BDB Law wts
DU-BALADAD AND ASSOCIATES

SIGNIFICANT DECISIONS OF THE COURT OF TAX APPEALS
May 2014

Assessment

1. An assessment cannot be considered valid if it does not indicate a specific period or date within which the alleged tax liabilities shall be paid.

The date within which the taxes shall be paid is material in an assessment notice. Otherwise, it will be at the liberality of the taxpayer when the taxes will be paid. If no specific period is indicated in the Final Assessment Notice and Formal Letter of Demand then it would no longer be a demand to pay. The importance of setting a deadline within which the taxpayer must pay cannot be stressed enough. Without it, the prescriptive period set forth in the Tax Code would not be determined with any certainty, rendering it nugatory. It cannot be considered a demand to pay but merely a request to pay. ***(Commissioner of Internal Revenue vs. First Gas Power Corporation, CTA EB No. 972, May 12, 2014)***

2. An assessment that is issued for the first time in an FDDA prescribes if the FDDA is issued after the lapse of the 3-year prescriptive period for the issuance of an assessment.

Taxpayer received from the BIR a Formal Letter of Demand on January 7, 2010 assessing it for deficiency income tax and deficiency VAT for the taxable year 2006. Included in the deficiency assessment is the VAT on interest income from loans and receivables. Taxpayer filed a protest, arguing, among others, that it is not liable for VAT on interest income on policy loans. On February 24, 2011, taxpayer received a Final Decision on Disputed Assessment (FDDA), removing the VAT assessment on interest income from loans and receivables. However, the FDDA imposed a 5% premium tax on the interest income on policy loans.

In its petition for review filed before the CTA, taxpayer argued among others that the BIR's right to assess had already prescribed. It also argued that the constitutional guarantee of a taxpayer's right to due process was not observed when the BIR arbitrarily changed the nature of the deficiency assessment on interest income on policy loans from deficiency VAT to deficiency premium tax. The CTA agreed with the taxpayer. The deficiency premium tax was made known to taxpayer for the first time when the BIR issued the FDDA. Hence, the BIR's right to issue an assessment has long prescribed when the BIR issued the FDDA on February 24, 2011 cancelling the original VAT assessment on interest income on policy loans and in its stead imposed deficiency premium tax for the first time without prior notice and opportunity to protest the same. ***(BPI-Philam Life Assurance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8240, May 14, 2014)***

3. Interest income earned by an insurance company on policy loans is not subject to premium tax.

On the basis of RMC No. 49-2010, the BIR assessed the taxpayer for deficiency premium tax on interest income on policy loans. The BIR contended that income which are incidental to or in connection with the issuance of policy contracts are considered akin to premiums and thus subject to 5% premium tax under Section 123 of the Tax Code. According to the CTA, interest income is not an administrative charge related to the issuance of policy contracts but income earned from debt claims, and thus, not "akin to premiums" subject to premium tax. ***(BPI-Philam Life Assurance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8240, May 14, 2014)***

4. The enumeration of direct costs under RR No. 11-05 is not exclusive.

Taxpayer is registered with the Philippine Economic Zone Authority (PEZA) as an ECOZONE utilities enterprise entitled to the 5% preferential tax rate on gross income. Taxpayer was issued a deficiency income tax assessment, arising mainly from the disallowance of some items of cost of sales/services claimed by taxpayer. Taxpayer argued that the enumeration of direct costs under RR No. 11-05 is not an exclusive or closed list of expenses that may be deducted by a PEZA-registered enterprise from its gross sales for the purpose of computing the 5% gross income tax. Instead, the enumeration of direct costs is intended as a guide in determining the items that may be considered direct costs or costs of sales. The CTA agreed with the taxpayer. According to the CTA, it is clear from the amendment made under RR No. 11-05 that the list is not meant to be all-inclusive but merely enumerates the expenses that can be considered as direct costs. PEZA-registered enterprises may be allowed to deduct costs even though the same are not included in the list. The Court further noted that the criteria in determining whether the item of cost or expense should be part of the direct cost is the direct relation of the item in the rendition of the PEZA-registered services. If the item of cost or expense can be directly attributed in providing the PEZA-registered services, then it should be treated as direct cost. ***(East Asia Utilities Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8179, May 21, 2014)***

5. The requirement that "the taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise the assessment shall be void" applies to FDDA.

Based on Section 3.1.6 of Revenue Regulations No. 12-99, it is clearly necessary for the BIR to inform the taxpayer of the facts, law, rules and regulations and jurisprudence on which the decision is based, otherwise, the decision shall be void. While the FDDA indicated the legal provisions relied upon for the assessment, the basis or the sources of the amounts from which the assessments arose were not shown. The need for stating the factual basis, i.e., for specifying the source of the amounts used in the assessment, gains more prominence in the instant case, where the FDDA reflects different amounts than that contained in the Formal Assessment Notice. Without the statement of the factual basis, or details of the assessment, the FDDA suffers from the appearance of being a mere arbitrary reduction of the assessment previously reflected in the Formal Letter to Demand. Thus, the assessment is void. ***(Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, CTA EB No. 989, May 22, 2014)***

6. The BIR has a period of five years within which to collect the tax assessed, reckoned from the ate the assessment notice has been released, mailed or sent by the BIR to the taxpayer.

The taxpayer received both the FLD and the FAN on June 8, 2007. As it was not established when the FLD and FAN were released, mailed or sent by the BIR to the taxpayer, the date of receipt by the taxpayer should be regarded as the date when the FLD and the FAN were released, mailed or sent to the taxpayer. Since the taxpayer received the FLD and the FAN on June 8, 2007, the BIR had until June 8, 2012 within which to collect the deficiency taxes.

Although the Notice of Tax Lien, Warrant of Distraint and/or Levy and Warrants of Garnishment were issued by the BIR on June 7, 2012, or one day before the expiration of the period for collection on June 8, 2012, the Notice of Tax Lien was served on the Register of Deeds on June 14, 2012 and the Warrants of Garnishment were received by the banks on June 15, 2012 and June 18, 2012. Distraint and levy proceedings did not validly begin or commence with the mere issuance of the Warrant of Distraint and/or Levy. The Warrant of Distraint and/or Levy must be served upon the taxpayer within the prescriptive period to collect, in order to suspend the running of the prescriptive period for collection of deficiency taxes. Since the Warrant of Distraint and/or Levy was served on taxpayer only on June 14, 2012 or six days beyond the expiration of the five-year period, the government lost its right to collect the assessed deficiency taxes and penalties. ***(solid-One Mills, Phils., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8507, May 29, 2014)***

VAT Refund

7. For the sale of services to a non-resident to be VAT zero-rated, the recipient of such services must be doing business outside the Philippines.

One of the requisites for sales of services to be VAT zero-rated is that the recipient of such services is doing business outside the Philippines. To be considered a non-resident foreign corporation doing business outside the Philippines, the entity must be supported by both SEC certificate of Non-Registration and Certificate/Articles of foreign incorporation/association or printed screenshots of US SEC website showing the state/province/country where the entity was organized. ***(Chevron Holdings, Inc. vs. Commissioner of Internal Revenue, CTA EB Case No. 940, May 06, 2014)***