

TAX ALERT

July 2021

COURT OF TAX APPEALS DECISIONS

THE BUREAU OF INTERNAL REVENUE’S (BIR) FINDING OF UNDECLARED PURCHASES DOES NOT JUSTIFY THE ISSUANCE OF THE ASSESSMENT BEYOND THE THREE-YEAR PRESCRIPTIVE PERIOD ON THE GROUND OF FRAUD DUE TO THE UNDERDECLARATION OF SALES. UNDERDECLARATION OF PURCHASES DOES NOT AUTOMATICALLY TRANSLATE TO UNDERDECLARATION OF SALES OR INCOME. *Commissioner of Internal Revenue v. First Global BYO, C.T.A. EB No. 2168 (C.T.A. Case No. 9172, 9212, 9242 dated July 1, 2021).*

THE COURT OF TAX APPEALS (CTA) IS NOT PRECLUDED FROM ACCEPTING EVIDENCE ASSUMING THESE WERE NOT PRESENTED AT THE ADMINISTRATIVE LEVEL. CASES FILED IN THE COURT OF TAX APPEALS ARE LITIGATED *DE NOVO*. Thus, the taxpayer need not show that it submitted complete documents in the administrative level prior to the filing of a judicial claim. *AIG Shared Services Corporation (Philippines) v. Commissioner of Internal Revenue, C.T.A. Case No. 9351 dated July 2, 2021.*

THE INFORMATION FOR A VIOLATION OF THE TAX CODE MUST BE FILED BEFORE THE COURT WITHIN FIVE YEARS FROM THE DATE OF DISCOVERY OF THE OFFENSE AND THE FILING OF THE PRELIMINARY INVESTIGATION WITH THE DEPARTMENT OF JUSTICE. *Berringer Marketing Inc. v. Commissioner of Internal Revenue, C.T.A Case No. 8978 dated July 13, 2021.*

THERE CANNOT BE A “FAILURE TO FILE A RETURN” IF THERE IS A “FALSE RETURN”, AND VICE VERSA. THE BIR CANNOT APPLY BOTH THE THREE-YEAR AND TEN-YEAR PRESCRIPTIVE PERIODS BY ALLEGING THAT BY FAILING TO FILE A RETURN, THE TAXPAYER COMMITTED A FALSITY BY FAILING TO FILE THE CORRECT TAX RETURN. *Commissioner of Internal Revenue v. Philippine Communications Satellite Corporation, C.T.A EB No. 2209 (C.T.A. Case No. 9219) dated July 19, 2021.*

THE CERTIFICATE OF CREDITABLE TAX WITHHELD AT SOURCE (BIR FORM 2307) IS THE COMPETENT PROOF TO ESTABLISH THAT TAXES WERE WITHHELD. IT IS NOT NECESSARY FOR THE PERSON WHO EXECUTED AND PREPARED THE CERTIFICATE TO BE PRESENTED TO TESTIFY TO PROVE THE AUTHENTICITY OF THE CERTIFICATES. MOREOVER, THE TAXPAYER CLAIMING THE REFUND OF EXCESS TAX CREDITS NEED NOT SHOW PROOF OF REMITTANCE OF THE WITHHELD TAXES. SUCH IS NOT THE DUTY OF THE

TAXPAYER BUT OF THE WITHHOLDING AGENT. *McKinsey & Co. (Phils.) v. Commissioner of Internal Revenue, C.T.A Case No. 9807 dated July 29, 2021.*

BIR ISSUANCES

THE BIR SUSPENDS THE IMPLEMENTATION OF THE PROVISIONS OF REVENUE REGULATIONS NO. (“REV. REGS.”) 5-2021 (A) REQUIRING PROPRIETARY EDUCATIONAL INSTITUTIONS TO BE NON-PROFIT TO AVAIL OF THE PREFERENTIAL INCOME TAX RATE OF 1%; (B) DEFINING “NON-PROFIT” INsofar AS IT APPLIES TO PROPRIETARY EDUCATIONAL INSTITUTIONS; AND (C) PROVIDING ILLUSTRATIONS ON THE TAX TREATMENT OF PROPRIETARY EDUCATIONAL INSTITUTIONS THAT ARE NON-PROFIT. *Revenue Regulations No. 14-2021 dated July 26, 2021.*

THE IMPLEMENTATION OF REV. REGS. 9-2021 IS DEFERRED UNTIL THE ISSUANCE OF AN AMENDATORY REGULATION. Rev. Regs. 9-2021 amended Rev. Regs. 16-2005 and implemented the imposition of 12% VAT on transactions covered by Sec. 106(A)(2)(a), subparagraphs (3), (4), and (5), and Sec. 108(B), subparagraph (1) and (5) of the NIRC. *BIR Revenue Regulations No. 15-2021 dated July 21, 2021.*

PUBLICATION OF THE LIST OF VAT-EXEMPT PRODUCTS, PURSUANT TO THE CREATE ACT. The VAT exemption for the sale or importation of the products in the list shall take effect beginning on January 1, 2020 for diabetes, high cholesterol, and hypertension medicines; beginning on January 1, 2021 for cancer, mental illness, tuberculosis, and kidney disease medicines; beginning January 1, 2021 until December 31, 2023 for vaccines prescribed and directly used for COVID-19 treatment; and beginning January 1, 2021 to December 31, 2023 for medicines directly used for COVID-19 treatment. *Revenue Memorandum Circular No. 81-2021 dated July 6, 2021.*

IN LIEU OF THE CONFIRMATION/ACKNOWLEDGEMENT EMAIL, SCREENSHOTS FROM THE eAFS SHOWING THE NECESSARY DETAILS AS PROVIDED IN THE RMC ARE CONSIDERED AS SUFFICIENT PROOF OF SUBMISSION TO THE BIR. *Revenue Memorandum Circular No. 82-2021, 7 July 2021*

CIRCULARIZING THE IMPLEMENTING RULES AND REGULATIONS OF THE CORPORATE RECOVERY AND TAX INCENTIVES FOR ENTERPRISES (CREATE) ACT. *Revenue Memorandum Circular No. 83-2021 dated July 12, 2021.*

CIRCULARIZING MEMORANDUM OF AGREEMENT ON INFORMATION EXCHANGE AND RECONCILIATION BETWEEN THE DEPARTMENT OF ENERGY, BUREAU OF CUSTOMS, AND BUREAU OF INTERNAL REVENUE. *Revenue Memorandum Circular No. 86-2021 dated July 15, 2021.*

THE PHILIPPINE IDENTIFICATION (PHILID) CARD IS NOW CONSIDERED AS AN ACCEPTABLE SUPPORTING DOCUMENT FOR PROOF OF ADDRESS AND VALID PROOF OF IDENTIFICATION FOR ALL TRANSACTIONS OR FRONTLINE SERVICES WITH THE BIR. *Revenue Memorandum Circular No. 87-2021 dated July 15, 2021.*

CIRCULARIZING THE LISTS OF WITHHOLDING AGENTS FOR INCLUSION TO AND DELETION FROM THE EXISTING LIST OF TOP WITHHOLDING AGENTS (TWA) WHO ARE REQUIRED TO DEDUCT AND REMIT EITHER THE 1% OR 2% CREDITABLE WITHHOLDING TAX FROM INCOME PAYMENTS TO THEIR SUPPLIERS OF GOODS AND SERVICES, RESPECTIVELY. The addition, continued inclusion, or removal from the list shall be effective starting August 1, 2021. Written requests for documentary proof for being identified as TWAs shall be filed with the RDO. Note, however, that the publication in the newspaper of general circulation shall be sufficient documentary proof of TWA status. *Revenue Memorandum Circular No. 88-2021 dated July 16, 2021.*

THE ASSISTANT COMMISSIONER OF THE LEGAL SERVICE IS DELEGATED WITH THE AUTHORITY TO APPROVE/SIGN REQUESTS INVOLVING THE FOLLOWING: EXTENSION OF TIME TO FILE ESTATE TAX RETURNS; EXTENSION OF TIME TO PAY ESTATE TAX DUE; EXTENSION OF TIME TO SUBMIT PHOTOCOPIES OF THE TCT/CCT/SHARES OF STOCK THAT BEARS THE ANNOTATION OF SUBSTITUTED BASIS OF THE REAL PROPERTIES, SHARES OF STOCK TRANSFERRED/RECEIVED PURSUANT TO SECTION 40(C)(2) OF THE TAX CODE OF 1997 AS CERTIFIED BY THE REGISTRY OF DEEDS/CORPORATE SECRETARY; MATTERS DECLARED AS “NO RULING AREAS” IN RB NO. 1-2003, AS AMENDED; AND NON COMPLIANCE WITH ANY OF THE REQUIREMENTS UNDER RMO NO. 9-2014. *Revenue Delegation Authority Order No. 3-2021 dated July 7, 2021*

SEC ISSUANCES

THE DEADLINE FOR SUBMISSION OF FORMS/NOTICES IN COMPLIANCE WITH SEC MC NO. 28 S. 2020 HAS BEEN EXTENDED TO AUGUST 31, 2021. THE FORMS/NOTICES MAY BE FILED ONLINE VIA EMAIL TO MC28_S2020@sec.gov.ph. FILING BEYOND THE DEADLINE PRESCRIBED HEREIN SHALL BE SUBJECT TO A PENALTY OF P10,000.00. *SEC Notice dated July 15, 2021.*

Note: The information provided herein is general and may not be applicable in all situations. It should not be acted upon without specific legal advice based on particular situations. If you have any questions, please feel free to contact any of the following at telephone number (632) 8633-9418, facsimile number (632) 8633-1911, or at the indicated e-mail address:

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