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COURT DECISIONS

FAN issuance date within 15-day period to reply to PAN violates due process
G.R. No. 249153 (promulgated 12 September 2022)

On January 7, 2009, the taxpayer received a Preliminary Assessment Notice (PAN) from the Bureau of Internal Revenue (BIR). On January 22, 2009, the taxpayer filed its reply to the PAN.

On February 12, 2009, the taxpayer received a Final Assessment Notice (FAN) dated January 14, 2009 which reiterated the findings in the PAN. Said FAN was duly protested by the taxpayer. Subsequently, the BIR issued a Final Decision on Disputed Assessment which upheld the deficiency tax assessments.

Although the Court of Tax Appeals (CTA) En Banc noted that the FAN was issued on January 14, 2009 that was well within the 15-day period for the taxpayer to reply to the PAN received on January 7, 2009, it nevertheless held that there was substantial compliance with due process requirements on the part of the BIR.

However, the Supreme Court disagreed with the above reasoning. In order to uphold the constitutional rights of the taxpayer, the BIR must strictly observe prescribed procedure in the issuance of assessment notices. The importance of the PAN stage of the assessment process cannot be discounted as it presents an opportunity for the taxpayer and the BIR to settle to the case at the earliest possible time without need for the issuance of a FAN.

In this light, the Supreme Court held that there can be no substantial compliance with due process if the BIR completely ignored the 15-day period by issuing the FAN even before the taxpayer was able to submit its reply to the PAN. That the taxpayer was able to file a "well-prepared protest letter" to the FAN was of no moment because the fact remains that the BIR violated the taxpayer's right to due process. Hence, the FAN was void and produced no effect.

Appointment of agent does not automatically constitute doing business
CTA EB Nos. 2481 and 2482 (promulgated 22 December 2022)

One of the elements for qualification for VAT zero rating under Section 108(B)(2) of the Tax Code is that the recipient of the services is a foreign corporation which is doing business outside the Philippines.

In case for input VAT refund before the Court of Tax Appeals (CTA), the Commissioner of Internal Revenue argued that VAT zero-rating does not apply when the foreign corporation (recipient of services), has an appointed agent in the Philippines. However, the CTA disagreed that the foreign corporation was doing business in the Philippines, reasoning as follows:

- There is no showing that the agent was continuing the shipping activities of the foreign corporation in the Philippines. The agent was authorized as such only for purposes of screening Filipino seamen and engineers for employment onboard the vessels of the foreign corporation.

- The foreign corporation is not doing business in the Philippines because it did not undertake any of the activities enumerated in Section 1(f) of the Implementing Rules and Regulations of the Foreign Investment Act of 1991.

- As held by the Supreme Court in Cargill, Inc. vs. Intrata Strata Assurance Corporation (G.R. No. 168266), activities of a foreign corporation in the Philippines that do not create earnings or profits do not constitute doing business in the Philippines.

30-day period to appeal to CTA counted from deemed denial due to inaction, not from subsequent issuance of FDDA
CTA EB No. 2526 (promulgated 13 December 2022)

After receiving the Final Assessment Notice (FAN), the taxpayer filed a request for reconsideration on March 21, 2016. On October 27, 2017, the taxpayer received the Regional Director's Final Decision on Disputed Assessment (FDDA) which denied the request for reconsideration.

On November 25, 2017, the taxpayer appealed the FDDA to the Commissioner of Internal Revenue (CIR). Due to the alleged inaction of the CIR, the taxpayer filed a Petition for Review with the Court of Tax Appeals (CTA).

However, the CTA dismissed the Petition for Review for being filed out of time. Section 228 of the Tax Code provides that if a protest (e.g., request for reconsideration) is not acted upon within 180 days from the filing of the protest, the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period. Accordingly, the taxpayer should have filed the Petition for Review within 30 days from September 17, 2016 which is the end of the 180-day period counted from March 21, 2016, the date of filing of the request for reconsideration.

According to the CTA, the lapse of the 180-day period on September 17, 2016 already constituted a deemed denial of the protest. Hence, the issuance of the FDDA by the Regional Director in 2017 which was already beyond the 180-day period and the subsequent appeal

thereof to the CIR did not grant a fresh 180-day period to the latter to act on such appeal.

SSDTs considered sufficient evidence to prove input VAT from importations
CTA Case No. 10113 (promulgated 23 November 2022)

Under Section 4.110-8(a)(1) of Revenue Regulations No. 16-2005, input VAT from imports must be substantiated and supported by import entry or other equivalent documents showing actual payment of VAT on the imported goods. According to the Court of Tax Appeals, such provision does not prescribe an all-inclusive list of requirements in substantiating input VAT to be creditable against output VAT. What is essential is that the document shows actual payment of VAT on the imported goods.

In this light, the most crucial document to substantiate the input VAT is the Statement of Settlement of Duties and Taxes (SSDT). If the SSDT is presented, all other importation documents or any defect or infirmities thereto are dispensable.

BIR Issuances

Withholding tax regulations amended in relation to MERALCO refunds
Revenue Regulations No. 15-2022 (published on 12 December 2022)

The Secretary of Finance amended Section 2.57.2(P) of Revenue Regulations No. 2-1998, otherwise known as the Consolidated Withholding Tax Regulations, as follows:

Income payment	CWT rate
Gross amount of MERALCO refund to non-residential customers arising from ERC Case Nos. 2020-043 RC, 2010-069 RC, 2011-088 RC, 2012-054 RC, 2013-056 RC and 2014-029 RC Orders	15%
Gross amount of interest paid directly to customers or deducted against customers' billings pertaining to meter deposit refunds in accordance with Rules to Govern Refund of Meter Deposits to Residential and Non-Residential Customers	10% for residential and general service customers whose monthly electricity exceeds 200 kwh as classified by MERALCO
	15% for non-residential customers
Gross amount of interest paid directly to customers or deducted by other electric Distribution Utilities in accordance with ERC Resolution No. 12-2016 governing meter deposit refunds	10% for residential and general service customers whose monthly electricity exceeds 200 kwh as classified by MERALCO
	15% for non-residential customers

Format of Alphalist of Employees revised
Revenue Memorandum Circular No. 160-2022 (issued on 27 December 2022)

The revised format of the alphabetical list of employees ("Alphalist") which is a required attachment to BIR Form No. 1604-C (Annual Information Return of Income Taxes Withheld on Compensation) is already available. It now includes information regarding the utilization of the 5% tax credit under the Personal Equity and Retirement Account (PERA) Act of 2008. The revised format is attached as Annex "A" of RMC No. 160-2022 which may be accessed at the BIR website.

List of Accredited Microfinance Non-Government Organizations updated
Revenue Memorandum Circular No. 159-2022 (issued on 27 December 2022)

The Bureau of Internal Revenue has published the "Updated List of Microfinance NGOs Accredited by the Microfinance NGO Regulatory Council (MNRC) as of December 2022." In this regard, a Certificate of Accreditation shall be valid for 3 years unless earlier revoked by the MNRC.

The List includes the MF-NGO Certificates of Accreditation that have been revoked or that have expired. It is attached to RMC No. 159-2022 which may be accessed at the BIR website.

Non-submission of cooperative members' TINs are subject to penalties
Revenue Memorandum Circular No. 158-2022 (issued on 27 December 2022)

The Commissioner of Internal Revenue (CIR) has clarified the implications of a cooperative's failure to submit the taxpayer identification numbers (TINs) of its members within 6 months from the issuance of the cooperative's Certificate of Tax Exemption (CTE) pursuant to Item A3 of RMC No. 124-2020.

According to the CIR, only the following instances will justify a cooperative's failure to submit its members' TINs:

1. The unsubmitted TIN pertains to inactive members that were delisted pursuant to Cooperative Development Authority Memorandum Circular No. 2022-14; and

2. The failure to submit was due to *force majeure* such as state of emergency or state of calamity as declared by the government and such *force majeure* no longer exists.

However, if the justifications are absent or have ceased to exist, the failure to submit members' TINs will be subject to penalties. Despite non-submission of members' TINs within the 6-month grace period, cooperatives with CTEs are nevertheless required to submit them after such grace period except if justified by the above instances.

In any case, all cooperatives are mandated to submit their Lists of Active Members with TIN and Inactive Members to the concerned Revenue District Office within 30 days from the effectivity of RMC No. 158-2022.

Manually issued CETIs are required to be attached to AITRs
Revenue Memorandum Circular No. 155-2022 (issued on 27 December 2022)

The Commissioner of Internal Revenue further extended the acceptance of manually issued Certificates of Entitlement to Incentives (CETIs) as attachments to the annual income tax returns (AITRs) to be filed by Registered Business Enterprises (RBEs) as proof of their entitlement to tax incentives.

All RBEs enjoying tax incentives shall be allowed to attach the manually issued CETI to the AITR for taxable year 2022 until such time that a system generated CETI can be issued via the Fiscal Incentives Registration and Monitoring System being administered by the Fiscal Incentives and Review Board.

eDST System Balance Adjustment facility may already be availed
Revenue Memorandum Circular No. 154-2022 (issued on 16 December 2022)

The Commissioner of Internal Revenue issued RMC No. 154-2022 to supersede RMC No. 142-2019 which prescribes the requirements for availing the Balance Adjustment facility of the Electronic Documentary Stamp Tax (eDST) System as an option for recovering erroneously deducted DST from the taxpayer's ledger.

The Balance Adjustment facility shall be available only for reasons arising from technical or system errors such as erroneously encoded information details and double/multiple affixtures of DST by the taxpayer on the same document. For other reasons, the remedy of the taxpayer is to apply for tax refund or tax credit certificate.

To avail of the Balance Adjustment facility, the taxpayer-user shall file a written request for adjustment in the ledger balance with the Chief, Miscellaneous Operations Monitoring Division, Collection Service together with proof of the incident that caused the erroneous deduction of DST.

Features of BIR Online Registration and Update System rolled out
Revenue Memorandum Circular No. 153-2022 (issued on 12 December 2022)

The BIR Online Registration and Update System (ORUS) will be available to taxpayers via www.bir.gov.ph under eServices, or https://orus.bir.gov.ph. ORUS is a web-based system that provides a facility for end-to-end BIR registration process.

Its features will be rolled out as follows:

Feature	Covered RRs and RDOs	Roll-out Date
Issuance of TIN of foreign individuals	RDO No. 39	December 12, 2022
• Business registration and issuance of COR and ATP • Application for ATP or use of BPRs/BPIs • Employer Account Enrollment • Registration of Books of Accounts	All RDOs under RR Nos. 6, 7A, 7B, 8A, 8B, 13 and 19	December 12, 2022
Registration of Books of Accounts	All RDOs under RR Nos. 1, 5, 10 and 14	December 19, 2022
	All RDOs under RR Nos. 2, 9A, 9B and 15	December 22, 2022
	All RDOs under RR Nos. 3, 11, 16 and 17	December 26, 2022
	All RDOs under RR Nos. 4, 12 and 18, LT Service, LT Divisions, LTAD and ELTRD	December 29, 2022
• Business registration and issuance of COR and ATP • Application for ATP or use of BPRs/BPIs • Employer Account Enrollment	All RDOs including LT Divisions, LTAD and ELTRD	January 16, 2023

Taxpayers who will avail of the facility are required to enroll or create an account in the ORUS and provide a permanent official email address which is required to be updated in the BIR registration record observing the guidelines under RMC No. 122-2022.

Clarifications regarding certain transitory provisions for VAT zero-rating
Revenue Memorandum Circular No. 152-2022 (issued on 07 December 2022)

The Commissioner of Internal Revenue further clarified several issues regarding the implementation of the transitory provisions in RR No. 21-2021 as explained in RMC Nos. 24-2022 and 49-2022.

- Local purchases of Registered Export Enterprises (REEs) between December 10, 2021 (date of effectivity of RR No. 21-2021) up to March 8, 2022 (date before the effectivity of RMC No. 24-2022) remain VAT zero-rated.

- If the seller imposed a 12% VAT within the above period, the following alternative options may be availed:

    1. The seller shall declare the sale as subject to 12% VAT. On the other hand, the purchaser may offset the input VAT against its own output VAT. If the purchaser is engaged in VAT zero-rated sales, it may either apply for input VAT refund or claim the input VAT as cost of sales or expenses.

    2. The seller shall amend its VAT returns after returning the VAT component to the REE buyer who shall also amend its VAT returns accordingly. The original VAT official receipt or invoice issued should be retrieved and cancelled by the seller, and a new one issued indicating the VAT zero rate.

- REEs under the 5% gross income tax (GIT) regime which have amended their registration from VAT to non-VAT after the expiration of their income tax holiday are not necessarily subject to percentage tax since the 5% GIT is in lieu of all taxes.

- REEs under the 5% GIT regime are still qualified for the VAT zero rate on their local purchases until the end of their incentive period.