SUMMARY OF SIGNIFICANT CTA DECISIONS (OCTOBER 2017)

1. ***The CGT and DST liability in expropriation arises when the sale has been completed. It does not arise when the amount equivalent to 100% of the zonal value is paid. Payment of the same is merely a requirement of law for the issuance of a writ of possession in favor of the government***

The taxpayer was assessed with deficiency CGT and DST pursuant to the expropriation of its real property. In particular, the assessment was based on the taxpayer's receipt of 100% of the zonal value of the property, which is a requirement before the issuance of a writ of possession. The just compensation of the property is still being determined by the RTC.

The CTA ruled that CGT and DST liability arises when the sale has been completed. In this case, the 100% of the zonal value is merely a requirement of law for the issuance of a writ of possession in favor of the government. It is not the just compensation as required under the Constitution. The Court also ruled that the completion of the sale occurs only upon payment of just compensation. Given the circumstances of the case where the amount of just compensation is still being determined, then there is no liability on the part of the taxpayer to pay CGT and DST on the proceeds of the expropriated property.

Capitol Steel Corporation v. Commissioner of Internal Revenue CTA Case No. 9240 October 26, 2017

2. ***A done is not liable for donor's tax.***

The BIR assessed the taxpayer with deficiency Donor's Tax on the capital infusion it received from its parent company in Japan. The CTA division struck down the assessment. The BIR argues that the capital infusion partakes of the nature of a donation. It also argues that as agent of the Japanese parent company, the taxpayer is the proper subject of the assessment.

The CTA En Banc ruled that it is clear that the taxpayer is the recipient of the alleged donation. It is the donee under the prevailing circumstances. As such, it cannot be held liable for donor's tax since it is not the donor. The law is clear that it is the donor, and not the recipient, who is liable for donor's tax. The CTA En Banc also stressed that the provision under DST, where one of the parties in the contract is exempt, the non-exempt party bears the liability of DST, cannot be extended to donor's tax.

CIR vs. Toenec Philippines, Inc., CTA EB No. 1520, October 23, 2017

3. ***Under the RP-US Tax Treaty, the subject capital gains may be exempt from Philippine tax if the interest being disposed is in a corporation whose assets do not consist principally of real property interest located in the Philippines.***

The taxpayer is a US corporation owning shares of stocks of a domestic corporation. It assigned the said shares to another corporation. The taxpayer paid CGT on the transfer. Invoking the RP-US tax treaty, the taxpayer filed a claim for refund of the CGT as erroneously paid taxes.

The CTA held that the taxpayer has sufficiently proven its entitlement to the refund. First, the taxpayer filed both the administrative and judicial claim within the 2 year prescriptive period. Second, the taxpayer was able to prove that it is a non-resident foreign corporation by presenting its Articles of Incorporation, a certificate of residence issued by the IRS, and a certificate of non-registration issued by the SEC. Third, the taxpayer complied with the reservation clause of the RP-US Tax Treaty which provides that such sale may be taxed by both the Philippines and the USA if the interest being disposed is in a corporation whose assets consist principally of a real property interest located in that country. On the reverse side, under the RP-US Tax Treaty, the subject capital gains may be exempt from Philippine tax if the interest being disposed is in a corporation whose assets do not consist principally of real property interest located in the Philippines.

GE Consumer Finance, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9144 October 24, 2017

4. ***One of the components of alkylate is a product of distillation of crude oil. Thus, alkylate falls under the definition of excisable items as outlined in the Tax Code.***

The taxpayer is claiming for a refund of the excise taxes it paid in connection with its importation of alkylate. The taxpayer insists that alkylate is not a product of distillation, and thus is not subject to excise tax. The BIR opposes the Petition, stating that the same is a challenge to the validity of CMC 164-2012. The proper venue should have been to assail the same before the Secretary of Finance.

Issues:

1) Whether or not the Court has jurisdiction over the case.

2) Whether or not the taxpayer is entitled to a refund of its excise taxes paid.

Ruling:

1) Yes. The CTA has jurisdiction. Unlike the previous cases, the taxpayer in this case filed a claim for refund on the basis of alkylate being not subject to excise tax. The other cases involved a direct challenge to CMC 164-2012. The Supreme Court ultimately ruled that the CTA did not have jurisdiction. However, since this case is connected with a specific item that the CTA has original jurisdiction (i.e. refund claim), then the CTA may decide on the validity of the issuance.

2) No. After due hearing, the Court determined that one of the components of alkylate is a product of distillation of crude oil. Thus, alkylate falls under the definition of excisable items as outlined in the Tax Code of 1997, as amended. The Court also mentioned that there is no requirement under the law that the products must be finished products. Thus, alkylate is subject to excise tax.

Petron Corporation v. Commissioner of Internal Revenue, CTA Case No. 9511, October 26, 2017

5. ***The Court determined that RMC 31-13 is valid, and that the Philippines reserved its right to tax the local employees of ADB. But the said RMC should be given a prospective application.***

The taxpayers are claiming a refund of the income tax as employees of ADB covering the taxable year 2012. The taxpayers stress that they should be exempted from income taxes due to the agreement between the Philippine government and ADB.

The Court determined that RMC 31-13 is valid, and that the Philippines reserved its right to tax the local employees of ADB. The Court also noted that the issuance is merely an interpretation of an existing law. However, the Court decided that it is more just to give the issuance a prospective application. Since the taxpayers honestly believed that they were exempted from income tax, and that the BIR did not enforce the collection of the same prior to RMC 31-13, then the said issuance should be given a prospective application.

Spouses Delos Reyes v. Commissioner of Internal Revenue, CTA Case No. 9088, October 19, 2017

6. ***Since the taxpayer did not submit additional documents within 30 days from the filing of its claim, and that the BIR did not issue a subsequent request for submission of further documents, then the 120 days commenced upon the filing of the administrative claim.***

The taxpayer is claiming a refund of its unutilized input VAT incurred in relation to its zero-rated sales. It has export sales during the relevant taxable years. Upon filing its claim for refund, it subsequently submitted additional documents on two separate occasions, each beyond 30 days from the filing of the claim. It then counted the 120 days from the day of its last submission of documents.

The Court ruled that it had no jurisdiction over the claim. Applying the ruling in the *Total gas* case, the CTA held that since the taxpayer did not submit additional documents within 30 days from the filing of its claim, and that the BIR did not issue a subsequent request for submission of further documents, then the 120 days commenced upon the filing of the administrative claim. Thus, the subsequent submissions of documents did not prolong the commencement of the 120 days required under Sec. 112 of the Tax Code.

Tagum Agricultural Development Company, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8917 October 13, 2017

7. ***The Sandiganbayan decision is not conclusive on the CTA. Further, the parties stipulated only on the presence of the decision, and not the matters stated therein. Thus, the burden to prove the connection of the account to the Spouses was not discharged.***

The BIR claims that the Spouses failed to declare and pay for the income taxes in connection with the Jose Velarde account. The said account was deemed to belong to the spouses, as declared by the Sandiganbayan. Given the said determination by the Sandiganbayan, the CIR argues that the Jose Velarde account has been duly proven to belong to the spouses. Thus, the BIR may then assess them for the income taxes in relation to the funds therein. Further, the CIR stresses that the parties have stipulated on the ruling of the Sandiganbayan.

The Court ruled that the BIR failed to connect the Jose Velarde account to the Spouses. The Sandiganbayan decision is not conclusive on the CTA. Further, the parties stipulated only on the presence of the decision, and not the matters stated therein. Thus, the burden to prove the connection of the account to the Spouses was not discharged.

Note: In the concurring opinion of PJ Del Rosario, he mentioned that the Revenue Officer who continued the investigation did not have the proper authority as there was no new Letter of Authority issued in his favor. Further, there was no proof that an actual audit or examination was performed. Thus, the assessment is void for lack of authority of the Revenue Officer.

Commissioner of Internal Revenue v. Spouses Ejercito, CTA EB No. 1446 (CTA Case No. 7847) October 19, 2017

8. ***Denied VAT claims can properly deducted from taxable income as losses.***

   The mere fact that Accumulated Earnings was booked under the Head Office Account does not automatically mean that said accumulated earnings were already applied or earmarked for remittance to the head office.

The taxpayer is assessed with deficiency income tax and branch profit remittance tax. The deficiency income tax stems from disallowed deductions from taxable income. Specifically, the taxpayer deducted its denied input VAT refund claim from its taxable income. The same was booked as bad debts. The Branch Profit Remitance Tax (BPRT) deficiency was found as the BIR alleged that the net income earned by the taxpayer was already earmarked for remittance to its head office.

As to Income tax, the Court ruled that lost input VAT refunds are considered as deductible losses. Since the taxpayer, upon payment of input VAT in relation to its zero-rated sales, have reasonable expectations to recover the same. However, upon denial of a claim, the taxpayer loses this expectation. Thus, denied VAT claims can properly deducted from taxable income as losses.

As to BPRT, the Court also struck down the same. The CTA ruled that it was erroneous for the BIR to conclude that the entire earnings of the taxpayer as of CY 2010 (i.e., Php166,043,000.00) partakes the nature of an indirect remittance to the head office which should be subjected to BPRT. Under the branch accounting principles in the Philippines, the net income is a standard component or entry in the Head Office Account, which entry is added to the Accumulated Earnings of the previous year (i.e., CY 2009) in order to arrive at the Accumulated Earnings as of the end of the current year (i.e., CY 2010). The mere fact that Accumulated Earnings was booked under the Head Office Account does not automatically mean that said accumulated earnings were already applied or earmarked for remittance to the head office. The BIR's allegation of a constructive remittance of profits cannot be countenanced.

Maersk Global Service Center Philippines, Ltd. v. Commissioner of Internal Revenue, CTA Case No. 8934 October 11, 2017

9. ***The 120 day period shall commence upon submission of complete documents as required by the LOA that was received by the taxpayer.***

This is a tax refund/credit case filed by the taxpayer for the refund of its excess and unutilized input VAT on its domestic purchases of goods and services attributable to zero-rated sales for the first quarter of 2012.

The Court ruled that claims filed before June 11, 2014, or prior to the effectivity of RMC No. 54-14, the rules under RMC No. 49-03, in relation to Section 112 of the NIRC shall apply.

In the instant case, the taxpayer filed its administrative claim on January 28, 2014. Consequently, the taxpayer had 30 days from the time of filing its administrative claim for tax credit or refund within which it should submit all the required supporting documents.

The taxpayer received an LOA on March 4, 2014 where it was required to submit all required documents, books and records to the assigned Revenue Officer. Thus, the taxpayer had 30 days to submit all pertinent supporting documents to expedite the examination. On March 18, 2014, the taxpayer submitted the required supporting documents.

On June 24, 2014, the taxpayer submitted a second set of supporting documents for the same claim for refund. However, on the said date, the 30-day period has already expired. Moreover, there is no record of any notice from the BIR requesting the taxpayer to provide additional documents. Thus, the 120-day period shall be reckoned from March 18, 2014, and it shall run until July 16, 2014. Considering that the BIR failed to act on the subject claim the taxpayer had until August 15 2014 within which to file a judicial appeal before the CTA. However, the present Petition for Review was filed on May 22, 2015. Thus, the CTA has no jurisdiction.

Zuellig Pharma Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9055, October 3, 2017

10. ***A prior application for tax treaty relief is not mandatory before a taxpayer may enjoy the relief provided under Philippine tax treaties.***

This is a tax assessment case against the taxpayer for deficiency income tax for 2008, which was cancelled by the court *a quo,* and where the taxpayer's motion for reconsideration was also denied. The BIR argues that the taxpayer must be subjected to a rate of 2.5% pursuant to Section 28(A)(3)(a) of the NIRC, and not the 1.5% rate as stated in the Tax Treaty given that the taxpayer failed to file an application to avail of the benefit of the tax treaty provisions as required under RMO No. 1-2000.

The Court ruled that a prior application for tax treaty relief is not mandatory before a taxpayer may enjoy the relief provided under Philippine tax treaties. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief. The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000, as every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith.

Commissioner of Internal Revenue v. Lufthansa German, CTA EB No. 1489, October 3, 2017

11. ***The act of the taxpayer in withholding of royalty payments to Amadeus IT Group S.A. is a sign that there is continuity of commercial dealings. Hence, Amadeus IT Group S.A. is doing business in the Philippines.***

The taxpayer argues that in order to be considered as "engaged in business" or 'doing business' in the Philippines, for purposes of imposition of VAT, there must still be "continuity," "habituality," or "regularity" - a determining factor which is absent in this case. The taxpayer repeatedly argues that Amadeus IT Group S.A. is not doing business in the Philippines because it is merely collecting royalties from the taxpayer pursuant to the Distribution Agreement. Amadeus IT Group, S.A. performed only a singular act, which is to grant AMPI the permission to use its intellectual property.

The Court ruled that records of this case contradicted the claim of the taxpayer that only a single transaction is involved, since the contracts involving the taxpayer and Amadeus IT Group S.A. are existing for several years already prior to the taxable year in question. The act of the taxpayer in withholding of payments to Amadeus IT Group S.A. is a sign that there is continuity of commercial dealings. Hence, Amadeus IT Group S.A. is doing business in the Philippines. It bears stressing that the Amadeus Commercial Organization (ACO) Agreement entered into between the taxpayer and Amadeus IT Group S.A., which authorizes the taxpayer to market, promote, offer and distribute the Amadeus System in the Philippines, was executed as early as August 13, 1997, while its Distribution Agreement with Amadeus IT Group S.A. was entered on January 1, 2001, and were both existing for several years. Thus, the taxpayer was not able to prove that it is entitled to a refund or issuance of a tax credit certificate for its unutilized input VAT.

Amadeus Marketing Philippines, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 1483, October 5, 2017

12. ***Being a renewable energy (RE) developer, the taxpayer is entitled to zero-rated VAT on its purchases. Accordingly, no input tax should have been shifted or passed on to the taxpayer.***

The Court ruled that being a renewable energy (RE) developer, the taxpayer is entitled to zero-rated VAT on its purchases of local supply of goods, properties and services needed for its operation. Thus, the taxpayer should not have paid input taxes on its purchases of goods and services from VAT-registered suppliers because such purchases were zero-rated, that is, no output tax was paid by the suppliers. Accordingly, no input tax should have been shifted or passed on to the taxpayer.

Thus, since the taxpayer’s purchases are subject to zero percent (0°/o) VAT the taxpayer’s recourse is not a claim for refund from the BIR but to seek reimbursement of its alleged input VAT paid from its suppliers of goods and services.

Hedcor, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8931, October 5, 2017

13. ***The presentation of evidence to prove that a taxpayer is a VAT registered entity is not a mere procedural technicality which may be easily disregarded.***

The taxpayer failed to prove that it is a VAT Registered entity, one of the requisites for claiming VAT Refund.

To prove that it is a VAT-registered taxpayer, the taxpayer offered in evidence a certified true copy of BIR Certificate of Reqistration. However, the taxpayer failed to have it identified by any of its witnesses as indicated in the Resolutlon of the CTA dated March 7, 2016. The BIR Certificate of Registration was then denied admission. The Court in a previous case had already stressed that the presentation of evidence to prove that a taxpayer is a VAT registered entity is not a mere procedural technicality which may be easily disregarded. As such, the claim for refund was denied.

Nokia Philippines Inc. v. Commissioner of Internal Revenue, CTA Case No. 8876, October 6, 2017