

Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated JANUARY 18, 2011, which reads as follows:

"A.M. No. 11-1-5-SC-PHILJA (Re: Interim Guidelines for Implementing Mediation in the Court of Tax Appeals).- The Court Resolved to NOTE the

(a) Letter dated December 20, 2010 of Justice Adolfo S. Azcuna, Chancellor, Philippine Judicial Academy (PHILJA), transmitting, among other things, its Board of Trustees (BOT) Resolution No. 10-28 approving Philippine Mediation Center Office Executive Committee (PMCO EXECOM) Resolution No. 19-2010, dated November 15, 2010; and

(b) Aforesaid BOT Resolution No. 10-28 dated November 23, 2010 which resolved to approve PMCO EXECOM Resolution No. 19-2010, dated November 15, 2010, recommending the approval of the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.

The Court further Resolved, upon the recommendation of the PHILJA, to APPROVE the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals, to wit:

**INTERIM GUIDELINES FOR IMPLEMENTING
MEDIATION IN THE COURT OF TAX APPEALS**

I. COVERAGE

I-1. The following cases may be referred to mediation:

A. Cases within the jurisdiction of the Divisions

1. Decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, 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 Bureau of Internal Revenue (BIR);

2. Inaction by the CIR in cases involving disputed assessments, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR, where the NIRC provides a specific period for action, in which case the inaction shall be deemed a denial upon the lapse of said period;
3. Decisions of the Commissioner of Customs (COC) in cases involving liability for customs duties, fees or other money charges, fines, forfeitures, or other penalties in relation thereto, or other matters arising under the Tariff and Customs Code of the Philippines (TCCP) or other laws administered by the Bureau of Customs (BOC);
4. Decisions of the Secretary of Finance on customs cases elevated for automatic review from the decisions of the COC adverse to the Government under Section 2315 of the TCCP; and
5. Decisions of the Secretary of Trade and Industry, in case of non-agricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Sections 301 and 302, respectively, of the Tariff and Customs code, and safeguard measures under Republic



Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

B. Cases within the jurisdiction of the Court *En Banc*:

Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over cases arising from administrative agencies – BIR, BOC, Department of Finance, Department of Trade and Industry, Department of Agriculture.

I.2 Cases not covered by mediation

The following cases shall not be referred to mediation:

1. Cases where the jurisdiction of the CTA, BIR, BOC, Secretary of Finance, Secretary of Trade and Industry or Secretary of Agriculture is in issue;
2. Cases where there is a pending application for temporary restraining order (TRO) or preliminary injunction for the suspension of collection of taxes unless such pending application for a temporary restraining order (TRO) or preliminary injunction is first resolved;
3. Cases arising from criminal offenses within the jurisdiction of the Court *En Banc* or in Divisions;
4. Decisions, resolutions or orders of the Regional Trial Court (RTC) in tax collection cases involving final and executory assessments decided or resolved by them in the exercise of their original or appellate jurisdiction;

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5. Decisions, resolutions or orders of the RTC in local tax cases decided or resolved by them in the exercise of their original or appellate jurisdiction;
6. Decisions of the Central Board of Assessment Appeals 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; and,
7. Civil cases involving tax assessments that are final and executory.

Any question relating to the coverage shall be resolved by the Court *En Banc* or in the Division where the case is pending.

II. REFERRAL TO MEDIATION

The referral to mediation shall be made after the filing of the Comment in cases pending with the Court *En Banc* and, before or during the pre-trial for cases pending with the Court in Division.

A Resolution (FORM NO. 1) shall be issued by the Court *En Banc* or in Division, referring the covered civil case to mediation and requiring the parties to appear before the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) at a specified date and time. Said Resolution shall suspend the proceedings for the duration of the period of mediation stated in Section VIII below.

III. AGREEMENT TO MEDIATE

Should the parties agree to mediate during their initial appearance before the PMC-CTA, they shall execute an Agreement to Mediate (FORM NO. 2).

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The Agreement to Mediate submitted to the Court shall contain a certification that the parties have submitted to the PMC-CTA certified true copies of the following documents: a) Petition for Review; (b) Answer/Comment, Reply, if any; c) Decision, Resolution or Order, being appealed if applicable.

During the initial appearance before the PMC-CTA, the parties shall choose their mediator/s from among the accredited mediators of the CTA.

If the parties fail to choose their mediator/s, the Chairperson of the PMC-CTA shall choose the mediator/s for the parties in accordance with the guidelines of the Philippine Mediation Center Office (PMCO).

The Mediator selected by the parties may decline the appointment or ask to be relieved on the ground of actual or perceived conflict of interest, or any other valid ground, subject to the approval of the Chairperson.

IV. PRELIMINARY MEDIATION CONFERENCE

Upon execution of the Agreement to Mediate, the PMC-CTA shall forthwith inform the chosen mediator to arrange a schedule with the parties for the preliminary mediation conference on a date and time not later than fifteen (15) days from such notice.

V. VENUE OF MEDIATION CONFERENCES

The preliminary mediation conference shall be conducted in the PMC-CTA. Thereafter, with notice to the Court, the parties and the mediator may agree to conduct subsequent mediation conferences at a venue outside the PMC-CTA.

VI. THE PARTIES

The parties and/or their duly authorized representatives shall attend mediation conferences.



In case of duly authorized representatives of private parties, they shall be required to file with the PMC-CTA, a special power of attorney in favor of an officer/s, showing their full authority, including, but not limited to the powers to appear in representation of the party, enter into stipulations of facts and to offer, negotiate, accept, decide, and enter into a compromise agreement that will put an end to the litigation. In the case of corporate parties, said authority must be in the form of a board resolution or secretary's certificate.

In the case of the representatives of the BIR or the BOC, they shall be required to file with the PMC-CTA, the appropriate special power of attorney issued by the CIR or COC or their duly Authorized Officials, subject to the limitations under Section 204 of the 1997 NIRC and/or Section 2316 of the TCCP.

VII. THE MEDIATOR

A. Qualifications

Retired justices and judges, retired Revenue or Customs Officials, senior law practitioners, senior certified public accountants (CPA) or senior licensed customs brokers, all with at least five (5) years of experience in the field of taxation or customs law, with creative problem-solving and human relations skills. After undergoing orientation or training and internship practice conducted by the PMCO of the Philippine Judicial Academy (PHILJA), they may be accredited by the Supreme Court as qualified mediators for the CTA.

B. Disqualifications

A Mediator shall be disqualified if related by consanguinity or affinity within the sixth civil degree to either of the parties, or

related by consanguinity or affinity to counsel of a party within the fourth civil degree or where he/she, or spouse, or child has financial or fiduciary or pecuniary interest in the case under mediation or is biased for or against any party.

C. Disclosure Requirements

During the preliminary mediation conference, the Mediator shall disclose (FORM NO. 3) to both parties any circumstance that may create or give the appearance of a conflict of interest or any instance that may be perceived as affecting the mediator's impartiality and independence.

A Mediator shall disclose any current or past personal or professional relationship with any party or counsel involved in the mediation, but the parties may agree in writing to allow the Mediator to continue as such despite the disclosure.

The duty to disclose is a continuing obligation of the Mediator throughout the mediation process. Failure to disclose material information shall make the mediator liable for perjury.

D. Authority of the Mediator

Upon commencement of the mediation proceedings, the Mediator acting as an Officer of the Court shall have full authority in the conduct of mediation, including the manner and flow of discussions, as well as the calling of separate caucuses. The mediator may terminate mediation at any time, when convinced that the parties are not interested to settle the case.

E. Duties of the Mediator



During the mediation conference, the Mediator shall, among others:

1. remind the parties that any agreement reached in the mediation shall be subject to approval by the CTA and to the limitations under Section 204 of the 1997 NIRC and Section 2316 of the TCCP;
2. inform the parties of the rules and procedures of mediation;
3. assess, on a non-binding basis, the risks and costs of continuing the litigation; and
4. draw out the parties' underlying interests behind the legal issues and explore common ground for settlement.

VIII. DURATION OF MEDIATION

The Mediator shall complete the mediation proceedings within thirty (30) days from the date of the preliminary mediation conference. However, if significant progress towards settlement has been achieved and an extension of time to mediate will most likely result in a successful settlement of the case, the parties, their representatives or their counsels may jointly and with the concurrence of the Mediator file with the Court, a motion for extension of time to continue mediation proceedings for a period not exceeding another thirty (30) days.

IX. DISPOSITION OF THE CASE

A. Where parties agree to a compromise

Where the parties agree to a compromise, the Mediator shall immediately ask the parties or their duly authorized representatives to prepare a compromise agreement (FORM NO. 4). Said compromise agreement shall be signed by the private parties or their



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duly authorized representatives and by the Commissioner of the BIR or the BOC and the Secretary of Finance, as the case may be, witnessed by the Mediator who shall certify that the parties have read and understood the agreement which they have signed knowingly and voluntarily.

The PMC-CTA shall transmit to the Court the Mediator's Report and the signed compromise agreement within thirty (30) days from the termination of the mediation proceedings. Upon approval thereof, the Court shall render judgment based on the compromise agreement. In case of partial compromise, the Court shall continue further proceedings as to the matter not compromised.

In both cases, the compromise agreement shall be subject to the limitations under Section 204 of the 1997 NIRC and Section 2316 of the TCCP.

B. Where parties fail to reach a settlement

Where the parties fail to reach a settlement, the PMC-CTA, shall forthwith return the case to the Court. The PMC-CTA shall transmit to the Court the Mediator's Report (FORM NO. 5) within five (5) days from the termination of the mediation proceedings indicating therein why the case is returned to the CTA. The Court shall then proceed with the case for further proceedings.

X. CONFIDENTIALITY

Any and all matters discussed or communications made, and documents presented before the PMC-CTA or during the mediation conferences shall be privileged and confidential, and the same shall be inadmissible as evidence for any purpose in any other proceedings. No

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record, stenographic notes, transcript or minutes of the mediation proceedings shall be taken, and personal notes of the mediator on the mediation proceedings shall not be furnished the parties and the Court. However, evidence, documents or information that are otherwise admissible under the Revised Rules of Court does not become inadmissible solely by reason of their presentation or use in mediation.

XI. SANCTIONS

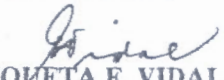
Upon written request of the Mediator, the Court may impose appropriate sanctions on the parties who fail to comply with the directives of the Mediator, such as but not limited to the appearance of the parties during scheduled mediation conferences and submission of the required written authority of representatives prior to starting mediation.

In case of failure of the parties to appear during mediation proceedings, the same effect and sanctions may be had as if the parties failed to appear during pre-trial, pursuant to Section 5, Rule 18 of the Revised Rules of Court and Section 5, Rule 11 of the Revised Rules of the Court of Tax Appeals.

XII. APPLICABILITY OF REPUBLIC ACT NO. 9285 AND A.M. NO. 01-10-5-SC-PHILJA

The pertinent provisions of A.M. No. 01-10-5-SC-PHILJA (Re: Various Resolutions of the Board of Trustees of the PHILJA Approved During Its Meetings on 18 September 2001 and 1 October 2001), dated October 16, 2001 and Republic Act No. 9285 (Alternative Dispute Resolution Act of 2004) shall have suppletory application to the interim guidelines for implementing mediation in the CTA." (146)

Very truly yours,


ENRIQUETA E. VIDAL
Clerk of Court

FEB 10 2011

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