April 2014

Tax bulletin

SGV

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PHILIPPINE TAX FIRM OF THE YEAR AND TRANSACTION TAX TEAM OF THE YEAR

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Highlights

BIR Ruling

- Income derived by a homeowners' association from association dues and rentals of facilities is exempt from income tax, value-added tax (VAT) or percentage tax, provided the homeowners' association renders basic community services to its members which are not provided by the local government due to lack of resources. **(Page 3)**

BIR Issuances

- Revenue Memorandum Circular (RMC) No. 20-2014 prescribes the guidelines on filing, receiving and processing of corporate and individual income tax returns (ITR) for taxable year 2013. **(Page 4)**

- RMC No. 22-2014 publishes the full text of Department of Finance (DOF) Department Order (DO) No. 018-2014, dated February 26, 2014, which amends DO No. 12-2012 on the rules on accrediting importers and customs brokers. **(Page 5)**

- RMC No. 26-2014 encourages the use of computer-generated forms, and clarifies certain policies in filing corporate and individual income tax returns (ITRs) for taxable year 2013. **(Page 5)**

- RMC No. 28-2014 waives the penalties incident to the late filing of returns and payment of income tax by eFPS taxpayers for taxable year 2013. **(Page 6)**

- Revenue Memorandum Order (RMO) No. 16-2014 reiterates and prescribes certain policies relative to the VAT Audit Program. **(Page 6)**

BSP Issuance

- Circular No. 830 provides for a 1 percentage-point increase in the reserve requirements of universal/commercial banks (UBs/KBs), thrift banks (TBs), rural banks (RBs), cooperative banks (Coop Banks), and non-bank financial institutions with quasi-banking functions (NBQBs). **(Page 7)**

SEC Issuances

- SEC Memorandum Circular (MC) No. 8 prescribes the guidelines for non-bank financial institutions (NBFIs) that are covered by the United States' Foreign Account Tax Compliance Act (FATCA) Regulations. **(Page 8)**

- A corporation may remove a director from its board if said director is an immediate family member of any stockholder in any of the corporation's competing firms, provided that the corporation's by-laws expressly provide for the same. **(Page 9)**

Court Decisions

- Taxes, being a personal obligation, can only be enforced against the taxpayer. Unpaid taxes are the personal obligation of the corporate taxpayer, and they cannot be imposed on its officers unless the said officer acted unlawfully, negligently or in bad faith. **(Page 10)**

- Importation occurs when a carrying vessel or aircraft (a) enters Philippine territory, and (b) intends to unload goods or articles.

  Section 1202 of the Tariff and Customs Code of the Philippines (TCCP) makes no distinction as to the type of article or goods for which import taxes and duties may be imposed. All articles, including a vessel, when imported from any foreign country into the Philippines, are subject to taxes and duties upon importation. **(Page 11)**

- The CIR must allege and clearly establish in the Final Assessment Notice (FAN) that the taxpayer filed a false or fraudulent return to warrant the application of the 10-year prescriptive period for assessment, as provided in Section 222(A) of the Tax Code.

  The instances provided by law where the 3-year prescriptive period will not apply must always be alleged and established by clear and convincing evidence and should not be based on mere conjecture and speculation. The exceptions to the law on prescription should be strictly construed. **(Page 13)**

BIR Ruling

BIR Ruling No. 105-14 dated March 26, 2014

Income derived by a homeowners' association from association dues and rentals of facilities is exempt from income tax, VAT or percentage tax, provided the homeowners' association renders basic community services to its members which are not provided by the local government due to lack of resources.

Facts:

A Co. is a residential homeowners' association within the jurisdiction of Antipolo City and Taytay, Rizal. It renders basic community services to its members such as security, maintenance and cleaning of streets, and cleaning and declogging of drainage pipes. The offices of the City Mayor of Antipolo City and the Municipal Mayor of Taytay certified that Antipolo and Taytay, respectively, cannot render the basic community services provided by A Co. to its members due to lack of resources. A Co. requested for a Certificate of Tax Exemption under Republic Act (RA) No. 9904, otherwise known as the "Magna Carta for Homeowners and Homeowners' Associations", as enunciated in Revenue Memorandum Circular (RMC) No. 9-2013.

Issue:

Is A Co.'s income from association dues and rentals of facilities exempt from income tax, VAT or percentage tax?

Ruling:

Yes. Under Section 18 of RA No. 9904, income derived by a homeowners' association from association dues and rental of its properties shall be exempt from income tax, VAT or percentage tax, whichever is applicable, provided the local government unit concerned lacks the resources to provide basic services, and the income and dues shall be used for the cleanliness, safety, security, and other basic services needed by the members of the homeowners' association, including the maintenance of the facilities of their respective subdivisions or villages. However, A Co. shall be subject to the applicable internal revenue taxes on its income from trade, business or other activities.

BIR Issuances

RMC No. 20-2014 prescribes the guidelines on filing, receiving and processing of corporate and individual income tax returns for taxable year 2013.

Revenue Memorandum Circular No. 20-2014 dated March 27, 2014

- All non-electronic filing and payment system (eFPS) taxpayers are encouraged to use the offline eBIRForms package which can be accessed and downloaded from the BIR website (www.bir.gov.ph) through the "eBIRForms" link.

- Taxpayers who are mandated to use eFPS, particularly the Large Taxpayers (LTs) under the jurisdiction of the Large Taxpayers Service and other eFPS users, shall use the eFPS facility for filing and paying ITRs.

- The following guidelines shall apply to non-eFPS taxpayers who opt to use the offline eBIRForms Package:

    1. Such taxpayers should follow the procedure specified in steps 1 to 9, Annex A of this RMC.

    2. The duly-accomplished ITRs should be printed on A4 size bond paper, portrait layout, signed by the taxpayer or authorized officers/ representatives and filed manually with the duly designated Authorized Agent Bank (AAB), Revenue District Office (RDO) or Revenue Collection Officers (RCO), as the case may be.

    3. Those who have secured the Manual ITR forms should legibly fill out the same in capital letters using black ink, signed by the taxpayer or authorized officers/representatives and filed manually with the duly designated AAB, RDO or RCO, as the case may be.

- The following guidelines shall apply to ePFS taxpayers who used the offline eBIRForms package:

    1. Those who manually filed the return and paid the tax should electronically re-file (efile) the contents of the previously filed ITRs, by accomplishing the applicable ITR in the eFPS facility.

    2. Those who electronically filed and paid using version 2011 should follow the procedure in Annex B of this RMC, within 10 days from the availability of the online submission.

    3. The returns shall be considered filed on the date when the initial eFiling was duly accomplished.

    4. The accompanying schedule of attachments may still be filed with the concerned LT office or RDO where they are registered within 15 days after the electronic filing of the return, together with the signed hardcopy of the ITR with Filing Reference Number.

[Editor's Note: See also RMC No. 26-2014 and 28-2014 below.]

RMC No. 22-2014 publishes the full text of DOF DO No. 018-2014, dated February 26, 2014, which amends DO No. 12-2012 on the rules on accrediting importers and customs brokers.

Revenue Memorandum Circular No. 22-2014 dated March 14, 2014

- The following rules on the accreditation of importers and customs brokers shall apply:

    1. Upon filing of an application, the BIR shall issue the necessary BIR Importer Clearance Certificate (BIR-ICC) or Customs Broker Clearance Certificate (BIR-BCC) in favor of the applicant, subject to the submission of the documentary requirements and compliance with verification procedures to be determined by the Commissioner of Internal Revenue (CIR).

    2. The CIR shall issue the necessary rules and regulations on the accreditation procedures and documentary requirements for the issuance of the BIR-ICC and BIR-BCC.

    3. An applicant desiring to register with the Bureau of Customs as an importer or customs broker must present the BIR-ICC or BIR-BCC, as applicable, to the concerned customs office.

    4. The Commissioner of Customs (CoC) shall issue the necessary rules and regulations on (a) the registration of importers and customs brokers accredited by the BIR with a validity period of three years, and (b) the suspension, revocation or cancellation of the importer's or customs broker's customs accreditation in case of violation of customs laws and regulations.

    5. The CIR and CoC shall issue their respective rules and regulations pursuant to this Order within 15 days from issuance hereof.

    6. All importers and customs brokers shall be given 90 days from the issuance of said rules to comply with the same; otherwise, the accreditation of said importer or customs broker shall be deemed automatically expired upon the lapse of the said 90-day period.

RMC No. 26-2014 encourages the use of computer-generated forms, and clarifies certain policies in filing corporate and individual ITRsfor taxable year 2013.

Revenue Memorandum Circular No. 26-2014 dated April 8, 2014

The following policies are adopted for using the Offline eBIRForms Package:

- All copies of computer-generated forms should be printed on A4 size bond paper in portrait orientation format; however, the setting of the printer for the paper size is folio or legal to ensure that the printed forms are the same as the official manual forms,

- Job aids in the use of the eBIRForms are included in the package and shall be used as guidelines in the preparing the forms,

- In lieu of the manually printed ITR forms distributed by the BIR, clear photocopies of the same (pdf/manually printed returns) may be used, provided all forms are originally signed by the taxpayer/ authorized officer/ representatives.

RMC No. 28-2014 waives the penalties incident to the late filing of returns and payment of income tax by eFPS taxpayers for taxable year 2013.

Revenue Memorandum Circular No. 28-2014 dated April 16, 2014

- In view of the system downtime last April 15 due to the volume of taxpayers filing/paying through the ePFS, the penalties attendant to late filing of returns and payment of income tax for taxable year 2013 and the quarter ended March 31, 2014 are waived.

- The waiver strictly covers eFPS-registered taxpayers and tax returns filed on April 16, 2014.

- All eFPS-enrolled taxpayers, who have already manually filed and paid their income tax due for above taxable periods, will not be liable for penalties and are advised to refile using eFPS until April 25, 2014.

RMO No. 16-2014 reiterates and prescribes certain policies relative to the VAT Audit Program.

Revenue Memorandum Order No. 16-2014 dated March 18, 2014

- Reports of investigation on VAT audit cases shall be submitted within the following prescribed number of days from the date of issuance of the electronic Letter of Authority (eLA):

Period Covered	No. of Days
One (1) quarter	60
Two (2) quarters	90

- If the Revenue Officer (RO) cannot submit the report of investigation within the prescribed audit period, he shall prepare a progress report stating the reason for the delay, to be noted by the VAT Audit Head who shall submit a copy thereof to the Regional Director prior to the lapse of the 60 or 90 day period, as the case may be.

- To facilitate the reporting of VAT audit cases, the RO assigned to audit the case shall observe the following:

    1. The directive in Operations Memorandum (OM) No. 13-06-001 to perform only the audit procedures under Revenue Audit Memorandum Order (RAMO) No. 1-99 applicable to the risks identified for case selection and as a result of pre-audit analysis shall be strictly adhered to;

    2. An audit plan in accordance with the prescribed format in OM No. 13-06-001 must be prepared and completed for each case; and

    3. Only documentary requirements prescribed under RMO No. 53-98 that are applicable and relevant to the audit case shall be attached to the docket.

    The RO is not precluded from applying the full provisions of the above revenue issuances depending on the risks or areas of assessment found.

BSP Issuance

Circular No. 830 provides for a 1 percentage-point increase in the reserve requirements of universal/commercial banks (UBs/KBs), thrift banks (TBs), rural banks (RBs), cooperative banks (Coop Banks), and non-bank financial institutions with quasi-banking functions (NBQBs).

BSP Circular No. 830 dated April 3, 2014

- Subsection X253.1 of the Manual of Regulations for Banks (MORB) prescribes amended rates of required reserves against deposit and deposit substitute liabilities, as follows:

Account	UBs/ KBs	TBs	RBs/ Coop Banks
‣ Demand Deposits	19	7	5
‣ "NOW" Accounts	19	7	5
‣ Savings Deposit	19	7	3
‣ Time Deposits, Negotiable CTDs, Long-Term Non-Negotiable Tax Exempt CTDs	19	7	3
‣ Long-Term Negotiable Certificate of Time Deposits (LTNCTDs)			
1. LTNCTDs under Circular No. 304	4	4	4
2. LTNCTDs under Circular No. 824	7	7	7
‣ Deposit Substitutes (DS)	19	7	n.a.
‣ DS evidenced by repo agreements	3	3	n.a.
‣ Interbank Call Loan (IBCL)	0	0	0
‣ Bonds	5	5	n.a.
‣ Mortgage/CHM Certificates	n.a.	5	n.a.
‣ Peso deposits lodged under Due to Foreign Banks	19	n.a.	n.a
‣ Peso deposits lodged under Due to Head Office/Branches/Agencies Abroad (Philippine branch of a foreign bank)	19	n.a.	n.a.

- Subsection X405.5 of the MORB prescribes the required reserves against peso-denominated common trust funds (CTFs) and trust and other fiduciary accounts – others (TOFA – others), as follows:

Account	UBs/KBs	TBs	RBs
‣ CTFs	19	8	4
‣ TOFA - others	16	8	4

- Sec. 4253Q (2008-4246Q) of the MORNBFI on reserves against deposit substitutes now requires NBQBs to maintain reserves equivalent to 19% of deposit substitute liabilities, except:

1. Borrowings from the BSP through the sale of government securities under repo agreements;
2. Deposit substitutes arising from special financing programs of the government and/or international FIs;
3. IBCL transactions;
4. Bonds, for which the reserve requirement is 5%.

- The reserve requirement for deposit substitutes evidenced by repo agreements covering government securities up to the amount equivalent to the adjusted Tier 1 capital of the NBQB shall be 3%, provided that the documentation of the repo agreement conforms with and were delivered to a BSP-accredited third party custodian as required under existing BSP regulations.

- Subsection 4405Q.5 of the MORNBFI prescribes the required reserves against peso-denominated CTFs and TOFA – others of NBQBs, as follows:

Account	NBQBs
▸ CTFs	19
▸ TOFA – others	16

- The Circular shall take effect on the reserve week starting 11 April 2014.

[Editor's Note: Circular No. 830 was published in Business World *on April 4, 2014 and on* Philippine Daily Inquirer *on April 7, 2014.]*

SEC Issuances

MC No. 8 prescribes the guidelines for NBFIs that are covered by the United States' FATCA Regulations.

SEC Memorandum Circular No. 8 dated April 3, 2014

- The Foreign Account Tax Compliance Act (FATCA) was enacted in the United States in 2010 to prevent off-shore tax abuses by US taxpayers.
  - FATCA requires the online registration of foreign financial institutions (FFIs) with the US Internal Revenue Service (IRS).
  - FATCA also requires reporting to the IRS of information about financial accounts by FFIs in which US taxpayers hold a substantial interest.
  - Non-compliance with the above requirements will result in the imposition of a 30% withholding tax on payments of US-sourced income to FFIs.
- SEC MC No. 8 requires non-bank financial institutions (NBFIs) licensed by the SEC to conduct the following procedures:
  1. Evaluate if the company is an FFI covered by the FATCA;
  2. Study the potential effects of FATCA on its business and determine the necessary steps to take to avoid the unfavorable consequences of non-compliance with the FATCA requirements;
  3. Establish a policy and prepare the company's operating systems which would enable it to capture and perform tagging of its account holders subject of the FATCA requirement;
  4. Consider the provisions of domestic laws, such as but not limited to, the Securities Regulation Code, the Investment Company Act, the Law on Secrecy of Bank Deposits and the Data Privacy Act in crafting the guidelines;
  5. Raise all FATCA-related questions or concerns of the NBFI through its appropriate association which shall act as the central repository of FATCA-related inquiries and collate such queries for a more systematic submission to the US Government;

6. Consider the inclusion of instructions/ disclosures in the company's notice to its clients; and

7. Disclose in its annual and quarterly reports the level of its compliance with FATCA Regulations, starting with the quarter report ending March 31, 2014 that is due on or before May 15, 2014.

- If the NBFI is covered by the FATCA, it should refer to IRS notices which include instruction that the FFI may:

    1. Register with the IRS;
    2. Obtain a Global Intermediary Identification Number (GIIN); and
    3. Report certain information on US accounts to the IRS:

        a. Name, address TIN of each account holder
        b. Account Number
        c. Account Balance or Value
        d. Gross Receipts and Gross withdrawals or payments from the account.

[Editor's Note: SEC MC No. 8 was published in the Philippine Daily Inquirer *and* Manila Standard Today *on May 1, 2014.]*

SEC-OGC Opinion No. 14-04 dated April 21, 2014

A corporation may remove a director from its board if said director is an immediate family member of any stockholder in any of the corporation's competing firms, provided that the corporation's by-laws expressly provide for the same.

Facts:

E Co. was registered with the SEC. E Co.'s primary purpose is similar to that of M Co.'s. E Co. is owned 80% by the daughter of one of the board members of M Co.

E Co. is engaged in a business that directly and substantially competes with M Co. and offers the same services as M Co. Some of the clients of M Co. did not renew their subsisting contracts with M Co. and transferred to E Co.

M Co. claims that since its director has direct access to its business and trade plans and has a daughter in a rival corporation, M Co. may remove said director from its board on the ground of conflict of interest.

Issue:

Can M Co. remove from the board a director who is the father of a substantial stockholder of a competing corporation?

Ruling:

Yes, corporations have the power to make by-laws that declare a person employed in the service of a rival company to be ineligible, or if elected, subject to removal as a director, if he is also a director in a corporation whose business competes with or is antagonistic to the other corporation. These qualifications become effective only when the by-laws of the Corporation expressly provide for the same.

Under Section 47(5) of the Corporation Code, a corporation may prescribe in its by-laws the qualifications of its directors, officers and employees.

Court Decisions

People of the Philippines vs. Efren O. Docena and Rolando E. Palad, South Sea Surety & Insurance Co., Inc.
CTA (Special First Division) Criminal Case No. 0-087 promulgated March 12, 2014

Taxes, being a personal obligation, can only be enforced against the taxpayer. Unpaid taxes are the personal obligation of the corporate taxpayer, and they cannot be imposed on its officers unless the said officer acted unlawfully, negligently or in bad faith.

Facts:

Accused Efren O. Docena and Rolando E. Palad, then the President and Executive Vice President/Chief Operating Officer, respectively, of South Sea Surety & Insurance Co., Inc., were charged with violation of Section 255 in relation to Sections 253(d) and 256 of the Tax Code, for alleged willful failure and refusal to pay deficiency DST and penalties for taxable year 2003.

The BIR issued a Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) both dated May 9, 2005 against the company for deficiency DST for taxable year 2003. South Sea Surety did not file a protest and the accused offered to settle the deficiency DST in six monthly installments. South Sea Surety paid the first installment but did not pay the balance of the installment payments despite BIR requests.

The BIR issued a Preliminary Collection Letter and Warrant of Distraint and Levy to effect collection of the deficiency tax. Accused Palad submitted a promissory note with a schedule of payments. As South Sea Surety failed to make further payments after three installments, the BIR referred the accused for indictment of criminal charges.

In its original decision promulgated on July 15, 2013, the CTA ruled that the accused are not criminally liable for willful and felonious failure to pay the tax, for failure of the prosecution to prove their guilt beyond reasonable doubt. However, as the responsible officers of South Sea Surety, the accused were held civilly liable and were directed to jointly or severally pay the unpaid portion of the assessed deficiency DST and compromise penalty, plus 20% deficiency interest from day of default until full payment.

Both accused filed a Motion for Reconsideration, praying for their exoneration. They argued that they were mere officers of South Sea Surety and no evidence was presented to prove that they committed any fraud or illegal act, which would make them personally liable for the obligations of the corporation under Section 31 of the Corporation Code.

On the other hand, the prosecution argued that Sections 255 and 253(d) of the Tax Code, and not Section 31 of the Corporation Code, are applicable in this case because the provisions of the Tax Code clearly define the direct, distinct and separate liability of the accused. The prosecution contended that as President and Executive Vice President/Chief Operating Officer of South Sea Surety, the accused are the persons required under the Tax Code to pay the deficiency tax assessment.

Issue:

Should the accused Palad and Docena be held jointly and severally liable to pay the unpaid portion of the assessed deficiency DST and compromise penalty of South Sea Surety?

Ruling:

No. The accused should not be held jointly and severally liable to pay the unpaid portion of the assessed deficiency DST and compromise penalty of South Sea Surety.

In its amended decision, the Court of Tax Appeals (CTA) held that the civil liability to pay the assessed deficiency DST is a corporate obligation of South Sea Surety. Taxes, being personal to the taxpayer, can only be enforced against the taxpayer. The payment of a corporation's unpaid taxes is the personal obligation of the corporate taxpayer, and it cannot be imposed on its officers. Considering that the assessment for deficiency DST and compromise penalty has been made on South Sea Surety, the obligation to pay rests on the corporation, and not on the accused.

The accused cannot be held personally liable for the deficiency DST and compromise penalty based on the corporate law principle that the corporation is a juridical entity vested with a legal personality separate and distinct from those acting for and in its behalf. Obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. A director, officer or employee is generally not held personally liable for obligations incurred by the corporation.

This legal fiction may only be disregarded if it is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues, as provided in Section 31 of the Corporation Code. However, before a director or officer can be held personally liable for corporate obligations, two requisites must concur:

1. He must have assented to patently unlawful acts of the corporation, or he must have been grossly negligent or in bad faith; and

2. Such unlawful acts, negligence or bad faith must be clearly and convincingly proven.

In this case, no evidence was presented to show that the accused acted unlawfully, negligently or in bad faith. In fact, the evidence shows a pattern of affirmative acts on the attempt of South Sea Surety, through the accused, to pay the tax liability of the company amidst financial distress. These acts negate intention, on the part of the accused, not to pay the tax liabilities of the company.

7107 Islands Shipping Corporation vs. Department of Finance
CTA (*En Banc*) EB Case No. 912 promulgated April 1, 2014

Importation occurs when a carrying vessel or aircraft (a) enters the Philippine territory, and (b) intends to unload goods or articles.

Section 1202 of the TCCP makes no distinction as to the type of article or goods for which import taxes and duties may be imposed. All articles, including a vessel, when imported from any foreign country into the Philippines are subject to taxes and duties upon importation.

Facts:

Panamanian vessel M/V Coco Explorer (later renamed M/V 7,107 Islands Cruise) arrived from Thailand at the Port of Batangas (POB) on September 4, 2007 for minor repairs. Twenty days after the vessel's arrival, C&C Marine A/S Denmark and Mr. Esteban Tajanlangit (Tajanlangit) executed a Memorandum of Agreement (MOA) for the purchase of the vessel for US$1.8 million.

After securing clearance, the vessel sailed from POB to Mariveles, Bataan, where some repairs were made. The vessel proceeded to the Port of Manila (POM) for further repairs and upgrading. It berthed at the POM without BOC clearance. The BOC's Run After Smugglers (RATS) Group investigated the presence of the vessel at the POM for violation of the Tariff and Customs Code of the Philippines (TCCP).

Pending the investigations, Petitioner 7107 Islands Shipping Corporation (ISC) secured its Certificate of Incorporation from the SEC. ISC then filed with the Maritime Industry Authority (MARINA) an application for authority to acquire the vessel.

The POM District Collector issued a Warrant of Seizure and Detention (WSD) on the vessel for having been illegally imported in violation of Section 2530(f) & (1) (5) of the TCCP. ISC moved to quash the WSD, which was granted by the POM District Collector. The Commissioner of Customs (CoC) affirmed the decision of the POM District Collector and ordered the release of the vessel.

On automatic review, the DOF reversed the CoC's decision. ISC filed a Petition for Review with the CTA and argued, among others, that:

1. There was no importation when the vessel arrived at the POB since Section 1202 of the TCCP does not apply to vessels but only to cargo imported into the country on board a carrying vessel.

2. As a foreign vessel whose sole purpose was to have repairs in the Philippines, there was no need to pass through a customshouse or pay duties and taxes at the time of entry in the POB.

3. The vessel was purchased only after it entered the country and since ISC was registered with the PEZA and with the Subic Bay Metropolitan Authority (SBMA), it was entitled to tax exemptions and incentives.

On the other hand, the DOF alleged that the factual circumstances show that there was fraudulent importation of the vessel; hence, its forfeiture was warranted.

Issue:

Was there fraudulent importation of the vessel that warranted its seizure and forfeiture?

Ruling:

Yes, there was importation when the vessel entered the POB on September 4, 2007. Thus, the DOF's order for the seizure and forfeiture of the vessel for non-payment of import duties in violation of the TCCP is proper.

Importation is defined as the act of bringing an article into the Philippines from any foreign country. It is completed once the taxable or dutiable commodity is brought within the limits of the port of entry. Importation is not the making of entry of goods at the customhouse, but merely bringing them into port. Section 1202 of the TCCP provides that importation commences from the time the carrying vessel or aircraft 1) enters the Philippine territory, and 2) intends to unload articles or goods. The mere intent to unload the article is sufficient to commence importation.

Section 1202 does not distinguish between vessels and other articles or goods sought to be imported, nor does it provide an exemption as regard its coverage. As such, all articles, even if the vessel itself is the imported item, when imported from any foreign country are subject to taxes and duties upon importation, pursuant to Section 100 of the TCCP.

The facts show that there was 'intent to unload' the vessel when it entered the Philippine territory. Records indicate that the Philippines was the final destination of the vessel. Tajanlangit himself admitted that he inspected the vessel in Thailand twice in 2006 preparatory to its purchase. Moreover, contrary to ISC's contention that the vessel docked at the POB for purposes of repairs, there was no evidence to show that repairs were indeed undertaken during the entire time the vessel was anchored at said port. A mere 20 days after the vessel's arrival, a MOA for the sale of the vessel was executed. Only after purchase of the vessel did repairs commence in Bataan and later, in Manila. The repairs done were to prepare the vessel for its intended use in the Philippines.

Section 1201 of the TCCP imposes the obligation upon all imported articles to enter through a customshouse at the port of entry and to pay taxes and duties, unless otherwise exempted. ISC made no attempt to comply with the legal obligation to pay the necessary taxes and duties for importation.

Asalus Corporation vs. Commissioner of Internal Revenue
CTA (Third Division) Case No. 8573 promulgated April 2, 2014

The CIR must allege and clearly establish in the FAN that the taxpayer filed a false or fraudulent return to warrant the application the 10-year prescriptive period for assessment, as provided in Section 222(A) of the Tax Code.

The instances provided by law where the 3-year prescriptive period will not apply must always be alleged and established by clear and convincing evidence and should not be based on mere conjecture and speculation. The exceptions to the law on prescription should be strictly construed.

Facts:

On January 10, 2011, Petitioner Asalus Corporation (Asalus) received from Respondent CIR a Preliminary Assessment Notice (PAN) for deficiency taxes covering taxable year 2007. Asalus protested the PAN. On August 26, 2011, Asalus received a Final Assessment Notice (FAN) from the CIR denying its protest and assessing deficiency VAT for the four quarters of taxable year 2007.

Asalus timely protested the FAN and argued that the right of the CIR to assess deficiency VAT for taxable year 2007 had prescribed, since the FAN was issued beyond the 3-year period prescribed by the Tax Code. On October 16, 2012, Asalus received the Final Decision on Disputed Assessment (FDDA) from the CIR denying the protest and reiterating the deficiency VAT assessment.

Asalus filed a Petition for Review with the CTA praying for the cancellation of the assessment on the ground of prescription. The CIR argued that the assessment has not prescribed because Asalus filed a false return; hence, the 10-year prescriptive period applies.

Issue:

Has the CIR's right to assess Asalus for deficiency VAT been prescribed?

Ruling:

Yes. The CIR's right to assess Asalus for deficiency VAT for taxable year 2007 has prescribed.

Section 203 of the Tax Code provides that the BIR ordinarily has a period of 3 years within which to assess a taxpayer, counted from the last day prescribed by law within which to file the necessary return, or the actual date of filing of such return, whichever comes later. Any assessment notice issued beyond the 3-year prescriptive period shall not be valid.

Asalus filed its VAT returns for the 4 quarters of taxable year 2007 on April 25, July 25, October 25, 2007 and January 25, 2008. On the other hand, Asalus received the FAN from the CIR only on August 26, 2011, which is beyond the 3-year prescriptive period.

The 10-year prescriptive period under Section 222(A) of the Tax Code does not apply in this case because neither the FAN nor the FDDA indicated that Asalus filed a false VAT return for taxable year 2007. It was only in the PAN that the CIR alleged Asalus filed a false or fraudulent return in relation to the imposition of surcharge. However, the PAN is only a proposed assessment. The CIR also failed to prove its allegation of fraud or falsity in the preparation of Asalus' returns.

Moreover, Asalus did not execute a waiver authorizing the extension of the 3-year prescriptive period for the issuance of an assessment. Neither was there a request for reinvestigation from Asalus that would prevent the CIR from issuing the assessment within the said period.

The instances provided by law where the 3-year period will not apply must always be alleged and established by clear and convincing evidence and should not be based on mere conjecture and speculation. To safeguard taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the assessment of taxes. Thus, the exceptions to the law on prescription should necessarily be strictly construed.

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