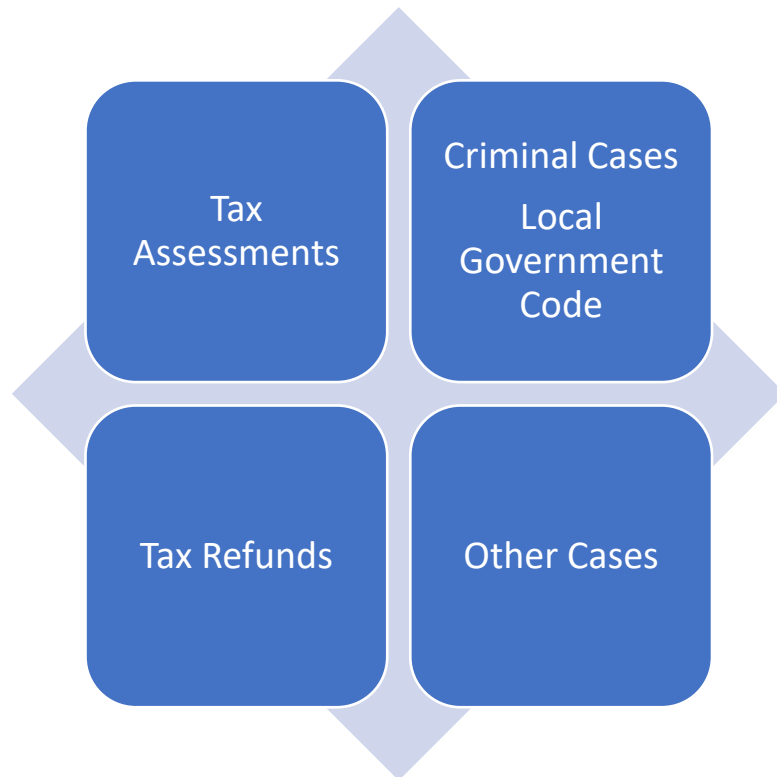



RECENT CTA and SC Decisions



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Tax Assessments

ORIGINAL - TAXPAYER'S COPY

 BIR
REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
LARGE TAXPAYERS SERVICE
RDO No. 121 - EXCISE LT DIVISION I

AUDM35/019615/2018

LETTER OF AUTHORITY eLA201600038779

June 05, 2018


[REDACTED]

SIR / MADAM / GENTLEMEN:

The bearer(s) hereof, [REDACTED] of RDO NO. 121 - EXCISE LT DIVISION I is / are authorized to examine your books of accounts and other accounting records for ALL INTERNAL REVENUE TAXES (AIRT) for the period from January 01, 2017 to December 31, 2017 pursuant to SEC. 6 (A) & SEC. 10 (C) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED. The Revenue Officer(s) identified herein are provided with the necessary identification card(s) which shall be presented to you upon request.

It is requested that all required documents, books and records be provided to the Revenue Officer(s) in order to expedite the examination.

You will be duly informed of the results of the examination upon approval of the report submitted by the aforementioned Revenue Officer(s).

Very truly yours,

TERESITA M. DIZON
OIC-ASSISTANT COMMISSIONER
LARGE TAXPAYERS SERVICE

IMPORTANT

- In case of failure to submit / present the books of accounts, records and documents per attached checklist of requirements, a Subpoena Duces Tecum shall be issued to compel submission / presentation thereof.
- Please address any communication on this matter to the authorized officer(s) ERLINDA V. VICTORINO, REVENUE DISTRICT OFFICER, RDO NO. 121 - EXCISE LT DIVISION I, with the address at ROOM 209 2ND FLOOR NATIONAL OFFICE BLDG., DILIMAN, Q.C. with telephone no. 926-5737/926-3603. This Letter of Authority becomes void if it contains erasures. This is an electronically-issued Letter of Authority. Please confirm the validity of this document with the authorized signature above.

RECEIVED BY

TAXPAYER / AUTHORIZED REPRESENTATIVE
(Signature Over Printed Name)

DATE

LETTER OF AUTHORITY

A Revenue Regional Director may appoint a sub-agent to examine a taxpayer and issue assessments in relation thereto when not prohibited from doing so by the CIR.

Memorandum Referrals were only signed by the OIC-Chief of the LT Regular Audit Division I of the BIR.

The assessment is **VOID**.

(CTA Case No. 9120 dated June 25, 2020)

When is a Memorandum of Assignment valid?

- A. Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service;
- B. Regional Director

(CTA Case No. 9422 dated June 30, 2020)

The BIR is, as part of the due process requirement, duty bound to wait for the expiration of fifteen (15) days from the date of receipt of the PAN before the issuance of FLD and assessment notice; otherwise said assessment shall be void.

PAN was issued on December 28, 2012

PAN was received only on January 10, 2013

FAN was received on January 15, 2013

} *5 days only*

Assessments issued in this case are void.

(CTA Case No. 9005, August 26, 2020)

Motion for Reconsideration and Motion for Reinvestigation are mutually exclusive.

- **Motion for Reinvestigation** – 180 days is counted from the submission of the complete documents within the 60 day period from the submission of the protest;
- **Motion for Reconsideration** – 180 days is counted from the submission of the protest.

Should there be an express acceptance by the BIR of a Motion for Reinvestigation?

(CTA Case 9245, June 9, 2020)

A tax assessment must not only contain a computation of tax liabilities, it must also include a demand upon the taxpayer for the settlement of a tax liability that is there definitely set and fixed.

A tax assessment must contain

- a) a computation of tax liabilities;
- b) **demand** upon the taxpayer for the settlement of a tax liability;
- c) that is **definitely set and fixed**.

In this case, the said FAN states:

"Please take note that the interest and total amount due will have to be adjusted if paid beyond the date specified therein."

(CTA Case 9687, June 10, 2020)

BIR
FORM NO. **0401**
REVISED: June, 1996



RETURN PERIOD 2009	AUDIT RESULT / ASSESSMENT NOTICE	ASSESSMENT NUMBER IT - 125 - 0000066 - 09-15-574 DATE ISSUED NOV 16 2015										
TIN: NAME: ADDRESS:	[REDACTED]											
PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)/CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS FOLLOWS:												
TAX TYPE: INCOME TAX BASED ON/REASON: Section 32/34 of the NIRC Due Date: November 15, 2015	<table border="1"> <thead> <tr> <th data-bbox="708 896 1666 925">PARTICULARS</th> <th data-bbox="1666 896 2423 925">AMOUNT</th> </tr> </thead> <tbody> <tr> <td data-bbox="708 925 1666 968">Basic</td> <td data-bbox="1666 925 2423 968" style="text-align: right;">57,955,503.92</td> </tr> <tr> <td data-bbox="708 968 1666 1011">Interest - April 16, 2009 to November 15, 2015</td> <td data-bbox="1666 968 2423 1011" style="text-align: right;">64,783,138.63</td> </tr> <tr> <td data-bbox="708 1011 1666 1053">Compromise penalty</td> <td data-bbox="1666 1011 2423 1053" style="text-align: right;">50,000.00</td> </tr> <tr> <td></td> <td data-bbox="1666 1053 2423 1068" style="text-align: right; border-top: 1px solid black;">122,788,642.55</td> </tr> </tbody> </table>	PARTICULARS	AMOUNT	Basic	57,955,503.92	Interest - April 16, 2009 to November 15, 2015	64,783,138.63	Compromise penalty	50,000.00		122,788,642.55	
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Interest - April 16, 2009 to November 15, 2015	64,783,138.63											
Compromise penalty	50,000.00											
	122,788,642.55											
IMPORTANT PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS	D1 By: _____ KIM JACINTO-HENARES Commissioner of Internal Revenue SIGNATURE OVER PRINTED NAME OF AUTHORIZED REVENUE OFFICIAL											
MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)												

It is the registry receipt issued by the mailing office and the affidavit of the person mailing, which proves service made through registered mail.

- If the FAN was served through mail, what documents should the BIR produce to prove receipt?

Registry receipt issued by the Bureau of Posts or the registry return card signed by the taxpayer or its authorized representative or at least a certification issued by the Bureau of Posts attesting to the same fact

AND

the **affidavit** of the person mailing, which proves service made through registered mail. (CTA Case 9595, June 15, 2020)

As part of due process in the issuance of tax assessments, the PAN and FLD must show, among others, in detail the facts on which the assessment is based; otherwise said assessment shall be void.

Reply to the PAN:

“2. Deficiency Withholding on Compensation - Php3.932.486.57

*Our total compensation expenses (those that are not subject to withholding tax and those that are subject to withholding tax) amounted to Php11.498.199.16 and Php10.885.444.73 or a total of Php22,383,643.89 for administrative and manufacturing respectively. Again, **who of our employees**, whose total compensation as above stated, was not subjected to withholding tax? May we be favored with a list of these employees.*

Reply to the PAN:

3. Deficiency withholding tax (EWT)-Php1.853.869.79 *Again, we reiterate that our expenses subject to expanded withholding tax runs to millions of pesos. Which of these expenses were not subjected to EWT? On top of these, not all incurred compensation expenses are subject subject to EWT. Which of these expenses should have been subject to EWT but were not? **No identification of the recipient was supplied by your examiner. May we request for a schedule** of the same so that we can properly respond.*

4. Deficiency Final Tax-Php18.277.471.47

***Again, there is no detail as to particular interest payment made and to whom was not given. We cannot therefore properly respond to this.** However, we would like to assure you that all our remittances of interest to offshore recipients were subjected to the final withholding tax. We are ourselves curious to know if we have made any remittance and failed to withhold. Please furnish us a schedule of these remittances that were supposedly not subjected to withholding tax.”*

(CTA Case No. 9294, August 26, 2020)

A valid Waiver must state the nature and amount of tax due.

A valid Waiver extending the prescriptive period of tax assessment must indicate the

- a. nature; and
- b. amount of tax due.

(CTA Case No. 9381 dated June 30, 2020)

Note - RMO 14-2016: waiver on **assessment** need not specify the particular taxes to be assessed nor the amount **EXCEPT** waiver on **collection**.

Preliminary collection letter constitutes a final decision on disputed assessment.

- PCL can take the place of an FDDA.
- So, you have to appeal to the CTA 30 days from receipt of the same.

Note:

- a. Not all PCL can be directly appealed to the CTA;*
- b. The BIR will no longer issue PCL and FNBS. It will directly issue WDL.*

TAX REFUNDS

A withholding agent has personality to file the claim for refund on behalf of the taxpayer.

- Toledo paid the repair services of Yashima and withheld from such income payment the amount of P18M which it remitted to the BIR.

Who is entitled to claim for tax refund? **Yashima** is entitled to claim.

However, in case Yashima does not file a claim for refund, the withholding agent may file the claim, which in this case is **Toledo**.

A withholding agent may file a claim for refund but he is obligated to remit to the said taxpayer the amount recovered as taxes erroneously or illegally collected. (CTA Case No. 9465 dated June 8, 2020)

To prove foreign currency inward remittance, taxpayer must show bank issued Bank Credit Memos; or alternatively, a Certificate of Inward Remittance

In this case, the bank did not certify the pages of the bank statements – deemed **self-serving**.

What must be presented to prove inward remittance?

- a. Schedule and copy of Bank Credit Memos OR
- b. Certificate of Inward Remittance that the recipient bank likewise issued.

(CTA Case 9647, June 4, 2020)

The DOE Certificate of Registration, BOI Registration, and DOE Certificate of Endorsement are mandatory documents to qualify for VAT zero-rating under the Renewable Energy Act.

Renewable Energy Act of 2008 indicates the mandatory submission of the following documents in order to qualify for VAT zero-rating:

- (1) DOE Certificate of Registration;**
- (2) Registration with the BOI; and**
- (3) Certificate of Endorsement by the DOE.**

(CTA Case Nos. 9208 & 9274, July 24, 2020)

Service Agreements must be offered in evidence.

Service agreements are essential in proving a claim for VAT refund to prove the nature of services that taxpayer performed under Section 108(B)(2) of the Tax Code.

(CTA 9892, September 8, 2020)

It is not required that the request for additional documents by the taxing authority be made in written form. All subsequent verbal request made by the tax authority are sufficient for the purpose of determining the reckoning point of the 120-day period.

- There is no requirement in the Tax Code that the taxing authority's request for additional documents should be made in a specific form.
- The law does not explicitly prohibit verbal requests for additional documents as long as they are duly made by authorized BIR officials.

(G.R. No. 244154, July 15, 2020)

Note: *This case applies only to those claims for refund prior to the effectivity of RMC No. 54-2014. Under RMC 54-2014, the taxpayer is now required to submit complete documents upon its filing of an administrative claim for VAT refund/tax credit, as no other documents shall be accepted thereafter.*

CRIMINAL CASES

The CTA has exclusive original jurisdiction on criminal offenses where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is at least Php1,000,000.00.

- The CTA has exclusive original jurisdiction on criminal offenses when the **principal amount of taxes and fees, exclusive of charges and penalties**, claimed is **at least Php1,000,000.00**.
- While the Amended Information stated the deficiency internal revenue tax liabilities due from accused as amounting to Php3,850,524.77, there is **nothing therein that states that said amount of internal revenue tax liabilities refers to the basic or principal amount** of tax liabilities of accused for taxable year 2011, exclusive of charges and penalties. (*CTA Crim 06-39, June 15, 2020*)

Without the conviction of the corporate taxpayer the officers, cannot likewise be held criminally liable.

- A corporation must also be arraigned.
- If the "accused" taxpayer is a corporation, the law simply says that the "penalty" shall be imposed on the officers responsible for the violation (who should also be indicted together with the corporation).
- Without the conviction of the corporate taxpayer the officers, cannot likewise be held liable as their culpability is dependent upon the liability and conviction of the accused corporation itself as the taxpayer.
(CTA Crim 06-39, June 15, 2020)

The final determination of the CIR as to the tax liability is necessary in order for the Court to rule on the civil aspect of the criminal case.

- The Joint Complaint-Affidavit of the Revenue Officers (ROs) is only for "preliminary investigation and the filing of an Information in court" against the taxpayer.
- There is no requirement for the precise computation and assessment of the tax liability before there can be a criminal prosecution.
- In order for a civil liability to be included in the judgment, it must be the final decision of the CIR The Joint Complaint-Affidavit of ROs cannot be deemed as a formal assessment. (*CTA EB Crim No. 060, July 1, 2020*)

Local Government Code

When the question pertains to the legality of the RPT assessment, which is a question of law, then the taxpayer may proceed directly to the courts.

- When the question is one on **reasonableness** of the RPT assessment, which is a **question of fact**, the taxpayer **must exhaust administrative remedies** before it could elevate the same with the Court.
- On the other hand, when the question pertains to the **legality** of the RPT assessment, which is a **question of law**, then the taxpayer may **proceed directly to the courts**. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.
- In this case, the issue is **whether its facility was a blending and storage facility, or purely a storage facility**. Logically, the issue can only be resolved by presenting evidence thereon; thus **a question of fact**. Therefore, the taxpayer must have resorted to exhaust all administrative remedies first before going to the courts. (CTA *EB No. 2093 dated July 14, 2020*)

Appeal to the RTC must be made when there is inaction by the local treasurer within 60 days from filing of protest.

Treasurer has 60 days to decide a protest.

In case of inaction, taxpayer has 30 days from the lapse of the said 60-day period within which to appeal with the court.

(CTA EB 2208, September 8, 2020)

OTHER DECISIONS

Condominium dues are not subject to income tax, VAT and withholding tax.

The Supreme Court categorically held that condominium association dues, fees, and other charges are not subject to income tax, VAT, and withholding tax. Further, the Supreme Court held that RMC No. 65-2012 is invalid.

In reaching such conclusion, the Supreme Court made the following determinations:

1. A condominium corporation is not engaged in trade or business.
2. Association dues, fees, and other charges do not constitute profit or gain.
3. Association dues, fees, and other charges do not arise from transactions involving the sale, barter, or exchange of goods or property nor for the performance of services.
4. If there is no income tax, withholding tax cannot be collected.

(G.R. No. 215801, January 15, 2020)

A condominium corporation is not subject to local business tax.

- The taxpayer (*Serendra*) in the present case is a condominium corporation which was required to pay LBT, among others, by the city treasurer.
- Supreme Court held that by their nature, condominium corporations are generally exempt from local business taxation under the Local Government Code, irrespective of any local ordinance that seeks to declare otherwise.

(CTA AC 229, September 10, 2020)

The BIR must have initially conducted a surveillance or stocktaking against the taxpayer before the issuance of a 48-Hour Notice, 5-day VAT Compliance, and Closure Order.

- The taxpayer received a Letter of Authority and subsequently, a 48-Hour Notice from the BIR informing the latter of its failure to issue sales invoices/receipts and pay VAT.
- The BIR did not conduct any surveillance against the taxpayer before the issuance of the said Notice.
- For purposes of the issuance of a 48-Hour Notice, 5-day VAT Compliance Notice, and Closure Order the BIR must have initially conducted a surveillance or stocktaking against the latter.

(CTA Case No. 9727, July 28, 2020)

Deposit on future subscription is not a loan agreement subject to DST.

- A deposit on future subscription has been characterized as "merely an amount of money received by a corporation with a view of applying the same as payment for additional issuance of shares in the future, an event which may or may not happen".
- It is **not subject to DST** since there is yet no subscription that creates rights and obligations between the subscriber and the corporation.
- A loan agreement, on the other hand, is a contract where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid.
(CTA Case 9835, September 9, 2020)

Companies authorized by PAGCOR to establish and operate casinos is subject to franchise tax of 5% on its gross receipts.

- Taxpayer, having been authorized by PAGCOR to establish and operate casinos through its Provisional License.
- Taxpayer also paid the five percent (5%) franchise tax due on its gross receipts as franchisee (gambling casinos, gaming clubs, and other similar recreation or amusement places, and gaming pools).
- The payment by taxpayer of the five percent (5%) franchise tax on its gaming operations exempts it from the payment of any other taxes, including the corporate income tax. *(CTA 9769, September 8, 2020)*

When EFPS is offline, file manually.

- In case the eFPS is not available during due dates, taxpayers shall manually file their returns.
- In this case, taxpayer still insisted to electronically file and pay its taxes despite the alleged unavailability of the eFPS. The claim for refund must be denied.

(CTA EB 2095, September 3, 2020)

There is also no merit to the BIR's averment that input VAT must be "attributable" to the zero-rated sales, in that "the connection between the purchases and finished product is 'concrete' and not 'imaginary' or 'remote'."

The CIR argues that to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production. The connection between the purchases and the finished product must be concrete and not imaginary or remote. The **direct connection of the purchases or input tax to the finished product whose sale is zero-rated must be established.**

CTA Ruling : The Tax Code did not limit itself to purchases or importation of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production; but also includes, inter alia, purchases or importation of goods **for use as supplies in the course of business,** or for use in trade or business for which deduction for depreciation or amortization is allowed. (CTA EB 1972 & 1975, September 3, 2020)

