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Tax news
Interpret and integrate

BIR Issuance
Clarification on the VAT exemption of international carriers and sale, importation, or lease of cargo vessels and aircrafts

The Bureau of Internal Revenue (BIR) introduced the following amendments to Section 4.109-1 of Revenue Regulations No. (RR) 16-05 for purposes of clarifying the value-added tax (VAT) exemption of international carriers and the sale, importation, or lease of passenger or cargo vessels and aircraft:

1. Added a new subsection (s) on the VAT exemption of transport of cargo and passengers by international carriers doing business in the Philippines. The new subsection (s) clarified that international carriers doing business in the Philippines are subject to 3% percentage tax on their gross receipts from transport of cargo from the Philippines to another country pursuant to Section 118 of the Tax Code.

2. Deleted subsection (t) on the VAT exemption of importation of life-saving equipment, safety and rescue equipment, and communication and navigational safety equipment, steel plates and other metal plates including marine-grade aluminum plates, used for shipping transport operations.

3. Deleted subsection (u) on the VAT exemption of importation of capital equipment, machinery, spare parts, life-saving and navigational equipment, steel plates and other metal plates including marine-grade aluminum plates to be used in the construction, repair, renovation or alteration of any merchant marine vessel operated, or to be operated, for domestic trade.

4. Old subsection (s) was renumbered to (t). The amendment removed the age and cargo-carrying capacity (tonnage) limits specified in the old subsection (s) on the VAT exemption of sale, importation or lease of passenger or cargo vessels and aircraft. Under the new subsection (t), the VAT exemption of sale, importation, or lease of passenger or cargo vessels and aircraft shall now be subject to the requirements on restriction on vessel importation and mandatory vessel retirement program of the Maritime Industry Authority (MARINA).

(Revenue Regulations No. 15-2015, December 28, 2015)

Court Decisions

Limitation on imposition of deficiency interest

Under Section 249(B) of the Tax Code, taxpayers with deficiency in the tax due, as the term is defined in the Tax Code, are required to pay deficiency interest at the rate of 20% per annum, which shall be assessed and collected by the BIR from the date prescribed for its payment until its full payment. The Court of Tax Appeals (CTA) held that the deficiency interest provided for in Section 249(B) of the Tax Code may only be imposed when there is deficiency in the income tax, estate tax, and donor's tax.

In the instant case, the taxpayer was assessed for deficiency interest at the rate of 20% per annum on its basic deficiency final withholding tax, withholding tax on compensation, expanded withholding tax, income tax, and VAT. The CTA held that no deficiency interest should have been charged except on the assessed income tax deficiency of the taxpayer.

The CTA maintained that Section 249(B) of the Tax Code, which authorized the imposition of deficiency interest, is explicit that the deficiency interest may be imposed only when there is deficiency in the tax due as defined in the Tax Code. According to the CTA, a review of the Tax Code disclosed that the term "deficiency in the tax due" is defined only in three types of taxes: first, in income tax (Section 56), second in estate tax (Section 93), and third, in donor's tax (Section 104). Hence, deficiency interest may not properly be imposed on the deficiency final withholding tax, deficiency withholding tax on compensation, deficiency expanded withholding tax and deficiency VAT of the taxpayer.

(Ace/Saatchi & Saatchi Advertising, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8439, December 9, 2015)

Refund of excess CWT of dissolved corporation in a merger

Under Section 76 of the Tax Code, a corporation whose total quarterly income tax payments exceeds its tax is given two alternative options: (a) carry over and apply the excess quarterly income tax against the income tax due for taxable quarters of the succeeding taxable years, or (b) apply for refund or issuance of tax credit for the excess tax credits.

Once a corporation exercises the option to carry over and apply the excess quarterly income tax against the tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that taxable period. However, as an exception to the irrevocability rule, a corporation contemplating dissolution may opt to claim for refund of its remaining tax credits even if it has previously chosen the irrevocable option to carry over its tax credits.

In the instant case, a claim for refund or issuance of tax credit certificate of unutilized creditable withholding tax (CWT) was filed after the corporation had ceased to exist as a consequence of approval by the Securities and Exchange Commission (SEC) of its merger with another corporation. Both the administrative and judicial claims were filed by the dissolved corporation. However, in its amended petition filed with the CTA, the dissolved taxpayer designated the surviving corporation as the correct petitioner to claim refund of its excess unutilized CWT.

The CTA held that there is no decision or inaction that should be subject of an appeal since there is no valid administrative claim filed by the taxpayer. In this regard, the CTA noted that the dissolving company no longer had any legal personality at the time the administrative claim was filed since it was already effectively dissolved as a corporate entity, and thus, no administrative claim can be considered filed by the dissolved company. Moreover, since no administrative claim was filed by the surviving corporation despite the SEC's approved plan of merger, the CTA held that no suit or proceeding can be maintained in the court for the recovery of the excess unutilized CWT.

While the CTA recognizes that after a merger, the surviving corporation shall possess all the rights, privileges, immunities and franchises of each of the constituent corporations and all property, real or personal, all receivables due on whatever account, and all other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in the surviving corporation, the CTA maintained that the surviving corporation can only acquire or benefit from what the dissolved corporation had or did during its lifetime, not after it was dissolved. Considering that the dissolved corporation no longer existed when the administrative claim for refund was filed, the CTA held that the surviving corporation cannot benefit from a claim of a non-entity.

(Axia Power Holdings Philippines Corporation v. Commissioner of Internal Revenue, CTA EB Case No. 1203 re CTA Case No. 8092, December 2, 2015)

Defense of prescription by reason of invalidity of the waiver

Under Section 203 of the Tax Code, the BIR has three years from the last day prescribed by law for the filing of the tax return or the actual date of filing of the return, whichever comes later, to make an assessment against a taxpayer. Under Section 222(b) of the Tax

Code, the period to assess may be extended upon a written agreement between the taxpayer and the Commissioner of Internal Revenue (CIR) before the expiration of the three-year period.

In the execution of the waiver, the provisions of Revenue Memorandum Order No. (RMO) 20-90 and Revenue Delegated Authority Order (RDAO) 05-01 must be faithfully complied with in order for the waivers to be considered valid and binding.

Under RMO 20-90, it is required, among others, that the waiver be signed by the taxpayer himself or his duly authorized representative and the taxpayer be furnished copies of the accepted waiver and that the fact of receipt by the taxpayer be indicated in the original copy of the waiver. In case of failure to comply with the procedures laid down in RMO 20-90 and RDAO 05-01, the waivers shall be considered invalid and the BIR assessments shall be deemed issued beyond the three-year prescriptive period and, therefore, void.

In the instant case, the deficiencies found by the Supreme Court (SC) were: (a) the official of the company who executed the waivers had no notarized written board authority to sign the waivers on behalf of the company, and (b) the date of acceptance of the taxpayer was not indicated on the waiver.

While a waiver that does not comply with the requisites under RMO 20-90 and RDAO 05-01 shall be considered invalid and ineffective to extend the prescriptive period to assess taxes, the SC decided to treat the case as an exception to the general rule and, thus, held the waivers valid for the following reasons:

a. The taxpayer and the BIR are in equal fault. The official of the company executed five waivers and the official’s authority to sign the waivers was not presented upon the submission of the waivers to the BIR. Later on, the BIR questioned the official’s authority to sign the waivers. According to the SC, both parties knew the infirmities of the waiver and yet they continued to deal with each other without bothering to rectify the infirmities.

b. The taxpayer should not be allowed to benefit from the flaws of its own waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.

c. The taxpayer is estopped from questioning the validity of the waivers. The SC explained that the taxpayer executed five waivers, which the BIR relied on to make an assessment. The taxpayer did not raise any objections against the validity of the waivers until the BIR assessed taxes and penalties against it. The SC maintained that the application of estoppel in this case is necessary to prevent undue injury that the government would suffer because of the cancellation of the taxpayer’s assessed tax liabilities.

d. The SC expressed that it cannot tolerate the highly suspicious situation surrounding the waivers. In this case, after voluntarily executing the waivers, the taxpayer insisted on their invalidity by raising the very same defects it caused. On the other hand, the SC pointed out that the BIR’s negligence in the performance of its duties was so gross that it amounted to malice and bad faith. According to the SC, the BIR was so lax that it seemed as if it consented to the mistakes in the waivers.

After holding that the waivers are valid, the SC referred the case to the CTA for the determination of the merits of the taxpayer’s petition to nullify the BIR assessment notices.

(Commissioner of Internal Revenue v. Next Mobile, Inc., G.R. No. 212825, December 7, 2015)

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