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1. Are the Bureau of Internal Revenue's collection efforts deemed initiated at the time of the issuance of the Final Decision on Disputed Assessment?

No. The Bureau of Internal Revenue's (*BIR's*) collection efforts are initiated by distraint, levy, or court proceeding and not upon issuance of a Final Decision on Disputed Assessment (*FDDA*). Distraint and levy proceedings are validly commenced by the issuance of a warrant of distraint and levy and service thereof on the taxpayer. On the other hand, a judicial action for the collection of tax is initiated: (a) by the filing of a complaint with the court of competent jurisdiction; or (b) if the assessment is appealed to the Court of Tax Appeals (*CTA*), by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for.

SyCipLaw TIP 1:

To support an argument that the BIR's right to collect taxes has already prescribed, a taxpayer must check whether the BIR has timely commenced distraint, levy, or court proceedings as this is when the BIR's collection efforts are deemed initiated. Notably, in cases of assessments issued within the 3-year ordinary period, the CIR only has another 3 years within which to collect taxes by initiating the appropriate proceedings.

In *Commissioner of Internal Revenue v. CTA Second Division and QL Development, Inc.* (G.R. No. 258947, March 29, 2022), the Supreme Court rejected the Commissioner of Internal Revenue's (*CIR's*) argument that the FDDA effectively operated as a collection letter for the satisfaction of deficiency tax liabilities. The Supreme Court reminded that collection efforts are initiated by distraint, levy, or court proceeding. In this case, since no warrant of distraint and/or levy was served on the taxpayer, and no judicial proceedings were initiated by the CIR within the prescriptive period to collect, prescription had already set in. Given that the assessment was issued within the 3-year ordinary prescriptive period to assess, the Court said that the CIR had another 3 years from the issuance of the final assessment to initiate the collection of taxes by distraint or levy or court proceeding. The 5-year period for collection of taxes applies only to assessments issued within the extraordinary period of 10 years in cases of false or fraudulent return or failure to file a return. The Supreme Court ruled that prescription had already set in when the CIR initiated its collection efforts only in 2020.

2. Does failure to indicate the date of acceptance of the BIR in the Waiver of the Defense of Prescription under the Statute of Limitations render the waiver invalid?

Yes, but only under the previous rules issued by the BIR. Failure to indicate the date of acceptance of the BIR in the Waiver of the Defense of Prescription under the Statute of Limitations (*Waiver*) renders the same invalid. However, in this case, the taxpayer's contributory fault or negligence coupled with estoppel rendered effective the otherwise flawed Waiver, regardless of the physical number of mistakes attributable to each party.

In *Republic of the Philippines, represented by the Bureau of Internal Revenue v. First Gas Power Corporation* (G.R. No. 214933, February 15, 2022), the Supreme Court ruled that the Waivers were defective because the date of acceptance by the BIR was not indicated therein. Revenue Memorandum Order (*RMO*) 20-90 and Revenue Delegation of Authority Order (*RDAO*) 05-01 clearly mandate that the date of acceptance by the BIR should be indicated in the Waiver. The Court rejected the argument that the date of the notarization should be presumed as the date of acceptance. The date of notarization cannot be regarded as the date of acceptance, as the notary public is distinct from the CIR who is authorized by law to accept Waivers.

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However, in *Asian Transmission Corporation v. Commissioner of Internal Revenue* (G.R. No. 230861, February 14, 2022), the Supreme Court ruled that if a Waiver suffers from defects attributable to both parties, the Waiver's validity is not determined by who between the BIR and the taxpayer has committed more mistakes. The taxpayer's contributory fault or negligence coupled with estoppel will render effective an otherwise flawed Waiver, regardless of the physical number of mistakes attributable to either the taxpayer or the BIR. Further, in this case, the taxpayer issued eight successive Waivers over the course of four years. The Waivers had always been marred by defects, and yet, the taxpayer continued to correspond with the tax authorities and allowed them to proceed with their investigation. Thus, the Supreme Court found that the taxpayer was estopped from questioning the validity of the Waivers.

SyCipLaw TIP 2:

Under the old rules, when raising the defense of prescription despite the execution of a Waiver, taxpayers should check if the same indicates the date of acceptance of the BIR, as its absence would render the same invalid. However, taxpayers should be mindful that contributory negligence in the defects of the Waiver, coupled with estoppel, will render effective an otherwise flawed Waiver.

However, the taxpayer must note that the BIR has issued new rules on the waiver of the defense of prescription. Under the new rules, the Waiver need not indicate the date of acceptance of the BIR, as long as the following are complied with:

(a) The Waiver is executed before the expiration of the period to assess or to collect taxes and the date of execution is specifically indicated in the Waiver.
(b) The Waiver is signed by the taxpayer himself or his duly authorized representative.
(c) In case the taxpayer is a corporation, the Waiver must be signed by any of its responsible officials
(d) The expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription is indicated in the Waiver.

3. Would the failure to indicate a definite due date in the tax assessment render the same invalid?

Yes. A Final Assessment Notice (*FAN*) that does not contain a definite due date for payment by the taxpayer is invalid.

In *Republic of the Philippines, represented by the Bureau of Internal Revenue v. First Gas Power Corporation* (G.R. No. 214933. February 15, 2022), the Supreme Court ruled that failure to indicate a definite due date for payment in the FAN and the Formal Letter of Demand (*FLD*) renders the same invalid. In this case, the last paragraph of each of the assessments stated the following: "In view thereof, you are requested to pay your aforesaid deficiency income tax liability/penalties through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice." However, the due date in each of the FAN was left blank. The FAN did not contain a definite due date and actual demand to pay. Thus, the Supreme Court ruled that there was no valid assessment.

SyCipLaw TIP 3:

When questioning the validity of a tax assessment, a taxpayer should check whether the FAN and FLD contain a definite due date for payment of the deficiency taxes. Failure to indicate the same would render the tax assessment invalid.

4. Can an officer of a corporation be held criminally liable for the corporation's failure to pay taxes solely on the basis of a letter to the BIR signed by such officer expressing the corporation's willingness to enter into a compromise?

No. A letter to the BIR signed by a corporate officer expressing their willingness to enter into a compromise cannot be considered as an implied admission of guilt of the corporate officer, as the National Internal Revenue Code, as amended (*Tax Code*) expressly allows compromise even for violations of its penal provisions.

In *Genoveva S. Suarez v. People of the Philippines and the Bureau of Internal Revenue* (G.R. No. 253429, October 6, 2021), the Supreme Court ruled that the petitioner, who was the Executive Vice-President of a corporation assessed for deficiency taxes, cannot be held liable under Section 255 in relation to Sections 253 (d) and 256 of the Tax Code. Section 253 expressly identified the following corporate officers who may be held liable for violations of the Tax Code committed by the corporation: partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation. An Executive Vice-President is not one of the corporate officers enumerated under the Tax Code. Further, the petitioner cannot be regarded as an employee responsible for the violation, as there was no evidence presented that the petitioner has actively participated in or has failed to prevent the violation by the corporation. Lastly, the letter to the BIR expressing her willingness to settle the corporation's tax liabilities through compromise cannot be used as an implied admission of guilt pursuant to the provisions of the Rules on Evidence. Offers of compromise for matters that are allowed by law to be compromised cannot be received in evidence as an implied admission of guilt. The Tax Code explicitly states that all criminal violations of the Tax Code may be compromised except: (a) those already filed in court, or (b) those involving fraud. Thus, the Tax Code itself allows compromise even for violations of its penal provisions.

SyCipLaw TIP 4:

For a corporate officer to be held liable for the corporation's violations of the Tax Code, the officer must have been the employee or officer responsible for the violation. Absent any evidence that the corporate officer has actively participated in or has failed to prevent the violation by the corporation, the officer cannot be considered as an employee responsible for the violation. A letter by the officer to the BIR expressing their willingness to settle the corporation's tax liabilities through compromise cannot be considered as an implied admission of guilt of the corporate officer or the corporate taxpayer.

5. Does the Court of Tax Appeals have jurisdiction over a claim for tax refund filed by the Bangko Sentral ng Pilipinas with the BIR?

Yes. In *Bangko Sentral ng Pilipinas v. Commissioner of Internal Revenue* (CTA EB NO. 2231 [CTA Case No. 9478], April 18, 2022), the CTA *En Banc* reversed the CTA Second Division's decision and ruled that the CTA has jurisdiction over a claim for tax refund filed by the Bangko Sentral ng Pilipinas (*BSP*) with the BIR.

In this case, the CTA Second Division previously ruled that the CTA had no jurisdiction over BSP's claim for tax refund with the BIR based on Presidential Decree No. 242 (*PD 242*), which provides that the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel shall have jurisdiction to administratively settle or adjudicate all disputes and claims solely between government agencies and offices, including government-owned or controlled corporations which are under the executive control and supervision of the President of the Philippines. The CTA Second Division also relied on *Power Sector Assets and Liabilities Management Corp. v. CIR* (G.R. No. 198146, August 8, 2017) (*PSALM Case*) in ruling that PD 242 applies and that the CTA does not have jurisdiction over the case.

In reversing the CTA Second Division's ruling, the CTA *En Banc* ruled that: (a) Republic Act No. 1125, as amended (*RA 1125*), vests the CTA with jurisdiction to hear all tax-related cases; (b) RA 1125 is the exception to the general law that is PD 242; (c) the CTA has undoubted expertise in tax cases; (d) recent jurisprudence has recognized the CTA's jurisdiction over tax issues involving national government agencies; (e) as an independent body, the BSP is not under the control and supervision of the President of the Philippines; (f) the PSALM Case is not applicable considering that, in the PSALM Case, there was a memorandum of agreement between PSALM, the National Power Corporation (*NPC*), and the BIR, which obligated NPC and PSALM to pay basic Value-Added Tax (*VAT*) to the BIR under protest, and all parties to seek resolution of the issue on the deficiency VAT before the appropriate court or body; and (g) the PSALM Case is also not applicable because there was no inaction or decision of the CIR to review in that case as the case was brought before the Department of Justice (*DOJ*). Thus, the CTA *En Banc* ruled that "absent any agreement between or among the parties on the voluntary submission of the tax issues to the DOJ, the default provision on CTA's exclusive appellate jurisdiction should prevail."

Here, the CTA *En Banc* found that the BSP was able to establish its claim for a tax refund based on Section 199(l) of the Tax Code, which provides that contracts, deeds, documents, *etc.*, related to the conduct of business of the BSP, are exempt from documentary stamp tax.

SyCipLaw TIP 5:

Government agencies must take note that it is the CTA – not the Secretary of Justice or the Solicitor General – which has jurisdiction over all tax-related cases, including cases involving decisions of the CIR or the CIR's inaction of cases pending before it.

A motion for reconsideration of the decision is currently pending.

CTA decisions, while persuasive, do not become the law of the land, unlike decisions of the Supreme Court.

6. Does filing a motion for reconsideration of a final decision on a disputed assessment with an Assistant Commissioner of the BIR toll the 30-day period to appeal to the CTA, or the CIR, to question the assessment?

No. Section 3.1.4 of BIR Revenue Regulation (*RR*) No. 18-2013 provides that if the taxpayer receives a decision from the CIR's authorized representative, the taxpayer may either appeal to the CTA within 30 days from receipt thereof or elevate the case to the CIR through a request for reconsideration within the same period.

In *Alphaland Southgate Tower, Inc. v. CIR* (CTA EB No. 2251 [CTA Case No. 9610], April 20, 2022), the taxpayer received a Final Assessment Notice and Formal Letter of Demand (*FAN*) from an OIC-Assistant Commissioner (*ACIR*) on October 9, 2015. The taxpayer protested the FAN on November 3, 2015 by way of reinvestigation. The ACIR subsequently denied the request for reinvestigation on May 5, 2016, which denial the taxpayer received on May 16, 2016. On May 17, 2016, the taxpayer filed a letter with the ACIR, seeking reconsideration of the denial of taxpayer's request for reinvestigation. On June 29, 2016, the taxpayer received the Final Decision on Disputed Assessment with Details of Discrepancies issued by the ACIR. On June 5, 2017, or more than a year after filing the letter for reconsideration with the ACIR, the taxpayer filed a petition for review with the CTA to question the FAN.

The CTA Second Division dismissed the petition for review for lack of jurisdiction.

On appeal by the taxpayer, the CTA *En Banc* ruled that the CTA Division has no jurisdiction to try the case. The CTA *En Banc* explained that, pursuant to Section 228 of the Tax Code, as implemented by RR No. 12-99, as amended by RR No. 18-2013, upon receipt of the ACIR's decision denying the taxpayer's request for reinvestigation on May 16, 2016, the taxpayer should have either (a) appealed the decision to the CTA, or (b) filed a request for reconsideration before the CIR, both within 30 days. The CTA *En Banc* explained that the request for reconsideration should have been filed with the CIR, and not the ACIR. In view of the taxpayer's failure to avail itself of either remedy, the petition for review it filed with the CTA to question the FAN was already filed out of time, and the ACIR's decision became final and executory.

SyCipLaw TIP 6:

A taxpayer who seeks to dispute the decision of the CIR's duly authorized representative must either appeal the decision to the CTA, or file a request for reconsideration with the CIR, within 30 days after receiving the disputed decision. Filing a request for reconsideration before a BIR Assistant Commissioner, or any other person other than the CIR, will not toll the period to appeal the disputed decision.

A motion for reconsideration of the decision is currently pending.

CTA decisions, while persuasive, do not become the law of the land, unlike decisions of the Supreme Court.

7. Can a Memorandum of Assignment be a valid Letter of Authority?

Yes. In *Sellery Phils. Enterprises, Inc. v. Commissioner of Internal Revenue* (CTA Case No. 10047, May 24, 2022), the CTA Third Division ruled that a Memorandum of Assignment (*MOA*) can be a valid Letter of Authority (*LOA*) if the MOA is issued by persons who are granted authority to issue LOAs. In this case, the CTA modified its previous rulings that in cases of continuation by another revenue officer of the audit examination of the taxpayer's books or reassignment of such audit to another revenue officer, a new LOA must be issued.

This case involves three LOAs authorizing a Revenue Officer Jayson Baello (*RO Baello*) to conduct a mandatory audit of the taxpayer's book of accounts and other accounting records. A few months later, a MOA was issued by Revenue District Officer Carlos A. Salazar in favor of Revenue Officer Cristina Yu (*RO Yu*) to continue the audit of the taxpayer's accounting records considering RO Baello's "resignation/retirement/transfer to another RDO."

The taxpayer was subsequently assessed deficiency income tax and VAT, and a Preliminary Assessment Notice (*PAN*), a Final Assessment Notice (*FAN*), and Warrants of Distraint and/or Levy were eventually issued. The taxpayer challenged the assessment, asserting that it is not liable for the deficiency income tax and VAT since RO Yu was not armed with a proper and valid LOA.

The CTA Third Division ruled that a Revenue Officer must be duly authorized before conducting an examination of a taxpayer for the purpose of collecting the correct amount of tax pursuant to Section 13 of the Tax Code. Further, Revenue Memorandum Order No. 43-90 (*RMO 43-90*) explicitly requires that any reassignment/transfer of cases to another Revenue Officer, and revalidation of LOAs that have already expired, shall require the issuance of a new LOA.

The CTA Third Division, however, relaxed the rule under RMO 43-90 by stating that "a [MOA], a Referral Memorandum, or any other

letter emanating from the BIR which seeks to authorize the audit/tax investigation of a taxpayer may be considered a valid LOA provided that it was issued by [(a) Regional Directors; (b) Deputy Commissioners; (c) the CIR; and (d) Other officials that may be authorized by the CIR for the exigencies of service.]"

In this case, the MOA was issued by Revenue District Officer Carlos A. Salazar, who is not among the specified persons who can issue a LOA. Thus, RO Yu was not armed with a proper LOA and she did not have the authority to conduct the tax audit. Consequently, the deficiency income tax and VAT assessments against the taxpayer were considered null and void.

SyCipLaw TIP 7:

In certain circumstances, including where it was issued by the proper BIR officer, a memorandum of assignment may be considered a letter of authority. In case of a tax audit audit, a taxpayer should examine the signatory of a LOA or MOA. The signatory must be one of the following: (a) Regional Directors; (b) Deputy Commissioners; (c) the CIR; and (d) other officials that may be authorized by the CIR for the exigencies of service.

CTA decisions, while persuasive, do not become the law of the land, unlike decisions of the Supreme Court.

8. Does the tax exemption of Philippine Amusement and Gaming Corporation extend to its contractees and licensees?

Yes. In *PremiumLeisure and Amusement, Inc. v. Commissioner of Internal Revenue* (CTA Case No. 10060*,* May 26, 2022), the CTA First Division ruled that the exemption from corporate income tax of the Philippine Amusement and Gaming Corporation (*PAGCOR*) extends to its contractees and licensees, such as PremiumLeisure and Amusement, Inc. (*PLAI*). However, PLAI must first prove: (a) it is a contractee and licensee of PAGCOR; and (b) the 5% franchise tax was paid.

In this case, PAGCOR issued a provisional license and, eventually, a gaming license to PLAI, together with the SM group of companies, (collectively, the *Consortium*). PLAI erroneously paid its income tax for 2016. Thus, it filed a claim for refund of erroneously paid income tax.

The CTA First Division ruled that the tax exemption of PAGCOR extends to its contractees and licensees based on Section 13(2)(a) of Presidential Decree No. 1869. Further, this issue has already been settled in *Bloomberry Resorts and Hotels, Inc. v. BIR* (G.R. No. 212530, August 10, 2016), where the Supreme Court ruled that "it is without doubt that, like PAGCOR, its contractees and licensees remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit."

The CTA First Division, however, emphasized that the taxpayer must show that the corresponding 5% franchise tax has been paid and remitted by PAGCOR.

SyCipLaw TIP 8:

Tax refunds take on the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer. Thus, a taxpayer must strictly comply with the requirements of the law, rules, and regulations to avail itself of a refund.

For further guidance, please note that the BIR issued Revenue Memorandum Circular (*RMC*) No. 32-2022 on March 30, 2022, which clarifies the franchise tax, income tax, and VAT due from the PAGCOR, its licensees and contractees, based on current laws and recent jurisprudence.

A motion for reconsideration of the decision is currently pending.

CTA decisions, while persuasive, do not become the law of the land, unlike decisions of the Supreme Court.

In this case, PLAI was able to show that it is a contractee and licensee of PAGCOR since it is one of the corporations composing the Consortium, which was granted a gaming license by PAGCOR. However, the CTA First Division found that PLAI was not able to prove that the 5% franchise tax was paid by PAGCOR. Although PLAI submitted proof of payment of its license fee to PAGCOR, the CTA First Division ruled that the remittance of license fees by the Consortium to PAGCOR cannot be equated as proof of payment of the franchise tax by PAGCOR to the National Government, even when the remittance of the license fees to PAGCOR includes the share of the Consortium in the same franchise tax. License fees are paid by the Consortium as a consideration for the grant of the gaming license by PAGCOR, while the franchise tax is paid by PAGCOR as a consideration for the grant of the said franchise by the Government, whichis necessary for PAGCOR to enjoy certain tax incentives. Here, PLAI should have presented a PAGCOR Certification or Statements of Franchise Tax Remittances to unequivocally show that PAGCOR remitted the 5% franchise tax to the National Government. PLAI's failure to do so resulted in the disallowance of its claim for refund.

9. What are the registered projects/activities under Tiers I, II, and III of the 2022 Strategic Investment Priority Plan?

Pursuant to Section 300 of the Tax Code, as amended by Republic Act No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises Act (*CREATE Act*), the President issued Memorandum Order No. 61 on May 24, 2022, which approves the 2022 Strategic Investment Priority Plan (*2022 SIPP*). The 2022 SIPP took effect on June 11, 2022. The 2022 SIPP classifies the industries or activities which fall under Tiers I, II, and III. Under the CREATE Act, the extent of the tax incentives that may be granted to qualified registered business enterprises depends on the location and the Tier applying to a particular industry or activity.

Tier I includes activities that (i) have high potential for job creation; (ii) take place in sectors with market failures resulting in under-provision of basic goods and services; (iii) generate value creation through innovation, upgrading or moving up the value chain; (iv) provide essential support for sectors that are critical to industrial development; or (v) are emerging owing to potential comparative advantage.

Specifically, under the 2022 SIPP, Tier I activities include all activities listed in the 2020 Investment Priorities Plan ("*IPP*"), as amended such as the following:

a) *Mass Housing*

This covers the development of mass housing units based on a price ceiling of PhP2 million. This also covers in-city low-cost dwelling projects for lease/rent. For Metro Manila, only in-city low-cost dwelling for lease/rent may qualify for registration.

b) *Infrastructure and Logistics*

This covers the establishment and operation of physical infrastructures vital to the country's economic development and prosperity such as, but not limited to, airports; seaports; air, land, and water transport; Liquefied Natural Gas storage and regasification facilities; pipeline projects for oil and gas; bulk water treatment and supply; training facilities; testing laboratories; and domestic industrial zones.

c) *Energy*

This covers power generation projects utilizing conventional fuels, waste heat and other wastes, and the establishment of battery energy storage systems.

Tier II includes activities that produce supplies, parts and components, and intermediate services that are not locally produced but are critical to industrial development and import-substituting activities, including crude oil refining.

Specifically, under the 2022 SIPP, Tier II activities include the following:

a) *Green ecosystems*

This covers, among others, electric vehicle assembly; manufacture of electric vehicle parts, components, and systems; and establishment and operation of electric vehicle infrastructure.

b) *Health-related activities*

This covers, among others, health-related activities such as manufacturing in support of the Vaccine Self-Reliance Program or other health-related programs as endorsed by the Department of Health, Department of Science and Technology, or other similar agencies.

c) *Defense-related activities*

This covers defense-related activities as endorsed by the Department of National Defense, Armed Forces of the Philippines, or National Security Council.

d) *Industrial value-chain gaps*

This covers activities that will address value-chain gaps in, among others, steel, textiles, chemicals, green metals processing, crude oil refining, and lab-scale wafer fabrication.

e) *Food security-related activities*

This covers products and services critical to competitively ensure food security or in support of green/organic agriculture, as endorsed by the Department of Agriculture or Philippine Council for Agriculture, Aquatic and Natural Resources Research and Development such as, but not limited to, integrated food production and processing activities; production and/or adoption of hybrid seeds contained in the National Seed Industry Council Crop Variety Registration; manufacture of animal vaccine, pesticides and fertilizers, agricultural and fisheries machinery and equipment, and parts and components therefor.

Tier III activities include (i) research and development resulting in demonstrably significant value-added, higher productivity, improved efficiency, breakthroughs in science and health, and high-paying jobs; (ii) generation of new knowledge and intellectual property registered and/or licensed in the Philippines; (iii) commercialization of patents, industrial designs, copyrights and utility models owned or co-owned by a registered business enterprise; (iv) highly technical manufacturing; or (v) are critical to the structural transformation of the economy and require substantial catch-up efforts.

Specifically, under the 2022 SIPP, Tier III activities include the following:

a) *Research & Development ("R&D") and activities adopting advanced digital production technologies of the fourth industrial revolution*

   This includes robotics, artificial intelligence, additive manufacturing, data analytics, and digital transformative technologies, among others.

b) *Highly technical manufacturing and production of innovative products and services*

   This includes the manufacture of equipment, parts, and services; commercialization of intellectual property (IP) and R&D products/services; and aerospace.

c) *Establishment of innovation support facilities*

   This includes R&D hubs; Centers of Excellence; science & technology parks; innovation incubation center; tech startups, startup enablers, incubators, and accelerators; and space-related infrastructures.

SyCipLaw TIP 9:

Taxpayers who wish to engage in certain activities and avail themselves of the tax incentives under the CREATE Act must examine the 2022 SIPP to determine if their activities are included in the activities set out in the SIPP and whether such activities may qualify for tax incentives. The investment promotion agencies will not accept an application for registration under the CREATE Act if the applicant's activity is not listed in the SIPP.

Additional activities may be added to Tiers II or III of the SIPP, provided that the additional activities under Tier III are duly endorsed by the relevant agencies such as the Department of Science and Technology.

10. Are there taxes due on the entry and/or importation into Freeport Zones or Ecozones of petroleum and petroleum products ?

Yes. Revenue Regulations No. 4-2022 provides the implementing rules on the tax treatment of the importation of petroleum and petroleum products into, and subsequent transfer, transport and/or withdrawal through and from, Freeport Zones and Economic Zones, in relation to Sections 294 and 295(F) of the Tax Code, as amended by the CREATE Act.

The Revenue Regulation provides that all petroleum and petroleum products that are entered into and/or imported into Freeport Zones or Ecozones are subject to VAT and excise taxes. These taxes must be paid to the Bureau of Customs (*BOC*) by the party which entered the aforesaid products or the importer thereof before these products can be subsequently transferred, transported, or withdrawn.

Instances when VAT or excise taxes are refundable

The taxpayer may file a claim with the BIR for credit or refund of the following taxes:

a) VAT or excise taxes paid on petroleum and petroleum products that are exported outside the Philippines;

b) VAT paid on petroleum and petroleum products that are transferred, delivered, and sold to:
   i. a registered export enterprise and have been directly and exclusively used in its registered export project/activity;
   ii. entities engaged in international shipping or air transport operations and have been actually used therefor; or
   iii. entities that are statutorily zero-rated for VAT under special laws or international agreements to which the Philippines is a signatory;

c) Excise taxes paid on petroleum and petroleum products that are transferred, delivered, and sold to:
   i. international carriers of Philippine or foreign registry on their use or consumption outside the Philippines;
   ii. exempt entities or agencies covered by tax treaties, conventions, and other international agreements for their use or consumption; or entities which are by law exempt from direct and indirect taxes.

No VAT and excise tax refund shall be granted if the Zone registered enterprise subsequently (1) sells or introduces the petroleum or petroleum products, or part of the volume thereof, into the customs territory (except sales of fuel for use in international operations), or (2) sells the petroleum or petroleum products to another Zone registered business enterprise or to a party not enjoying tax privileges.

Tax Consequences of Importation of Petroleum Products and Crude Petroleum

a) Importation of petroleum products by registered export enterprises to be used directly and exclusively for their registered project or activity is VAT-exempt but subject to excise tax.

b) Importation of petroleum products produced from imported crude oil by registered export enterprises located outside the Zones to be used directly and exclusively for their registered project or activity is VAT-exempt but subject to excise tax.

c) Importation by a Philippine refinery enjoying fiscal incentives with an Investment Promotion Agency of crude petroleum to be refined at its refinery inside the Zone is exempt from all applicable duties and taxes under Section 295(G) of the Tax Code.

Tax Consequences of Lifting of Petroleum Products Produced from Imported Crude Oil

Upon lifting of the petroleum products produced from the imported crude oil, the producer must pay all applicable duties and taxes, provided that:

a) If the producer is under Income Tax Holiday, the producer may ask for a refund of the excise tax or VAT paid, as the case may be, on petroleum products sold to entities entitled to 0% VAT or excise tax exemption; and

b) If the producer is under the 5% Special Corporate Income Tax, its export sales and sales inside the Zones shall be exempt from VAT and excise taxes.

SyCipLaw TIP 10:

Taxpayers who wish to import petroleum and petroleum products into Freeport Zones or Ecozones must be mindful of the instances when a transaction is subject to VAT or excise tax and when a refund of the taxes paid may be claimed. Knowing the appropriate tax consequences of their transaction and allowable instances for VAT or excise tax refund for imported petroleum or petroleum products will enable the taxpayers to pay the correct taxes and to properly structure their business operations to maximize returns while minimizing tax obligations.

Tax Consequence of Introduction of Petroleum Products from Imported Crude Oil into Customs Territory

The introduction by a registered refinery into the customs territory of petroleum products produced from the imported crude oil by the said refinery, to the extent of its local sales allowance, shall be subject to applicable duties and taxes which shall be payable by the importer thereof.

However, the registered refinery may ask for a refund of the excise tax or VAT paid, as the case may be, on sales to entities entitled to 0% VAT or excise tax exemption.

11. Are BIR tax audits and other field operations suspended beginning May 30, 2022?

Yes. Revenue Memorandum Circular Nos. 76-2022 and 77-2022 suspended the following tax audits and other field operations relative to examinations and verifications of taxpayers' books of account, records, and other transactions:

a) Those done pursuant to and under the authority of all Task Forces created through Revenue Special Orders, Revenue Operation Memoranda, and other similar orders or directives; and

b) Those covered by Letters of Authority (*LOAs*) or Mission Orders (*MOs*).

Under the RMCs, no audits, field operations, or any form of business visitation pursuant to any LOA or MO may be conducted effective May 30, 2022 until further notice. Moreover, no new LOAs or MOs may be issued from the said date onwards.

However, service of Assessment Notices, Warrants, and Seizure Notices should still be effected. Taxpayers may also voluntarily pay their known deficiency taxes without the need to secure authority from concerned Revenue Officials.

RMC No. 77-2022 provides that no written orders to audit and/or investigate taxpayers' internal revenue tax liabilities shall be issued and/or served, except in the following cases:

a) Investigation of cases prescribing on or before October 31, 2022;

b) Processing and verification of estate tax returns, donor's tax returns, capital gains tax returns, and withholding tax returns on the sale of real properties or shares of stocks, together with the documentary stamp tax returns related thereto;

c) Examination and/or verification of internal revenue tax liabilities of taxpayers retiring from business;

d) Audit of National Government Agencies, Local Government Units and Government Owned and Controlled Corporations including subsidiaries and affiliates; and

e) Other matters/concerns where deadlines have been imposed or under the orders of the CIR.

SyCipLaw TIP 11:

Taxpayers whose books of account, records, and other transactions are under audit as of May 30, 2022 should insist that such audit be suspended. Moreover, taxpayers who have been served LOAs or MOs prior to May 30, 2022 should resist any attempt by the BIR to begin any audit on or after such date. Further, beginning May 30, 2022, taxpayers should refuse service of LOAs or MOs, regardless of the date of issuance of the LOAs or MOs. However, taxpayers must take note of the instances when LOAs or MOs may be issued and/or served on them, as well as those procedures which are not affected by the suspension.

12. What are the different classifications of Educational Institutions and how are their income taxed?

The BIR issued Revenue Memorandum Circular No. 78-2022 (*RMC No. 78-2022*) to clarify the income tax treatment of the different classifications of educational institutions under the Tax Code. It identified the different kinds of educational institutions and provided the corresponding income tax treatment under each classification. Thus,

a) Proprietary Educational Institution

Proprietary Educational Institutions (*PEI*) refer to private schools maintained and administered by private individuals or groups with a permit to operate issued by the Department of Education (*DepEd*), or the Commission on Higher Education (*CHED*), or the Technical Education and Skills Development Authority (*TESDA*). According to RMC No. 78-2022, the income tax treatment for a PEI depends on whether it is organized as a domestic corporation, a resident foreign corporation, or if it is owned by an individual.

If the PEI is organized as a domestic corporation, its income is subject to the 10% preferential income tax rate under Section 27(B) of the Tax Code. This preferential rate is temporarily reduced to 1% from July 1, 2020 until June 30, 2023. For the preferential income tax rate to apply, the gross income of the domestic corporation from unrelated trade, business or other activity must not exceed 50% of the PEI's total gross income derived from all sources. Otherwise, the income shall be subject to the regular corporate income tax of 25% of the taxable income (*i.e.*, gross income less allowable deductions), or 20% of the taxable income in certain cases, under Section 27(A) of the Tax Code.

If the PEI is organized as a resident foreign corporation, its income is subject to 25% of the taxable income under Section 28(A) of the Tax Code.

For PEIs owned by an individual, trust, or estate as a sole proprietor, the income would be taxed under Sections 24 and 25 of the Tax Code depending on the citizenship and residence of the individual, trust, or estate.

b) Government Educational Institution

Government Educational Institutions (*GEI*) refer to public universities or colleges that are fully owned and subsidized by the government. RMC No. 78-2022 provides that if the GEI's charter contains an express provision for a tax exemption, then such GEI is exempt from the applicable taxes mentioned therein. On the other hand, if there is no express provision granting a tax exemption in the charter, the income of the GEI is, generally, still exempt from income tax pursuant to Section 30(I) of the Tax Code. As an exception, income arising from the GEI's properties or the activities it conducted for profit shall be subject to the regular corporate income tax under Section 27(A) of the Tax Code.

c) Non-stock and Non-profit Educational Institution

Non-stock and Non-profit Educational Institutions (*NSNPEI*) refer to schools which are non-stock and non-profit. RMC No. 78-2022 reiterated the rule under the 1987 Constitution that all revenues and assets of a NSNPEI used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties. Hence, NSNPEI's income which are not used actually, directly, and exclusively for educational purposes shall be subject to the regular corporate income tax rate under Section 27(A) of the Tax Code. Additionally, RMC No. 78-2022 pointed out that for the exemption to set in, the NSNPEI must secure a one-time certificate of income tax exemption or exemption ruling from the BIR. Furthermore, the NSNPEI must submit, together with the required annual income tax return, a detailed breakdown of the expenses defrayed from each nature of revenues/income or an accounting for those actually, directly and exclusively used for educational purposes.

Should the NSNPEI's net income or assets accrue/ inure to or benefit any member or specific person, its income shall be subject to the 10% preferential income tax rate under Section 27(B) of the Tax Code, provided that beginning July 1, 2020 until June 30, 2023, the tax rate imposed shall be one percent (1%).

Other Tax Obligations

RMC No. 78-2022 noted that an educational institution shall be constituted as a withholding agent for the government if (i) it acts as an employer and its employees receive compensation income subject to withholding tax; or (ii) it makes income payments to individuals or corporations which are subject to expanded withholding tax under Section 57 of the Tax Code.

Tax Compliance Requirements

RMC No. 78-2022 also emphasized that all educational institutions must register each type of internal revenue tax for which they are obligated to file a return or pay the tax due thereon with the BIR on or before commencing operations. In addition, registrant educational institutions must also provide the specific legal basis and the incentives to which they may be entitled in their application forms during registration.

Finally, all educational institutions must issue receipts and invoices to their clients for each sale of merchandise or for services rendered valued at Php100.00 or more. For NSNPEI, the words "Tax Exempt" must be printed prominently in the official receipt that it will issue for all exempt revenues/receipts.

SyCipLaw TIP 12:

Individuals and corporations who operate or intend to operate an educational institution in the Philippines must be mindful of the different kinds of educational institutions under the Tax Code and their applicable taxes. Having knowledge of the proper classification of the educational institution will enable them to identify the appropriate tax consequences and administrative requirements that they would need to comply with.

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