a judicial case for refund within two (2) years from the payment

of the tax, fee, or charge, or from the date when the taxpayer is entitled to a refund or credit.

The CTA reiterated the reversed Decision of RTC Makati where it held that Casas+ Architects should have filed its judicial claim for refund as early as April 20, 2016 (since it made payments on April 21, 2014, July 21, 2014, October 20, 2014, January 29, 2015, May 25, 2015, and July 20, 2015, and October 20, 2015), but it only filed its petition before the RTC on July 18, 2017. Based on the above schedule, the only payments it made within the two-year prescriptive period are those for the assessments that were paid on July 20, 2015 and October 20, 2015. All other causes of action, insofar as its erroneous LBT payments for the second quarter of 2014 to the second quarter of 2015 are concerned, have already prescribed.

Hence, Casas+ Architects is only entitled to the grant of refund in the reduced amount of PhP835,151.26 representing the LBT erroneously collected from it for the 3rd and 4th quarters of the taxable year 2015.

Lazada E-Services Philippines, Inc. v. City of Makati
CTA AC No. 261 promulgated on November 23, 2022

(Business taxes are due in the city where the taxpayer's principal place is situated or where the trade or commercial activity are conducted. In other words, in order for a city to validly impose LBT, the situs [i.e., principal place of business or branch and sales office] thereof must be in that city.)

Facts:

In 2012, Lazada E-services Philippines, Inc. (Lazada) has its principal office and registered in the local government of Makati City and accordingly paid local business taxes (LBT) thereto. Sometime on the third quarter of 2015, Lazada decided to transfer its principal office and operate its business in Taguig City.

In taxable years (TY) 2016 and 2017, despite the transfer of its principal office to Taguig City, Lazada paid LBT to Makati City. On August 2017, the contract of lease over the Makati office was terminated; thereafter, Lazada filed an Application for the Retirement of its Makati office before the Business Tax Division (BTD) of Makati City, effective September 30, 2017. On March 2018, the BTD of Makati City issued an Order of Payment assessing Lazada for deficiency LBT for TY 2015 to 2017. Lazada filed a Letter Protest contesting assessment for TY 2016 and 2017, which the City Treasurer denied.

Later, Lazada filed a Refund of Erroneously Collected 2017 LBT with the City Treasurer, which the latter denied. Then, Lazada filed a Petition for Cancellation of Tax Assessment before the RTC of Makati. The RTC of Makati ordered Lazada to pay deficiency LBT and denied Lazada's claim for refund.

Issues:

1. Is Lazada liable for deficiency LBT in TY 2015?
2. Is Makati City justified in imposing LBT taxes against Lazada in TY 2016 and 2017?
3. Was Lazada able to prove that the operations in Makati office during 2016 and 2017 limited to non-revenue generating activities?

Ruling:

1. Yes.

In accordance with Section 150(a) of the Local Government Code (LGC) which provides for the situs of LBT, business taxes are due in the city where the taxpayer's principal place is

situated or where the trade or commercial activity are conducted. In other words, in order for a city to validly impose LBT, the situs (i.e., principal place of business or branch and sales office) thereof must be in that city. Thus, for purposes of imposing local business taxes against Lazada, it is crucial to determine whether Lazada conducted commercial activities with a view to make a profit in its Makati office during the subject period of assessment.

Here, records of the case show that Lazada conducted business operations in its Makati office during the taxable year 2015. Lazada confirmed that it is only during the third quarter of 2015 when it decided to transfer its principal office and operate its business to Taguig City. Also, the said transfer of principal office was only approved by Lazada's shareholders and BOD in 2016. Clearly, Lazada carried out commercial activities and generated sales in its Makati Office in 2015. Moreover, it bears stressing that Lazada did not contest the 2015 assessment, but only the 2016 and 2017 assessments. As such, the 2015 assessment has become final, executory and unappealable.

2. Yes.

   As mentioned, business taxes are due in the city where the taxpayer's principal place is situated or where the trade or commercial activity are conducted. In other words, in order for a city to validly impose LBT, the situs (i.e., principal place of business or branch and sales office) thereof must be in that city.

   That Lazada transferred its principal office to Taguig City in 2016 and maintained only an administrative office in Makati, which did not record any sales transactions are of no moment. The authority of local government units to impose LBT for TY 2016 and 2017 is not dependent on the procedural requirement of filing an application for retirement of business but is conditioned on the business transactions conducted within their territorial jurisdiction.

3. No.

   For purposes of determining Lazada's liability for deficiency LBT for TY 2016 and 2017, the principal question hinges on whether Lazada's Makati office pursued commercial activities, even after the transfer of its principal office to Taguig City in 2016.

   Here, Lazada claims that it merely used its Makati office as an administrative office which did not record any sales activities. However, apart from the unsubstantiated and self-serving testimony of Lazada's witness, there is nothing on record which would remotely support Lazada's stance. On the contrary, the following pieces of evidence prove that Lazada had commercial activities in TY 2016 and 2017 in Makati:

   1. Schedule of Gross/Receipts for 2017 certified by Lazada's accountant, indicating Lazada's gross sales and receipts recorded in its Makati Office in 2017; and
   2. Sworn Statement of Gross Sales/Receipts, subscribed under oath by Lazada's Chief Executive Officer, showing the gross sales/receipts for TY 2016 and 2017

   From the foregoing, despite the transfer of Lazada's principal office to Taguig City, sales activities were still being conducted, generated, and record in Lazada's Makati office. It is worth noting that Lazada religiously declared gross sales/receipts relating to its Makati office as shown in the payments of LBT for TY 2016 and 2017.

Concepcion Industries, Inc. v. CIR
CTA Case No. 10305, November 24, 2022

(New ROs assigned to audit a taxpayer must be issued a LOA which specifically names him or her as authorized to examine the taxpayer, even if he or she is merely assigned to assist the ROs originally named in a previous LOA.)

Facts:

On September 26, 2014, an LOA was issued by the OIC-Assistant Commissioner of the Large Taxpayers (LT) Service, Nestor S. Valeroso, in favor of ROs Maria San Pedro-Anaban and Riza Budano, and Group Supervisor (GS) Allan Maniego of LT Regular Audit Division 1, authorizing them to audit and examine the books of accounts and other accounting records of Concepcion Industries Inc. (Concepcion Industries) for the purpose of determining any deficiency tax liability for the TY 2013.

Thereafter, the Chief of the LT Regular Audit Division 1, Cesar D. Escalada, sent a Letter to Concepcion Industries informing it that ROs Arnaldo Ancheta and Tito Monforte are authorized to assist, under GS Maniego, in the examination of Concepcion Industries' books.

Subsequently, the BIR issued a PAN, and subsequently, an FLD/FAN finding Concepcion Industries liable for deficiency taxes. Notably, the FAN did not indicate any due date—the space provided for it was left blank by the CIR.

Despite Concepcion Industries' Protests, the CIR issued the FDDA denying its Protests. Hence, Concepcion Industries filed a Petition for Review before the CTA.

Issues:

1. Does the CTA have jurisdiction to entertain issues which have not been raised in the administrative level?
2. Does the LOA have to particularly name the ROs who are authorized to conduct an audit?
3. Was the FLD/FAN in this case valid?

Ruling:

1. Yes.

   Even if Concepcion Industries failed to raise the issues of (a) the lack of authority of the ROs who conducted an audit and examination of its books of accounts and other accounting records; (b) the FLD/FAN's lack of definite amount of tax liability; and (c) the FLD/FAN's lack of a due date, the CTA is still mandated to look upon the said issues as the same are necessary for the orderly disposition of the case.

   The CTA is a court of record, and it conducts trial *de novo*. According to the RRCTA, the CTA need not limit itself to the issues stipulated by the parties to be resolved upon but may also rule on related issues necessary for the orderly disposition of the case.

2. Yes.

   Well-settled in jurisprudence is that an LOA should specifically name the ROs who will pursue the tax audit.

   The taxpayer has the right to know the specific ROs who are authorized to examine his or her books of accounts and other accounting records. Consequently, an LOA must particularly state the names of the ROs authorized to audit/investigate a particular taxpayer.

Given this, new ROs assigned to audit a taxpayer must be issued a LOA which specifically names him or her as authorized to examine the taxpayer, even if he or she is merely assigned to assist the ROs originally named in a previous LOA. Otherwise, any resulting assessment arising from the audit conducted by the new ROs is null and void.

3. No.

   The FLD/FAN is void for failure to provide a definite due date and demand for the payment of tax liabilities.

   A final assessment is a notice to the effect that the amount therein stated is due as tax and a demand for payment thereof. This demand for payment signals the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies. Thus, it must be sent to and received by the taxpayer, and must demand payment of the taxes described therein within a specific period. The Supreme Court has already held that the absence of a due date in the assessment notice negates demand for payment.

   Here, the FLD expressly provided that Concepcion Industries is "requested to pay [its] aforesaid deficiency tax liabilities… within the time shown in the enclosed assessment notice." Conversely, the FANs attached to the FLD did not provide any due date as the space provided was left blank by the CIR.

DEPARTMENT OF JUSTICE ISSUANCE

DOJ Opinion No. 25, series of 2022 issued on October 25, 2022

- In this legal opinion, the Department of Social Welfare and Development (DSWD) is seeking the DOJ's opinion on whether the DSWD can write a letter to the named father in the child's Certificate of Live Birth simply to remind him to provide financial support to his minor child since his failure to do so has corresponding civil a criminal consequences.
- It was established that the phrase "there are civil and criminal consequences under the law if financial support is not give" in the proposed letter can be likened to a demand letter to the recipient and make it appear that the DSWD is lawyering on behalf of the minor children. The act of doing so may be beyond the mandate of DSWD for it may already constitute providing legal service to minor children.
- The DOJ opined that the DSWD can only assist these minors who are not receiving financial support from their respective fathers in seeking legal service so they can properly obtain the financial support which they are entitled to under the law. The DSWD may refer these matters to the Public Attorney's Office (PAO) or other pertinent government agencies so that their cases may be acted upon.

NATIONAL PRIVACY COMMISSION ISSUANCES

NPC Advisory Opinion No. 2022-011 issued on August 19, 2022

- Flexi Finance Asia Inc. (FFAI) is a financing company that processes basic credit information of its clients, including their personal data as defined in the Data Privacy Act of 2012 (DPA). Under the Credit Information System Act (CISA), FFAI is required to retain the data of its clients for reporting to the Credit Information Corporation (CIC).
- One of its clients requested to delete his personal data from its system.
- The FFAI's Loan Contract with the client allows it to retain personal data, to wit:

"b. Retain my personal information within the period as may be allowed for by law from the date of the termination of my loan contract subject to the discretion of the company. The company may use such information for any legitimate purpose but always in compliance with prevailing and to be enacted laws and regulations."

"c. Retain my information in the database of the company with the latter having the right to share the same to all its affiliates and necessary third parties for any legitimate business purpose subject to the assurance by the company that proper security systems are in place to protect my information."

- The DPA defines Personal Information as any information whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual.
- Aside from Personal Information, some of the personal data required to be submitted and/or retained by submitting entities pursuant to the CISA qualifies as Sensitive Personal Information. This can serve as a guide on the type and limits of the processing that FFAI may perform on the personal data of its clients.
- The rights to suspend, withdraw, or order the blocking, removal, or destruction of his or her data from the personal information controller's (PIC) filing system, subject to specified conditions as stated in Section 16 (e) of the DPA.
- While both the DPA and the CISA and all related issuances recognize the right of a Data Subject to request the deletion of his personal data, the exercise of such right is not absolute.
- PICs, such as FFAI, may request the data subject to substantiate his/her request. However, FFAI is also obliged to observe the limits imposed by law as to the type of data and the conditions for its processing.
- It must be emphasized that the DPA requires that personal data shall only be retained for as long as necessary for the fulfillment of the purposes for which the data was obtained; for the establishment, exercise or defense of legal claims; for legitimate business purposes; or as provided by law. Other conditions for the retention of data are also provided in Sections 12 and 13 of the DPA.
- Thus, although PICs cannot retain personal data in perpetuity, the continued processing thereof may be permitted if it is anchored on Sections 12 and 13 of the DPA. And, if negative information is involved, FFAI must also comply with the three-year limitation provided in the CISA. Please note that the repurposing of Personal Data retained other than for what the law prescribes may constitute as a violation of the DPA.

NPC Advisory Opinion No. 2022-22 issued on October 19, 2022

- In this Opinion, Davao Center for Health Development (DCHD) is requesting for an opinion from the NPC regarding the disclosure of Covid-19 swab test results in the company group chat.
- They requested an Opinion on whether DCHD allowed to post the complete list of COVID-19 swab test results in a group chat where majority voted in favor of the posting while a minority signified to the contrary. Moreover, DCHD would like to know if written consent still necessary for those who agreed to have their names posted in the group chat once they have positive result.
- In a survey conducted among DCHD's employees, a majority voted to have the complete list of COVID-19 positive employees posted in the group chat composed of 250 members, while a minority opposed the measure. The purpose of posting in the group chat is to let everyone be aware if they are possible close contacts and, thus, enable them to take the necessary precautions to avoid infection.

- The NPC opined that it does not suggest posting in a group chat the names of employees who are COVID-19 positive. Through Department Memorandum No. 2020-0189, the Department of Health (DOH) already laid down the procedure which a Personal Information Controller (PIC), such as your office, must observe in relation to contact tracing. As such, the NPC recommends that the guidelines be strictly observed since it provides a lawful basis which justifies the processing of personal data of employees under the circumstances.
- The NPC has stated in NPC Circular No. 2021-02 that the disclosure of personal data in cases of contact tracing "shall be limited to public health authorities, such as the DOH and its authorized partner agencies, LGUs, or other lawfully authorized entities, officers, or personnel, and must only be for the purpose of responding to the public health emergency.
- The NPC further opined that consent is not the appropriate basis for disclosure of COVID-19 swab test results. The appropriate lawful basis for processing relative to contact tracing purposes is provided and limited by law and regulation, that is, DOH Department Memorandum No. 2020-0189. Given this, it would be inconsistent with the basis for processing to ask employees to consent to such additional processing since it already goes beyond the prescribed procedure under the regulation. Mere participation in the survey in the group chat cannot be recognized as a positive indication of valid consent since the elements of consent under the DPA are not present. Moreover, asking for the employees' consent for processing in addition to what is provided by the law and regulation would be unjust and improper as the data subject may not be able to distinguish the basis for which their personal data is being processed.
- DCHD should adhere to the requirements of the law as well as implement strategies that are least intrusive to the rights and freedoms of its employees. Even though the proposed disclosure in the group chat is made with good intentions, this strategy may run afoul with the employee's data privacy.

MATA-PEREZ TAMAYO & FRANCISCO (MTF)
Attorneys-at-Law

MTF Counsel is a full-service law firm comprised of experienced, multi-disciplined and innovative tax, customs and international trade, corporate, and litigation attorneys.