SUMMARY OF SIGNIFICANT CTA DECISIONS (SEPTEMBER 2017)

1. ***The Commissioner is empowered to refund tax stamps if the same are returned in good condition. However, the tax stamps in question have all been attached to cigarette packs, and were not shown to have been returned to the BIR.***

The taxpayer pre-purchased excise stamps for the cigarettes it is selling. However, the BIR subsequently issued RR No. 8-2014, which enforced the usage of new excise stamps. The said issuance also gave the old stamps limited validity, that after 6 months, the same are no longer valid. The taxpayer sought an extension of the validity of the old stamps, but was denied by the BIR. It then filed a refund of its payment for the old stamps which lost their validity.

The Court ruled that the taxpayer failed to substantiate its claim for refund. It stressed that the Commissioner is empowered to refund tax stamps if the same are returned in good condition. However, the tax stamps in question have all been attached to cigarette packs, and were not shown to have been returned to the BIR. Thus, the taxpayer’s claim is denied.

Seneca Tobacco Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9137, September 20, 2017

2. ***The CTA held that the assessment has already attained finality. Thus, the Court may not decide on whether the same is valid or not in a claim for refund.***

The taxpayer, after filing and paying for its monthly expanded withholding tax, filed an amended return, which contained a lower tax due. The taxpayer, having overpaid taxes, claimed the same as a deduction in its subsequent tax return. The taxpayer was then assessed with deficiency taxes amounting to the previous month’s overpayment, plus penalties. The taxpayer paid the same, and eventually sought for its refund.

The CIR's duly authorized representative has one hundred eighty (180) days from submission of documents in support of the protest, or from filing of the protest if no supporting documents are submitted, to decide. The one hundred eighty (180)-day period is to be reckoned from the date of submission of documents in support of the protest. In the present case, the taxpayer was notified of its alleged under payment of EWT for the month of August 2012 on March 20, 2014 through a Preliminary Notices. In response thereto, on March 26, 2014, the taxpayer submitted a letter addressed to Mr. Misajon of LT-DPQAD, requesting for reconsideration of the assessment. Counting one hundred eighty (180) days therefrom, Mr. Misajon had until September 22, 2014 to decide. On May 6, 2014, the taxpayer received the decisions denying its protest, to which the taxpayer requested for reconsideration in a letter with Mr. Misajon filed on May 29, 2014. Thereafter, on June 5, 2014, or within thirty (30) days from receipt of the adverse decision on May 6, 2014, the taxpayer likewise elevated its protest with the CIR. When the taxpayer filed its appeal on June 5, 2014, the CIR had only the remaining days of the one hundred eighty (180)-day period, counted from the date the protest was filed on March 26, 2014 or until September 22, 2014, to decide. Thereafter, the taxpayer had until October 22, 2014, to elevate its claim with the CTA.

Records disclose that no decision on the disputed assessment was yet rendered by the CIR. Therefore, the taxpayer is only left with the option to wait for the decision of the CIR before it may appeal with the CTA. Accordingly, when the taxpayer filed the instant petition on September 16, 2015, without the final decision on the disputed assessment by the CIR, the Court is already bereft of jurisdiction to determine the legality or validity of the assessment as the same has already attained finality.

In view of the finality of the assessment, the taxpayer cannot now raise the question of its validity in its claim for refund or issuance of a TCC before this Court any more than it could have done so when it should have appealed the denial of the protest within the prescribed period. Instead of disguising its failure to appeal in a form of refund, the taxpayer should have raised its defenses by filing an appeal with the CTA to prevent the assailed assessment from becoming final and executory. Failing in this regard is detrimental to the taxpayer.

Further, the Court also stressed that the taxpayer was wrong in claiming the excess payment as a deduction in its subsequent return. There is no such remedy under the law.

New Coast Hotel, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9146 September 19, 2017

3. ***The Court sustained the IAET assessment as there was no proof that the accumulated funds were really earmarked for projects.***

The taxpayer is assessed with deficiency income tax, VAT, DST and IAET. As to the DST, the same is already conceded.

As to Income tax and VAT, the Court reduced the same. The court totally removed the alleged undeclared expenses, as the same do not constitute income, but are actually deductions. The Court also removed items where, upon examining the pertinent tax returns, there are actually no discrepancies found. The Court, however, sustained certain items where no documents were actually presented.

As to IAET, the Court sustained the same as there was no proof that the accumulated funds were really earmarked for projects. In fact, the claimed project as per board resolutions have yet to be implemented, despite being issued for years prior to the taxable year audited.

Opulent Landowners, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8956
September 19, 2017

4. ***A local water district, it is liable for franchise tax under Section 119 of the NIRC imposed on water utilities. It further argues that upon the enactment of RA 7109, the exemption privilege granted to Local Water Districts was limited to a period of five (5) years.***

The case involves a refund of franchise tax payments for the year 2012 made by the taxpayer and those paid on its behalf. The taxpayer argues that it cannot be considered as a franchisee under the fundamental law of the land, and that a franchise is not necessary to operate as a water utility. It argues that it is a public utility owned by the government, thus it should not be subject to franchise tax.

The BIR argues, on the other hand, that as a local water district, it is liable for franchise tax under Section 119 of the NIRC imposed on water utilities. It further argues that upon the enactment of RA 7109, the exemption privilege granted to Local Water Districts was limited to a period of five (5) years.

The Court ruled that a franchise is a privilege conferred by government authority, which does not belong to citizens of the country generally as a matter of common right. Moreover, local water districts are GOCCs. PD No. 198 granted LWDs the franchise to operate as a water utility with corresponding tax exemption privileges.

However, upon the enactment of RA No. 7109, such tax exemption privileges were limited for a period of five (5) years. Considering that RA 7109 was approved and took effect on Aug. 14, 1991, LWDs had five years from such date, or until Aug. 13, 1996 to enjoy the exemption.

Davao City Water District vs. Commissioner of Internal Revenue, CTA Case No. 8979,
September 5, 2017

5. ***The Court ruled that there are two situations when a taxpayer may question a Real Property Tax assessment: first, the taxpayer questions the reasonableness or correctness of the assessment; or, second, the taxpayer questions the legality or validity of the assessment. In the first situation, the taxpayer must first pay under protest the assessed tax.***

The taxpayer was assessed by the Provincial Assessment and Treasury Office with Real Property Tax to the Province of Agusan del Sur for 2011-2012. The taxpayer filed a Petition with the LBAA of Agusan del Sur against the Municipal Assessor and Acting Provincial Assessor. The Assessors filed Motion to Dismiss citing lack of jurisdiction on account of NGCP's failure to first pay the tax under protest.

The Court ruled that there are two situations when a taxpayer may question a Real Property Tax assessment: *first*, the taxpayer questions the reasonableness or correctness of the assessment; or, *second*, the taxpayer questions the legality or validity of the assessment.

In the first situation, the taxpayer must first pay under protest the assessed tax. In the event that the protest is denied, or not acted upon within 60 days from filing, the taxpayer may then file an appeal with the Local Board of Assessment Appeals (LBAA). The LBAA has 120 days from the date of receipt of such appeal to render a decision. When the taxpayer remains unsatisfied with the decision of the LBAA, the taxpayer may elevate the case to the Central Board of Assessment Appeals (CBAA) within 30 days from receipt of the adverse decision. If still aggrieved, the taxpayer may seek judicial intervention before the Court of Tax Appeals (CTA) *En Banc*.

As for the second situation, the taxpayer is assailing the authority and power of the assessor to impose the assessment. He may also assail, in such situation, the authority and power of the treasurer to collect the real property tax. Such questions involve questions of law, thus, the taxpayer may appeal directly to the proper Regional Trial Court (RTC), and if unsatisfied, he may raise an appeal from the RTC's decision to the Division of the CTA.

In the instant case, NGCP should have first paid the assessed taxes before protesting. Consequently, the Court has no jurisdiction to entertain the present case.

National Grid Corporation of the Philippines (NGPC) vs. Central Board of Assessment Appeals, CTA EB No. 1392, September 5, 2017

6. ***CIR has the sole authority to abate or cancel the whole or any unpaid portion of a tax liability, inclusive of increments.***

Aware that the filing of its Quarterly Income Tax Return was a day delayed, the taxpayer sent a letter to CIR, requesting for the abatement of surcharge. The taxpayer paid only the assessed interest and compromise penalty, but not the surcharge. The taxpayer filed a Supplemental Letter requesting for the abatement of the assessed surcharge. The taxpayer then wrote to Officer-in-Charge Misajon, reiterating its request for abatement of surcharge. A similar request was made by the taxpayer, through counsel, via a letter.

In a letter, OIC-ACIR Misajon informed the taxpayer that its application for abatement was denied, and demanded payment of the surcharge. The taxpayer then moved for reconsideration, however, the same was denied. A letter of the same tenor was sent by the taxpayer to OIC-ACIR but it suffered the same fate.

The taxpayer then elevated the matter via a Petition for Review with the CTA Division where it ruled as follows:

A. The CTA has Jurisdiction over the present case as it falls within the purview of Sec. 7(a)(1) of RA No. 1125 in relation to "other matters arising under the NIRC or other laws administered by the BIR".

B. Under the NIRC, CIR has the sole authority to abate or cancel the whole or any unpaid portion of a tax liability, inclusive of increments, under the following circumstances: (1) its assessment is excessive or erroneous, or (2) if the administration costs involved do not justify the collection of the amount due. Since the sole authority to abate tax liability rests upon the sole discretion of respondent, the CTA may not dip its finger in to it in observance of the principle of separation powers among the three branches of government.

Moreover, evaluation of the request for abatement using Sec. 2.6.1 of RR No. 13-2001 revealed that the taxpayer's failure to file the return due to faulty internet connection does not fall under the meritorious circumstances wherein one day late filing may be used as a ground for abatement of penalties.

Significantly, the taxpayer was not without recourse under the alleged prevailing circumstances. To avoid delay, the taxpayer could file a tentatively quarterly income tax return if it was still unsure with the figures contained therein to avoid paying the 25% surcharge for late filing. Thereafter, it could modify, change, or amend the tentative return already filed if warranted.

Qatar Airways Company with Limited Liability vs. Commissioner of Internal Revenue, CTA EB No. 1468, September 5, 2017

7. ***Not only did the taxpayer fail to address the Notice of Hearing to respondent, the hearing set did not state the time and place for the hearing of the Motion. Thus, the motion is a mere scrap of paper.***

The taxpayer filed a Motion for Reconsideration but was found to have no merit, holding that the "Motion for Reconsideration" filed by petitioner is considered a mere scrap of paper for failure of its counsel to indicate the notice of hearing as provided under Section 5, Rule 15, of the Rules of Court. Hence, this appeal to the Court En Banc.

The Court ruled that the Petition for Review is bereft of merit. The MR is a mere scrap of paper.

A review of the taxpayer's Motion for Reconsideration shows that the Notice of Hearing reads as follows:

NOTICE

The Clerk of Court
Court of Tax Appeals-First Division
Quezon City

GREETINGS:

Kindly submit the foregoing Motion for the consideration and resolution of the Honorable Court immediately upon receipt thereof.

(Sgd.)
Olivier D. Aznar

Considering the Notice of Hearing in the taxpayer's Motion for Reconsideration was only addressed to the Clerk of Court of the Court in Division and stated that the same be submitted "for the consideration and resolution of the Honorable Court immediately upon receipt thereof," the Court En Banc holds that the same failed to comply with the procedural requirements. Not only did the taxpayer fail to address the Notice of Hearing to respondent, the hearing set did not state the time and place for the hearing of the Motion.

Consequently, the Assailed Decision has already become final and executory. Thus the Court no longer deems it proper to discuss the remaining issue as to the validity of the taxpayer's claim for refund of unutilized CWTs for CY 2010.

Under Section 3, Rule 15 of the RRCTA, the movant of a motion for reconsideration shall set the same for hearing on the next available motion day. The requirements that the notice shall be directed to the parties concerned and that it shall state the time and place for the hearing of the motion are mandatory. If not complied with, a motion is considered pro forma and the court has no authority to act upon it. It likewise does not toll the running of the prescriptive period for an appeal or the filing of the requisite pleading.

UNISYS Philippines Limited v. Commissioner of Internal Revenue, CTA EB No. 1450, September 6, 2017

8. ***The law requires a foreign service contractor for the rate of 15% under Section 25E of the NIRC to apply.***

The taxpayer is a non-resident foreign corporation organized under the laws of Australia. It entered into a contract with NES Global Pte. Limited for the latter to recruit and provide fully skilled, competent and experienced personnel for Inpex's Ichthys Gas Field Development Project, which is based in Australia. In this regard, the taxpayer employed foreign and Filipino nationals to perform its obligations under the contract with Inpex. The performance of the agreement commenced on September 1, 2012 until September 1, 2016. Similarly, FDIP, a domestic corporation", contracted NES Global Pte. Limited to provide specialist staff support solutions for its offshore high level key positions. Thus, NES Global Pte. Limited also employed foreign nationals to render services to FDIP.

The taxpayer paid FWT for its employees at the rate of 15% and remitted the same to the BIR, pursuant to Section 25(E) of the National Internal Revenue Code of 1997.

Subsequently, the taxpayer subjected the same compensation of the same individuals to withholding tax on compensation (WTC) and paid correspondingly on the basis that the subject foreign and Filipino nationals are employees of the taxpayer.

On September 25, 2014, the taxpayer filed its administrative claim for refund or issuance of a tax credit certificate (TCC). Due to respondent's inaction, the taxpayer filed a Petition with the CTA.

The Court ruled that the contracts in this case are in the nature of a "contract of service". However, neither Inpex nor FDIP qualifies as foreign service contractors engaged in petroleum operations in the Philippines, as defined in Section 3 of PD No. 87. Moreover, FDIP is a domestic corporation. It must be stressed that the law requires a foreign service contractor. Considering that both INPEX and FDIP do not qualify as foreign service contractors engaged in petroleum operations within the Philippines, the taxpayer therefore does not qualify as foreign petroleum service subcontractor, as contemplated under PD No. 87

As such, income payments made by the taxpayer to its employees who were assigned in the Philippines for the Inpex and FDIP projects were not qualified for 15% preferential income tax treatment for employees of foreign service contractors and subcontractors engaged in petroleum operations in the Philippines, under Section 25(E) of the NIRC of 1997. Rather, their income is subject to the regular tax rate of 5%- 32% WTC. The taxpayer, therefore, has erroneously paid the 15% FWT attributable to the compensation paid to the assigned employees.

Accordingly, on the basis that the taxpayer's employees' compensation is subject to WTC instead of FWT, the claimed amount constitutes erroneously paid FWT which is refundable pursuant to Sections 204 and 229 of the NIRC of 1997. However, it shall be to the reduced amount as it will be less the disallowed amount due to understatement of WTC on compensation paid by the taxpayer to its foreign employees and to prove the withholding and actual remittance of the required WTC on the compensation for the month of October 2012.

NES Global Talent Limited v. Commissioner of Internal Revenue, CTA Case No. 9065, September 6, 2017

9. ***A TVN is not a valid source of authority of revenue officers to conduct an examination.***

The Court ruled that the Revenue Officer was only issued a TVN and not an LOA. Applying the *Medicard* case, the Revenue Officer has no authority to examine the taxpayer's final books and records in the absence of an LOA. Further, the CTA found that the taxpayer did not earn any revenue for the year since it has not yet started commercial operations as of December 31, 2007. The taxpayer did not even derive any gain or profit, a precondition to the imposition of income tax.

Great Holiday Entertainment Services v. Commissioner of Internal Revenue, CTA Case No. 8864, September 13, 2017

10. ***The taxpayer failed to prove that the imported articles are not locally available in reasonable quantity, quality or price, one of the requirements to entitle it to such exemption.***

The taxpayer seeks to refund excise taxes paid in connection with its importations of liquor, wine, and cigarettes for its catering and commissary supplies for international consumption for the period of April 20, 2011 to August 5, 2011 in the amount of P9,766,731.05.

The Court in Division held that while the taxpayer is exempt from excise taxes on its importations of liquor, wine, and cigarettes for international flight consumption under Presidential Decree (PD) No. 1590, which has not been repealed by Republic Act (RA) No.9334, nonetheless, the taxpayer is not entitled to the refund sought for failure to prove that the imported articles are not locally available in reasonable quantity, quality or price, one of the requirements to entitle it to such exemption.

The Court En Banc likewise ruled that PD No. 1590 did not expressly repeal RA No. 9334. Thus, PAL may still claim exemption granted to it under its franchise provided that the following requisites are proved:

1. It paid its corporate income tax and VAT liabilities for the subject period of importation;

2. The imported articles, supplies or materials are intended to be used in its transport and non-transport operations and other activities incidental thereto; and

3. The imported articles, supplies or materials are not locally available in reasonable quantity, quality or price.

PAL, however, failed to prove by evidence the third requisite. Hence, the CTA En Banc affirmed the decision of the CTA Division.

Philippine Airlines Inc. v. Commissioner of Internal Revenue, CTA EB No. 1400, September 13, 2017