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Defining Health Care Institutions

Section 4(o)(1) of RA No. 7875 (National Health Insurance Act of 1995, as amended by RA No. 10606), provides that a licensed and accredited health care institution is one that is devoted primarily to the maintenance and operation of facilities for health promotion, prevention, diagnosis, treatment, and care of individuals suffering from illness, disease, injury, disability or deformity, or in need of obstetrical or other medical and nursing care.

It is also construed as a building, or place where there are installed beds, cribs, or bassinets for 24-hour use or longer by patients in the treatment of diseases, injuries, deformities, or abnormal physical and mental states, maternity cases or sanitary care, or infirmaries, nurseries, dispensaries, and such other similar names by which they may be designated.

Corporate Income Tax Regime

Under Section 27(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, proprietary hospitals which are nonprofit shall pay a tax of 10% on their taxable income. If the gross income from unrelated trade, business or other activity exceeds 50% of the total gross income derived by such hospitals from all

sources, the tax prescribed in Subsection (A) shall be imposed on the entire taxable income, that is, at 30%.

The following general principles govern the tax-exempt status of health care institutions under Section 30 of the NIRC:

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Income Tax Exemption, Not Absolute

Income tax exemption covers only the income derived by the corporation in furtherance of the purposes for which it was organized.

Section 30 corporations are still subject to the corresponding internal revenue taxes on income derived from any of their properties, real or personal, or any activity conducted for profit regardless of the disposition thereof (i.e. interest income from bank deposits, gains from investments, rental income from real or personal properties), which income should be reported for taxation purposes.

The interest income from currency bank deposits and yield or any other monetary benefit from deposit substitute instruments and from trust funds and similar arrangement, and royalties derived from sources within the Philippines of organizations under Section 30 are subject to the 20% final withholding tax. The interest income derived from a depository bank under the expanded foreign currency deposit system shall be subject to 15% final withholding tax pursuant to Section 27(D)(1) in relation to Section 57(A).

Obligation as Withholding Agent for the Government

The tax exemption granted under Section 30 does not cover withholding taxes on compensation income of the employees of the corporation, or the withholding tax on income payments to persons subject to tax pursuant to Section 57. The corporation or association is therefore constituted as a withholding agent for the government if it acts as an employer and any of its employees receives compensation income subject to withholding tax under Section 79(A), as implemented by RR No. 2-98, as amended, or if it makes income payments to individuals or corporations subject to the withholding tax provided for in Section 57, also as implemented by RR No. 2-98, as amended.

Liability for Value-Added Tax (VAT) and Other Percentage Taxes

Purchase of goods or properties or services and importation of goods by a corporation organized and operated as a Section 30 corporation shall be subject to the 12% VAT.

Section 105 provides that any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the VAT imposed under Sections 106 to 108. Section 109(1)(G) provides that transactions on medical, dental, hospital and veterinary services except those rendered by professionals shall be exempt from the VAT.

The phrase "*in the course of trade or business*" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells its good exclusively to members or its guests), or government entity. Hence, revenues derived therefrom shall be subject to the 12% VAT, in case the gross receipts exceed Three Million Pesos (₱3,000,000.00), or to the 3% percentage tax, if gross receipts do not exceed ₱3 million.

Guidelines or Criteria to Avail Tax Incentives

Revenue Memorandum Order No. 38-2019 was issued to clarify the nature, character, and tax treatment of corporations under Section 30 of the NIRC. Non-stock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset belongs to or inures to the benefit of any member, organizer, officer or any specific person.

Operationally, a corporation is exempt from tax on its income if it meets two tests: (a) it is organized and operated for one or more of the above-specified purposes; and (b) no part of its net income or assets inures to the benefit of private stockholders or individuals.

a. Operational and Organizational Tests in Determining Entitlement to Exemption

The requirements for the grant of tax exemption are specified by the law granting it and such grant is strictly construed against the taxpayer because an exemption restricts the collection of taxes necessary for the existence of the government. Thus, a corporation claiming tax exemption must be able to show clearly that it is organized and operated for the purposes under Section 30 of the NIRC, and that its income is derived pursuant thereto.

Organizational Test: The corporation or association's constitutive documents (SEC Registration, Articles of Incorporation and By-Laws) must show that its primary purposes of incorporation fall under Section 30 of the NIRC.

Operational Test: The regular activities of the corporation or association are exclusively devoted to the accomplishment of the purposes specified in Section 30 of the NIRC. A corporation or association fails to meet this test if it has no activities conducted in furtherance of the purpose for which it was organized, or if a substantial part of its operations constitutes "*activities conducted for profit*".

b. Non-Profit, Inurement Prohibition

Corporations falling under Section 30 of the NIRC must be nonprofit. "*Non-profit*" means that "*no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit*". The organization must serve a public rather than a private purpose.

Image by BullTax Accountants, with modification.

Tax Exemptions under the Customs Modernization and Tariff Act (CMTA)

The following provisions provide the tax exemptions under RA No. 10863:

a. Sec. 120. *Relief Consignment.* – Goods such as food, medicine, equipment and materials for shelter, donated or leased to government institutions and accredited private entities for free distribution to or use of victims of calamities shall be treated and entered as relief consignment.

b. Sec. 121. *Duty and Tax Treatment.* – Relief consignment imported during a state of calamity and intended for a specific calamity area for the use of the calamity victims therein, shall be exempt from duties and taxes.

c. Sec. 800. *Conditionally Tax and/or Duty-Exempt Importation*. – The following goods shall be exempt from the payment of import duties upon compliance with the formalities prescribed in the regulations which shall be promulgated by the Commissioner with the approval of the Secretary of Finance, under the following subsections:

(m) Imported goods donated to or, for the account of the Philippine government or any duly registered relief organization, not operated for profit, for free distribution among the needy, upon certification by the DSWD or the Department of Education (DepEd), or the DOH, as the case may be;

(r) Samples of the kind, in such quantity and of such dimension or construction as to render them unsaleable or of no commercial value; models not adapted for practical use; and samples of medicines, properly marked "*sample-sale punishable by law*", for the purpose of introducing new goods in the Philippine market and imported only once in a quantity sufficient for such purpose by a person duly registered and identified to be engaged in that trade.

Incentives Under the Bayanihan to Heal as One Act (RA No. 11469)

Under the following subsections of Section 4, the President shall have the power to adopt the following temporary emergency measures to respond to crisis brought by the pandemic:

(h) Consistent with Section 17, Article XII of the Constitution, when the public interest so requires, direct the operation of any privately-owned hospitals and medical and health facilities including passenger vessels and, other establishments, to house health workers, serve as quarantine areas, quarantine centers, medical relief and aid distribution locations, or other temporary medical facilities; and public transportation to ferry health, emergency, and frontline personnel and other persons;

(j) Ensure that donation, acceptance and distribution of health products intended to address the COVID-19 public health emergency are not unnecessarily delayed and that health products for donation duly certified by the regulatory agency or their accredited third party from countries with established regulation shall automatically be cleared;

(k) Undertake the procurement of the following as the need arises, in the most expeditious manner, as exemptions from the provisions of RA No. 9184 or the "*Government Procurement Reform Act*" and other relevant laws:

(1) Goods, which may include PPE such as gloves, gowns, masks, googles, face shields; surgical equipment and supplies; laboratory equipment and its reagents; medical equipment and devices; support

and maintenance for laboratory and medical equipment, surgical equipment and supplies; medical supplies, tools, and consumables such as alcohol, sanitizers, tissue, thermometers, hand soap, detergent, sodium hydrochloride, cleaning materials, povidone iodine, common medicines (e.g., paracetamol tablet and suspension, mefenamic acid, vitamins tablet and suspension, hyoscine tablet and suspension, oral rehydration solution, and cetirizine tablet and suspension); testing kits and such other supplies or equipment as may be determined by the DOH and other relevant government agencies;

(2) Goods and services for social amelioration measures in favor of affected communities;

(3) Lease of real property or venue for use to house health workers or serve as quarantine centers, medical relief and aid distribution locations, or temporary medical facilities;

(4) Establishment, construction, and operation of temporary medical facilities;

(5) Utilities, telecommunications, and other critical services in relation to operation of quarantine centers, medical relief and aid distribution centers and temporary medical facilities; and

(6) Ancillary services related to the foregoing.

(o) Liberalize the grant of incentives for the manufacture or importation of critical or needed equipment or supplies for the carrying-out of the policy declared herein, including healthcare equipment and supplies: *Provided*, That importation of these equipment and supplies shall be exempt from import duties, taxes and other fees.

The DOF issued RR No. 6-2020 and Customs Administrative Order (CAO) No. 7-2020 to implement the said provision. In particular, RR No. 6-2020 clarifies that "*donations of these imported articles to or for the use of the National Government or any entity created by any of its agencies, which is not conducted for profit or to any political subdivision of the said Government, are exempt from donor's tax, and subject to the ordinary rules of deductibility under existing rules and issuances.*"

Incentives Under the Bayanihan to Recover as One Act (RA No. 11494)

Section 12 provides that notwithstanding any law to the contrary, the requirement of Phase IV trials for COVID-19 medication and vaccine stipulated in the Universal Health Care Law is hereby waived to expedite the procurement of said medication and vaccine: *Provided*, That these are recommended and approved by the WHO and/or other internationally recognized health agencies: *Provided, further,* That the minimum standards for the distribution of the said medication and vaccine shall be determined by the FDA and HTAC, as may be applicable: *Provided, furthermore,* That nothing in this Act shall prohibit private entities from conducting research, developing, manufacturing, importing, distributing or selling COVID-19 vaccine sourced from registered pharmaceutical companies, subject to the provisions of this Act and existing laws, rules and regulations: *Provided, finally,* That this section shall remain in effect three (3) months after December 19, 2020.

Tax Issues on the Delivery of Health Care Services

a. [G.R. No. 195909] Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc. and [G.R. No. 195960] St. Luke's Medical Center, Inc. vs. Commissioner of Internal Revenue [1]

Issue:

Whether St. Luke's is liable for deficiency income tax in 1998 under Section 27(B) of the NIRC, which imposes a preferential tax rate of 10% on the income of proprietary non-profit hospitals.

Ruling:

The Supreme Court ruled that Section 27(B) of the NIRC does not remove the income tax exemption of proprietary non-profit hospitals under Section 30(E) and (G).

The highest tribunal elucidated that there is no dispute that St. Luke's is organized as a non-stock and non-profit charitable institution. However, this does not automatically exempt St. Luke's from paying taxes. This only refers to the organization of St. Luke's. Even if St. Luke's meets the test of charity, a charitable institution is not *ipso facto* tax exempt. To be exempt from real property taxes, Section 28 (3), Article VI of the Constitution requires that a charitable institution use the property "*actually, directly and exclusively*" for charitable purposes. To be exempt from income taxes, Section 30(E) of the NIRC requires that a charitable institution must be "*organized and operated exclusively*" for charitable purposes. Likewise, to be exempt from income taxes, Section 30(G) of the NIRC requires that the institution be "*operated exclusively*" for social welfare.

The last paragraph of Section 30 provides that if a tax exempt charitable institution conducts "*any*" activity for profit, such activity is not tax exempt even as its not-for-profit activities remain tax exempt. Thus, even if the charitable institution must be "*organized and operated exclusively*" for charitable purposes, it is nevertheless allowed to engage in "*activities conducted for profit*" without losing its tax exempt status for its not-for-profit activities.

In 1998, St. Luke's had total revenues of ₱1,730,367,965 from services to paying patients. It cannot be disputed that a hospital which receives approximately ₱1.73 billion from paying patients is not an institution "*operated exclusively*" for charitable purposes. Clearly, revenues from paying patients are income received from "*activities conducted for profit*." Services to paying patients are activities conducted for profit. Indeed, St. Luke's admits that it derived profits from its paying patients. The Court finds that St. Luke's is a corporation that is not "*operated exclusively*" for charitable or social welfare purposes insofar as its revenues from paying patients are concerned. This ruling is based not only on a strict interpretation of a provision granting tax exemption, but also on the clear and plain text of Section 30(E) and (G). Such income from for-profit activities, under the last paragraph of Section 30, is merely subject to income tax, previously at the ordinary corporate rate but now at the preferential 10% rate pursuant to Section 27(B).

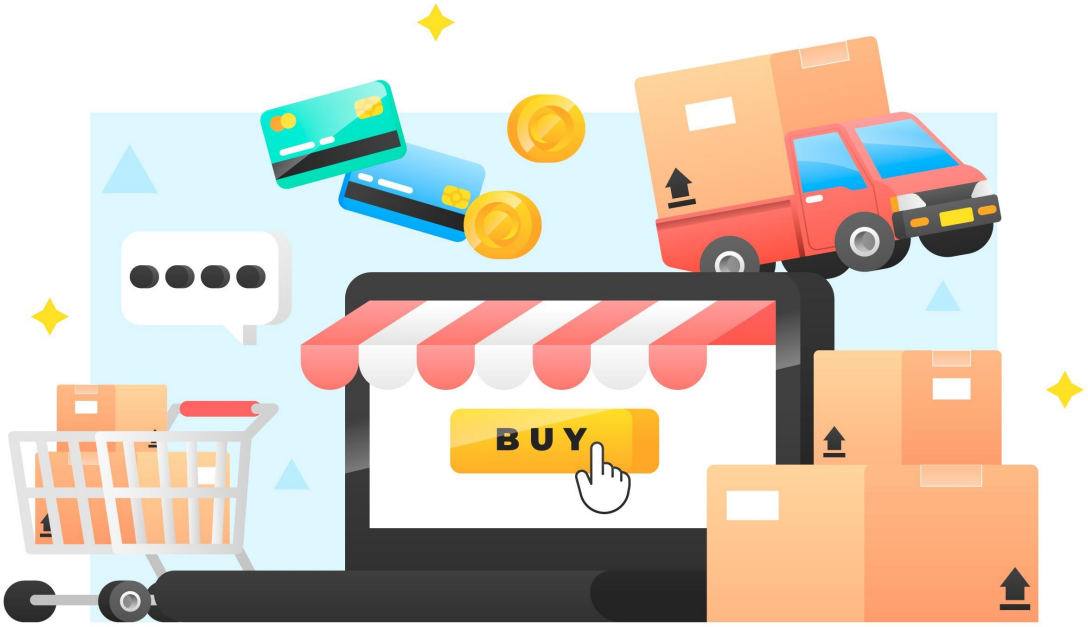
St. Luke's fails to meet the requirements under Section 30(E) and (G) of the NIRC to be completely tax exempt from all its income. However, it remains a proprietary non-profit hospital under Section 27(B) of the NIRC as long as it does not distribute any of its profits to its members and such profits are reinvested pursuant to its corporate purposes. St. Luke's, as a proprietary non-profit hospital, is entitled to the preferential tax rate of 10% on its net income from its for-profit activities. St. Luke's is therefore liable for deficiency income tax in 1998 under Section 27(B) of the NIRC.

b. Rulings on tax-exempt hospitals

All rulings issued prior to November 1, 2012, which grant tax exemption to proprietary non-profit hospitals or to non-stock non-profit entities operating hospitals under Section 30 of the NIRC, shall no longer be valid due to the issuance of BIR RMC No. 4-2013 requiring tax-exempt hospitals to secure re-validated tax exemption rulings or certification.

[1] https://www.lawphil.net/judjuris/juri2012/sep2012/gr_195909_2012.html

Taxing the Digital Economy



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Preface

The digital revolution has unlocked huge opportunities for people and businesses, increasing consumer choice and boosting prosperity. It changed the way individuals, business and the entire civilization conduct their respective roles in society.

According to Kim (2020)[1], "*The rise of highly digitalized businesses, such as Google and Amazon, has strained the traditional income tax rules on nexus and profit allocation.*" Traditionally, profit is allocated to market countries where consumers are located only if the business has physical presence. However, in the digital economy, profits can be easily generated in market countries with their virtual presence, resulting in tax revenue loss for the countries where purchases are made.

Thus, some countries started imposing a new tax called the digital services tax (DST), on certain digital business models. As defined by Bunn & Enache (2020)[2] DSTs are gross revenue taxes with a tax base that includes revenues derived from a specific set of digital goods or services, or based on the number of digital users within a country.

We note that the DST may be a direct tax – that is, an income tax – and/or an indirect tax – as in a value-added tax (VAT) or Goods and Services Tax (GST). This paper focuses on the VAT practices and how the Philippines has responded to the global call.

Scope of Digital Services Tax

The common characteristics of DST are: it encompasses cross-border or importation of services primarily available digitally or electronically (e.g., audio and video streaming, online advertising, digital marketplaces, ride-hailing and booking platforms, and user data); it covers all companies whose digital services are supplied to consumers located within the taxing jurisdiction, and it is computed on revenue generated from consumers within the taxing territory.

In 2018, European Union countries proposed to tax mostly foreign digital companies. In South Africa[3], electronic services cover educational services supplied by a person that is not regulated by an education authority in the foreign country, games and games of chance, internet-based auction services, supply of e-books, audio visual content, still images and music, and subscription services to any blog, journal, magazine, newspaper, games, internet-based auction services, periodical, publication, social networking services, webcast, webinar, website, web application and web series.

In France, DST applies to digital intermediary services and online advertising services, whereas United Kingdom's DST applies to revenues from search engines, social media platforms, and online marketplaces.

The Indonesian Ministry of Finance issued Regulation No. 48/PMK.03/2020 dated 05 May 2020 as a measure to provide fairness in the VAT treatment of digital and non-digital goods and services. The regulation specifies that intangible goods and services from outside Indonesian customs territory are to be VATable. Digital goods include movie, music, computer software, mobile applications, games, electronic books, magazines, etc.; digital services include web hosting and video conferencing.[4]

Global Reactions to Digital Services Tax

1. US investigations. The United States Trade Representative (USTR) began its investigation under Section 301 into the adoption of the DST by several countries. Under the US investigation system, the USTR may investigate whether an act or policy of a foreign country is discriminatory, unreasonable and restricts US commerce. The investigation covers DST implemented in Austria, India, Indonesia, Italy, Turkey and the UK as well as those proposed in Brazil, the Czech Republic, the EU, and Spain.[5]

2. Trade war. Last year, the US investigated France for its DST and threatened to impose up to 100% tariff on French imports such as champagne, camembert cheese and other French luxury goods. France decided to suspend collection of its DST until 2021 but the tax liability will accrue in 2020.[6] In return, the US did not increase tariffs and continued its engagement with the Organization for Economic Cooperation and Development (OECD).

The UK government implemented its tax effective 01 April 2020, despite US threat in January 2020 to impose new tariffs on UK car manufacturers.[7] The US has stepped up pressure against countries that have implemented or are planning to implement the DST. It has signified that compliance to the tax should be voluntary for US firms.[8]

The Tax Foundation cautioned that the Canadian proposal of a 3% tax on revenues from sales of online advertisement and user data may further escalate the ongoing trade war and the negotiations at the OECD. Presently more than 130 countries are working toward an agreement on the taxation of multinational businesses and implement a global minimum tax.[9]

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[1] Kim, Young Ran (Christine), Digital Services Tax: A Cross-Border Variation of the Consumption Tax Debate, March 30, 2020.

[2] Bunn D., Asen E. and Enache C., Tax Foundation: Digital Taxation Around the World, 27 May 2020.

[3] Musgrove, A., Digital Tax Around the World: What To Know About New Rules. Retrieved from https://quaderno.io/blog/digital-taxes-around-world-know-new-tax-rules/on 04 June 2020.

[4] Nugroho, A. and Tampubolon, J. Indonesia imposes VAT on imported digital supplies. Retrieved from https://www.internationaltaxreview.com/article/b1mtmjhgwp5833/indonesia-imposes-vat-on-imported-digital-supplies?utm_source=LinkedIn&utm_term=editorial&utm_content=3560218808&utm_campaign=editorial&utm_medium=social%20media%20organic on 14 August 2020.

[5] Politi, J. and Williams, A. US takes aim at digital services taxes in UK and EU. Retrieved from https://www.ft.com/content/e8edf57b-439e-ac1d-56ba28a96b78 on 08 July 2020.

The Jakarta Post. US says will investigate nations with digital services tax. Retrieved from https://www.thejakartapost.com/nes/2020/06/03/us-says-will-investigate-nations-with-digital-services-tax.html on 04 June 2020.

[6] Bunn, D. The U.S. Trade Representative expands its digital services tax investigations. Retrieved from https://taxfoundation.org/us-trade-representative-ustr-digital-services-tax-investigations/ on 09 July 2020.

[7] Pinsent Masons. US expands digital services tax investigation to cover UK and EU. Retrieved from https://www.pinsentmasons.com/out-law/us-digital-services-tax-investigation-uk-eu on 08 July 2020.

[8] A new trade war? US opens new investigations into countries planning digital tax. Retrieved from https://www.cnbc.com/2020/06/03/us-probes-uk-india-brazil-the-eu-and-others-for-digital-tax-plans.html on 08 July 2020.

[9] Another digital service tax? Canada adds its proposal to the mix. Retrieved from https://taxfoundation.org/canada-digital-tax-proposal/ on 01 June 2020.

3. Restriction in grant of US working visa. The US is proposing to restrict the grant of working visa to Indian nationals into the country. [10]

4. Reduction in online business transactions. One of the possible drawbacks of imposing a DST on online transactions is the increase in the tax burden of customers – thus an increase in customer aversion to online business – and which may result in lower revenues for those engaged in said business.

What Has the Philippines Done so Far?

1. The BIR through RMC 55-2013 issued on 22 August 2013 reiterates the tax due from online transactions. The Memorandum Circular noted the most common type of online business transactions in the country as follows:

    a. *Online shopping or online retailing* – where consumers directly buy goods or services from a seller over the internet without an intermediary service;

    b. *Online intermediary service* – where a 3rd party offers intermediation services between two (2) trading partners. The intermediary is the conduit for the goods or services offered by a trader to a consumer and receives commission for this service;

    c. *Online advertisement/classified ads* – where the internet is used to deliver marketing or promotion messages to attract customers; and

    d. *Online auction* – where the auctions are conducted through the internet via an online service provider which hosts such auctions. The seller, through this service, sells the product or service to the highest bidder.

The obligations of those conducting the above-mentioned transactions are:

- Register the business [11] with the Revenue District Office (RDO);
- Secure the required Authority to Print (ATP) invoices/receipts and register books of accounts;
- Issue registered invoice or receipts for every sale, barter, exchange or lease of goods, properties or services;
- Withhold the required creditable/expanded withholding tax and other taxes;
- File the applicable tax returns on or before the due dates, pay the correct internal revenue taxes, and submit information returns and other tax compliance reports; and,
- Keep books of accounts and other business/ accounting records within the time prescribed by law.

Existing tax laws and revenue issuances on the treatment of purchases (local or imported), and sale (local or international) of goods (tangible or intangible) or services shall be equally applied regardless of the medium of transaction.

Finally, RMC 55-2013 identifies the parties to different types of online transactions:

    a. Online Merchant/Retailer, Buyer/Customer, Payment Gateways [12], Freight Forwarders and Online and Online Website Administrators;

    b. Online Intermediary Service – Online Intermediary, Merchant/Retailer, Buyer/ Customer, Payment Gateways, Freight Forwarders and Online Website Administrators;

    c. Online Advertisement – The Advertising Entity, Merchant/Retailer, Buyer/Customer, Payment Gateways, Freight Forwarders and Online Website Administrators;

    d. Online Auction – Auction Webstores, Merchant/Retailer, Buyer/Customer, Payment Gateways, Freight Forwarders and Online Website Administrators.

2. Unnumbered House Bill that seeks to impose a 12% VAT on digital services. The bill aims to impose tax on major global players, not small or medium enterprises.

The bill defines 'digital service' as "*any service that is delivered or subscribed over the internet or other electronic network and which cannot be obtained without the use of information technology and where the delivery of the service may be automated*."

Except for the books, newspapers, magazines, or bulletins sold electronically that would be exempt from the proposed 12% VAT, the following online services will become taxable if the bill becomes a law:

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[10] Iloka, H. and Dushime, A. insight: new value-added tax on online services in Nigeria. Retrieved from https://news.bloombertax.com/daily-tax-report-international/insight-new-value-added-tax-on-online-services-in-nigeria/ on 06 June 2020.

[11] An estimated 6Mn big, medium and minimal digital merchants operating in the country are about to register in more than 120 revenue district offices (RDOs) nationwide. BIR reiterated that online sellers whose earnings do not exceed P250,000 annually are not required to pay income tax and sellers with gross receipts of Php3Mn and below are exempted from the value-added tax (VAT).

[12] Payment gateways/payment settlement entities are defined in RMC 55-2013 as banks or other organizations and third party settlement organizations that has contractual obligation to make payment to participating payees in the settlement of the transactions. These include, but are not limited to, credit card companies, banks, financial institution, and bill paying services.

- online licensing of software, updates, and add-ons;
- website filters and firewalls;
- mobile applications, video games, and online games;
- webcast and webinars;
- provision of digital content such as music, files, images, text and information;
- advertisement platform such as provision of online advertising space on intangible media platform;
- online platform such as electronic marketplaces or networks for the sale, display, and comparison of prices of trade products for services;
- search engine services;
- social networks;
- database and hosting such as website hosting;
- online data warehousing;
- file sharing and Cloud storage services;
- internet-based telecommunication;
- online training such as provision of distance teaching, e-learning, online courses and webinars, online newspapers, and journal subscription; and
- payment processing services.

The DOF presented revenue estimates under the proposed DST-VAT measure[13] as follows:

Table 1. ***Estimated Incremental VAT Revenue on Digital Transactions/Services on Non-resident and Resident Digital Service Providers*** (amounts in billion pesos)

Particulars	Tax Base	Estimated VAT Revenue		
		Nonresident	Resident	Total
Digital Media	63.36	6.08	0.89	**6.97**
Video games	42.51	4.08	0.60	**4.68**
Video-on-demand	5.33	0.51	0.07	**0.59**
E-publishing	12.58	1.21	0.18	**1.38**
Digital music	2.94	0.28	0.04	**0.32**
Digital Advertising	33.58	3.22	0.47	**3.69**
Total	**96.94**	**9.31**	**1.36**	**10.66**

Source: Department of Finance/Bureau of Internal Revenue

3. HBN 6122[14] and SBN 1591[15] (The Internet Transactions Bills) filed on 30 January 2020 and 09 June 2020, respectively, seek to cover transactions by the following industries:[16]
   a. Internet retail of consumer goods;
   b. Online travel services, covering the purchase of flights, hotel accommodations, and vacation rental spaces;
   c. Digital media providers, including advertising, gaming, music subscription, and video on demand;
   d. Ride hailing services for personal transport, delivery of food and merchandise; and
   e. Financial services offered through digital online platforms, such as online payments, remittances, online lending, online investment, and online insurance services.
4. SBN 1470[17] (The National Digital Transformation Act) filed on 04 May 2020, seeks to create a national framework[18] for digital competency with focus on information and data literacy, communication and collaboration, digital content creation, safety and problem solving. The bill also seeks to establish and institutionalize a national digital transformation strategy[19], and a national digital skills development strategy to ensure that every citizen is given the opportunity to understand ICT and develop the necessary skills and ability to apply ICT in their everyday lives.
5. PS Res. No. 409[20] (Budgetary Requirements of the Government to Utilize Innovative Digital Technologies) filed on 18 May 2020, directs the Senate Committee on Finance to conduct an inquiry, in aid of legislation, to determine the budgetary requirements of the government in its pursuit to embrace digital technologies and accelerate the build-up of the necessary infrastructure throughout the country to significantly improve governance, socioeconomic development and prompt delivery of services to the Filipino people.

Some Policy Considerations

1. Equity. The DST should include all digital services and products in its net to achieve equal tax treatment between digital and physical businesses. Cross-border transactions should be taxed equally as local business transactions.

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[13] DOF. *Value-added tax on digital transactions*.

[14] Referred to the Committee on Trade, Commerce and Entrepreneurship on 02 May 2020.

[15] Referred to the Committee on Trade, Commerce and Entrepreneurship on 28 July 2020.

[16] Sec. 4 of HB 6122 and SB 1591.

[17] Referred to the Committee on Science and Technology on 04 May 2020.

[18] Title II, Chapter I, Sec. 4 of SB 1470.

[19] Part III, Chapter I, Sec. 6 and Chapter II, Sec. 11 of SB 1470.

[20] Referred to the Committee on Finance on 01 June 2020.

2. *Administrative facility*. Compliance requirements should be designed to minimize the costs associated with building the new tax system as well as in identifying the location of the consumer and the transaction. An in-depth review of whether the projected tax revenues are worth more than the burden of implementing the tax.

3. *Ease of compliance*. Businesses may face several challenges to comply with the proposed imposition of the DST. These include being able to: (a) determine how to allocate different revenues for the calculation of this tax, in the case of a complex business arrangement; (b) determine the amount of taxes to be declared and paid; (c) determine the paying entities and the administrative process to be compliant; and (d) compile the documents to substantiate the amount and nature of the business' revenues. [21]

4. *Economic impact*. Several EU countries have postponed the implementation of their digital services tax due to the COVID-19 crisis[22]. It was noted that during these times, online or digital transactions allowed consumers and providers/ vendors of goods and services to connect with the minimum of physical interactions. We have noticed or experienced purchasing food and other necessities without leaving our residences, thus avoiding possible exposure to the virus. The strict implementation of a tax on digital transactions may deter consumers as well as vendors from transacting online. With the possible reduction in the volume of online transactions, expected tax revenues may not be realized. The tax may also create barriers to economic growth. Businesses may allocate resources and organize their business to stay under the threshold for DST purposes. The proposed tax may likewise hurt companies engaged in e-commerce that have thin profit margins. [23]

Postscript

In crafting our own digital tax law, it may be wise to learn how other countries do it. Unfortunately, there is currently no consensus among nations as to how to uniformly apply digital tax. There are contentious cross-border tax issues.

In order that the said tax proposal would meet the test of a sound tax policy, that is, fiscal adequacy, equality or theoretical justice and administrative feasibility, the following data must be secured and solicited from the BIR and DOF, *to wit*:

a) How much has the BIR collected from online shopping and online retailing since 2013?

b) How many firms that are categorized as online selling or online retailing, online intermediary service; online advertisement; online auction are registered in the BIR?

c) What is the compliance rate of those registered firms, if any, and how much revenue do we expect?

d) Does the BIR have the digital infrastructure to implement the proposed tax?

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Photo by the Court of Tax Appeals (http://cta.judiciary.gov.ph/)

The Core of the Court of Tax Appeals

by **Johann Francis A. Guevarra**
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It is normal for the government's revenue collections to increase every year as demographic data changes as well. Thus, revenue collections fifty (50) years ago are much smaller than the collections last year. Generally, there is an established pattern of increase in the government's tax collection every five (5) to ten (10) years as experienced in almost all tax jurisdictions. These particulars cannot be overlooked because a hefty increase in the amount of revenue collection means a corresponding increase in the number of tax controversies as well.

There is also the issue on whether our tax laws and regulations are being implemented faithfully. Though it can lead to criminal charges, tax evaders have always been thorns in effective tax administration. If not reduced sizably, tax evasion can affect vital revenue generation that fund the government's human capital, infrastructure programs and other projects for the general welfare. Notwithstanding, presumed tax evaders are still accorded the Constitutional due process for their defense. Thus, another kind of controversy is submitted for decision and/ or litigation.

The controversies fall primarily into the jurisdiction of the Bureau of Internal Revenue (BIR) and/or the Bureau of Customs (BOC). However, even if a

larger number of tax controversies are settled administratively in the BIR and/or the BOC, many cases still seek redress from the courts of law as they are valid remedies provided by statutes. As such, it is the courts that ultimately control the decision of the BIR. It bears noting that before a dispute/ controversy is settled, lapse of considerable time is required. Since the old system of judicial review on tax cases was ineffective, it resulted in the clogging of court dockets, rushed promulgation of decisions and even conflicting jurisprudence.

Hence in the interest of the government and the taxpayers, **Republic Act No. 1125**, "*An Act Creating the Court of Tax Appeals*" was enacted on June 16, 1954 so that judicial function in deciding tax cases would be expeditiously addressed. Since it has appellate jurisdiction over decisions of the Commissioners of the BIR and the BOC, the CTA can be misconstrued as an independent agency in the Executive Branch of government. However, the CTA in organization and function is a judicial body and must be deemed as a judicial reviewer of tax cases.

On March 30, 2004, due to the exponential increase in the number of tax cases, **RA No. 9282** was approved amending RA 1125 and expanding the jurisdiction of the CTA. It also elevated the CTA's rank to the level of the Court of Appeals with special jurisdiction. From the previous membership of one (1) Presiding Justice and two (2) Associate Justices under the old law, RA 9282 provided for one (1) Presiding Justice and five (5) Associate Justices.

On June 12, 2008, Congress passed **RA 9503** further enlarging the organizational structure of the CTA. The court is now composed of one (1) Presiding Justice and eight (8) Associate Justices who, as provided in Section 2 thereof "*may sit en banc or in three (3) Divisions, each Division consisting of three (3) Justices. Five (5) Justices shall constitute a quorum for sessions en banc and two (2) Justices for sessions of a Division. xxx*"

The Supreme Court in the case of **Commissioner of Internal Revenue vs. Asalus Corporation** (G.R. No. 221590, February 22, 2017) held that "*jurisprudence has consistently shown that the Supreme Court (SC) accords the findings of fact by the CTA with the highest respect, citing the case of* ***In Sea-Land Service, Inc. v. Court of Appeals*** *(G.R. No. 122605, 30 April 2001, 357 SCRA 441, 445-446), when the SC recognized the CTA by the very nature of its function is dedicated exclusively to the consideration of tax problems, has necessarily developed an expertise on the subject, and its conclusions will not be overturned unless there has been an abuse or improvident exercise of authority.* ***Such findings can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court****. In the absence of any clear and convincing proof to the contrary, the SC must presume that the CTA rendered a decision which is valid in every respect*." (Emphasis supplied)

Mandate and Jurisdiction

The mandate and jurisdiction of the CTA are provided similarly in its office domain and under Section 7 of RA No. 1125, as amended by RA No. 9282, respectively, *to wit*:

"a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

1) *Decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the BIR;*

2) *Inaction by the CIR in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the NIRC or other laws administered by the BIR, where the NIRC provides a specific period of action, in which case the inaction shall be deemed a denial;*

3) *Decisions, orders or resolutions of the Regional Trial Courts (RTC) in local taxes originally decided or resolved by them in the exercise of their original or appellate jurisdiction;*

4) *Decisions of the Commissioner of Customs (COC) in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the BOC;*

5) *Decisions of the Central Board of Assessment Appeals (CBAA) in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;*

6) *Decisions of the Secretary of Finance (SOF) on customs cases elevated to him automatically for review from decisions of the COC which are adverse to the Government under Section 2315 of the Tariff and Customs Code (TCC);*

7) *Decisions of the Secretary of Trade and Industry (STI), in the case of nonagricultural product, commodity or article, and Secretary of Agriculture (SA) in the case of agricultural product, commodity or article, involving dumping and countervailing duties under*

Section 301 and 302 respectively, of the TCC, and safeguard measures under RA No. 8800, "The Safeguard Measures Act" (July 19, 2000), where either party may appeal the decision to impose or not to impose said duties.

b) Jurisdiction over cases involving criminal offenses:

1) *Exclusive original jurisdiction over all criminal offenses arising from violations of the NIRC and TCC and other laws administered by the BIR or the BOC: Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (₱1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.*

2) *Exclusive appellate jurisdiction in criminal offenses:*

   a) *Over appeals from the judgments, resolutions or orders of the RTC in tax cases originally decided by them, in their respective territorial jurisdiction.*

   b) *Over petitions for review of the judgments, resolutions or orders of the RTC in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts (MeTC), Municipal Trial Courts (MTC) and Municipal Circuit Trial Courts (MCTC) in their respective jurisdiction.*

   c) *Jurisdiction over tax collection cases as herein provided:*

      1) *Exclusive original jurisdiction in tax collection cases involving final and executor assessments for taxes, fees, charges and penalties: Provided, however, That collection cases where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (₱1,000,000.00) shall be tried by the proper MuTC, MeTC and RTC.*

      2) *Exclusive appellate jurisdiction in tax collection cases:*

         a) *Over appeals from the judgments, resolutions or orders of the RTC in tax collection cases originally decided by them, in their respective territorial jurisdiction.*

         b) *Over petitions for review of the judgments, resolutions or orders of the RTC in the exercise of their appellate jurisdiction over tax collection cases originally decided by the MeTC, MuTC and MCTC, in their respective jurisdiction."*

For the CTA vision, the court envisages the role of a specialized judicial reviewer of tax cases that is impartial, competent, transparent, and worthy of public trust and confidence that inspires faithful compliance with tax laws at all times. The following principles serve as guidelines to realize the aforesaid vision:

"a) Ensure the fair collection of taxes by the Government;

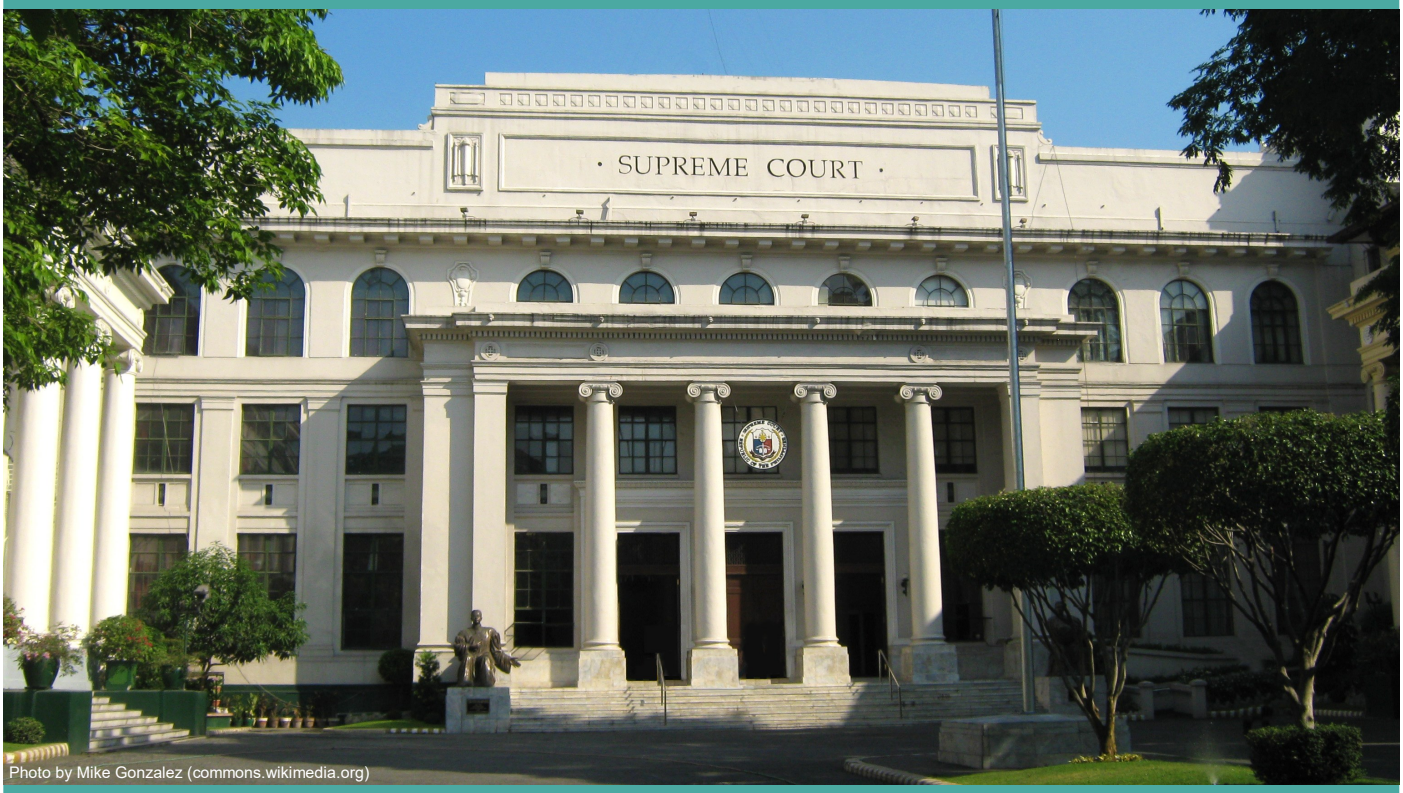
b) Provide adequate remedies to taxpayers against unreasonable and unjustified tax assessments through the refund of excess taxes paid;

c) Promotion of the common good through the proper interpretation of tax statutes;

d) Adherence to the independence of the judiciary; and

e) Enhancement of the public trust and confidence in the judiciary."

Considering all propositions, it is safe to conclude that the objectives of the framers of the law creating the CTA have been fully realized. Tax cases have now been resolved more expeditiously with the parties guided by uniformity of decisions. Fewer tax controversies are taken from the BIR and/or BOC to trial courts. Taxpayers are relieved from considerable anxiety as revenue for the government is also assured. The consequent stimulated commerce will then provide confidence and a better investment climate for investors. Finally as it is worth noting, the Court of Tax Appeals is one of our most important tribunals.



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Digest of Supreme Court Cases in Taxation

by **Clinton S. Martinez**
Director II, Legal and Tariff Branch

Bureau of Internal Revenue (BIR) as Represented by the Commissioner of Internal Revenue (CIR), Petitioner, vs. Manila Home Textile, Inc. (MHTI), Thelma Lee and Samuel Lee, Respondents. [GR No. 203057, June 06, 2016 – Del Castillo, J]

Facts:

This case, which started out as a criminal complaint for *tax evasion and perjury* against respondents Manila Home Textile, Inc. (MHTI), Thelma Lee and Samuel Lee, is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to impugn the May 7, 2012 *Decision* and July 25, 2012 *Resolution* of the Court of Appeals (CA) in CA-G.R. SP No. 112159.

MHTI is domestic corporation duly organized and registered under our laws. It is mainly in the preoccupation of *manufacturing, buying, selling, exporting, importing and otherwise dealing in home textiles, apparels of all kinds, its end products and any and all supplies, materials, tools, machines, appliances or apparatus employed in or related to the manufacture of said goods, for itself or as contractor, and to contract with third parties, natural or juridical persons, to supply the work, labor and materials for the manufacture and processing of such materials as independent contractor*. It was issued a license by the Garments and Textiles Export Board (GTEB) to operate a Customs Bonded Manufacturing Warehouse (CBMW) to facilitate its importation and storage of raw materials, which are duty-free, subject to certain conditions.

It is alleged that MHTI's importation documents revealed that for the taxable years 2001 and 2002, it made several importations of PVC (or polyvinyl chloride) materials, woven fabrics, PVC leather and other raw materials used in the manufacture of its end-products.

On January 14, 2005 the BIR issued Letter of Authority (LOA) No. 00002462 to the respondent advising it that its agents under the National Investigation Division had been authorized to examine its books of accounts and other accounting records for all internal revenue taxes for taxable years 1997 to 2002 and unverified prior years. Attempts by the BIR to serve the LOA proved useless because MHTI could not be located at its given address. GTEB has issued a certification that MHTI, with address at De la Paz St., Manggahan, Pasig, Metro Manila, had been inactive since 1997.

Further, *it is alleged that "MHTI, through its corporate officers, directors and/or employees, willfully under-declared the amount of its purchases and/or importations for taxable years 2001 and 2002 by as much as ₱428,408,634,00 and ₱554,802,368.00, respectively. This underdeclaration resulted in estimated Deficiency Income Taxes in the amount of ₱43,716,161.84 for taxable year 2001, and ₱34,561,975.40 for taxable year 2002, both inclusive of interests and increments*."

Thelma and Samuel allegedly denied the accusation against them and instead asserted that:

1. MHTI, as an independent contractor and supplier of work, labor and other materials, merely received various consignments of raw materials worth ₱431,764,487.00, imported tax-free;

2. These were processed at its CBW and eventually re-exported as finished handbags or unused materials; it did the same thing with respect to the ₱555,778,491.00 worth of materials it imported in 2002;

3. MHTI did not declare as purchases the foregoing importations of raw materials because it did not buy them; it processed them into finished products for its foreign customers; the rest it returned as excess raw materials;

4. All that MHI supplied in the manufacture of the finished products were shipped out and re-exported under what is known in the export industry as cut, make and trim (CMT) invoices; under its CMT arrangement, MHTI could not dispose of any of its products it produced out of the imported raw materials; and

5. Considering that the importation and re-exportation happened four or five years ago, its records are no longer readily available; and likewise, a request made to the Bureau of Customs (BOC) to provide copies of the export documents including CMT invoices and bills of lading proved futile.

The prosecutor ruled that "*respondents have not been shown to have intended to deliberately understate the importation and/or purchases in their income tax returns x x x considering that the raw materials were imported duty-free. X x x respondents did not pay for the imported raw materials which were merely consigned to them to be used in the manufacture of finished products for re-export under CMT invoices. X x x we cannot readily conclude that respondents intended to evade the payment of proper taxes on the mere basis of suspicion and speculation which cannot substitute for evidence*." It recommended that the complaint for tax evasion and perjury be dismissed.

The motion for reconsideration (MR) was denied. The Department of Justice (DOJ) dismissed the appeal. The Petition for Certiorari before the Court of Appeals (CA) was dismissed.

Issues:

Was there perjury and tax evasion on the part of Thelma Lee and Samuel Lee? Was there grave abuse of discretion on the part of the officers/ officials?

Held:

The Supreme Court (SC) agreed with the argument of the BIR-CIR. The High Court in the decision penned by Justice Del Castillo said:

"*Viewed in this context, it is easy to see that petitioner has clearly made out a prima facie case or shown probable cause to indict respondents for tax evasion under the pertinent sections of the NIRC. X x x we believe that by themselves the annexes appended to the records of this case x x x do already provide viable support to petitioner's plea for the indictment of the said respondents for tax evasion. By contrast, respondents' argument in this case is the nebulous, murky and unsubstantiated claim of 'consignment' with an alleged tax-free guaranty, not a shred or scintilla of which has been adduced in this case.*"

The SC ruled that respondents have not shown evidence connoting to show or prove that the raw materials were delivered to them as consignee or on 'consignment'. To this the High Tribunal added:

"*Corollary thereto, it must be borne in mind that tax exemptions, which respondents obviously want or desire to avail of in this case, are strictissimi juris. Indeed, taxation is the rule and tax exemption the exception. Tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be misunderstood. We hold that in this case respondents have utterly failed to make out even a prima facie for tax exemption in their favor.*"

"*Nevertheless, we must hasten to add at this juncture that we are here only to determine probable cause. As to whether respondents are guilty of tax evasion and/or perjury under the pertinent provisions of the NIRC and other penal statutes is an issue that must be resolved during the trial of the criminal case/s where the quantum of proof required is proof beyond reasonable doubt.*"

"*On top of these, we must stress that our ruling in this case should not be construed as an unbridled license for our tax officials to engage in fishing expeditions and witch-hunting. They should not abuse their investigative powers and should exercise the same within the parameters and ambit of the law. By no means is this Court signaling that it is opening the floodgates to inundate the courts of justice with frivolous and malicious tax suits.*"

The DOJ was directed to promptly file the appropriate information for tax evasion and perjury under the pertinent provisions of the Tax Code and other pertinent penal statutes against the respondents.

Photo by ccPixs.com

COMMISSIONER OF INTERNAL REVENUE (CIR), Petitioner, v. KEPCO ILIJAN CORPORATION (KIC), Respondent. [G.R. No. 199422, June 21, 2016 (En Banc) – Peralta, J.]

Facts:

Respondent KIC filed its 1st and 2nd quarter VAT returns with the BIR. Its Application for Zero Rated Sales was also filed for calendar year 2000 which was duly approved by the BIR. KIC then filed its claim for refund of input tax incurred for the 1st and 2nd quarters of year 2000 from its importation and local purchases of capital goods and services. The latter was performed prior to its production and sale of electricity to the National Power Corporation (NAPOCOR).

The CIR did not act on respondent's claim for refund or issuance of tax credit certificate, forcing it to file a Petition for Review on March 21, 2002 and an Amended Petition for Review on September 12, 2003.

Petitioner, in her *Answer* alleged the following Special and Affirmative Defenses:

1. *Respondent is not entitled to the refund of the amounts prayed for*;
2. *The petition was prematurely filed for respondent's failure to exhaust administrative remedies*;
3. *Respondent failed to show that the taxes paid were erroneously or illegally collected*; and
4. *Respondent has no cause of action*.

The KIC "*filed its Motion to Deny Due Course (To The Petition for Annulment of Judgment), arguing, among others, that petitioner is not lawfully entitled to the annulment of judgment on the ground that the CTA En Banc is bereft of jurisdiction to entertain annulment of judgments on the premise that the Rules of Court, Republic Act No. (RA No.) 9282, and the Revised Rules of the Court of Tax Appeals do not expressly provide a remedy on annulment of judgments.*"

The CTA First Division ruled that KIC is entitled to a refund of its unutilized input VAT paid on its domestic purchases and importation of capital goods for the first and second quarters of 2000. An appeal to the CTA *En Banc* proved futile.

Accordingly, on April 11, 2011 the CIR filed a petition for annulment of judgment with the CTA *En Banc*, praying for the following reliefs: (1) that the Decision dated September 11, 2009 of the CTA First Division in CTA Case No. 6412 be annulled and set aside; (2) that the Entry of Judgment on October 10, 2009 and Writ of Execution on February 16, 2010 be nullified; and (3) that the CTA First Division be directed to re-open CTA Case No. 6412 to allow petitioner to submit her memoranda setting forth her substantial legal defenses.

Issues:

Whether the CTA has jurisdiction to take cognizance of the petition for annulment of judgment. Whether the CIR is bound by the actions of its counsel.

Held:

The SC said: "*Annulment of judgment x x x is based only on the grounds of extrinsic fraud and lack of jurisdiction. It is a recourse that presupposes the filing of a separate and original action for the purpose of annulling or avoiding a decision in another case. Annulment is a remedy in law independent of the case where the judgment sought to be annulled is rendered.*"

However, the SC declared: "*But the law and the rules are silent when it comes to a situation similar to the case at bar, in which a court, in this case the Court of Tax Appeals, is called upon to annul its own judgment. More specifically, in the case at bar, the CTA sitting en banc is being asked to annul a decision of one of its divisions. However, the laws creating the CTA and expanding its jurisdiction (RA Nos. 1125 and 9282) and the court's own rules of procedure (the Revised Rules of the CTA) do not provide for such a scenario. X x x the silence of the Rules may be attributed to the need to preserve the principles that there can be no hierarchy within a collegial court between its divisions and the en banc, and that a court's judgment, once final, is immutable. Nevertheless, x x x, when the interest of justice highly demands it, where final judgments of the Court of Appeals, the CTA or any other inferior court may still be vacated or subjected to the Supreme Court's modification, reversal, annulment or declaration as void. But it will be accomplished x x x through any of the actions over which the Supreme Court has original jurisdiction as specified in the Constitution, like 65 of the Rules of Court [Not via Rule 47].*"

Although in select cases, this Court has asseverated that it is always within its power to suspend its own rules or to except a particular case from its operation, whenever the purposes of justice require it and that the Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. We have also equally stressed that strict compliance with the rules of procedure is essential to the administration of justice."

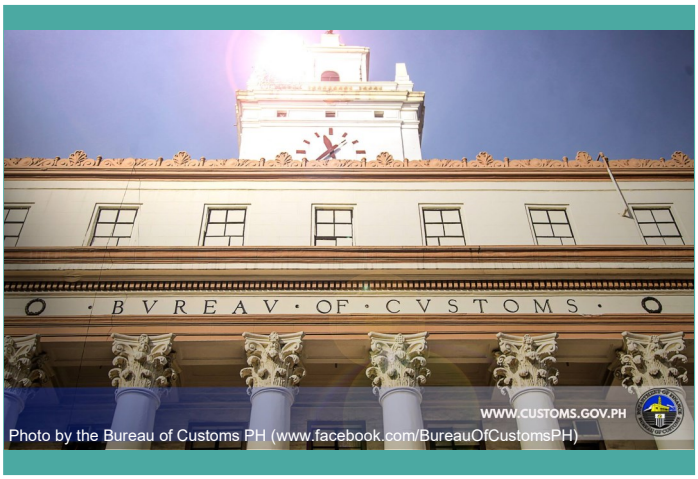
Additionally, the SC stated that: "*X x x even if there was allegedly a deliberate effort from petitioner's counsel to refuse to participate, despite notice, in the conduct of the case after the filing of the Answer right up to the issuance of the Writ of Execution against petitioner, equally apparent is the failure of petitioner and/or petitioner's responsible subordinates to supervise the said counsel* as well as the

conduct and progress of the case. Not only was there an apparent negligence of counsel, which binds the client, there likewise appears to have been lapses on the part of the client - the petitioner and the petitioner's responsible subordinates - themselves. Equally oft-repeated is the rule that service made upon the present counsel of record at his given address is service to the client. Thus, it is harder to justify a relaxation of the rules when the litigant itself suffers from inexcusable neglect."

Finally, the SC suggested:

"*To prevent similar disadvantageous incidents against the government in the future, the BIR is **DIRECTED** to **ADOPT** mechanisms, procedures, or measures that can effectively monitor the progress of cases being handled by its counsels. Likewise, the Ombudsman is **DIRECTED** to **CONDUCT** an in-depth investigation to determine who were responsible for the apparent mishandling of the present case that resulted in the loss of almost half-a-billion pesos, which the government could have used to finance its much needed infrastructure, livelihood projects, and other equally important projects.*"

Petition for review is denied.



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In This Corner:

Customs Administrative Order No. 03-2020

by **Romeo E. Regacho**
LSO III, Legal and Tariff Branch

Customs Administrative Order (CAO) No. 03-2020, which took effect on January 8, 2020, lays down the implementing rules for Sections 1118, 1139 to 1151 of Chapter 10, Title XI, and other related provisions of RA 10863 (Customs Modernization and Tariff Act or CMTA). Aside from this, CAO 03-2020 also implements relevant provisions of RA 10845 (Anti-Agricultural Smuggling Act of 2016).

In essence, this CAO covers all modes of disposition of seized, abandoned, and forfeited goods by the Bureau of Customs (BOC) pursuant to the provisions of the CMTA. The following are the highlights from this CMO:

1. "*Goods*" refer to articles, wares, merchandise or any other items which are subject of importation or exportation. These cover other properties including, but not limited to, cargoes, vehicles, vessels or aircrafts seized and forfeited in favor of the government in accordance with the provisions of the CMTA. (Sec. 3.7)

2. "*Perishable Goods*" refer to goods liable to perish or goods that depreciate greatly in value while stored or which cannot be kept without great disproportionate expense. (Sec. 3.12)

3. Goods in customs custody that are in the following condition and status shall be subject to disposition:

   a. Abandoned goods with final decree of abandonment. (Sec. 4.1.1)

   b. Goods deemed abandoned pursuant to Section 811 of the CMTA. (Sec. 4.1.2)

   c. Forfeited goods, other than prohibited, restricted and regulated goods after liability has been established by the proper administrative or judicial proceedings in conformity with the provisions of the CMTA. (Sec. 4.1.3)

   d. Goods subject to a valid lien for customs duties, taxes and other charges collectible by the Bureau, after the expiration of the period allowed for payment thereof. (Sec. 4.1.4)

   e. Goods subject of forfeiture proceedings when certified by the Customs Officer as Perishable Goods. Goods certified as perishable may be sold at a public auction within five (5) calendar days after a 3-day notice during the pendency of the forfeiture proceedings in the following cases:

      i. Upon motion by the importer; or

      ii. Upon a written Order of the District Collector in order to protect the interest of the government after the importer was given the opportunity to comment.

      The proceeds of the sale through public auction of Perishable Goods shall be held in escrow until the final resolution of the forfeiture proceedings. (Sec. 4.1.5)

4. Liability has been established by the Goods referred to in the preceding section may be disposed in any of the following manner:

   a. Public Auction within 30 calendar days after a 10-day notice, or in case of Perishable Goods as certified by the Bureau, within 5 calendar days after a 3-day notice. The Bureau shall proceed to advertise and sell the

same at auction upon notice as shall be deemed to be reasonable. (Sec. 4.2.1)

b. Donation to another government agency after approval of the Secretary of Finance or donation to the Department of Social Welfare and Development (DSWD) in case of goods suitable for shelter, foodstuffs, clothing materials or medicines. (Sec. 4.2.2)

c. Goods subject to disposition, after approval of the Secretary of Finance, and goods which remain unsold after at least 2 public biddings, may be declared for official use of the Bureau. (Sec. 4.2.3)

d. Goods which remain unsold after at least 2 public biddings, that are not suitable either for official use or donation may be sold through a negotiated sale subject to the approval of the Secretary of Finance and executed in the presence of a Commission on Audit (COA) representative. (Sec. 4.2.4)

e. Re–exportation as government property of goods not disposed through public auction, donation, and official use, or of goods injurious to public health, as identified by the Board created under Section 1145 of the CMTA, upon the Order of the Collector. Re-exportation shall also be done pursuant to international agreements and treaties. (Se. 4.2.5)

f. Destruction or condemnation in an appropriate manner, upon the order of the District Collector, if the Board created under Section 1145 of the CMTA is in the opinion that such are injurious to public health or if such is classified as prohibited in accordance with Section 118 of the CMTA except for paragraph (d) thereof. (Sec. 4.2.6)

g. Turn-over to proper government agencies as provided in Section 1146 and Section 1147 of the CMTA. (Sec. 4.2.7)

In all modes of disposition, the Bureau shall ensure that other government agencies and the public are invited to witness the disposition of the Goods.

5. All ports are required to submit a monthly report to the Office of the Commissioner the status of cargoes which remain unclaimed at the yard for more than ninety (90) days from the discharge of the last package from the vessel, or in case of goods under Customs Bonded Warehouse (CBW) remained unliquidated or unpaid after the period of one (1) year from the time of arrival, including actions taken thereon. (Sec. 4.3)

6. All goods subject of disposition pursuant to this CAO shall be offered for sale on an "*As is Where Is*" basis.

The quantity, number, weight or measurement of the Goods subject of sale and/or as listed in the Notice of Public Auction shall be deemed subject to proper determination by Auction and Cargo Disposal Division (ACDD) or equivalent unit prior to delivery. In case any excess is discovered, the winning bidder shall be required to pay for the difference in his bid price, otherwise the excess shall not be deemed included in the sale and shall be returned to the Bureau. (Sec. 5.7)

7. All proceeds from sales through public auction after deduction of charges as provided in Section 5.17 and subject to the claim of the owner or importer of impliedly abandoned goods as provided in Section 1130 of the CMTA shall be deposited in a Forfeiture Fund. (Sec. 5.18)

8. Goods subject to disposition or which remain unsold after at least 2 public auctions for want of bidders or for lack of an acceptable bid may be donated to another government agency. For regulated goods, donation shall be made upon concurrence of the concerned regulatory agency.

   If the goods are suitable for use as shelter or consists of foodstuffs, clothing materials or medicines, it may be donated to the DSWD. (Sec. 6.1)

9. Violations of this CAO committed by any person, officer, or employee shall be penalized in accordance with Title XIV of the CMTA and other applicable penal provision. (Sec. 11)

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"When nothing seems to help, I go and look at a stonecutter, hammering away at his rock, perhaps a hundred times without as much as a crack showing in it. Yet at the hundred and first blow it will split in two, and I know it was not that blow that did it, but all that had gone before."

- Jacob Riis