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Tax brief

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BIR Issuances

Streamlined process on the issuance of CTE and eCAR for raw land transfers to community/homeowners associations

(Revenue Memorandum Order No. 12- 2017, May 17, 2017)

The processing of Certificate of Tax Exemption (CTE) and electronic Certificate Authorizing Registration (eCAR) for transfers of raw lands to community/homeowners associations for Socialized Housing Projects (SHP) has been streamlined.

SHPs under the Community Mortgage Program (CMP) have the primary objective to assist depressed areas residents to own the places they occupy. Participants of CMP are exempt from Capital Gains Tax (CGT) and creditable withholding tax but not from documentary stamp tax.

Application for the issuance of CTE shall be filed with the Office of the Commissioner. The following documentary requirements must be fully complied with for the processing of the application

(Please see Table I for the documentary requirements)

Processing, approval and issuance of eCAR shall be completed by the RDO within 5 working days from the date of submission of the CTE. Issued eCAR shall contain information that the raw lands are intended for a Community Mortgage Program.

CTE is a sufficient basis for the issuance of eCAR by the concerned RDO officer. No other documents shall be required from the taxpayer/landowner requesting for eCAR.

BIR accountable forms for approval/ denial of abatement/compromise settlement

(Revenue Memorandum Order No. 36- 2017, May 3, 2017)

Prescribed format for the Certificate of Availment/Approval and Notice of Denial relative to the application for Compromise settlement and/or abatement of penalties is further amended by the BIR. These BIR accountable forms shall be accomplished in 3 copies to be distributed as follows:

- Original : Taxpayer's copy
- Duplicate : Copy for the issuing office
- Triplicate : to be attached to the docket of the case

Table I

1	Original Certification signed by the President of the SHFC that the subject property qualifies and is actually a CMP project;
2	Certified true copy of the Deed of Sale executed by the land-owner in favor of the community/homeowner association;
3	Certified true copy of the Master List of Beneficiaries
4	Certified true copy of the Transfer Certificate of Title/ Original Certificate of Title and latest Tax Declaration of the property
5	Extrajudicial Settlement of Estate, if title of property is still the name of the deceased owner; and
6	Evidence of tax payments

Table II

Form No.	Form Names	Authorized Requisitioninhg Offices
2343	Certificate of Availment (CA)- Abatement of Penalties	Office of the Assistant Commissioner- Collection Services Office of the Assistant Commissioner- Large Taxpayers Service
2342	Certificate of Availment- Compromise Settlement	Office of the Assistant Commissioner- Collection Services Office of the Assistant Commissioner- Large Taxpayers Service Office of the Regional Director
0427	Notice of Denial (ND)- Application for Compromise Settlement	
0428	Notice of Denial (ND)- Application for Abatement of Penalties	

BIR Issuances

Unacceptable bank check from a certain rural bank

(Revenue Memorandum Circular No. 39-2017, May 19, 2017)

All concerned are advised not to accept checks, as well as taxpayer's checks drawn in payment of internal revenue taxes from Rural Bank of Ragay (Camarines Sur), Inc., with Head Office address at Tomas Delgado St. cor. Provincial Road, Poblacion Ilaod, Ragay, Camarines Sur with a branch located at Zone 1, Fatima (Poblcaion) Del Gallego, Camarines Sur.

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

SEC Opinions

Ground handling services covered under FINL-10

(SEC-OGC Opinion No. 17-04, May 10, 2017)

The business of airport ground handling services, which include moving of aircraft and baggage handling are considered public utilities, therefore, subject to limitation on foreign ownership.

Pursuant to the Tenth Regular Foreign Investment Negative List (FINL-10), foreign equity participation in corporations engaged in the operation and management of public utilities is limited up to 40%. Further, "public utility" under the constitution and public service law is defined as one organized for hire or compensation to serve the public which is given the right to demand its service should they like to do so. It is a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, transportation, telephone or telegraph service.

The Commission held that it is the nature and not the name of the activity which determines whether or not the business activity is covered by the Negative List. While FINL-10 does not expressly include a corporation engaged in ground handling services, it was opined that NAIA Terminal III is a "public service" or a "public utility" within the contemplation of the law. This arrangement likewise places the port service contractors and port facility under the category of public utility.

In this case, the company is 99.9999% owned by a UAE-registered company and .0002% owned by a British National. In fine, said corporation may not engage in the business of airport ground handling services.

CTA Decisions

Premature issuance of FLD voids the assessment

(Commissioner of Internal Revenue v Merial Philipines, Inc., CTA EB No. 1398 re: CTA Case No. 8370, May 9, 2017)

Issuance of FLD/FAN prior to the lapse of the 15-day period from service of the PAN is deemed a violation of taxpayer's right to due process. Hence, the assessment is void and shall be cancelled.

When a taxpayer is deprived of its right to due process, any tax assessment shall be deemed void and cannot give rise to an obligation to pay deficiency taxes.

Section 3 of Revenue Regulations (RR) No. 12-99, in relation to Section 228 of the NIRC of 1997, as amended, provides the due process requirements in the issuance of deficiency tax assessment. If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax, a Preliminary Assessment Notice (PAN) shall be issued to the taxpayer. If the taxpayer fails to respond within 15 days from the date of receipt of the PAN, he shall be considered in default, hence, a Formal Letter of Demand (FLD) and assessment notice shall be issued, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

Failure of the CIR to strictly comply with the requirements laid down by law and its own rules is a denial of taxpayer's right to due process. As such, issuance of FLD/FAN prior to the lapse of the 15-day period is deemed violation of taxpayer's right to due process and the assessed deficiency is void and shall be cancelled.

Earmarked amounts shall form part of HMOs' gross receipts

(Maxicare Healthcare Corporation v Commissioner of Internal Revenue, CTA EB No. 1312 re: CTA Case No. 8441, May 8, 2017)

There is no basis to exclude from the VAT base of a Health Maintenance Organization (HMO) the amounts earmarked for payment to medical, dental and hospital services to independent hospital, clinics and medical professionals.

HMOs' gross receipts shall be the total amount of money or its equivalent actually received from members undiminished by any amount paid or payable to the owners/operators of hospitals, clinics and medical and dental practitioners.

It is the HMOs, not their members, who are obligated to the doctors and hospitals for payment of the latter's bills. All payments to doctors and hospitals, whether earmarked or actually paid (e.g. professional fees) are indivisibly intertwined with the total fees payable to HMOs by the members. These payments shall form part of the gross receipt of HMOs subject to VAT.

Defective waiver cannot be rendered valid by estoppel if benefit to the taxpayer is not significant

(Commissioner of Internal Revenue v Total Philippines Corporation, CTA EB No. 1367 re: CTA Case No. 8608, May 25, 2017)

In previous decisions, the court has ruled that receiving and accepting reduced assessment after a waiver is executed and accepted, and paying portions of the reduced assessments binds taxpayer to the new assessment. It follows that the taxpayer recognized the validity of executed waivers. The taxpayer cannot thereafter question the validity of waivers, specially, after it received and accepted certain benefits as a result of the execution of the waivers.

For this principle to apply, the benefit received as a result of reduced assessment must be substantial in amount. In case reduction of assessed amount is not substantial, validity of waivers cannot be assumed even with partial payment of the newly computed reduced tax assessment. In the case at bar, the amount assessed in the FAN does not indicate a

CTA Decisions

reduction from the amount in the PAN.

Furthermore, the fact that taxpayer never questioned the waivers in its protest to the PAN should not be used against taxpayer. It must be emphasized that a protest to the PAN is not the same as the protest required to be filed as an answer to the FAN. In fact, a PAN may or may not even be protested to by the taxpayer.

Government's right to assess the taxpayer prescribes in 3 years, counted from the date of the last day of filing or from the date of actual filing, whichever is later. However, in accordance with the provisions of Section 222 (b) and (d) of the 1997 NIRC, these prescriptive periods may be suspended by the execution of a waiver of the statute of limitations. A waiver being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed, and executed before the expiration of the 3-year period for assessing taxes.

Application of the doctrine of estoppel as an exception to the statute of limitations on the assessment of taxes is not allowed since there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. The doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy.

30-day period to appeal denial/inaction of claim for refund is both mandatory and jurisdictional

(Vestas Services Philippines, Inc. v Commissioner of Internal Revenue, CTA Case No. 8888, May 26, 2017)

In order for judicial claims for VAT refund to be considered as timely filed, the taxpayer should strictly follow the "120+30" rule under Section 112 (C) of the NIRC of 1997, as amended. Section 112 (C) states that the taxpayer affected "may", within 30 days from receipt of the decision denying the claim or after the expiration of the 120-day period, appeal the decision or the unacted claim with the CTA.

Contention that the requirement of judicial recourse within 30 days is only directory and permissive, as indicated by the use of the word "may" in Section 112 (C) is not correct. The law is clear, plain and unequivocal to declare that the 30-day period to appeal is both mandatory and jurisdictional. The law does not make the 120+30 day periods optional just because the law uses the word "may". The word "may" simply means that the taxpayer may or may not appeal the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period.

SC Decisions

LN must be replaced with a LOA to produce a valid assessment

(Medicard Philippines, Inc., v Commissioner of Internal Revenue, GR No. 222743, April 5, 2017)

A FAN, arising from an LN, issued without prior issuance of an LOA is not valid.

A Letter Notice (LN) is issued to a taxpayer to inform him of discrepancies uncovered between his declarations and information sourced from other taxpayers or government agencies. The taxpayer is given an opportunity to explain and reconcile the differences cited in the LN.

If the issues in the LN are not resolved, the BIR shall issue an LOA before a PAN or FAN can be issued on the unreconciled discrepancies.

Failure to convert previously issued LN to an LOAs is a clear and unequivocal violation of a taxpayer's right to due process. Hence, the resulting assessment issued against taxpayer shall be deemed void.

Termination letter necessary to prove completion of tax abatement process

(Asiatrust Development Bank, Inc., v Commissioner of Internal Revenue, GR No. 201530, April 19, 2017)

Application for tax abatement is considered approved only upon the issuance of a termination letter.

Section 4 of RR No. 15-2006 provides that any person/taxpayer, natural or juridical, may settle through this abatement program any delinquent account or assessment which has been released as of June 30, 2006, by paying an amount equal to 100% of the Basic Tax Assessed with the AAB of the RDO that has jurisdiction over the taxpayer.

The last step in the aforementioned tax abatement process is the issuance of the termination letter. Presentation of the termination letter is essential as it proves that the taxpayer's application for tax abatement has been approved. Without a termination letter, a tax assessment cannot be considered closed and terminated.

(Note: Under current rules, a Certificate of Approval/Denial is issued in lieu of a termination letter.)

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