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1. Does the Court of Tax Appeals have jurisdiction over a tax dispute involving solely two government agencies under the Executive Department?

None. In *The Department of Energy ("DOE") v. Court of Tax Appeals ("CTA")* (G.R. No. 260912, August 17, 2022), the Supreme Court held that it is the Executive, acting through the Solicitor General or the Secretary of Justice, as the case may be, that has jurisdiction over a tax dispute involving two government agencies under the Executive Department.

In *DOE v. CTA*, the Bureau of Internal Revenue ("*BIR*") assessed deficiency excise taxes against the DOE. The DOE filed a petition for review before the CTA Second Division, which dismissed the petition for lack of jurisdiction. The CTA *En Banc* affirmed the dismissal.

In affirming the dismissal by the CTA, the Supreme Court held that the CTA is not the proper forum to resolve a purely intra-governmental dispute. The Supreme Court ruled that all disputes, claims, and controversies, including disputes on tax assessments, solely between or among executive agencies, must be submitted to administrative settlement by the Secretary of Justice or the Solicitor General, as the case may be.

SyCipLaw TIP 1:

If a tax dispute involves solely two government agencies, even if one of them is the BIR, jurisdiction to resolve the case lies with the Executive. However, if the parties to the tax dispute include not only government agencies but also individual taxpayers and/or non-individual taxpayers that are not government agencies, the jurisdiction lies with the tax courts.

The Supreme Court explained that Presidential Decree No. 242 (Prescribing the Procedure for Administrative Settlement or Adjudication of Disputes, Claims and Controversies, between or among Government Offices, Agencies and Instrumentalities, including Government-Owned or Controlled Corporations and for Other Purposes) ("*PD No. 242*"), as a special law, prevails over Republic Act No. 1125 (An Act Creating the Court of Tax Appeals), as amended ("*RA 1125*"), and the National Internal Revenue Code of 1997, as amended ("*NIRC*"), with respect to provisions on the jurisdiction of the CTA over tax disputes. The Supreme Court reiterated its ruling in *PSALM v. Commissioner of Internal Revenue ("CIR")* (GR No. 198146, August 8, 2017) where the Court made a definitive and binding pronouncement that PD No. 242 is a special law and must be read as a carve-out from the general jurisdiction of the CTA over tax cases.

The provisions in the NIRC and RA 1125, on the jurisdiction of the CTA over tax disputes involving tax laws enforced by the BIR, should be read as general provisions governing the settlement of disputes involving tax claims. These provisions apply with equal force to *all persons* involved in disputes pertaining to *all tax claims* arising from *all tax laws* being implemented by the BIR. In contrast, PD No. 242, as now embodied in the Revised Administrative Code, applies only to particular persons involved in a uniquely specific category of cases — disputes, claims, and controversies where all the parties involved are government agencies.

The Supreme Court said that it was categorical in its ruling in *PSALM v. CIR* that when the law says "all disputes, claims and controversies solely among government agencies," the law means all, without exception. Therefore, so long as such dispute arises from any of the following – "the interpretation and application of statutes, contracts, or agreements" – the same falls under the administrative settlement proceedings directed by PD No. 242.

The Supreme Court also held that the Executive's power of control necessitates administrative settlement of disputes. Given that the President, as Chief Executive, has control over all agencies in dispute, including the BIR and the CIR, it is only proper and logical that he first be given a chance to resolve the dispute before resorting to the courts. Only after the President has decided or settled the dispute can the court's jurisdiction be invoked.

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2. Is there substantial compliance with the due process requirements when the BIR issues a Final Assessment Notice ("*FAN*")/Formal Letter of Demand ("*FLD*") before the lapse of the 15-day period to file a reply to the Preliminary Assessment Notice ("*PAN*") without waiting for the taxpayer's reply to the PAN if the taxpayer is able to submit a well-prepared protest letter?

No. In *Prime Steel Mill, Incorporated v. Commissioner of Internal Revenue* (G.R. No. 249153, September 12, 2022), the Supreme Court ruled that there can be no substantial compliance when the 15-day period to reply to the PAN is completely ignored by the BIR, even if the taxpayer was able to submit a protest letter. The fact remains that the BIR violated the taxpayer's right to due process when it issued a FAN without waiting for the taxpayer's reply to the PAN. An assessment that fails to strictly comply with the due process requirements is void and produces no effect.

In *Prime Steel,* the taxpayer received a PAN on January 7, 2009 assessing it with deficiency income tax, value-added tax, and expanded withholding tax. Prime Steel filed a letter protesting the PAN on January 22, 2009. On February 12, 2009, Prime Steel received a FAN and FLD dated January 14, 2009 from the BIR. Subsequently, Prime Steel received the Final Decision on Disputed Assessment maintaining Prime Steel's liability for deficiency taxes. Prime Steel challenged the validity of the assessment by filing a Petition for Review before the CTA. On the issue of alleged violation of due process, the CTA *En Banc* ruled that there was substantial compliance with the due process requirements considering that Prime Steel was still able to submit a well-prepared protest letter.

The Supreme Court disagreed with the ruling of the CTA *En Banc.* Citing jurisprudence, the Supreme Court stated that the sending of a PAN is part and parcel of the due process requirement in the issuance of a deficiency tax assessment and the BIR must strictly comply with the requirements laid down by the law and by its own rules. The PAN stage presents an opportunity for both the taxpayer and the BIR to settle the case at the earliest possible time without need for the issuance of a FAN.

The BIR must strictly observe the 15-day period from receipt provided under the revenue regulations for a taxpayer to reply to a PAN. The BIR should issue the FLD/FAN only after receiving the taxpayer's response or in case of the taxpayer's failure to file a reply within the 15 day-period. In this case, the FAN was issued on January 14, 2009, merely seven days after the taxpayer received the PAN on January 7, 2009, and well within the 15-day period for petitioner to reply to the PAN. Although the FAN was received by the taxpayer 36 days from when it received the PAN, the FAN was issued by the BIR without waiting for Prime Steel's reply. Since the BIR failed to observe the 15-day period for the taxpayer to file its reply to the PAN, the assessment is void and produces no effect.

SyCipLaw TIP 2:

An assessment that fails to strictly comply with the due process requirements is void and produces no effect. A taxpayer should take note of the date when the FAN was issued by the BIR. If the FAN was issued within the 15-day period from the date of taxpayer's receipt of the PAN and before the taxpayer's reply to the PAN, the assessment is void notwithstanding the fact that the taxpayer received the FAN beyond said 15-day period and that the taxpayer was able to submit a protest.

3. Can a local government unit continue taxing a company that is no longer conducting business within its jurisdiction on the basis of the company's failure to apply for the retirement of its business?

No. A local government unit ("*LGU*") cannot continue to assess local business taxes on a company that is no longer conducting business within its jurisdiction based on the mere fact that the company has not yet filed an application for the retirement of its business.

In *Lazada E-Services Philippines, Inc. v. City of Makati*, (CTA AC No. 261, November 23, 2022), the LGU, Makati City, assessed the taxpayer deficiency local business taxes after it had transferred its principal office, as well as its business operations, to another LGU. When the taxpayer questioned the assessment, the Regional Trial Court ("*RTC*") ruled that for the taxpayer to escape liability for the payment of local business taxes to the Makati City, it must apply for the retirement of its business with the city.

On appeal by the taxpayer, the Special Third Division of the CTA reversed the RTC's decision. The CTA reiterated that local business taxes are taxes imposed by an LGU on the privilege of doing business within its jurisdiction. Under Section 150(a) of the Local Government Code, businesses maintaining or operating a branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the city or municipality where such branch or sales outlet is located. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality

The CTA held that the term "business" means trade or commercial activity regularly conducted by an entity as a means of livelihood or with a view to profit. Accordingly, business taxes are due in the city where such trade or commercial activity is conducted. For a city to validly impose local business taxes, the situs (i.e., the principal place of business or branch and sales office) thereof must be in that city. Thus, the authority of LGUs to impose local business taxes is not dependent on the procedural requirement of filing an application for the retirement of business but is conditioned on the business transactions conducted within its territorial jurisdiction.

SyCipLaw TIP 3:

Taxpayers transferring their principal office and business operations from one LGU to another should be mindful that they should not be made liable for local business taxes on the mere fact that they had not yet applied for the retirement of their business with the LGU where they used to conduct business.

4. Does the Court of Tax Appeals have jurisdiction over the validity of a department order imposing safeguard duties on imported commodities?

No. In *Ecossential Foods Corp. v. Hon. Emmanuel F. Piñol* (CTA Case No. 9929, December 1, 2022), the company challenged the validity of Department Order No. 6, series of 2018 ("*DO No. 6*") issued by the Secretary of the Department of Agriculture ("*DA Secretary*") through a petition for review with the CTA. DO No. 6 imposed special safeguard duties on certain imported commodities pursuant to the provisions of Republic Act No. 8800, or the Safeguard Measures Act.

The CTA ruled that it had no jurisdiction over a petition questioning DO No. 6 because the order was issued in the exercise of the DA Secretary's quasi-legislative powers. In filing an appeal before the CTA, it is essential that the appealed action arose from the exercise of the relevant government official's judicial or quasi-judicial powers. The CTA differentiated quasi-legislative and quasi-judicial power, citing the case of *The Chairman and Executive Director, Palawan Council for Sustainable Development, and the Palawan Council for Sustainable Development v. Ejercito Lim doing business as Bonanza Air Services* (G.R. No. 183173, August 24, 2016), where the Supreme Court ruled:

> Administrative agencies possess two kinds of powers, the quasi[-]legislative or rule-making power, and the quasi-judicial or administrative adjudicatory power. The first is the power to make rules and regulations that results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers . . . The second is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act that is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.

The CTA ruled that the issuance of DO No. 6 was not a quasi-judicial act, but rather a quasi-legislative (or at the very least, ministerial) one. It is not quasi-judicial because there is no discretion involved on the part of the DA Secretary if the conditions for the imposition of special safeguard duties are present. It is mandatory for the DA Secretary to impose the special safeguard duties after it verifies that the product can be imposed such a duty. The procedure for the imposition also reveals that it is not a quasi-judicial act — there is no verified petition, no preliminary investigation, no reception of evidence, no holding of hearings prior to the imposition of the special safeguard duties.

The CTA also noted that under the Safeguard Measures Act, the CTA has the power to review "rulings" of the DA Secretary in connection with the imposition of a safeguard measure. Under RA 1125, as amended, the CTA has the power to review decisions of the DA Secretary involving safeguard measures. However, since DO No. 6 is neither a "decision" nor a "ruling" as contemplated under the law, any action or decision on the merits that the CTA will make in the case would be void for lack of jurisdiction.

SyCipLaw TIP 4:

In filing a petition for review before the CTA assailing the actions of government agencies involving safeguard measures, taxpayers must be mindful that the assailed action must be a "decision" or "ruling", which means that the assailed action must have been done in the exercise of the quasi-judicial power of the government agency.

5. Is there forum shopping if a taxpayer files a petition for review with the Court of Tax Appeals without disclosing that they had sent an offer of compromise with the Bureau of Internal Revenue, and applied for amnesty, covering the same taxes?

Yes. In *Cagayan de Oro Doctors, Inc. (Madonna and Child Hospital) v. Commissioner of Internal Revenue* (CTA EB Case No. 2234 [CTA Case No. 9260], December 6, 2022), the taxpayer filed a petition for review with the CTA, questioning the assessment of withholding tax and value-added tax against it. After filing the petition, it sent an offer of compromise to the BIR, which was forwarded to the National Evaluation Board for approval. The taxpayer also availed itself of Bureau of Internal Revenue tax amnesty involving the same taxes.

When the Third Division of the CTA dismissed the petition on the ground that the assessment was valid, the taxpayer filed an appeal to the CTA *En Banc*. However, it did not disclose the pendency of the offer of compromise before the National Evaluation Board, and the tax amnesty it had previously applied for, in the certificate against forum shopping attached to the petition.

The CTA *En Banc* ruled that the taxpayer committed forum shopping. It found that the Third Division of the CTA already took cognizance of the taxpayer's original petition prior to filing an offer of compromise with the BIR. Neither the Third Division of the CTA, nor the opposing counsels, were informed of such offer of compromise or of the application for tax amnesty during the pendency of the proceedings.

The CTA *En Banc* discussed the different ways that forum shopping may be committed, as follows: [a] filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); [b] filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and [c] filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).

In this case, the CTA *En Banc* ruled that the taxpayer's offer of compromise with the BIR was still pending before the National Evaluation Board, while it prayed for the BIR to act favorably on its application for tax amnesty, both during the pendency of its petition with the CTA. The taxpayer resorted to three separate remedies in the hope of getting a favorable outcome or, at the very least, a mitigation of its tax liability. The CTA Third Division's ruling, if the same attains finality, would have constituted *res judicata* on the actions of the National Evaluation Board and the BIR. The CTA *En Banc* held that the taxpayer undoubtedly committed the act of forum shopping.

SyCipLaw TIP 5:

Once a taxpayer has chosen a judicial remedy to question or reduce its tax liability, it should not resort to other remedies, administrative or judicial, to question or attempt to reduce the said tax liability without disclosing the same to the court and to the other parties. In filing a petition for review to question an assessment before the CTA, the taxpayer should disclose in the certificate against forum shopping the resort to any offer of compromise or availment of tax amnesty covering the same taxes.

6. Are sales made during the period from December 10, 2021 to March 8, 2022 to registered export enterprises ("*REEs*") whose incentive periods have expired subject to VAT?

In Revenue Memorandum Circular ("*RMC*") No. 152-2022, the BIR expressly declared that sales during the period from December 10, 2021 to March 8, 2022 made by suppliers to REEs whose incentive periods have expired remain to be VAT zero-rated.

Under Revenue Regulations ("*RR*") No. 21-2021, which took effect on December 10, 2021, the local purchases of REEs whose incentive periods have already expired were already subject to 12% VAT. However, despite the effectivity of RR No. 21-2021, it was only upon the issuance of RMC No. 24-2022 on March 9, 2022 that the status of local purchases of these REEs as being subject to 12% VAT was confirmed. Thus, suppliers may have declared their sales to these REEs whose incentive periods have already expired as VAT zero-rated even after the date of effectivity of RR No. 21-2021 on December 10, 2021, and until the date prior to the effectivity of RMC No. 24-2022, or until March 8, 2022,.

RMC No. 152-2022 acknowledged that a retroactive application of RMC No. 24-2022 may prejudice the affected taxpayers; thus, transactions which transpired during the period from December 10, 2021 up to March 8, 2022 remain to be VAT zero-rated even though the REEs were no longer entitled to VAT zero-rating on their local purchases.

RMC No. 152-2022 provides the seller and the REE-buyer two alternatives for the treatment of sales to the REE-buyer during the period from December 10, 2021 up to March 8, 2022:

a) The seller and REE-buyer may retain the transaction as subject to 12% VAT.

   Under this option, the seller shall still declare its sales to the REE-buyer as subject to 12% VAT.

   If the REE-buyer is VAT-registered, it can utilize the passed-on VAT as input tax and either (i) deduct the same from any output tax, or (ii) recover the same through filing a claim for VAT refund if the purchases which generated such input tax is attributable to zero-rated sales of the REE-buyer. On the other hand, if the REE-buyer is not VAT-registered, the VAT paid shall be claimed as part of the cost of sales or expenses.

b) The seller and buyer may revert the transaction from subject to 12% VAT to VAT zero-rated.

   If the seller has already declared the transactions in its VAT return/s, the seller may amend the same after reimbursing/returning the VAT paid by the REE-buyer. The adjustment to the seller's sales shall only be to the extent of the VAT reimbursed to the REE-buyer. The resulting overpayment due to unutilized input tax credits, if any, may be recovered through a claim for VAT refund pursuant to Section 112(A) of the NIRC since the corresponding sales are VAT zero-rated.

   The seller must retrieve the VAT Sales Invoice/Official Receipt ("*SI/OR*") originally issued to the REE-buyer for cancellation and replacement with a zero-rated SI/OR. The seller must also prepare a list of VAT SI/OR cancelled, together with the corresponding zero-rated SI/OR replacement, subject to validation by the BIR.

   Meanwhile, the VAT-registered REE-buyer must likewise amend its VAT return/s to reflect the reduced input VAT it previously declared in the said return/s.

SyCipLaw TIP 6:

If an REE whose incentive period has already expired paid 12% VAT on their local purchases from December 10, 2021 to March 8, 2022, it may try to reach an agreement with the seller on the VAT treatment for said purchases. If the parties agree to reimburse/return the VAT paid by the REE, both parties should make the appropriate adjustments and amendments to the relevant sales invoices/official receipts and VAT returns.

7. Will REEs that changed their registration from VAT to non-VAT now be subject to percentage tax?

No. Pursuant to RMC No. 24-2022, as amended by RMC No. 49-2022, REEs which have completed their Income Tax Holiday ("*ITH*"), and are now under the five percent (5%) Gross Income Tax ("*GIT*")/Special Corporate Income Tax ("*SCIT*") regime, are required to change their registration to non-VAT within two (2) months from the expiration of their ITH incentive. Similarly, REEs already enjoying the five percent (5%) GIT/SCIT upon the effectivity of Republic Act No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises Act ("*CREATE Law*"), but remained VAT-registered, are required to change their registration to non-VAT within two (2) months from the effectivity of RMC No. 49-2022 on April 20, 2022.

In RMC No. 152-2022, the BIR clarified that the change in the registration of REEs from VAT to non-VAT does not necessarily mean that such REEs will now be subject to percentage tax, because these REEs are only subject to the five percent (5%) GIT/SCIT in lieu of all other internal revenue taxes. Further, these REEs can enjoy the VAT zero-rating incentive on their local purchases that are directly and exclusively used for their registered activities until the end of their incentive period. Thereafter, these REEs will be subject to 12% VAT on such local purchases.

SyCipLaw TIP 7:

REEs who are enjoying the 5% GIT/SCIT upon the effectivity of the CREATE Law or upon the expiration of their ITH incentive, are required to change their registration from VAT to non-VAT, but their non-VAT registration does not mean they will now be subject to percentage tax. These REEs are still entitled to the VAT zero-rate incentive on their local purchases that are directly and exclusively used for their registered activities, subject to compliance with VAT zero-rating requirements, until the end of their incentive period.

8. When is the deadline for registered business enterprises ("*RBEs*") in the Information Technology-Business Process Management ("*IT-BPM*") sector to transfer their registration to the Board of Investments ("*BOI*") so that they can adopt up to 100% work-from-home ("*WFH*") arrangement without losing their tax incentives?

The deadline is January 31, 2023. The Fiscal Incentives Review Board ("*FIRB*") issued Resolution No. 033-22 extending to January 31, 2023 the December 31, 2022 deadline for RBEs in the IT-BPM sector to transfer their registration to the BOI pursuant to FIRB Resolution No. 026-22 (discussed in the Supplement to the September 2022 International Edition of TIPS).

In addition, RBEs in the IT-BPM sector who have already registered with the BOI may already adopt up to 100% WFH arrangement without loss of tax incentives upon completion of their registration with the BOI and will not be required to post a bond with respect to the movement of capital equipment within and outside the ecozones pursuant to the Department of Trade and Industry Memorandum Circular No. 22-19.

On the other hand, RBEs in the IT-BPM sector that will opt to register with the BOI pursuant to FIRB Resolution No. 033-22 (i.e., from January 1 to 31, 2023) will not be required to post a bond for all equipment and other assets that will be brought outside the economic or freeport zone until whichever is earlier of (i) the date of securing the Tax Exemption Indorsement for all their equipment and other assets from the Department of Finance Revenue Office, or (ii) March 31, 2023.

SyCipLaw TIP 8:

RBEs should have transferred their registration to the BOI by January 31, 2023 to be able to implement the 100% WFH arrangement without losing their tax incentives. Meanwhile, RBEs in the IT-BPM sector that transferred their registration to the BOI during the period from January 1 to 31, 2023 or pursuant to FIRB Resolution No. 033-2022 should ensure that their equipment and assets are brought outside the ecozone or freeport zone by March 31, 2023, otherwise they will be required to post a bond for the movement of said assets outside of the zone.

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