



## SyCipLaw

# TIPS

TAX ISSUES AND  
PRACTICAL SOLUTIONS

### 1. What are the new and simplified guidelines and procedures on the use of Computerized Accounting Systems, Computerized Books of Account, and/or its Components, including Electronic Storage System?

The Bureau of Internal Revenue (*BIR*) issued Revenue Memorandum Order No. 9-2021 (*RMO No. 9-21*) which prescribes the simplified guidelines and procedures on the use of Computerized Accounting Systems, Computerized Books of Accounts, and/or its components, including Electronic Storage System, middleware and other similar systems (collectively referred to as *System*).

Under RMO No. 9-21, a taxpayer no longer needs to obtain a Permit to Use a System. Nevertheless, every taxpayer that intends to use a System must inform and register with the Revenue District Office (*RDO*) or Large Taxpayers (*LT*) Office where it is registered of its intention to use a System. The System that will be used by the taxpayer must strictly comply with the Standard Functional and Technical Requirements set out in Annex B of RMO No. 9-21.

The taxpayer must submit the requirements listed in Annex A (the Checklist of Documentary Requirements) of RMO No. 9-21. These requirements include:

- (a) Sworn Statement (Annex C of RMO No. 9-21) (if the System is used and maintained by taxpayer) or Joint Sworn Statement (Annex E of RMO No. 9-21) (if system is outsourced or used and maintained by tax service providers or third-party software provider instead of taxpayer) with attached duly accomplished Summary of System Description, Commercial Invoice/Receipts/Document Description, Forms/Records and Reports Specification (Annex C-1 of RMO No. 9-21);
- (b) Sample print-out of Principal and Supplementary Receipts/invoices compliant with existing rules and other accountable forms that will be used, if applicable (as declared on Part V of Annex C-1 of RMO No. 9-21);
- (c) Sample print-out of Books of Accounts compliant with existing rules and other reports that can be generated from the system and will be used, if applicable (as declared on Part VI of Annex C-1 of RMO No. 9-21);
- (d) Printed copy of Audit Trail (activity log generated by the system); and
- (e) Duly accomplished and signed form regarding Standard Functional and Technical Requirements (Annex B of RMO No. 9-21).

The concerned RDO/LT Office shall issue an Acknowledgment Certificate (*AC*) (Annex D of RMO No. 9-21) upon receipt of the complete documentary requirements. The *AC* shall be issued within three working days from receipt of complete documentary requirements. The *AC* shall be valid unless revoked by the BIR upon discovery of non-compliance with the provisions of RMO No. 9-21 and other related issuances during the conduct of post-evaluation.

#### SyCipLaw TIP 1:

Taxpayers should take note of the different annexes to RMO No. 9-21, as these include checklists, more detailed procedures, and sample forms to enable the taxpayer to register their System.

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### SyCipLaw TIP 2:

Taxpayers should take note of the different annexes to RMO No. 47-20, as these include checklists, more detailed procedures, and sample forms to enable the taxpayer to comply with the documentary requirements of RMO No. 47-20.

## 2. How does a taxpayer file a claim for refund of erroneously or illegally assessed or collected value-added tax (VAT)?

In Revenue Memorandum Order No. 47-2020 (*RMO No. 47-20*), the BIR consolidated and amended the existing revenue issuances on the processing of VAT credit/refund claims filed under Sections 112 and 229 of the National Internal Revenue Code, as amended (*Tax Code*). The effective date of RMO NO. 47-20 is on January 19, 2021, as clarified by Revenue Memorandum Circular No. 19-2021.

Like applications for refund of input VAT under Section 112 of the Tax Code, claims for refunds of erroneously or illegally assessed or collected VAT under Section 229 of the Tax Code will undergo the same process of verification, review, and approval before the issuance of the tax credit certificate or refund check, as may be applicable.

As a policy, only applications for refund with complete documentary requirements which are filed within the prescribed period under the Tax Code shall be received by the authorized processing office. Before officially receiving the application, the assigned BIR Revenue Officer shall check the completeness and propriety of the supporting documents, compliance with the appropriate Checklist of Requirements, the existence of any outstanding tax liability other than VAT, and the existence of pending audit investigations covering the same taxable period. Applications that are refused by the BIR may be re-filed as long as the re-filing is within the corresponding prescriptive period under the Tax Code.

## 3. What amendatory provisions of the 2019 Proposed Amendments to the 1997 Rules of Civil Procedure are adopted by the Court of Tax Appeals (CTA)?

In CTA En Banc Resolution No. 9-2020 dated August 7, 2020, the CTA expressly adopted the following provisions of the 2019 Proposed Amendments to the 1997 Rules of Civil Procedure (*Amended Rules*): (a) Section 2, Rule 6 (Kinds of Pleadings); (b) Sections 3, 4, 5 and 6, Rule 7 (Parts and Contents of a Pleading); (c) Section 12, Rule 8 (Manner of Making Allegations in Pleadings); (d) Rule 10 (Amended and Supplemental Pleadings); (e) Section 1 and 11, Rule 11 (When to File Responsive Pleadings); (f) Rule 13 (Filing and Service of Pleadings, Judgments and other Papers); (g) Rule 15 (Motions); (h) Rule 18 (Pre-Trial); (i) Section 6, Rule 21 (Subpoena); (j) Rule 33 (Demurrer to Evidence); (k) Rule 34 (Judgment on the Pleadings); and (l) Rule 35 (Summary Judgments). These provisions shall apply to all civil cases filed with the CTA after May 1, 2020, and to all pending civil proceedings filed prior to May 1, 2020, except to the extent that, in the opinion of the CTA, their application would not be feasible or would work injustice.

### SyCipLaw TIP 3:

More lead time and preparation are now needed to file a petition for review with the CTA. Pursuant to the Amended Rules adopted by the CTA, taxpayers are now required to submit all their evidence, including the judicial affidavits of their witnesses, upon the filing of the petition for review with the CTA.

Motions for extension of time to file pleadings, affidavits, and other papers are no longer allowed, except in the case of a motion for extension to file an answer. Motions for postponement are also prohibited unless they are based on acts of God, force majeure or the physical inability of the witness to appear and testify.

The other provisions of the Amended Rules that are not expressly adopted by the CTA in the En Banc resolution, apply in a suppletory manner to CTA cases pursuant to Section 3, Rule 1 of the Revised Rules of the CTA.

#### **SyCipLaw TIP 4:**

The decision of the CIR that may be appealed to the CTA may not always be in the form of a Final Decision on Disputed Assessment. It may also come in other forms, such as a Final Notice Before Seizure. The determining factor of whether the decision of the CIR may already be appealed to the CTA depends on the language used in, and tenor of, the CIR's communication.

#### **4. Is a Final Notice Before Seizure sent by the BIR to a taxpayer appealable to the CTA?**

Yes. In *Philippine Dream Company, Inc. v. Commissioner of Internal Revenue* (G.R. No. 216044, August 27, 2020), the BIR issued a Final Notice Before Seizure while the taxpayer's protest against a tax assessment was pending review by the BIR. The Supreme Court ruled that a Final Notice Before Seizure is considered a final decision of the Commissioner of Internal Revenue (CIR) on a disputed assessment. Accordingly, pursuant to Section 228 of the Tax Code, the taxpayer must file an appeal to question the Final Notice Before Seizure with the CTA within 30 days from its receipt of the same.

Being a court of special jurisdiction, the CTA can only take cognizance of matters which are within its jurisdiction. While the right to appeal a decision of the CIR to the CTA is a statutory remedy, the requirement that the appeal must be brought within the prescribed 30-day period is jurisdictional.

#### **5. In an input VAT refund case, may the CTA automatically adjudge deficiency VAT liability if it finds that a portion of the sales/receipts do not qualify for VAT zero-rating?**

No. *Commissioner of Internal Revenue v. Procter & Gamble Asia Pte. Ltd.* (CTA En Banc Case No. 1998, January 5, 2021 and CTA Case No. 7683, September 6, 2018) involves a petition filed by Procter & Gamble Asia Pte. Ltd. (P&G) for VAT refund on its unutilized excess input VAT attributable to zero-rated sales/receipts. The CTA in Division partially granted the petition but disallowed a portion of P&G's zero-rated sales/receipts for failure of P&G to adequately prove that these sales/receipts qualify for zero-rating. The CIR filed an appeal before the CTA En Banc, which eventually affirmed the CTA in Division.

The CIR then filed a motion for reconsideration and asked the CTA En Banc to determine the corresponding output VAT liability on P&G's sales/receipts that did not qualify for zero-rating. The CIR argued that the determination of P&G's output VAT liability is for the purpose of merely ascertaining the latter's entitlement to its unutilized input VAT claim, and not for imposing any deficiency tax.

The CTA En Banc denied the CIR's motion and held that any tax deficiency liability of a taxpayer-claimant in a refund case may not be collected in the same refund case where the sole issue therein is the taxpayer's entitlement to a refund. The CTA En Banc ruled that to automatically hold the taxpayer liable for the alleged tax deficiencies against the claim for refund pertaining to the same category of tax would be unjust as it would deprive the taxpayer of the opportunity to dispute the same in the proper venue, and would not afford the taxpayer the defenses available to it under the law. The CTA En Banc also stressed that it has no assessment power like that of the CIR.

The CIR may still file an appeal before the Supreme Court.

#### **SyCipLaw TIP 5:**

A tax refund claim, where the sole issue is the taxpayer's entitlement to a refund, cannot be used by the BIR and the CTA to issue a deficiency tax assessment. A taxpayer must be given the opportunity to question an alleged deficiency tax assessment before the BIR in a separate proceeding.

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**SyCipLaw TIP 6:**

If the preliminary investigation for a criminal case under the Tax Code has been pending for more than five years, the taxpayer may already move for the dismissal of the case on the ground of prescription.

**6. In criminal cases for violation of the Tax Code, how long does the Department of Justice have to file the criminal information in court before the case is barred by prescription?**

The DOJ has five (5) years from the date of the filing with it by the BIR of a criminal complaint for preliminary investigation within which to file the criminal information in court. Otherwise, the same will be barred by prescription.

In *People v. Consebido* (CTA En Banc Criminal Case No. 069, January 6, 2021), the CTA En Banc cited Section 281 of the Tax Code which states that the prescriptive period for criminal offenses under the Tax Code begins to run when the crime has been discovered and judicial proceedings for its investigation and punishment have been instituted. Applying such provision, the CTA ruled that the prescription for the criminal action involved in this case

began to run on January 30, 2014, which was when the joint complaint-affidavit of the investigating revenue officers was filed with the DOJ for preliminary investigation. Thus, the CTA held that when the information was filed before the CTA Second Division on March 18, 2019, the 5-year prescriptive period had already lapsed.

There is currently a pending motion for reconsideration questioning the CTA En Banc's decision.

**7. What tax base should be used in computing a mining company's local business tax?**

For local business tax, the tax base is gross receipts, i.e., the amount of consideration actually or constructively received by the taxpayer. In *The Municipal Treasurer of the Municipality of Claver v. Platinum Group Metals Corporation* (CTA En Banc Case No. 2157, January 7, 2021), the Municipal Treasurer of the Municipality of Claver (*Municipal Treasurer*) issued a Notice of Assessment requiring Platinum Group Metals Corporation (*Platinum*) to settle its local business taxes for calendar years 2015 and 2016. The assessment was based on the total gross value of Platinum's shipments.

The CTA En Banc clarified that in order for the tax base to be in accordance with the Local Government Code, the same should be based on Platinum's gross receipts, or the amount of consideration actually or constructively received by Platinum. In other words, to form part of the gross receipts, the consideration should be under the control of Platinum without imposed restrictions as to its use.

Section 3 of the Department of Finance Local Finance Circular No. 02-09 states that "the tax on mining companies shall be levied on gross receipts for the preceding calendar year." It then defines gross receipts as including "deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person excluding discounts if determinable."

The CTA stated that the Municipal Treasurer's action of using the "total gross value of respondent's shipment" as basis for the local business tax is incorrect and without basis since it does not take into consideration whether or not the shipment has been paid by Platinum's customers.

The Municipal Treasurer may still file a motion for reconsideration to question the CTA En Banc's decision or file an appeal with the Supreme Court.

**SyCipLaw TIP 7:**

Taxpayers subject to local business taxes on the basis of gross receipts must ensure that they are only paying for, or are being assessed on, taxes based on the amount they actually or constructively received. Thus, taxpayers engaged in mining activities and are using the accrual method in preparing their financial statements must ensure that the tax base used in computing their local business tax is gross receipts, and not gross sales or gross shipments.