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TAX LAW FOR BUSINESS

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Basics of mediation at the CTA

IN hopes of declogging the dockets of the Court of Tax Appeals, the Court finally pushed through with the referral of cases to mediation as envisioned in AM 11-1-5-SC-Philja. Under the guidelines, the CTA may refer cases within its jurisdiction to mediation, subject to certain exclusions. Cases are referred to mediation at relatively early stages. For cases pending with the CTA Division, referral is done before or during pretrial conference.

On the other hand, for cases pending with the CTA En Banc, referral is done after filing the Comment.

The referral hopes to expeditiously terminate litigation by offering the taxpayer and the Bureau of Internal Revenue (BIR) the opportunity to settle before a full-blown trial commences. True to the word "referral," the parties are not obligated to settle but are merely referred to a mediation center to discuss the possibility of entering into mediation. Either of them may refuse if the party so chooses.

Let us say that the Court refers a case to mediation, what happens next? The parties are ordered to attend an "initial appearance" at the Philippine Mediation Center-CTA to communicate whether or not they are willing to enter into mediation. If either the taxpayer or the BIR is not willing to enter into mediation, the mediation proceedings would be terminated and the CTA proceedings would continue. If willing, the parties execute an "agreement to mediate" and are asked to name their preferred PMC accredited mediator. The taxpayer is also required to submit certain documents and pay the mediation fee (if not already paid as part of the filing fee).

The mediation fee consists of a basic mediation fee and an additional mediation fee. The taxpayer would be asked to pay the basic mediation fee of P2,500 at the initial appearance. Meanwhile, the additional mediation fee, which ranges from P5,000 to P50,000 depending on the sum in dispute, is paid upon the execution of the agreement to mediate.

After the initial appearance, the preliminary mediation conference ensues, wherein the parties and the mediator meet for the first time. Counting from the preliminary mediation conference, the parties and the mediator have 30 days, extendible for another 30 days, within which to meet and reach a settlement amount. Within the 30-day period, mediation conferences would be held wherein the taxpayer and the BIR would discuss a compromise amount with the help of the mediator.

If the mediation is successful, it may result in either a full or partial compromise. A full compromise would terminate the CTA proceedings. On the other hand, if there is only a partial compromise the CTA proceedings would continue on the remaining issues. If the mediation is not successful, then the Court would continue the trial on all the issues.

The overview of the structure of the mediation at the CTA is simple enough to be readily understood. However, looking closely, there are underlying matters that may be of issue.

For starters, the goal of mediation is to enable the taxpayer and the BIR to reach a settlement, also known as a compromise. However, our Tax Code already provides for such mechanism under Section 204(A). In certain cases, the taxpayer and the BIR may have already explored the option to compromise the tax liability. Would referring them to undergo the same process be a superfluity? Is the presence of the mediator enough to tip the scales toward a compromise?

Also, to what extent is the BIR counsel authorized to settle or compromise taxes? It should be noted that although the mediation proceedings were initiated by the CTA, the BIR is still bound by the provisions of Section 204(A) of the Tax Code. Under the said provision, “[w]here the basic tax involved exceeds P1,000 or where the settlement offered is less than the prescribed minimum

rates, the compromise shall be subject to the approval of the Evaluation Board, which shall be composed of the commissioner and the four deputy commissioners.” With such strict requirements under the Tax Code, would the BIR counsel be too restricted to discuss a compromise that may be acceptable to the taxpayer?

Another one is that mediation is easy to imagine when you are thinking of tax assessment cases. Both the taxpayer and the BIR may opt to compromise in order to speedily terminate the litigation. The taxpayer pays a lower amount, and the BIR collects taxes: a win-win. However, would mediation work in tax refund cases where the taxpayer is seeking to get back taxes paid to the BIR? Would a taxpayer be willing to settle for a lower amount than what he believes he is entitled to?

Given that the mediation proceedings is still in its infantile stage in terms of actual execution, it would not be surprising to see new rules and guidelines rolled out to address certain gray areas. Hopefully, mediation would be the answer to the clogged dockets of the Court.

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