BDB Law wts
DU-BALADAD AND ASSOCIATES

SIGNIFICANT DECISIONS OF THE COURT OF TAX APPEALS
June 2014

ASSESSMENTS

1. Payments for condominium dues are not taxable income of a condominium corporation and therefore not subject to withholding tax.

Association/condominium dues, membership fees and other assessment/charges collected from the members, which are merely held in trust and which are to be used solely for administrative expenses in implementing their purposes, viz., to protect and safeguard the welfare of the owners, lessees and occupants; provide utilities and amenities for their members, and from which the corporation could not realize any gain or profit as a result of their receipt, must not be included in said corporation's gross income. This means that the same are not subject to income tax and to withholding tax. ***[Officemetro Philippines (formerly Regus Centres, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 8383, June 3, 2014]***

2. An assessment that has not been protested becomes final and executory and cannot be the subject of an appeal.

On January 07, 2009, the BIR issued Preliminary Assessment Notice (PAN) assessing taxpayer deficiency income tax and VAT for calendar year 2006. On March 25, 2009, the BIR issued Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) assessing taxpayer deficiency income tax and VAT for the year 2006. On February 18, 2010, the taxpayer wrote the BIR a letter stating that he was informed by a collection agent of the BIR that he has a deficiency tax which had become due and demandable. He wrote that he did not receive any FLD, FAN or notice of delinquency and requested that the tax assessment against him not be posted as delinquent inasmuch as the 30-day period for the filing of a protest had not commenced to run. On March 26, 2010, the revenue region issued a memorandum finding that the FLD and FAN, both dated March 25, 2009 were posted and delivered by mail to the taxpayer at his given address on April 2, 2009. The taxpayer had until May 12, 2009 within which to file his protest, and that the protest letter dated February 18, 2010 was filed out of time, and the subject assessment had become final, executory and unappealable. On April 11, 2011, taxpayer filed a petition for review before the CTA.

On the issue of whether or not the CTA had jurisdiction over the case, the Court ruled that the taxpayer could have requested a reconsideration or reinvestigation and administratively protested the FLD. But he failed to do so within the 30-day period set by law. Consequently, he was unable to timely raise a dispute upon which the BIR could have rendered a final decision appealable to the CTA. The taxpayer's failure to comply with the 30-day statutory period barred the appeal and deprived the CTA of its jurisdiction to entertain and determine the correctness of

the assessment. With the taxpayer having lost not only the remedy of protest but also of appeal, the assessment attained finality and became executory. ***[Adelardo K. Pagente vs. Honorable Esmeralda M. Tabule, CTA EB No. 1030, June 3, 2014)***

3. An assessment arising from a Letter Notice is valid even if not covered by a Letter of Authority.

Taxpayer is engaged in the business of developing and promoting prepaid medical, heath maintenance, and related services (health maintenance organization). Finding discrepancies between its Income Tax and VAT Returns for the year 2006, the BIR issued to the taxpayer a Letter Notice (LN). This was followed by a Preliminary Assessment Notice (PAN) and later a Formal Assessment Notice (FAN) for deficiency VAT.

The taxpayer assailed the validity of the assessment by arguing that the assessment is a nullity on the ground that it was issued without Letter of Authority (LOA) authorizing the examination of taxpayer's books of accounts and accounting records. The CTA ruled against the taxpayer. According to the CTA, to declare that the BIR should at all times necessarily issue an LOA is to deprive her of the vast powers given her by the National Internal Revenue Code (NIRC) to make assessments and collect the right amount of taxes. While the examination of taxpayers by a revenue officer working under an LOA is one way by which the BIR collects deficiency taxes under section 13 of the NICR, section 6 does not in any way limit the power of the BIR to determine tax deficiencies only through the issuance of LOA. ***(Medicard Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 7948, June 5, 2014)***

4. Gross receipts of health maintenance organizations for VAT purposes pertain to the total amount received.

In the same case, one of the issues is whether or not the total membership fees received by the taxpayer, being an HMO, representing (i) payments to hospitals, clinics, laboratories, doctors, dentists and other healthcare providers in exchange of services the latter render to taxpayer's members; and (ii) payments to taxpayer itself in exchange of "actual and direct" medical and hospital services it provides its members through its own clinics, x-ray and laboratory facilities, should properly be considered part of taxpayer's gross receipts subject to VAT.

As decided by the Court, based on the characteristics of an HMO, it is a service contractor under Section 108 of the NIRC. The amounts earmarked for payment, or actually paid, to hospitals and doctors form part and parcel of entire package offered to its members. There is no contract for administrative or management services between the HMO and its members that is distinct, independent or separable from a contract providing for the remittance of the fees payable to doctors and hospitals. The members to not deal directly with the doctors, hospitals and other medical service providers on the matter of the fees payable to the latter. It is in the nature of their health contract that the members are unaware or clearly without right to inquire, much less negotiate, the amount of their medical bills. Therefore, no portion of the money that go into the hand of the HMO is delineated for "delivery" to an identified third party. Rather, all moneys are surrendered to the HMO lump sum by its members in exchange of an obligation or service to ensure that medical services will be provided the members without the usual payment protocols. How the HMO does this is entirely the essence of its business as a service contractor. Further, there is no showing that the members have the right to require the HMO to account to them the management and disposition of the portions of their premiums which the HMO claims to be earmarked for the payment of contingent medical bills. All these negate the

concept of "money in trust." ***(Medicard Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 7948, June 5, 2014)***

5. **Rulings of first impression by an assistant commissioner is not valid, as this contravenes the provision of Section 7 of the NIRC, which states that the power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau shall not be delegated.** ***(Metropacific Corporation vs. Commissioner of Internal Revenue, CTA Case No. 83138, June 11, 2014)***

6. For a transaction to be considered as "incidental" in the context of Section 105 of the Tax Code, it must be dependent upon or appertaining to a primary transaction or activity.

The BIR assessed the taxpayer for unpaid VAT on interest income, arguing that the loan extended to Intertrade Credit Corporation (ICC) is incidental to the taxpayer's trade or business. Taxpayer was then engaged in the sales of motorcycles. For his part, the taxpayer maintained that the loan assistance was not incidental to his motorcycle business.

The Court agreed with the taxpayer that the act of extending loan to ICC was not an incidental transaction. According to the Court, for a transaction to be considered as "incidental" in the context of Section 105 of the Tax Code, it must be dependent upon or appertaining to a primary transaction or activity. Thus, in this case, to be considered as an incidental transaction, the act of extending a loan to ICC must be dependent upon or appertaining to the taxpayer's primary business transactions or activities. The payment of the loan plus interest cannot be considered as incidental to the business of selling motorcycles, simply because the payment of the loan is not "dependent upon or appertaining to" the said business. ***(Commissioner of Internal Revenue vs. Thomas C. Ongtenco, CTA EB No. 995, June 30, 2014)***

VAT Refund

7. Only the amortized portion of the input taxes paid on capital goods may be the subject of a refund.

This claim for refund of input taxes by the taxpayer involves the input taxes paid on capital goods with aggregate acquisition cost that exceeds One Million Pesos. According to the taxpayer, since its entire sales are zero-rated, the total amount of input taxes on capital goods is refundable. The amortization applies only when the input tax is creditable against output tax. On the other hand, the BIR contends that only the amortized portion of the input tax on capital goods may be the subject to a refund.

The Court disagreed with the taxpayer. There is nothing in the law which states that the amortization of VAT paid on capital goods with acquisition cost of more than P1M applies only when the input VAT is creditable against the output VAT. The law does not state that the amortization does not apply to claims for refund or application for issuance of tax credit certificate. The law being silent, the rule on the amortization of input VAT necessarily applies to claims for refund. ***(Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA EB No. 1039, June 10, 2014)***