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Tax News
Interpret & Integrate

BIR Issuances
Availability of new BIR Form 2305 and UEE Data Entry and 2305 Batch File Validation Modules

The Bureau of Internal Revenue (BIR) released the revised BIR Form 2305 (Certificate of Update of Exemption and of Employers and Employee's Information), and new versions of the Update of Exemption of Employees (UEE) Data Entry Module in filing of the BIR Form No. 2305 and 2305 Batch File Validation Module.

BIR Form 2305, the UEE Data Entry Module, and 2305 Batch File Validation Module were revised to include qualified persons with disabilities (PWDs) as an additional dependent for income tax purposes.

The new data entry and filed validation modules may be accessed at http://www.bir.gov.ph/index.php/downloadables.html.

(Revenue Memorandum Circular Nos. 42-2017 and 43-2017, 14 June 2017)

Court Decisions

Failure to indicate the period to pay deficiency tax invalidates the FLD

For a tax assessment to be valid, it must contain not only a computation of tax liabilities but also a demand for payment within a prescribed period. In the instant case, the taxpayer was issued the final letter of demand (FLD) assessing him for deficiency tax plus surcharge and penalties. In the FLD, the taxpayer was requested to pay his deficiency tax liabilities through the duly authorized bank he was enrolled with for the time shown in the assessment notice. The Court of Tax Appeals (CTA) held that in order to be valid, the FLD issued to the taxpayer should not only contain a computation of tax liabilities but also a demand for payment within a prescribed period.

In relation to this, the CTA cited the case of Commissioner of Internal Revenue vs. Menguito (G.R. No. 167560, 17 September 2008) where the Supreme Court (SC) ruled that, "the issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor."

The CTA also cited the case of Petronila C. Tupaz vs. Honorable Benedicta B. Ulep and People of the Philippines (G.R. No. 127777, 1 October 1999), where the SC highlighted the importance of indicating the period to pay deficiency tax in tax assessments by holding that an assessment should contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period. According to the SC, the ultimate purpose of the assessment is to ascertain the amount that each taxpayer is to pay, and that being a notice, an assessment should state the amount due as tax and a demand for payment thereof.

Upon perusal of the FLD issued to the taxpayer, the CTA noted that while the FLD contains the computation of the supposed tax liabilities of the taxpayer, there is no fixed date when payment should be made. Instead, the FLD merely states that the payment be made "within the time shown in the enclosed assessment notice." The CTA held that the statement does not amount to a valid assessment as it failed to state a definite time when the supposed tax liabilities were due and demandable. This is especially true in this case since, as already determined, the subject assessment notices were not served to the taxpayer. Since there was no showing that the FLD issued against the taxpayer contained a prescribed period for the payment of the supposed deficiency tax, the CTA held that the FLD issued to the taxpayer is void.

(Commissioner of Internal Revenue v. Derek Arthur P Ramsay, CTA EB 1413 re CTA Case No. 8456, 22 June 2017)

Absence of LOA invalidates a tax assessment

Under Section 6 (A) of the Tax Code, after a return has been filed, the Commissioner of Internal Revenue (CIR) or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax. Accordingly, Section 13 of the Tax Code provides that a revenue officer assigned to perform assessment functions may examine the books of accounts and accounting records of a taxpayer pursuant to a Letter of Authority (LOA) issued by the Revenue Regional Director.

In the instant case, the authority to examine taxpayer’s records was made pursuant to a tax verification notice (TVN), which authorized the assigned BIR revenue officers to conduct the examination and verification of the taxpayer’s records. Thus, after conducting examination and on the basis of the TVN, the BIR assessed the taxpayer for deficiency taxes, the validity of which was questioned by the taxpayer.

The BIR argued that based on Revenue Memorandum Order (RMO) No. 20-08, the CIR authorized the issuance of TVNs and the conduct of examination of the taxpayer’s records pursuant to the TVNs.

The CTA held that even assuming for the sake of argument that RMO 20-2008, which was invoked by the BIR to justify the non-issuance of an LOA, is deemed sufficient to give the revenue officers authority to conduct an examination of the taxpayer’s records and books of accounts, there is no showing that the revenue officers complied with the requirements of RMO 20-2008.

Based on the cursory examination of RMO 20-2008 by the CTA, it maintained that while RMO 20-2008 authorizes the issuance of a mere TVN, instead of an LOA to certain taxpayers, the grant of authority is qualified. According to the CTA, the objectives of RMO 20-2008 are clear in that there must first be an establishment of benchmarks or a taxpayer's profile on tax payments in relation to its gross sales/revenues/receipts, and a pre-audit prior to the issuance of a TVN, LOA, letter notice, or mission orders, as the case may be.

In this case, the BIR failed to mention if the examination of the taxpayer resulted from the profiling of taxpayers on the basis of RMO 20-2008, or if it should have been covered by a valid LOA, for being a generic "examination of all revenue taxes," as stated in the TVN.

Considering that there is no valid grant of authority to assess the taxpayer due to the absence of an LOA, the CTA cancelled the assessment issued against the taxpayer.

(Commissioner of Internal Revenue v. Farcon Marketing Corporation, CTA EB 1306 re CTA Case No. 8367, 5 June 2017)

Use of FIFO method in the application of unutilized input value-added tax

Under Section 110(B) of the Tax Code, if at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to zero-rated sales by a VAT-registered person may, at his option, be refunded or credited against other internal revenue taxes.

On the other hand, Section 110(C) of the Tax Code provides that the sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter shall be reduced by the amount of claim for refund or tax credit for VAT and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale.

In the instant case, the taxpayer-refund claimant filed a claim for refund of its excess unutilized input VAT arising from zero-rated sales. The BIR contended that the taxpayer should not be entitled to a refund since it has no excess input VAT. According to the BIR, based on the first-in first-out (FIFO) method, the taxpayer does not have input taxes to which it is entitled to as the same has been fully applied and credited against the output taxes due.

The taxpayer-refund claimant argued that there is nothing in the Tax Code, existing rules or regulations, and jurisprudence that states that the FIFO method should be used in determining whether a taxpayer is entitled to a tax refund or a tax credit certificate for unutilized input taxes.

The CTA held that Section 110(B) allows the carry-over of the excess input VAT of a given quarter to the succeeding quarter(s) but it does not require that such excess input tax be applied first using the FIFO method. According to the CTA, it is clear from the provisions of Section 110(B) of the Tax Code that any input tax attributable to zero-rated sales may be refunded or credited against other internal revenue taxes at the option of the taxpayer. In relation to this, the CTA maintained that Section 110(C) of the Tax Code, as amended, merely requires that the amount of input VAT being claimed for refund should be deducted from the accumulated input VAT as of the month or quarter when such claim was opted to be filed. The reason for the deduction is to assure that the claimed input VAT shall not be applied against any future output VAT liability.

(Galileo Asia, LLC-Philippine Branch v. Commissioner of Internal Revenue, CTA Case No. 8868, 6 June 2017)

Substantiation of input tax carry-over required in VAT refunds

Pursuant to Section 112(A) in relation to Sections 106(A)(2)(c) and 108(B)(3) of the Tax Code, as amended, VAT-registered taxpayers may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of its excess input tax attributable to zero-rated sales.

To claim refund or tax credit of unutilized input taxes based on Section 112(A) of the Tax Code, as amended, the following requisites must be complied with: (1) the claimant must be a

VAT-registered person; (2) there must be zero-rated or effectively zero-rated sales; (3) the input taxes were incurred or paid; (4) such input taxes are attributable to zero-rated or effectively zero-rated sales; (5) the input taxes were not applied against any output VAT liability; and (6) the administrative and judicial claims for refund were seasonably filed.

In the instant case, taxpayer-refund claimant filed a claim for refund or issuance of tax credit certificate representing unutilized input VAT arising from its domestic purchases of goods and services and importation of goods (other than capital goods) attributable to its zero-rated transactions.
In its initial decision, the CTA held that while the taxpayer-refund claimant was able to prove satisfaction of the first to third and sixth requisites, the taxpayer failed to satisfy the fourth and fifth requisites, which require that the taxpayer be able to prove that it has excess input VAT that is attributable to zero-rated sales.

Based on the CTA findings, while the taxpayer's quarterly VAT return reflected an amount as "Input Tax Carried Over from Previous Period", the taxpayer failed to present VAT invoices or receipts to prove the existence of such amount. As a result of disallowance of its input tax carry-over, its input VAT became much smaller compared to its output VAT liability, and hence, there was no excess input VAT that may be the subject of a claim for refund or tax credit certificate.

In its appeal, the taxpayer-refund claimant argued that the input tax carry-over in its quarterly VAT return should not have been disallowed. It pointed out that the case pertains to a claim for refund of unutilized excess input VAT grounded on Section 112 of the Tax Code, and not a VAT deficiency assessment, which are two different claims and require different procedural due process.

The taxpayer-refund claimant stressed that under Section 112 of the Tax Code, the taxpayer is required to substantiate only the input VAT that it is claiming for refund. There is no provision in Section 112 of the Tax Code, as amended, that requires the taxpayer to prove and substantiate in refund case its input VAT carry-over.

The CTA held that the invoicing requirements for a VAT-registered taxpayer as provided in the Tax Code and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file for a claim for input taxes on domestic purchases for goods or services attributable to zero-related sales.

Considering that the taxpayer failed to present VAT invoices or receipts to prove the existence of the input tax carried over the previous period, the CTA held that the same cannot be validly applied against the taxpayer's output, and since there was no excess input VAT, there is no basis for the taxpayer to claim a refund or tax credit certificate.

[BJ Well Services Company (Philippines), Inc. v. Commissioner of Internal Revenue, CTA Case No. 8859, 5 June 2017]

Proper remedy against RPT assessments

Once an assessment for real property tax (RPT) has been issued against the taxpayer or owner, the proper remedy of the taxpayer or owner will depend on the stage in which the local government unit (LGU) is enforcing its authority to collect the RPT.

In cases of erroneous assessments where the correctness of the amount assessed is assailed, the SC in the case of City of Lapu-Lapu v. Philippine Economic Zone Authority (G.R. No. 184203, 26 November 2014) and Province of Bataan v. Philippine Economic Zone Authority (G.R. No. 187583, 26 November 2014) held that the taxpayer must first pay the tax then file a protest with the local treasurer within 30 days from date of payment of tax. If the protest is denied or upon the lapse of the 60-day period to decide the protest, the taxpayer may appeal to the Local Board of Assessment Appeals within 60 days from the denial of the protest or lapse of the 60-day period to decide the protest.

The Local Board of Assessment Appeals (LBAA) has 120 days to decide the appeal. If the taxpayer is unsatisfied with the LBAA’s decision, the taxpayer may appeal before the Central Board of Assessment Appeals (CBAA) within 30 days from receipt of the Local Board’s decision. The decision of the CBAA is appealable to the CTA En Banc.

On the other hand, in case of an illegal assessment where the assessment was issued without authority, it was held that the exhaustion of administrative remedies is not necessary and the taxpayer may directly resort to judicial action by filing a complaint for injunction before the Regional Trial Court to enjoin the LGU from collecting the RPT. If unsatisfied with the decision of the RTC, an appeal, not a petition for certiorari, should be filed before the CTA within 15 days from notice of RTC's decision.

Lastly, in case the LGU has issued a notice of delinquency, the taxpayer may file a complaint for injunction to enjoin the impending sale of the real property at public auction. In case the property has already been sold at public auction, the taxpayer must first deposit with the court the amount for which the real property was sold. The taxpayer may then file a complaint with the RTC to assail the validity of the public auction. The decision of the RTC may be appealed before the CTA.

In the instant case, the concerned LGU issued a notice of assessment against the taxpayer assessing it for real property taxes on its real properties. The taxpayer protested the notice of assessment on the ground that as a government instrumentality, it is exempt from local taxes, fees, and charges pursuant to Section 133(o) of the Local Government Code (LGC).

When the LGU issued the warrants of levy involving the taxpayer's real properties, the taxpayer filed a petition to issue a temporary restraining order (TRO) and/or writ of injunction against the LGU before the RTC. Unsatisfied with the decision of the RTC, the taxpayer filed a petition with the CTA for certiorari with prayer for TRO and/or writ of preliminary injunction.

The CTA En Banc held that the taxpayer should have filed an appeal, not a petition for certiorari, before the CTA. According to the CTA En Banc, the SC ruling in the City of Lapu-Lapu case is clear that parties that are unsatisfied with the decision of the RTC should file an appeal, not a petition for certiorari, before the CTA, the complaint being a local tax case decided by the RTC. Hence, in filing the petition for certiorari with prayer for TRO and/or writ of preliminary injunction, the taxpayer availed of the wrong remedy, which resulted in the dismissal by the CTA of the case due to lack of jurisdiction.

(National Food Authority v. City Government of Kidapawan and City Treasurer of Kidapawan, CTA EB No. 1587, re: CTA AC No. 169, 5 June 2017)

"Due to home office" account not subject to DST

In the case of CIR vs. Filinvest Development Corporation, the SC held that advances made by a corporation to its affiliates evidenced by instructional letters, as well as the journal and cash vouchers, are subject to documentary stamp tax (DST).

In the instant case, the taxpayer-petitioner is a Philippine branch office of a foreign corporation. It was assessed for deficiency DST on the amount it received from its home/head office under the "Due to Home Office" account. The BIR contends that advances by a corporation to its affiliates need not be covered by debt instruments in order to be subjected to DST, citing the case of Commissioner of Internal Revenue vs. Filinvest Development Corporation as basis for assessing the taxpayer for deficiency DST.

The CTA held that the BIR's reliance on the Filinvest case is misplaced. According to the CTA, the parties in the Filinvest case were affiliated corporations with separate juridical personalities. In the instant case, the petitioner is a Philippine branch office of a foreign corporation and, thus, the branch office and home office do not have separate juridical personalities.

In its original decision, which was promulgated on 21 March 2017, the CTA held that since the Philippine branch office and its home office are one and the same entity, the same entity cannot be a creditor or debtor of itself. Hence, the funds received by the Philippine branch office from its home/head office should not be treated as loans.

(Modern Imaging Solutions, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8987, 6 June 2017)

PEZA Memorandum Order

Submission of "other information" under TIMTA

The Philippine Economic Zone Authority (PEZA) required all PEZA-registered enterprises entitled to tax incentives to submit the following additional information pursuant to Republic Act No. 10708, or the Tax Incentives Management and Transparency Act (TIMTA):

1. Registration - certificate of registration number, date of registration, and registered acitivity/ies
2. Financial and investment – amount of assets (current and non-current), equity, retained earnings, and percent share of ownership (local and foreign)

3. Employment - number of employees (male and female) with breakdown as to type of position
4. Employment – amount of salaries paid to expatriates, management, administrative personnel, direct and indirect labor, and outsourced labor
5. Withholding taxes – amount of withholding tax on compensation, creditable withholding tax, final withholding tax, and other national internal revenue taxes paid/remitted to the BIR
6. Local taxes – amount of local business tax, real property tax, mayor's permit, and other local fees and charges paid to LGUs

There are two separate reports that should be submitted to PEZA containing information/data for taxable years 2015 and 2016, which should be prepared using the prescribed format. The worksheets should be certified by the two highest responsible officials, and the scanned copy should be submitted via email to esd@peza.gov.ph, together with the accomplished Excel worksheet.

In case of failure to comply with the submission of the report, a fine of P100,000 shall be imposed for the first violation, and P500,000 for the second violation. The registration of the PEZA enterprise shall be cancelled on the third violation.
The data/information gathered from the reports will be used by the National Economic Development Authority (NEDA) in conducting a cost-benefit analysis of the prevailing tax incentives. The result of the cost-benefit analysis shall also serve as input in the design of Package II of tax reforms, which will focus on corporate tax and tax incentives reforms.

(PEZA Memorandum Order No. 2017-09, 30 June 2017)

BLGF Opinions

LBT on gross receipts realized by specialty contractors from overseas construction projects

A corporation registered as specialty contractor that is engaged in well drilling operations is not subject to local business tax (LBT) on its gross receipts realized from its overseas construction projects.

Under Section 5(b)(4) of Local Finance Circular No. 03-95, the gross receipts realized by construction contractors with construction projects undertaken outside the territorial boundaries of the Philippines, paid for in acceptable freely convertible foreign-currency, as well as construction contracts dealing in foreign-currency denominated fabrication works with attendant installation works outside of the Philippines should be declared separately and shall not be subject to LBT.

In its opinion, the Bureau of Local Government Finance (BLGF) reiterated its view that gross receipts must be realized from services rendered within the jurisdiction of the local government imposing the tax to be subject to business tax. Hence, if the services are performed beyond the territorial jurisdiction of the taxing authority, the power to tax may not be exercised by the concerned LGU.

(BLGF Opinion issued to Atty. Anthony Mark Gutierrez, 16 May 2017)

Requirement to secure business permit for outsourcing companies

An outsourcing company that provides temporary and outsourced services to its various clients in different locations is not required to secure a business permit from the LGUs where it does not maintain any branch office, sales office, or warehouse but only deploys its workers or personnel to the office of its clients.

The BLGF opined that an outsourcing company is not required to secure a business permit since the presence of its personnel in the localities is merely to fulfill its contractual obligation to its clientele, and the presence of these employees is only temporary.

According to the BLGF, the absence of any branch office, sales office, or warehouse of the outsourcing company repudiates the requirement of securing a business permit since there is no fixed business establishment to regulate, inspect, and issue a license to to justify the imposition of the business permit. This notwithstanding, the BLGF opined that the concerned LGU that has jurisdiction over the company where the workers or personnel are assigned may impose an occupation fee on said workers as may be authorized under the duly enacted ordinance of the LGU.

(BLGF Opinion No. 003-2017, 13 March 2017)

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