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Tax brief

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BIR Issuances

Unacceptable bank checks from a certain rural bank

(Revenue Memorandum Circular No. 80-2017, September 27, 2017)

All concerned are advised not to accept checks, as well as taxpayer's checks drawn in payment of internal revenue taxes from World Partners (A Thrift Bank), Inc., with head office address at 74 A. Mabini St., Brgy. Poblacion City of San Pedro, Laguna, and its 4 branches located at the following addresses:

1.	**Sta. Maria**	Gen. Halili Avenue Bagbaguin, Sta. Maria, Bulacan
2.	**San Pablo City**	2/F San Pablo Shopping Mall, Regidor St., San Pablo City
3.	**Meycauayan**	HBC Building, Requino St., Calvario, City of Meycauayan
4.	**Tanauan**	21 A. Mabini St., City of Tanauan

This bank (and its branches) is prohibited from doing business in the Philippines and has been placed under receivership with PDIC as the designated Receiver.

Casinos are covered persons under AMLA

(Revenue Memorandum Circular No. 81- 2017, September 27, 2017)

Section 3(a) of RA 9160, otherwise known as the Anti Money Laundering Act of 2001 (AMLA), has been further amended to include casinos in the list of covered persons. Casinos shall cover the land-based as well as the internet and ship-based operations, with respect to their casino cash transaction related to their gaming operations.

The coverage shall be limited to transactions in cash or other equivalent monetary instrument involving a total amount in excess of Php500,000 within 1 banking day.

A freeze order for 20 days, effective immediately, may be issued by the Court of Appeals upon verified probable cause that any monetary instrument or property is in any way related to an unlawful activity. Within this period, CA shall conduct a summary hearing with notice to the parties, to determine whether or not to modify or lift the freeze order, or extend its effectivity for a maximum of 6 months.

This amendment shall take effect on October 12, 2017.

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Withdrawal of pending appeals before the CTA to give way for compromise settlement

(Top Rate Construction and General Services v Commissioner of Internal Revenue, CTA Case No. 9368, September 4, 2017)

The Revised Rules of the Court of Tax Appeals (RRCTA) reveals the lack of provisions governing the procedure for the withdrawal of pending appeals before the CTA. Hence, pursuant to Section 3, Rule 1 of the RRCTA, the Rules of Court shall supplementarily apply.

Section 3 of Rule 50 of the Rules of Court (now the 1997 Rules of Civil Procedure) states that when the case is deemed submitted for resolution, withdrawal of appeals made after the filing of the appellee's brief may still be allowed in the discretion of the court.

The Supreme Court has held that when an appeal is withdrawn, the assailed decision becomes final and executory, and that the granting of a Motion to Withdraw Appeal at this stage is addressed to the sound discretion of the Court.

Payment of tax required before protest could prosper

(National Grid Corporation of the Philippines v Central Board of Assessment Appeals, et al, CTA EB No. 1392, September 5, 2017)

Section 252 of the LGC of 1991 provides that no protest against a real property tax assessment shall be entertained unless the taxpayer pays the tax first. Tax receipts thereof shall be annotated with the words "paid under protest".

Assessment may be questioned by a taxpayer or the owner or person with legal interest over the property, under the following situations: 1) question the reasonableness or correctness of the assessment or 2) question the legality or validity of the assessment.

In this case, the taxpayer questioned the correctness of the assessment issued against it by the provincial assessment and treasury office. However, it was found out that the taxpayer failed to first pay the assessment under protest. The said payment is mandatory to allow the CBAA to have jurisdiction over the petition. Consequently, the court has no jurisdiction to entertain the case for review.

CIR's power to abate or cancel tax liabilities cannot be delegated

(Qatar Airways Company v Commissioner of Internal Revenue, CTA EB No. 1468, September 5, 2017)

Pursuant to Section 204 (B) of the NIRC of 1997, as amended, the Commissioner may abate or cancel a tax liability except those already filed in court, or those involving fraud. However, under Section 7 of the same Code, the power to compromise or abate granted to the Commissioner cannot be delegated.

Thus, under the law, respondent CIR has the sole authority to abate or cancel the whole or any unpaid portion of a tax liability, inclusive of increments, under the following circumstances, namely, (1) its assessment is excessive or erroneous, or (2) if the administration costs involved do not justify the collection of the amount due.

In this instant case, petitioner-taxpayer sent a letter to the Commissioner of Internal Revenue (CIR) requesting for the abatement of surcharge only to receive a reply denying it's request as signed by an Assistant Commissioner of Internal Revenue (ACIR). The taxpayer then moved for a reconsideration of the said adverse ruling but also received denial from the CIR.

The Court affirmed the taxpayer's contention that the 30-day period to appeal the denial of its request for abatement of

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Revenue Regulations No. 2-98, as amended, in order for a taxpayer to be entitled to a refund of or an issuance of tax credit certificate for its unutilized excess CWT, the following 3 basic requisites must be sufficiently established:

1. the claim for refund must be filed within the two-year prescriptive period as provided under Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended;

2. The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes were withheld must be declared as part of the gross income of the recipient.

The Court ruled to disallow certain CWTs for the following reasons:

1. CWT certificate indicates wrong TIN of the taxpayer
2. Date indicated is not clear
3. CWT certificate is a photocopy, not original copy
4. No supporting CWT certificates

To prove that the CWTs being refunded are indeed unutilized, the Court required the taxpayer to document the CWT carried forward from previous quarters/years which were used to pay the income tax due in the year subject of the refund. It was noted that the prior years' CWTs was a result of the accumulation over 9 years. The taxpayer, however, was only able to submit the CWT certificates for the year immediately preceding the year of refund. Hence, the other CWT carried forward from prior years were disallowed and the current year CWTs were used to offset the current year income tax due.

The application for refund was approved although at a reduced amount.

Requisites for tax refund or issuance of TCC for erroneously paid FWT

(NES Global Talent Limited v Commissioner of Internal Revenue, CTA Case No. 9065, September 6, 2017)

In order to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be satisfied:

1. That there must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;

2. That the claim for refund has been duly filed with the Commissioner, within 2 years after the payment of tax or penalty; and

3. That the suit or proceeding is instituted with this Court within 2 years from the date of payment of the tax or penalty.

From the foregoing, it is clear that in order for a taxpayer to be entitled to a tax refund or tax credit for erroneous payment, it must prove not only that taxes paid were illegally or erroneously collected but also that both the administrative claim with the CIR and the judicial claim with the Court were filed within 2 years from the date of payment of the tax or penalty.

In the case at bar, the taxpayer withheld the 15% final withholding tax on the compensation of its employees based on its belief that the company is a petroleum service subcontractor. Upon realization that it is not a petroleum service subcontractor, it subjected the salaries paid to the employees to the withholding tax on compensation and filed a claim for refund of the erroneously paid final withholding

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surcharge should be counted from the day it received CIR's letter-denial.

Documentation of CWT for refund

(Zuellig Pharma Corporation v Commissioner of Internal Revenue, CTA Case No. 8801, September 5, 2017)

Based on relevant jurisprudence and BIR tax.

The taxpayer presented its BIR Form 1601F and the corresponding bank deposit slips to prove that the final taxes applied for refund were remitted. The BIR Form 1601C and the corresponding deposit slips were also presented to prove that the taxes on compensation were withheld and remitted to the BIR. The amount not supported by the deposit slips were deemed not paid and, therefore, deducted from the claim.

To verify the refundable claim, the Court determined whether company correcdy subjected the same compensation to withholding tax. The tax base for the final tax was compared to the tax base for withholding on compensation and the differences were accounted for. Whe re the tax base for the final tax was higher, the Court presumed that tax on compensation was underwithheld and, therefore, disallowed. Further, for the foreign employees whose taxes were shouldered by the Company, The Court noted that such taxes shouldered by the Company should also be considered as compensation subject to withholding tax. The corresponding tax not withheld was also deducted from the claim.

The Company was granted the refund for the reduced amount on the basis of the findings of the Court.

Failure to submit BIR Form 2307 is fatal in a claim for refund of excess CWT

(Davao City Water District v Commissioner of Internal Revenue, CTA EB No. 1472, September 13, 2017)

In a claim for refund of excess creditable taxes, the court held that the competent proof to establish the fact that taxes are withheld is the certificate of creditable tax withheld at source (BIR Form 2307). Submission of the ICPA report does not relieve the claimant of its imperative task of premarking photocopies of sales receipts and invoices and submitting the same to the court after the independent CPA shall have examined and compared them with the originals.

Without presenting these pre-marked documents as evidence, from which the summary and schedules were based, the court cannot verify the authenticity and veracity of the independent auditor's conclusion.

Good faith can justify abatement of penalties

(San Miguel Corporation v Commissioner of Internal Revenue, CTA Case No. 9007, September 19, 2017)

The court has already settled that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax laws are sufficient justification to waive the imposition of surcharges and interest.

In 2013, the company was assessed by the BIR for documentary stamp tax (DST)on its advances to affiliates in taxable year 2010. The assessment was based on the 2011 Supreme Court decision in the case of Filinvest holding, among others, that instructional letters and journal and cash vouchers evidencing the advances which Filinvest extended to its affiliates qualified as loan agreements upon which DST may be imposed.

The company argued that the SC decision was issued in 2011 and should not be applied retrospectively on its 2010 transactions. The company cited that it relied on a 2008 ruling issued by the BIR which states that intercompany loans and advances covered by inter-office

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memoranda are not subject to DST.

The court ruled that reliance by the company on the said BIR ruling justifies non imposition of surcharges and interest.

Failure to file protest against FLD/FAN renders CTA without jurisdiction over the case

(Lifebank Foundation, Inc. v Commissioner of Internal Revenue, CTA Case No. 8836, September 20, 2017)

Section 228 of the NIRC of 1997, as amended, and as implemented by Section 3.1.5 Revenue Regulations No. 12-1999, explicitly states that failure to file a valid protest against FLD/FAN within 30 days from receipt thereof renders the assessment final, executory, and demandable.

The fact that an assessment has become final for failure of the taxpayer to file a protest within the time allowed only means that the validity or correctness of the assessment may no longer be questioned on appeal.

Undoubtedly, the CTA is a court of special jurisdiction. Hence, when the assessment has already attained finality, the Court has no jurisdiction over the assessment, and shall dismiss the appeal.

Here, the taxpayer received the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) on August 2, 2013 but did not file a protest. Petitioner relies on the issuance of the August 30, 2013 Memorandum which referred the case for reinvestigation notwithstanding the fact that no protest was yet filed. The taxpayer assets that the Memorandum shows that BIR itself did not treat the FLD/FAN as the final demand. Instead, the taxpayer considered a subsequent Final Notice as the final assessment of the BIR from which the 30-day period to protest shall be reckoned.

The Court, however, noted that the memorandum was received on September 5, 2013, 4 days after the lapse of the 30-day period to protest. Hence, prior to the receipt of the Memorandum, the period to protest has already lapsed. The court does not find the non-filing of the request for reinvestigation justifiable.

Being an unprotested assessment, the Court does not have jurisdiction on the case and the appeal must be dismissed.

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