

TAX ALERT

May 2021

COURT OF TAX APPEALS (“CTA”) DECISIONS

THE IMPOSITION OF COMPROMISE PENALTIES IS VOID SINCE THE BUREAU OF INTERNAL REVENUE (“BIR”) DID NOT FOLLOW THE STRICT MANDATE THAT ALL AMOUNTS OF COMPROMISE PENALTIES BE ITEMIZED IN A SEPARATE ASSESSMENT NOTICE/DEMAND LETTER. It must be stressed that acts executed against the provisions of mandatory or prohibitory laws shall be void. Thus, considering that the pertinent provisions of Revenue Memorandum Order No. (“RMO”) 19-2007 were not strictly observed by the BIR, the payment of compromise penalties by the taxpayer is a nullity. *Henryville, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9365 dated May 27, 2021.*

IT IS WELL-SETTLED THAT THE CTA HAS NO JURISDICTION TO COMPEL A TAXPAYER TO PAY THE COMPROMISE PENALTY BECAUSE BY ITS VERY NATURE, A COMPROMISE IMPLIES A MUTUAL AGREEMENT BETWEEN THE PARTIES IN RESPECT TO THE THING OR SUBJECT MATTER THAT IS SO COMPROMISED, AND THE CHOICE OF PAYING OR NOT PAYING IT DISTINCTLY BELONGS TO THE TAXPAYER. *Mindanao Mineral Processing Refining Corp. v. Commissioner of Internal Revenue, CTA Case No. 9643 dated May 19, 2021.*

THE NEXT STEP UPON RECEIPT OF A FINAL DECISION ON DISPUTED ASSESSMENT (“FDDA”) SHOULD HAVE BEEN TO FILE AN APPEAL BEFORE THE CIR (SINCE THE DENIAL WAS ISSUED BY THE CIR’S AUTHORIZED REPRESENTATIVE) OR A PETITION FOR REVIEW BEFORE THE CTA WITHIN 30 DAYS FROM RECEIPT OF THE FDDA. An administrative appeal to the CIR’s authorized representative did not toll the running of the reglementary period within which the appeal must be elevated to the CTA or CIR. Thus, the assessments have become final and executory and, consequently, the CTA no longer has jurisdiction to act on the same. *Masagana Mgt. Services Corp. v. Commissioner of Internal Revenue, CTA Case No. 10071 dated May 28, 2021.*

THE BIR’S ACTIVE PARTICIPATION DURING TRIAL WITHOUT POINTING OUT THE CTA’S SUPPOSED LACK OF JURISDICTION, COUPLED WITH THE ASSERTION OF ARGUMENTS AND DEFENSES UNRELATED TO THE CTA’S JURISDICTION, IS TANTAMOUNT TO INVOKING THAT JURISDICTION AND ABIDING BY THE CTA’S RESOLUTION REGARDING ITS JURISDICTION OVER THE CASE. The BIR should have continuously raised and pointed out the supposed lack of jurisdiction all throughout the proceedings. *Sciscindustrial Corp. v. BIR, CTA Case No. 9616 dated May 25, 2021.*

WHILE RMO 69-2010 REQUIRES THAT A MEMORANDUM OF ASSIGNMENT BE ISSUED IN CASE OF REASSIGNMENT OF A CASE TO ANOTHER REVENUE OFFICE FOR THE CONTINUATION OF THE AUDIT/INVESTIGATION, THERE IS NOTHING THEREIN WHICH DISPENSES WITH THE MANDATORY ISSUANCE OF A LETTER OF AUTHORITY FOR PURPOSES OF AUTHORIZING A REVENUE OFFICER TO CONTINUE THE INVESTIGATION. *People of the Phil. v. Active Travel and Tours, Inc., See Siu Hung Dionisio and See Siu Ying Dionisio, CTA Crim Case Nos. O-737 and O-738 dated May 24, 2021.*

BY FAILING TO ADDRESS THE TAXPAYER'S DEFENSES IN ITS PROTEST, THE TAXPAYER WAS NOT INFORMED OF THE PARTICULAR FACTS UPON WHICH THE FORMAL LETTER OF DEMAND/FINAL ASSESSMENT NOTICE WAS BASED PURSUANT TO SECTION 228 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 ("1997 NIRC") AND REVENUE REGULATIONS NO. 12-99. The taxpayer was left unaware of how the BIR appreciated the explanations or defenses the taxpayer raised against the subject Preliminary Assessment Notice. Accordingly, the BIR's failure to do so clearly violates taxpayer's right to administrative due process thereby rendering the subject tax assessments void. *Chu Lang Chan, then operating under Business Name Tokai Rubber Products represented by Li Chuan Chang v. CIR and Myrna Leonira, Regional Director, RR5, Caloocan City, CTA Case No. 9758 dated May 26, 2021.*

A TAXPAYER, THROUGH A PARTIAL PAYMENT OF THE ASSESSMENTS, IMPLIEDLY ADMITTED, AND MAY NO LONGER QUESTION, THE VALIDITY OF THE WAIVERS OF THE STATUTE OF LIMITATION UNDER THE 1997 NIRC. *Mindanao Mineral Processing Refining Corp. v. Commissioner of Internal Revenue, CTA Case No. 9643 dated May 19, 2021.*

A TAXPAYER IS NOT REQUIRED TO SECURE A PRIOR CONFIRMATORY RULING BEFORE A TRANSACTION MAY BE CONSIDERED AS A TAX-FREE EXCHANGE. The BIR should not impose additional requirements not provided by law, which would negate the availment of the tax exemption. Moreover, the CTA emphasizes that while tax refunds are strictly construed against the taxpayer, the Government should not resort to technicalities and legalisms, much less frivolous appeals, to keep the money it is not entitled to at the expense of the taxpayers. *Luzviminda Land Holdings, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10035 dated May 20, 2021.*

RENEWABLE ENERGY DEVELOPERS, MANUFACTURERS, FABRICATORS, AND SUPPLIERS OF LOCALLY-PRODUCED RENEWABLE ENERGY EQUIPMENT SHALL BE QUALIFIED TO AVAIL OF THE INCENTIVES PROVIDED FOR IN REPUBLIC ACT NO. 9513, SUCH AS VAT ZERO-RATING, ONLY AFTER SECURING A CERTIFICATE OF ENDORSEMENT FROM THE DEPARTMENT OF ENERGY ON A PER TRANSACTION BASIS. It must be stressed that actions for tax refund or credit is in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. *Vestas Services Phil., Inc. v. Commissioner of Internal Revenue, CTA Case No. 9544 dated May 19, 2021.*

BIR ISSUANCES

RULES AND REGULATIONS IMPLEMENTING THE PROVISIONS OF REPUBLIC ACT NO. 11346 AND 11467, RELATIVE TO THE EXCISE TAX ON ALCOHOL PRODUCTS, TOBACCO PRODUCTS, HEATED TOBACCO PRODUCTS, VAPOR PRODUCTS, AND DISPOSITION OF EXCISE TAX COLLECTION. *Revenue Regulations No. 7-2021 dated May 18, 2021.*

GUIDELINES IN THE FILING OF BIR FORM NO. 1702Q JANUARY 2018 ENCS IN THE ELECTRONIC FILING AND PAYMENT SYSTEM (EFPS) BY TAXPAYERS WITH FISCAL YEAR ACCOUNTING PERIOD. *Revenue Memorandum Circular No. 68-2021 dated May 26, 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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