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JURISDPRUDENCE

DST may be imposed on the advances of a company extended to its affiliates

San Miguel Corporation vs. Commissioner of Internal Revenue, G.R. No. 257297/259446 (12 April 2023)

Taxpayer is liable for deficiency documentary stamps tax (DST) on its advances to related parties based on Section 179 of the National Internal Revenue Code ("Tax Code") and the *Filinvest* ruling which states that instructional letters, journal and cash vouchers evidencing advances of the company to its affiliates qualified as loan agreements and are subject to DST.

The Supreme Court held that Section 179 of the Tax Code, when read in relation to Section 173, clearly applies to all loan agreements, whether made or signed in the Philippines, or abroad. The application of the *Filinvest* case to SMC's case was not violative of the principle of non-retroactivity of laws and rulings. The Court's interpretation of "loan agreements" referred to in Section 179 of the NIRC, as pronounced in *Filinvest*, should be deemed a part of the Tax Code as of the date it was passed.

The crime of tax evasion is immediately committed upon the lapse of the due date to file a return

People of the Philippines vs. SKI Construction Group, Inc., CTA Crim Case No. 1-17 (July 17, 2023)

An information filed against the taxpayer more than five years from the due date to remit the withholding tax has prescribed. The information for alleged violation of Sec. 255, in relation to Sec. 253 (d) and Sec. 256 of the Tax Code, on failure to withhold or remit the correct withholding tax due on compensation for the year 2010, was filed only on January 15, 2020. Clearly, the action has prescribed pursuant to Section 281 of the Tax Code which provides that "all violations of any provisions of this Code shall prescribe after five (5) years."

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The Court of Tax Appeals has no jurisdiction on assessed regulatory fees
NLEX Corporation v. Municipality of Guiguinto Bulacan, CTA EB No. 2514 (July 19, 2023)

The CTA does not have jurisdiction to rule on the validity of the imposition of regulatory fees by the Municipality of Guiguinto Bulacan on Tollways Management Corporation (TMC), since such fees are not local taxes, and are not covered under Section 7(a)(3) of Republic Act (RA) No. 1125 (the CTA Act). Taxpayer in this case, however, was assessed for both local business tax and regulatory fees. CTA upheld its jurisdiction on the assessment involving local business tax, but not on the assessment on regulatory fees. (Note: Justice Roman del Rosario dissented, stating that for the CTA not to take cognizance on the regulatory fees issue will be tantamount to a splitting of cause of action, and that the CTA's jurisdiction over "local tax case" includes protests of assessments of "taxes, fees, or charges" imposed by a LGU)

The CTA has no appellate jurisdiction over the inaction of the District Collector of Customs
L.T.J.S. Store vs. Hon District Collector of Customs CTA EB No. 2563 (July 27, 2023)

The CTA held that inaction by the Commissioner of Customs (COC) on cases involving liability for custom duties, fees or other money charges is not one of the subject matters upon which the CTA exercises jurisdiction. Thus, the Court lacks jurisdiction over the subject matter of the petition, which is an appeal from inaction of the District Collector of Customs on a claim for duty and tax refund.

The inaction referred to in Section 9 of RA No. 9282 must be taken to refer exclusively to the inaction of the Commissioner of Internal Revenue on protest in cases of disputed assessment. No similar provision appears in the Customs Modernization and Tariff Act ("CMTA") specifically allowing appeals from any inaction of the COC.

Section 1136 of CMTA is clear and categorical in stating that it is the ruling and decision of the COC which may be appealed to the CTA. In the present case, the COC has yet to render a decision on taxpayer's protest and appeal for duty and tax refund.

Execution of escrow agreement mandatory for claim for refund of CGT
Estelita Rodriguez v. CIR, CTA Case No. 10151 (July 20, 2023)

The failure of taxpayer to execute and submit the required escrow agreement warrants the denial of the claim for refund of capital gains tax on the sale of the principal residence.

Section 3 of Revenue Regulations (RR) No. 13-99, as amended by RR No. 14-2000 requires that the 6% capital gains from the sale of the principal residence shall be deposited in cash or manager's check with an Authorized Agent Bank (AAB) under an Escrow Agreement between the taxpayer and the BIR.

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An Escrow Agreement is required under RR No. 14-2000 since the capital gains tax exemption under the Tax Code is condition on the fact that "the proceeds of the sale or disposition are fully utilized in acquiring or constructing a new principal residence within 18 calendar months from date of sale." Thus, as of the date of sale, it is still impossible to determine whether the seller shall be able fully utilize the proceeds in accordance with such requirement; thus, the transaction's exemption from capital gains tax cannot yet be determined. Hence, the requirement of an Escrow Agreement.

A LOA without a dry seal is still valid

Donato C. Cruz Trading Corp., v CIR, *CTA EB No. 2573 (July 25, 2023)*

A LOA is valid, despite the in absence of dry seal. Nowhere in existing jurisprudence and in BIR Revenue Audit Memorandum Order (RAMO) No. 1-00 mandates that a LOA must bear a dry seal in order to be valid. In fact, Revenue Memorandum Order (RMO) No. 019-0921 provides that an LOA "shall remain to be valid and enforceable even without the mark of the BIR dry seal as long as the LOA is authentic and duly issued by the authorized revenue official." In this case, the Regional Director is authorized to issue letters of authority.

An assessment served by personal delivery on the taxpayer's accounting clerk substantial complies with the requirements under RR No. 12-99. As an accounting clerk, it is highly likely that she knows and would be able to appreciate the significance of a letter or notice from the BIR and her receipt thereof.

Despite the suspension of withholding of tax to income payments made to suppliers of agricultural products under RR No. 03-04, the income tax of agricultural suppliers is not exempt from withholding tax if the sales were made to a top ten thousand (10,000) private corporation.

RMO No. 69-2010 does not revoke previously issued manual LOAs

Commissioner of Internal Revenue v. Robinsons Toys, Inc., CTA EB No. 2560, (13 July 2023)

RMO No. 69-2010 does not suggest that the conduct of the audit pursuant to the previously issued manual LOA would be invalidated in the event that a new eLOA is not issued. Neither does it provide a blanket revocation of the manual LOA if the said manual LOA is not replaced with an eLOA. A manual LOA still validly clothes an RO the authority needed to conduct an audit.

Unvalidated third party sources are mere presumptions and will not support an assessment

Julio R. De Quinto v. Bureau of Internal Revenue, CTA Case No. 9623, (4 July 2023)

The prima facie correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. In this case, the basis for the assessment is the computerized matching conducted by the BIR from the information or data provided by third party sources, through confirmation letters which bear notations that failure to respond to such letter shall mean that the information therein will be "assumed to be true and correct." The facts are not fully validated either from the third party sources or from petitioner's

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accounting records. Thus, the assessments were based merely on presumption, and are null and void pursuant to Section 228 of the Tax Code.

The period for filing a Petition for Review under Section 228 of the Tax Code is non-extendible

Montalban Methane Power Corporation v. Commissioner of Internal Revenue, CTA EB No. 2611, (6 July 2023

In so far as the period for filing appeals on protests on assessments before the CTA is concerned, Section 228 of the Tax Code, and not Section 11 of RA No. 1125, shall apply. The appeal to the CTA must be made within the periods prescribed under Section 228, and such periods cannot be extended pursuant to Rule 42 of the Rules of Court.

Section 11 of RA No. 1125, as amended, is the general law governing the time, mode, and manner of appeals before the CTA. It states that a person adversely affected by a decision or ruling of the CIR may filed an appeal with the CTA within thirty (30) days after receipt of such decision or ruling. While Section 228 of the Tax Code, serves as a special law specifically prescribing the applicable reglementary period for filing appeals to the CTA of the CIR's adverse decisions exclusively in protests on assessments by the CIR. Therefore, insofar as the period for filing appeals on protests on assessments before the CTA, it is Section 228 of the Tax Code, as amended shall apply.

Rule 42 of the Rules of Court cannot be used as basis for extending the mandatory 30-day period set by Section 228 of the Tax Code. A mere procedural rule such as Rule 42 of the Rules of Court cannot prevail over a substantive law such as Section 228 of the Tax Code.

Tax litigation is akin to a civil suit. Hence, the party who asserts has the burden to prove his or her assertion.

Bryan M. Torregosa v. Regional Director BIR Davao City, CTA EB No. 2520, July 26, 2023

Taxpayer must duly prove his allegation that he received two copies of the FDDA, the latest of such it received on October 19, 2017, making October 23, 2017 filing of the petition for review timely. In this case, however, the taxpayer failed to show that the second copy of the FDDA was received on October 19, 2017. His sole basis in claiming the receipt of the copy on said date is his very own testimony during cross examination, without adducing proof to support such claim. Tax litigation is akin to a civil suit. Hence, the party who asserts has the burden to prove his or her assertion.

Homeowner's dues collected for delivery of basic services are exempt form income tax

BIR Ruling No. 076- 2023, June 9, 2023

A homeowners association is exempt from income tax on association or membership dues collected from its members, pursuant to Section 18 under R.A. No. 9904, otherwise known as the Magna Carta for Homeowners and Homeowners' Association, as implemented by RMC No. 9-2013, since it was able to show that is delivers basic community services on a reimbursement basis. Also, the LGU having jurisdiction issued a certificate that it does not provide material or financial assistance in the maintenance of the village. The BIR holds that the income derived from the association dues,

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membership fees, other assessments and charges collected in a purely reimbursement basis and rentals of facilities is exempt from income tax, VAT, percentage tax. The homeowner's association, however, shall be subject to the applicable internal revenue taxes on its other income from trade, business or other activities.

LEGISLATION

An Act Establishing the Maharlika Investment Fund
Republic Act No. 11954 (July 18, 2023)

The Maharlika Investment Corporation ("MIC")

The MIC shall be created and shall act as the sole vehicle for the purpose of mobilizing and utilizing the Maharlika Investment Fund ("MIF") for investments.

Capitalization of the MIC: Php500 Billion pesos. Initial capital shall come from the following: (a) Land Bank of the Philippines Php50 Billion, Development Bank of the Philippines, Php25 Billion, National Government, Php50 billion.

Php125 billion shall be made available for subscription by the National Government, its agencies or instrumentalities, Government Owned and Controlled Corporations ("GOCC") or Government Financial Institutions ("GFI"), except the:

1. Social Security System;
2. Government Service Insurance System;
3. Philippine Health Insurance Corporation;
4. Home Development Mutual Fund;
5. Overseas Workers Welfare Administration; and
6. Philippine Veterans Affairs Office

Other sources are of capitalization are as follows:

1. Bangko Sentral ng Pilipinas (BSP) Dividends
2. Government share in Philippine Gaming Corporation (PAGCOR)
3. Department of Finance – Privatization and Management Office (DOF-PMO)
4. Royalties and/or special assessments based on the fiscal regime to be implemented by the National Government

The Maharlika Investment Fund

The objective of the MIF is to promote socioeconomic development. This will be achieved by making strategic and profitable investments in key sectors to preserve and enhance long-term value of the MIF.

The fund shall be initially sourced from the capitalization of the MIC, as provided for in the Act. Other GFIs and GOCCs may invest into the MIF, subject to their respective investment and risk

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management strategies, and approval of their respective Boards. Additional investments may likewise be sourced from investments of reputable private and State-owned financial institutions and corporations in the forma and under the terms and conditions that the Board of Directors may prescribe.

Allowable Investments

Subject to strict compliance with the Investment and Risk Management Guidelines, the Board of Directors of the MIC may engage in the following Investments:

a. Cash, foreign currencies, metal, and other tradable commodities;
b. Fixed income instruments issued by sovereigns, quasi-sovereigns, and supranationals;
c. Domestic and foreign corporate bonds;
d. Listed or unlisted equities, whether common, preferred, or hybrids;
e. Islamic investments, such as Sukuk bonds;
f. Joint ventures or co-investments, mergers and acquisitions;
g. Mutual and exchange-traded funds invested in underlying assets;
h. Real estate and infrastructure projects: Provided, that investments in infrastructure projects shall be directed towards the fulfillment of national priorities such as the national infrastructure program of the Department of Public Works and Highways and other infrastructure agencies, the inclusive innovation industry strategy of the Department of Trade and Industry, and the public investment program of the National Economic and Development Authority;
i. Programs and projects on health, education, research and innovation, and other such investments that contribute to sustainable development;
j. Loans and guarantees to, or participation into joint ventures or consortiums with Filipino and foreign investors, whether in the majority or minority position in commercial, industrial, mining, agricultural, housing, energy, and other enterprises, which may be necessary or contributory to the economic development of the country, or important to the public interest; and
k. Other investments with sustainable and developmental impact aligned with Section 17 of this Act, as may be approved by the Board.

The MIC shall be subject to the provisions of Republic Act No. 10149 or the “GOCC Governance Act of 2011".

All procurement activities of the MIC shall be subject to, and governed by, the provisions of Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act"

The MIC shall be subject to the provisions of Republic Act No. 7656 or "An Act Requiring Government-Owned or -Controlled Corporations to Declare Dividends Under Certain Conditions to the National Government, and for Other Purposes".

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