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Tax brief

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BIR Issuances

Updated guidelines on PTU loose-leaf filing

(Revenue Memorandum Circular No. 58-2017, July 21, 2017)

In line with the “ease of doing business”, the processing and issuance of the Permit to Use (PTU) loose-leaf books of accounts/invoices/receipts and other accounting records shall now be handled by the concerned Revenue District Office (RDO). Prior to this issuance, processing of the application was being handled by the regional offices pursuant to RMC No. 13-82.

The requirements for evaluation and approval of the application remain the same as follows:

1. Duly accomplished BIR Form No. 1900 (Application for Authority to Use Computerized Accounting System or Components thereof/Loose-Leaf Books of Accounts);
2. Sample format and print-out;
3. Sworn statement specifying the books to be used; invoices/receipts and other accounting records with the serial numbers of principal and supplementary invoices/receipts to be printed and commitment to permanently bind the loose-leaf forms within 15 days after end of each

taxable year or upon termination.

Only the taxpayer’s Head Office is required to secure the PTU loose-leaf. The same PTU shall be valid for the branches, regardless of the RDO of the branch. The branch should, however, secure certified true copy from the RDO of the taxpayer’s head office. For each additional branch, updating of the PTU loose-leaf is also required.



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CTA Decisions

Assessment without a PAN is void

(*CIR vs. Philippine Aerospace Development Corporation*, CTA EB No. 1516, August 23, 2017)

The taxpayer claimed that it did not receive a Preliminary Assessment Notice (PAN) prior to issuance of the Final Assessment Notice (FAN). For failure by the BIR to issue a PAN, the taxpayer was effectively denied its right to due process. The Court ruled that the assessment of tax deficiency is void.

BIR should wait for expiration of 15 days before issuance of FAN

(*Freelife Philippines Distribution, Inc.-Philippine Branch vs. CIR*, CTA Case No. 8838, August 29, 2017)

After the receipt of the PAN, the taxpayer has 15 days to file his reply and the Commissioner of Internal Revenue (CIR) is duty bound to wait for the expiration of fifteen days from the date of service of the PAN. If during the said period, the taxpayer failed to respond to the PAN, it is only then that the CIR can consider the taxpayer in default, and correspondingly cause the issuance of FLD/FAN, which shall be subsequently served to the said taxpayer. Such procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.

In the case at bar, the PAN was received by the taxpayer on January 10, 2013. The reply can therefore be submitted on or before January 25, 2013. However, even before the taxpayer can submit its reply to the PAN, the FAN was already served on January 25, 2013. The taxpayer was clearly deprived of his right to due process and the court declared the FLD/FAN null.

False or fraudulent tax returns

(*Arturo E. Villanueva, Jr. vs. CIR*, CTA Case No. 8935, August 18, 2017)

False or fraudulent return as an exception to the period of limitation and to collect taxes provided in Section 222 of the Tax Code, must be actual, not constructive. It must be intentional, consisting of deception willfully and deliberately done or resorted to. Fraud must be proven by clear and convincing evidence amounting to more than mere preponderance. It cannot be justified by mere speculation. This is because fraud is never lightly to be presumed. In order to render a return made by a taxpayer a 'false return' within the meaning of Section 222 of the Tax Code, there must appear a design to mislead or deceive on the part of the taxpayer, or at least culpable negligence. A mistake, not culpable in respect of its value would not constitute a false return.

Section 248(8) of the NIRC provides, among others, that a substantial

under-declaration of taxable sales, receipts or income, or a substantial overstatement of deductions shall constitute *prima facie* evidence of a false or fraudulent return. *Prima facie* evidence is defined as evidence good and sufficient on its face, and can remain sufficient if not rebutted or contradicted. It is noteworthy that such substantial underdeclaration or failure to report sales or income in an amount exceeding 30% of that declared per return, merely operates as a *prima facie* evidence of fraud, which can still be contradicted by other evidence. In the case at bar, the taxpayer showed that there was no intention to conceal the alleged undeclared income because said income are indicated in its financial statements. It was also shown that there was an amended return where the amounts allegedly undeclared were actually disclosed.

The Court ruled that there is no basis to allege fraud and the 10 year prescription period cannot apply. The assessment was deemed prescribed and, therefore, void.

Authority of BIR to impose interest on deficiency VAT and DST

(*Toyota Manila Bay Corporation vs. CIR*, CTA EB Nos. 1280 and 1287, August 22, 2017)

Section 247(a) in relation to Section 249(B) of the 1997 National Internal Revenue Code



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(NIRC) authorizes the imposition of deficiency interest on all taxes under the NIRC.

The text of Section 247(a) states, without doubt, that the additions under Chapter I, Title X are applicable to all taxes imposed under the Code. The authority to impose additions under that provision clearly extends to all taxes regardless of the title under which they are classified. Therefore, the law does not limit these additions only to the three types of internal revenue taxes, namely, income (Title II), estate (Title III) and donor's tax (Title III). Their imposition applies with equal force and effect to the other taxes under the 1997 NIRC such as the VAT (Title IV), other percentage taxes (Title V), excise tax (Title VI) and DST (Title VII). In addition, Section 249 of the 1997 NIRC authorizes the simultaneous imposition of deficiency interest and delinquency interest.

Assessment is void if examiner is not part of the LOA

(Composite Materials, Inc. vs. CIR, CTA EB No. 1314, August 15, 2017)

Letter of Authority (LOA) is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers said revenue

officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.

There must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, an examination of the taxpayer cannot ordinarily be undertaken, otherwise the assessment or examination is a nullity.

In the case at bar, the assessment of the taxpayer was transferred to a new Revenue Officer (RO) pursuant to a Referral Memorandum issued by the RDO. The new RO informed the taxpayer of the reassignment and continuance of the audit. The Referral Memorandum is not the equivalent of a LOA. The LOA is issued by the Regional Director.

The CTA ruled that the examinations and resulting assessments are void inasmuch as the RO does not have an authority to conduct the audit and assessment pursuant to the LOA.

Requisites for a non-stock, non-profit educational institution to be exempt from taxes

(CIR vs. De La Salle Lipa, Inc., CTA EB No. 1412 and 1430, August 17, 2017)

Exemption from income tax of a non-stock, non-profit educational institution under Sections 28(3), Article VI and 4(3), Article XIV of the 1987 Constitution, requires the following:

1. the educational institution falls under the classification non-stock, non-profit educational institution; and
2. the income it seeks to be exempted from taxation is used actually, directly, and exclusively for educational purposes.

In this case, while it was acknowledged that the school is a non-stock non-profit educational institution, it failed to fully document that that the income it earned from the lease of its facilities were used for educational purposes. The amounts were booked separate from the General Fund and no further proof was presented on its utilization. Said income were assessed for the regular corporate income tax.



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When invalid waivers cannot invalidate an assessment

[CIR vs. Universal Weavers Corporation, CTA EB No. 1348, August 31, 2017]

In this case, the BIR and the taxpayer are both aware of the defects of the three waivers and yet, they transacted with each other relying on the defective waivers. Hence, both parties are at fault. The BIR is negligent in complying the provisions of the NIRC and the existing rules on the execution of waivers. While the taxpayer, by its own positive actions of executing and delivering the subject waivers, is now estopped from questioning the validity of the waivers after it persuaded the BIR to delay the issuance of the assessment based on the waivers it executed.

Even if there is non-compliance of the subject waivers of the statute of limitations set forth by RMO No. 20-90 and RDAO No. 05-01, the taxpayer is estopped from claiming that the three waivers are invalid and that the CIR's right to assess for that taxable year has prescribed because the taxpayer's acts persuaded the BIR to postpone the issuance of the assessments.

The assessment was not invalidated on the basis of prescription. The case was remanded to the Court in Division for determination and ruling on the merits.

Coverage of tax exemption of FCDUs

[United Coconut Planters Bank vs. CIR, CTA Case No. 8963, August 31, 2017]

Foreign Currency Deposit Units (FCDUs) are exempt from tax on any and all fees, commissions and other charges which are integral parts of the charges imposed on foreign currency loan transactions.

In protesting an assessment, the FCDU, however, cannot just invoke the exemption. The FCDU should be able to prove that such income it earned were indeed integral parts of the gross interest income derived from its foreign currency loan transactions. For failure to clearly establish its claim with the necessary supporting documents, the service fees and commissions shall be considered as other income subject to the regular corporate income tax.

Reckoning of the two-year prescriptive period for refund in case of installment payment of taxes

[Cristeta May Galang Caridad Ortega, et al vs. CIR, CTA Case No. 9081, August 20, 2017]]

Pursuant to Section 204 of the National Internal Revenue Code, no credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund

within two years after the payment of the tax.

The same rule shall apply in case the tax is paid in installment. In this case, the taxpayer paid his income tax in two installments. The period to refund shall therefore be counted from the date of payment of the second installment.

Enforcement of collection of interest and penalties require an assessment

[Pacifichub Corporation v CIR, CTA Case No. 8895, August 31, 2017]

Pursuant to Sec. 247 of the Tax Code, the additions to the tax or deficiency tax shall be collected at the same time, in the same manner and as part of the tax.

Based on this provision, additions to the tax or deficiency tax, shall be collected at the same time, in the same manner and as part of the tax. Hence, a valid formal assessment is also a substantive prerequisite for the collection of penalties, surcharge and interest.

In this case, the taxpayer filed certain returns but, due to financial difficulties, failed to pay the taxes in full. When it had the funds, the taxpayer paid the unpaid basic taxes and applied for abatement of the interest, surcharge and penalties. The BIR subsequently issued a denial of the application for abatement and issued a Warrant of Distraint and Levy (WDL) to



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enforce collection of the increments.

The taxpayer filed a Petition for Review with the CTA with a Motion to Suspend Collection of Surcharges, Interests and Penalties, being enforced under the WDL.

The BIR argued that the WDL was validly issued since the taxpayer, even without prior assessment, was aware of its liabilities which it admitted, and, thus, cannot claim denial of procedural due process.

The Court ruled that without a valid formal assessment for the surcharge, interest and penalties, the WDL is considered void and cannot be enforced.

Proper claimant for VAT refund

(EHS Lens Philippines, Inc. v CIR, CTA Case No. 9014, August 31, 2017)

In a refund of indirect taxes, such as the VAT, the statutory taxpayer has the legal personality to claim the refund. The statutory taxpayer is the person on whom the tax is imposed by law and who paid the same even if he subsequently shifts the burden of the tax to another. This general rule, however, may not apply in case the party who carries the burden of the tax is exempt from both indirect and direct taxes.

The taxpayer is a PEZA-registered entity. It entered into an asset purchase agreement with another PEZA-registered entity. It

also acquired real properties and leasehold rights from another PEZA company. In both transactions, the taxpayer was passed on the VAT. The PEZA-registered buyer in this case, though not the statutory taxpayer, has the legal personality to claim the refund of the passed on VAT.

Willful intent in tax evasion

(People of the Philippines v. Romulo Neri, CTA Crim. Case No. O-251 and O-252, August 30, 2017)

The taxpayer, in this case, held various positions in government for which he received compensation, allowances, bonuses, and profit share, among others.

BIR's investigation of the taxpayer was triggered when the Senate conducted an inquiry of the excessive salaries and bonuses given by government-owned and controlled corporation, and government financial institutions to its officers. The BIR secured certifications from the various agencies from whom the taxpayer received income and compared these with the amounts declared in his annual income tax returns. As discrepancies were noted amounting to more than 30%, the BIR filed a case with the DOJ for violation of Section 255 in relation to Sections 24 and 74 of the 1997 NIRC for willful, unlawful, and felonious failure to supply correct and accurate information. There are three elements to this offense:

1. Accused is the person required under the 1997 NIRC or the rules and regulations to supply correct and accurate information;
2. Accused failed to supply correct and accurate information at the time required by law; and
3. Such failure was willful

Based on the evidences and testimonies of the witnesses, the Court concluded that there was indeed some failure to supply correct and accurate amount of income in his ITR. The taxpayer actually admitted to this during the proceedings. He also made voluntary payments when he discovered such omissions though that cannot absolve him from the charge.

The BIR, however, failed to prove beyond reasonable doubt that the taxpayer willfully failed to supply correct and accurate information relating to his income in the ITR. The BIR merely relied on the certifications issued by the employers and immediately presumed fraud.

On the other hand, the taxpayer was able to account for each of the income received from the employers, and to submit evidence to support his counterarguments. The fact that taxpayer's accountant committed mistakes in reporting his correct and true income does not imply that there is willful disregard of a lawful duty to report his accurate income.



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Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. It must amount to intentional wrong doing with the sole object of evading the tax.

The Court ruled that the BIR failed to establish the guilt beyond reasonable doubt. The taxpayer was, nevertheless, required to pay the amount of deficiency taxes found to be due.

The taxpayer, likewise, cannot be faulted for relying on the BIR Forms No. 2316 and 2307 issued by his employers, which were later found out to be erroneous. The amounts contained in the BIR Forms are the same amounts the withholding agents are required to report to the BIR. To require taxpayer to go over every detail contained in the certifications and re-compute his income tax liability on the premise that the certifications issued may be inaccurate is incredible, if not impractical. The Court could not discount the confidence placed upon by accused on his subordinates, absent showing any malicious or willful disregard of his duty. Furthermore, the fact that accused voluntarily paid the deficiency taxes upon finding the discrepancies shows good faith on his part. He also endeavored to provide reconciliations of the discrepancies found by the BIR, if only to explain his side.

The BIR, on the other hand, merely relied on the certifications issued by the employers, without even seeking explanation from the said companies as to how the amounts were derived.

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To avoid prolonged trials, we offer independent verification of financial and other pertinent documents that are presented as evidence in tax cases/disputes or claims for refund before the Court of Tax Appeals (CTA). This involves an evaluation of the completeness and validity of the documents and the correctness of the claims involved or other representations made by the taxpayer based on the requirements provided under applicable laws and regulations.

If you would like to know more about our services

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