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SyCipLaw TIPS
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1. May the Court of Tax Appeals review the Commissioner of Internal Revenue's denial of an Application for Abatement or Cancellation of Taxes?

Yes. In *Commissioner of Internal Revenue v. Pacific Hub Corporation*, G.R. No. 252944, November 27, 2024, the Supreme Court ("*SC*") ruled that the Court of Tax Appeals ("*CTA*") has jurisdiction to review the denial of an application for abatement under its "other matters" jurisdiction.

In 2008, Pacific Hub Corporation ("*Pacific Hub*") sent a letter to the Bureau of Internal Revenue ("*BIR*"), indicating its willingness to pay its unremitted taxes for years 2005 and 2006 but requested for abatement of penalties, surcharges, and interests due to continued financial losses. Pacific Hub later filed in 2010 its Application for Abatement or Cancellation of Tax, Penalties and/or Interest, as well as the payment of the basic deficiency withholding tax on compensation, expanded withholding tax, and value-added tax ("*VAT*") in the total amount of PHP15,480,231.11.

Pacific Hub eventually received the Notice of Denial, dated January 10, 2014, rejecting its application for abatement. It also received a Warrant of Distraint and/or Levy, dated September 12, 2014, enforcing the collection of the increments incident to its deficiency withholding tax on compensation and expanded withholding tax in the aggregate amount of PHP13,792,867.56.

Pacific Hub then filed a Petition for Review before the CTA claiming that the Notice of Denial and the Warrant of Distraint and/or Levy were irregularly issued in violation of its right to due process.

In its defense, the Commissioner of Internal Revenue ("*CIR*") contended that the CTA had no jurisdiction over the petition since there was no final decision on a disputed assessment to be reviewed and that the power to grant or deny a request for abatement was completely discretionary on the part of the CIR.

The CTA Third Division annulled both the Notice of Denial and the Warrant of Distraint and/or Levy, holding that (1) it had jurisdiction over the case under its "other matters" jurisdiction, (2) the Warrant was void for having been issued without the benefit of a prior assessment and for failing to state the reasons for the denial of the application. This decision was affirmed by the CTA *En Banc*.

The SC affirmed the decision of the CTA *En Banc*.

The CTA's "other matters" jurisdiction in relation to the CIR is enshrined in Section 7 (a) (1) of Republic Act ("*RA*") No. 1125, as amended by RA No. 9282:

> SEC. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

(1) Decisions of the Commissioner of Internal Revenue 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 or other laws administered by the Bureau of Internal Revenue.

Citing *CIR v. Hambrecht & Quist Philippines, Inc.*, G.R. No. 169225, November 17, 2010, the SC said that the term "other matters" is virtually unbridled save for the qualifying phrase that immediately follows: "arising under the National Internal Revenue Code, as amended ("*Tax Code*") or other laws administered by the Bureau of Internal Revenue." In *Qatar Airways Co. v. Commissioner of Internal Revenue*, G.R. No. 238914, June 8, 2020, the SC already impliedly recognized the CTA's jurisdiction to review the CIR's denial of an application for abatement, albeit therein petitioner's case was ultimately dismissed for its failure to timely file its judicial petition before the CTA.

The CIR's power to abate or cancel a tax liability is vested in the CIR under Section 204(B) of the Tax Code. This power to abate or cancel a tax liability is purely discretionary on the part of the CIR given that it is "a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others." While the courts may generally not interfere in an administrative agency's exercise of a purely administrative or discretionary power, this rule admits of exceptions such as when "the issuing authority has gone beyond its statutory authority, has exercised unconstitutional powers or has clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion."

The SC ruled that the CIR acted with grave abuse of discretion in denying the application of abatement and found that the Notice of Denial was devoid of any reason for the CIR's rejection of Pacific Hub's application. Aside from the lack of an explanation for its denial, the CIR likewise failed to explain how it arrived at its computation which is at odds with the amounts stated in Pacific Hub's application for abatement. ■

SyCipLaw Tip No. 1

The CTA has the power to review the CIR's action on an application for abatement. While the CIR's action on an application for abatement is purely discretionary, the Court may interfere with the exercise of this power when the CIR has either gone beyond his authority, has exercised unconstitutional powers, has clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion.

2. Is a taxpayer estopped from questioning the validity of a defective waiver extending the period of assessment?

Generally, no. In *CIR v. Telstar Manufacturing Corporation*, G.R. Nos. 249239 and 250286, February 10, 2025, the Supreme Court held that the taxpayer is not estopped from questioning the validity of the waiver. It is the BIR that has the burden of ensuring that the waivers comply with the strict requirements for their validity.

In 2010, the BIR Large Taxpayers Service served upon Telstar Manufacturing Corporation ("*Telstar*") Letter of Authority No. 116-2010-00000096 in line with Revenue Memorandum Order ("*RMO*") No. 36-2010 on the conduct of special investigation and enforcement activities of interrelated companies, conglomerates, their affiliates and subsidiaries for taxable year 2009.

Consequently, Telstar submitted its documents, books and records to the BIR. Telstar's President and General Manager, Ms. Divina A. Puyo ("*Puyo*"), executed a Waiver of the Defense of Prescription under the Statute of Limitations of the Tax Code, requesting more time to submit the required documents. Puyo signed a second waiver extending the period of assessment until December 31, 2013. Both waivers were accepted by the CIR through OIC-Assistant Commissioner Alfredo V. Masajon of the Large Taxpayers Service.

On June 18, 2013, Telstar received from the BIR a Preliminary Assessment Notice ("*PAN*") for deficiency taxes, to which Telstar filed a reply.

On October 16, 2013, the CIR issued a Formal Letter of Demand ("*FLD*")/Final Assessment Notice ("*FAN*") assessing Telstar for deficiency taxes. Annexed to the FLD was a document detailing the discrepancies. Reiterating its earlier explanations, Telstar filed its protest to the assessment.

The CIR then issued a Final Decision on Disputed Assessment ("*FDDA*") partially cancelling the assessment with the attached "Details of Discrepancy."

Telstar then lodged a Petition for Review before the CTA, mainly insisting that the waivers executed by Puyo were not valid. The CTA Second Division pronounced that Telstar was estopped from questioning the validity of the waivers since they were in *pari delicto*. The CTA *En Banc* affirmed the findings of the CTA Second Division but modified the computation of deficiency interest and delinquency interest.

The SC overturned the decision of the CTA *En Banc*.

The SC held that the CIR's right to assess Telstar for deficiency taxes for taxable year 2009 had already prescribed when it assessed Telstar for deficiency taxes and issued the FLD/FAN on October 16, 2013. Section 203 of the Tax Code provides that internal revenue taxes must be assessed within three years after the last day prescribed by law for the filing of the return.

While Section 222 of the Tax Code allows for the period to be extended by subsequent written agreement of the CIR and the taxpayer, the waivers executed by Puyo did not comply strictly with the requirements of RMO No. 20-90 and BIR Delegation of Authority Order No. 05-01.

Particularly, the waivers executed by Puyo suffer from the following defects:

1. The request made was for an extension of time within which to present additional documents, and not for the reinvestigation and/or reconsideration of the pending internal revenue case as required under RMO No. 20-90;

2. The subject waivers failed to specify the kind and amount of taxes due. Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated. Hence, specific information in the waiver is necessary for its validity;

3. The subject waivers were not signed by the CIR but by Assistant Commissioner Masajon, the officer-in-charge of the Large Taxpayers Service. The requirement in RMO No. 20-90 clearly specifies that it is the Commissioner who should sign for the BIR such waivers where the taxes exceed PHP1,000,000.00.

While the SC has previously applied the doctrine of estoppel in cases where the taxpayer failed to raise the invalidity of the waivers at the earliest opportunity and where the taxpayer benefited from the waiver, such exception does not apply here.

It is true that, in signing the correspondence with the CIR (including the reply to the PAN and the protest to the FLD), Puyo effectively held herself out as authorized by Telstar to act on its behalf. Nevertheless, it was ultimately the responsibility of the BIR to ensure that the waivers executed by Telstar strictly complied with the legal requirements for their validity before accepting them.

The BIR did not ensure that all supporting documents were attached before accepting the waivers, including the notarized written authority of Telstar's representative to sign them on the corporation's behalf. Thus, the BIR's

inaction was the proximate cause of the defects in the waiver, thereby preventing the extension of the period to assess or collect taxes against Telstar.

Since the period for assessment has already lapsed, the subsequent FLD/FAN is invalid. ■

SyCipLaw Tip No. 2

The BIR generally has a three-year period from the last day of filing of the tax return to assess deficient internal revenue taxes against the taxpayer. While this prescriptive period may be extended by a waiver, the BIR must ensure that waivers strictly comply with the legal requirements for their validity before accepting them. The SC has previously applied the doctrine of estoppel in certain circumstances. However, when the BIR fails to comply with its own issuances on the proper execution of a waiver, a taxpayer may challenge a prescribed assessment as void. Taxpayers should note the applicable BIR issuances at the time the waiver was executed.

3. Is the service of a Preliminary Assessment Notice to a taxpayer by registered mail, which was received by its security guard, considered a valid service?

Yes, provided the service is done in accordance with the rules and regulations of the BIR. In *CIR v. Dizon Country Fresh, Inc.*, CTA EB No. 2836, May 15, 2025, the CTA *En Banc* ruled that the service of a Preliminary Assessment Notice ("*PAN*") by registered mail, among other modes of service, must comply with Section 3.1.6 of Revenue Regulations ("*RR*") No. 18-13 to be considered valid.

Here, the taxpayer was assessed deficiency taxes and penalties for taxable year 2013. The BIR issued a PAN and served it by registered mail, which was received by the taxpayer's security guard. Afterwards, the BIR issued a FLD/FAN. The taxpayer questioned the tax assessment before the CTA, which cancelled the FLD/FAN due to the improper service of the PAN. The CIR then filed a petition for review to question the decision before the CTA *En Banc*.

In deciding on the validity of the service by registered mail of the PAN, the CTA *En Banc* ruled that the service must comply with Section 3.1.6 of RR No. 18-13. The PAN must be sent to the taxpayer's registered or known address with an instruction to the postmaster to return the mail to the sender after ten (10) days, if undelivered. Alternatively, the PAN may be sent through a reputable professional courier service, or if none, through ordinary mail. The server shall also make a written report under oath detailing the manner, place, and date of service, the name of the recipient, and other relevant information. The registry receipt or official receipt, as the case may be, containing identifiable details of the transaction shall constitute sufficient proof of mailing and shall be attached to the case docket.

Here, the CTA *En Banc* ruled that the PAN was not validly served. There was no instruction to the postmaster to return the mail to the sender after ten (10) days, if undelivered. The server of the mail also did not provide a written report under oath, setting forth the manner, place, and date of service of the PAN, the name of the person who received the same, and such other relevant information relating to such service is likewise required.

Furthermore, the CTA held that the CIR failed to prove that the taxpayer actually received the PAN. There was no evidence that the security guard was authorized to receive the PAN. In fact, the taxpayer denied the receipt of the PAN. Since the mailing of the PAN only raised a disputable presumption of receipt, the CIR had the burden to prove proper service and receipt of the PAN, which was absent in this case. ■

SyCipLaw Tip No. 3

When a taxpayer receives an assessment, it should first determine whether service was validly done in accordance with the Tax Code and relevant rules and regulations. Otherwise, the taxpayer may dispute the assessment, which may be declared void for violating the taxpayer's due process rights.

4. Should a taxpayer wait for the CIR's response to an application for tax credit or refund before filing a petition with the CTA?

Before Republic Act No. 11976, also known as the Ease of Paying Taxes Act ("EOPT Act"), took effect on January 22, 2024, no. In *Bethlehem Holdings, Inc. v. CIR*, CTA Case No. 10831, May 5, 2025, a case involving an application for tax credit or refund filed prior to the EOPT Act's effectivity, the CTA ruled that a taxpayer does not have to wait for the CIR's response to its administrative claim for refund before filing its judicial claim with the CTA.

In this case, the taxpayer filed an administrative application for tax credit or refund of its alleged creditable withholding tax for the calendar year 2019. The CIR failed to act on the application, so the taxpayer filed a judicial claim for refund with the CTA.

The CIR argued that he was not given the opportunity to assess and/or audit the taxpayer's claim since the taxpayer filed the judicial claim before it could render a decision.

The CTA ruled that the CIR's action on the administrative claim is not a pre-requisite to the filing of a judicial claim. Based on Section 229 of the Tax Code and jurisprudence, the CTA held that "the filing of a judicial claim is not conditioned upon the CIR's action on the administrative claim considering that the Tax Code only requires the taxpayer to file the administrative and judicial claims for refund within the two (2)-year prescriptive period." The CTA also ruled that the filing of an administrative claim for tax refund does not toll the running of the prescriptive period to file the corresponding judicial claim.

Here, the taxpayer filed its 2019 Annual Income Tax Return on April 8, 2020. Thus, it had two years from that date, or until April 8, 2022, to file its claim for refund. On February 23, 2022, the taxpayer filed its administrative claim. Since the prescriptive period was about to expire without any action from the CIR, the taxpayer timely filed its judicial claim on April 7, 2022. Had the taxpayer waited for the CIR's response to the administrative claim, its claim would have prescribed. ■

SyCipLaw Tip No. 4

A taxpayer claiming for a tax refund or credit must be aware of the relevant periods for filing administrative and judicial claims for refund. Under current rules, as amended by the EOPT Act, the taxpayer must first file its application for refund with the BIR (*i.e.*, the administrative claim), and the BIR has 180 days from the taxpayer's submission of complete documents within which to process and decide the administrative claim. If the BIR denies the administrative claim or fails to decide within the 180-day period, the taxpayer must file a petition for review with the CTA (*i.e.*, the judicial claim) within 30 days from receipt of the adverse decision or from expiration of the 180-day period. The two (2)-year prescription period to file a judicial claim for refund has now been removed under the EOPT Act.

5. What were the amendments under Republic Act No. 12214 or the Capital Markets Efficiency Promotion Act ("*CMEPA*") in relation to the sale of shares in a corporation?

CMEPA amended the provisions on stock transaction tax ("*STT*") and capital gains tax ("*CGT*") in relation to the sale of listed shares and unlisted shares.

STT

CMEPA reduced the tax on the sale, exchange, or other disposition of shares of stock listed and traded through the stock exchange, other than by a dealer in securities, from 0.6% to 0.1%, based on gross selling price or gross value in money of the shares sold. This would make the Philippine STT at par with its ASEAN neighbors that impose minimal to nil STT. The reduction in this friction cost would enhance market liquidity and encourage trading of listed shares.

In addition to the reduction in the rate, STT is now also imposed on the sale, other than by a dealer in securities, of shares of a domestic corporation listed and traded through a *foreign* stock exchange.

CGT

The net gains realized by citizens, resident individuals, and domestic corporations on the sale of their shares in *foreign* corporations that are not listed in the local or foreign stock exchanges are now subject to CGT at 15%.

Prior to the CMEPA, only the net gains from the sale of shares in domestic corporations that are not traded through the Philippine stock exchange by citizens, residents, and domestic corporations were subject to CGT, while the net gains from their sale of shares in foreign corporations were previously subject to the regular income tax rate. ■

SyCipLaw Tip No. 5

Owners of shares listed and traded through the local stock exchange will now enjoy a reduced STT rate when they sell their shares through the stock exchange. However, please note that the sellers of shares in a domestic corporation listed and traded through a foreign stock exchange may be subject to the 0.1% STT even when the sale of such shares is done through the foreign stock exchange. On the other hand, citizens, residents, and domestic corporations with shares in foreign corporations that are not listed in a local or foreign stock exchange should take note that they may be subject to 15% CGT on the sale of such shares and must remember to file the correct tax return and pay the correct tax within thirty days from the transaction.

6. What is the tax rate on the interest income received from a depository bank's foreign currency deposit unit ("*FCDU*")?

Under the CMEPA, interest income from a depository bank under the expanded foreign currency deposit system shall now be subject to the uniform 20% final withholding tax rate imposed on interest income. The rate was increased from the previous 15% tax rate. The revised rate only applies to citizens, resident individuals, nonresident individuals engaged in business in the Philippines, domestic corporations, and resident foreign corporations.

The interest income of nonresident individuals not engaged in trade or business and nonresident foreign corporations remain subject to the 25% final withholding tax or tax treaty rate (as applicable). Nonresidents also continue to enjoy tax exemption on their income from transactions with depository banks under the expanded system. The enrolled bill proposed to remove this exemption, but the President vetoed the removal and recommended the retention of the exemption to reduce the effect on the country's competitiveness in attracting foreign capital. ■

SyCipLaw Tip No. 6

There appears to be no distinction on interest income earned by certain taxpayers from their local currency deposits or foreign currency deposits in FCDUs for tax purposes because of the imposition of the uniform tax rate of 20%. Nonetheless, foreign currency deposits remain exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body.

7. Is the interest income from long-term deposits or investments still exempt from final tax?

The CMEPA removed the exemption from final tax of interest income from long-term deposits or investments in the form of savings, common or individual trust funds, deposit substitutes, investment management accounts, and other investments evidenced by certificates in such form prescribed by the *Bangko Sentral ng Pilipinas*. Thus, the interest income from such instruments is now subject to the standard 20% final tax. Long-term deposits and investments pre-terminated before the 5th year shall now also be subject to the 20% final tax and not to the varying rates imposed depending on the remaining maturity of such deposit or investment.

Gains realized from the sale or exchange, or retirement of bonds, debentures or other certificates of indebtedness with a maturity of more than 5 years are also no longer excluded from gross income and will thus be subject to income tax. However, this does not include interest income and gains from the sale of bonds if the bonds are issued by the Philippine government to finance priority programs.

Please note that while the CMEPA took effect on July 1, 2025, financial instruments issued and transacted prior to July 1, 2025 will still be subject to the tax exemption or preferential tax treatment prevailing at the time of its issuance for the remaining maturity of the relevant agreement. ■

SyCipLaw Tip No. 7

There is no longer any tax benefit on the interest income earned from long-term deposits or investments issued starting July 1, 2025, as income from both short-term and long-term deposits or investments are now similarly subject to a 20% final tax or no longer considered exclusions from gross income. Investors may consider other forms of investments, such as mutual funds or unit investment trust funds as gains from the redemption of the units of participation in such funds remain excluded from gross income. Subject to the regulations, income from long-term deposits or investments issued before the effectivity of the CMEPA may nonetheless still be subject to tax exemption or preferential tax rate for the remainder of the term until maturity.

8. What amendments were introduced by CMEPA to the documentary stamp tax ("*DST*") provisions?

Under the CMEPA, the: (1) original issuance of shares of stock, (2) issuance of bonds, debentures, certificates of stock, or indebtedness issued in foreign countries, and (3) issuance of all debt instruments – are now all subject to 0.75% DST. The changes in the provisions are as follows:

	Tax Code	CMEPA
Sec. 174 – Stamp tax on original issuance of shares of stock	On every original issue, whether on organization, reorganization or for any lawful purpose, of shares of stock by any association, company, or corporation, there shall be collected a documentary stamp tax of Two pesos (P2.00) on each Two hundred pesos (P200), or fractional part thereof, of the par value, of such shares of stock.	On every original issue, whether on organization, reorganization or for any lawful purpose, of shares of stock by any association, company or corporation, there shall be collected a documentary stamp tax of seventy-five percent of one percent (75% of 1%) of the par value of such shares of stock.
Sec. 176 – Stamp tax on bonds, debentures, certificates of stock, or indebtedness issued in foreign countries	On all bonds, debentures, certificates of stock, or certificates of indebtedness issued in any foreign country, there shall be collected from the person selling or transferring the same in the Philippines, such tax as is required by law on similar instruments when issued, sold or transferred in the Philippines.	A documentary stamp tax of seventy-five percent of one percent (75% of 1%) of the value of the transaction shall be collected from the person selling or transferring bonds, debentures, certificates of stock, or certificates of indebtedness issued in any foreign country.

	Tax Code	CMEPA
Sec. 179 – Stamp tax on all debt instruments	On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso and fifty centavos (P1.50) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments.	On every original issue of debt instruments, there shall be collected a documentary stamp tax of seventy-five percent of one percent (75% of 1%) of the issue price of any such debt instrument.

SyCipLaw Tip No. 8

The DST has been standardized at 0.75% whether for the original issuance of shares, local loans, and foreign debts.

9. Is equity-based compensation, despite not being paid in the form of cash, considered compensation for services that form part of gross income subject to income tax?

Yes, the CMEPA amended the general definition of gross income under Section 32(A)(1) of the Tax Code to explicitly provide that equity-based compensation such as stock options, restricted stock units, stock appreciation rights, and similar items are considered compensation, just like fees, salaries, wages, and commissions. The equity-based compensation shall be included in the gross income at the time of exercise. ■

SyCipLaw Tip No. 9

CMEPA merely expressly set out in the Tax Code what has already been provided under RR No. 13-2022, specifically, that compensation includes payment in some form of medium other than money, such as equity-based compensation.

10. Is the sale of pick-ups still exempt from excise tax?

No, pick-ups are now subject to excise tax. The previous excise tax exemption for pick-ups under the TRAIN Law, premised on the assumption that pick-ups are predominantly used by small business owners and professionals, has been removed under the CMEPA.

The removal of this excise tax exemption, as explained by the Department of Finance, addresses the observation from the Department of Trade and Industry that car manufacturers would modify pick-up trucks into passenger, leisure, or sport utility vehicles which took advantage of the excise tax exemption. ■

SyCipLaw Tip No. 10

Purchasers of pick-up vehicles should note that the excise tax exemption is now exclusive to purely electric vehicles only. When they purchase pick-up trucks (as well as hybrid vehicles), the sale will be subject to excise tax.

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