TAX LAW FOR BUSINESS
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The Aichi inception

As law evolves and interpretations over difficult questions of law are debated upon, taxpayers are left in the dark to salvage whatever vested rights are left with them.

In recent years taxpayers had to contend with the sudden flip-flop of the courts on some well-settled jurisprudence. First, the Atlas Case (Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue, GR Nos. 141104 and 148763, June 8, 2007) was overturned by the Mirant Case (Mirant Pagbilao Corp. v. CIR, GR 172129, September 12, 2008), which, in sum, reckons prescription of VAT refunds at the end of the quarter when sales were made, effectively reversing the rule that prescription sets in only after a quarterly VAT return has been filed. Fortunately for taxpayers, the Court of Tax Appeals in the case of Kepco Case (Kepco Ilijan Corp. v. Commissioner of Internal Revenue, EB Case 528, October 14, 2010), with a vote of 5-4 ruled in favor of the prospective application of the Mirant Case. Second and the more controversial new doctrine is enunciated in the Aichi case (Commissioner of Internal Revenue v. Aichi Forging Co. of Asia Inc., GR 184823, October 6, 2010), which requires that the 120-day period from the filing of the administrative claim under Section 112 (D) of the NIRC of 1997 must be observed before a judicial claim for value-added tax refund may be elevated to the CTA.

Unfortunately, however, the Aichi case did not set the rules squarely. It conceived other questions of law that are equally controversial that until now are uncomfortably nagging taxpayers. First, the CTA is divided on whether the observance of the 120-day period is jurisdictional. It appears that a slim majority of the justices of the CTA believe that the 120-day period must be observed first before the CTA can acquire jurisdiction. In other words, the observance of the 120-day period is jurisdictional. The minority of the justices of the CTA, however, believe that the filing of a judicial claim even before the 120-day period has lapsed is only considered premature filing that violates the doctrine of exhaustion of administrative remedies and, therefore, not jurisdictional. Thus, it can be waived if not raised as a defense in the Answer by the Bureau of Internal Revenue.

Another issue that is cropping up is the interpretation of the phrase "…from submission of complete documents…" as worded under Section 112 (D) of the NIRC of 1997. What does this phrase mean? In one case, the CTA ruled that a taxpayer's submission of Articles of Incorporation, registration documents and VAT returns is considered submission of complete documents. In another case, however, the CTA was stricter and ruled that a taxpayer must submit all the documents required under Revenue Memorandum Order (RMO) 53-98, which prescribes the documents required for submission by a taxpayer upon audit of his tax liabilities per type of tax, as well as the different mandatory audit reporting requirements to be prepared, submitted and attached to a tax-audit docket by a revenue officer. It appears, however, that RMO 53-98 refers to documents required in a tax assessment in relation to a claim for refund and is not, in categorical terms, the regulation governing the interpretation of "complete documents" as prescribed under Section 112 (D) of the NIRC of 1997. The submission of documents under that RMO must spring from a valid Letter of Authority.

Even assuming that the documents that a taxpayer is required to submit are set forth in detail in a revenue order or circular, does it mean that the 120-day period only runs after the submission of the complete documents? In other words, if a taxpayer files the administrative claim for refund within two-year prescriptive period but submits the complete documents to the BIR only after the two-year period has lapsed, does the CTA lose jurisdiction, or the 120-day period may still run, notwithstanding?

In these uncertain times, what should a taxpayer do to protect himself from an evolving interpretation of a law? It is better to be conservative. First, file the administrative claim for refund, together with the complete documents at least 121 days before the end of the two-year prescriptive period. This will avoid the issue of separate filing of the administrative claim and the complete documents as well as the issue on whether the 120-day period may go beyond the two-year prescriptive period. Second, submit all the documents to the BIR as if you are offering them in evidence to the court in a judicial claim. If you are ultra conservative, file the documents being required under RMO 53-98. A taxpayer usually hires an independent certified public accountant to examine and submit voluminous documents.

It is conservative to submit these voluminous documents in the administrative claim although the probability that a lightning will strike at the reception of the "royal wedding of the century" is much greater than these documents being examined by the BIR.

At the end of the day, it is a taxpayer's decision whether to just be content in staying in limbo or be proactive by being conservative.

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The author is a senior associate of Du-Baladad and Associates Law Offices (BDB Law). The article is for general information only and is not intended, nor should be construed as a substitute for tax, legal or financial advice on any specific matter. Applicability of this article to any actual or particular tax or legal issue should be supported therefore by a professional study or advice. If you have any comments or questions concerning the article, you may e-mail the author at irwin.nidea@bdblaw.com.ph or call 403-2001 local 330