

## **SUMMARY OF SIGNIFICANT SUPREME COURT DECISIONS** **(October - December 2012)**

### **1. Carry-over of excess income tax payments will result in the denial of a claim for refund of excess income tax payment.**

Taxpayer filed its annual income tax return for the taxable year 1998 showing an excess income tax payment in the amount of P4,325,152. The taxpayer opted to carry-over as tax credit to the succeeding taxable year the said overpayment by putting an "x" mark on the corresponding box. In the following taxable year 2009, the taxpayer actually carried over the 2008 excess income tax payment of P4,325,152. Adding this to the 1999 creditable taxes withheld of P7,317,385, the taxpayer had a total available creditable taxes for the year 2009 of P11,642,937. This was applied against the 2009 income tax due of P2,333,645, leaving an unutilized income tax payment of P9,309,292. On the face of the 1999 return, taxpayer indicated its option by putting an "x" mark on the box "To be refunded." The taxpayer then applied for a refund for the amount of P9,309,292.

Citing Section 76 of the 1997 Tax Code which provides that "once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore", the Supreme Court denied the claim pertaining to 1998. According to the Court, having chosen to carry-over the excess quarterly income tax, the corporation cannot thereafter choose to apply for a cash refund or for the issuance of a tax credit certificate for the amount representing such overpayment. Taxpayer's claim for refund for 1998 should be denied as its option to carry over has precluded it from claiming the refund of the excess 1998 income tax payment. (*United International Pictures AB vs. Commissioner of Internal Revenue, G.R. No. 168331, October 11, 2012*)

### **2. Failed to reconcile the discrepancy between income payments per income tax return and the certificate of creditable tax withheld will result in the denial of a claim for refund.**

For the same case mentioned in the preceding number, the Court also denied the claim pertaining to the year 1999. As found by the Court, the certificate of tax withheld would reveal that the taxpayer earned P146,355,699.80. On the contrary, its annual income tax return reflects a gross income from film rentals in the amount of P145,381,568.00. However, despite the P974,131.80 difference, both the certificate of taxes withheld and income tax return filed by the taxpayer for taxable year 1999 indicate the same amount of P7,317,785.00 as creditable tax withheld. What's more, taxpayer failed to present sufficient proof to allow the Court to trace the discrepancy between the certificate or taxes withheld and the income tax return. The Court agreed with the position of the Office of the Solicitor General that the amount of income payments in the income tax return must correspond and tally to the amount indicated in the certificate of withholding, since there is no possible and efficacious way by which the BIR can verify the precise identity of the income payments as reflected in the income tax return. Therefore, taxpayer's claim for tax refund for taxable year 1999 must be denied, since it failed to prove that the income payments subjected to

withholding tax were declared as part of the gross income of the taxpayer. (***United International Pictures AB vs. Commissioner of Internal Revenue, G.R. No. 168331, October 11, 2012***)

**3. The 30-day period to appeal decisions of the RTC to the CTA is extendible.**

On the strength of the provisions of Tax Ordinance Nos. 7988 and 8011, which amended Ordinance No. 7794, also known as the *Revenue Code of Manila*, the City of Manila assessed petitioners/taxpayers, together with their other sister companies, increased rates of business taxes for the year 2003 and the first to third quarters of 2004. The companies filed under protest and later filed an application for refund and later a complaint for refund with the Regional Trial Court (RTC). The RTC granted the claim for refund. Respondent City of Manila filed a petition for review with the CTA, after the latter granted its request for extension of time to file the petition for review. One of the issues presented before the Court was whether the 30-day period provided by law within which to appeal decisions of the RTC to the CTA may be extended.

According to the Court, "Section 11 of Republic Act No. 9282 does state that the Petition for Review shall be filed with the CTA **following the procedure analogous to Rule 42 of the Revised Rules of Civil Procedure**. Section 1, Rule 42 of the Revised Rules of Civil Procedure provides that the Petition for Review of an adverse judgment or final order of the RTC must be filed with the Court of Appeals within: (1) the original 15-day period from receipt of the judgment or final order to be appealed; (2) an extended period of 15 days from the lapse of the original period; and (3) only **for the most compelling reasons**, another extended period not to exceed 15 days from the lapse of the first extended period. Following by analogy, Section 1, Rule 42 of the Revised Rules of Civil Procedure, the **30-day** original period for filing a Petition for Review with the CTA under Section 11 of Republic Act No. 9282, as implemented by Section 3 (a), Rule 8 of the Revised Rules of the CTA, may be extended for a period of **15 days**. No further extension shall be allowed thereafter, except only for the most compelling reasons, in which case the extended period shall not exceed **15 days**. (***SM Land, Inc. vs. City of Manila, G.R. No. 197151, October 22, 2012***)

**4. The claimant for the refund of excise taxes related to exported products shall be the same person who paid the taxes.**

Petitioner Diageo Philippines, Inc. purchased raw alcohol from its supplier for use in the manufacture of its beverage and liquor products. The supplier imported the raw alcohol and paid the related excise taxes thereon before the same were sold to the petitioner. The purchase price for the raw alcohol included, among others, the excise taxes paid by the supplier. Subsequently, petitioner exported its locally manufactured liquor products and received the corresponding foreign currency proceeds of such export sales. Petitioner then filed applications for tax refund/ issuance of tax credit certificates corresponding to the excise taxes which its supplier paid but passed on to it as part of the purchase price of the subject raw alcohol invoking Section 130(D) of the Tax Code.

The Court ruled that "the right to claim a refund or be credited with the excise taxes belongs to its supplier." Citing the case of *Silkair (Singapore) Pte, Ltd. v. Commissioner of Internal Revenue*, the Court stated that the phrase "any excise tax paid thereon shall be credited or refunded" requires that the claimant be the same person who paid the excise tax. (***Diageo Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 183553, November 12, 2012***)

**5. Failure to appeal to the Secretary of Justice within the statutory period of 30 days from the effectivity of an ordinance is fatal one's cause.**

On January 10, 2005, the *Sangguniang Panlungsod* of Cagayan de Oro (City Council) passed Ordinance No. 9503-2005 imposing a tax on the lease or rental of electric and/or telecommunication posts, poles or towers by pole owners to other pole users at ten percent (10%) of the annual rental income derived from such lease or rental. The City Council, in a letter dated 15 March 2005, informed Cagayan Electric Power and Light Company, Inc. (CEPALCO), through its President and Chief Operation Manager, Ms. Consuelo G. Tion, of the passage of the subject ordinance. On September 30, 2005, appellant CEPALCO, purportedly on pure question of law, filed a petition for declaratory relief assailing the validity of Ordinance No. 9503-2005 before the Regional Trial Court.

The Court ruled that CEPALCO failed to exhaust administrative remedies. Section 5 of said ordinance provided that the "Ordinance shall take effect after 15 days following its publication in a local newspaper of general circulation for at least three (3) consecutive issues." Gold Star Daily published Ordinance No. 9503-2005 on 1 to 3 February 2005. Ordinance No. 9503-2005 thus took effect on 19 February 2005. CEPALCO filed its petition for declaratory relief before the Regional Trial Court on 30 September 2005, clearly beyond the 30-day period provided in Section 187. CEPALCO did not file anything before the Secretary of Justice. Thus, the Court found that CEPALCO ignored the mandatory nature of the statutory periods. (***Cagayan Electric Power and Light Co., Inc. vs. City of Cagayan de Oro, G.R. No. 191761, November 14, 2012***)

Note though that in this case, the Court relaxed the rules. It then invalidated Ordinance No. 9503-2005 for imposing 10% tax instead of only 2%, in violation of Section 143(h) of the Local Government Code.