

TAX ALERT

January 2022

COURT OF TAX APPEALS (“CTA”) DECISIONS

IN ORDER FOR AN ACCUSED TO BE LIABLE UNDER SECTION 255 OF THE TAX CODE, THE FOLLOWING ELEMENTS MUST ALL BE PROVEN BY THE PROSECUTION: 1) THE ACCUSED IS THE PERSON REQUIRED UNDER THE TAX CODE OR RULES AND REGULATIONS TO FILE A RETURN, TO PAY THE TAX, AND SUPPLY CORRECT AND ACCURATE INFORMATION; 2) THE ACCUSED FAILED TO FILE A RETURN, TO PAY THE TAX, AND SUPPLY CORRECT AND ACCURATE INFORMATION AT THE TIME REQUIRED BY LAW; AND 3) SUCH FAILURE WAS WILLFUL. Moreover, the CTA identified the instances where a taxpayer is legally obligated to pay taxes under the Tax Code. *First*, when the law specifically requires the payment of a particular tax or when the taxpayer is compelled to make a self-assessment of its own tax liability. *Second*, when the Bureau of Internal Revenue (“BIR”) issues a tax assessment demanding the payment of deficiency tax. The charges against the accused in the instant case are based on the second instance and in order to satisfy the first requisite, the prosecution must establish, through competent evidence, the existence of a valid assessment, notice, and demand from the BIR to pay deficiency taxes. In this case, the prosecution failed to establish that a Notice for Informal Conference was issued to the taxpayer, and that the Preliminary Assessment Notice and Final Assessment Notice/Formal Letter of Demand were served on the taxpayer by way of personal service, registered mail, or constructive service. Considering that assessments against the accused are void, it follows that it is not liable to pay any deficiency taxes rendering the first element non-existent. *People of the Philippines v. Grand East Empire Corp., CTA Crim. Case Nos. O-779, O-780 and O-781 dated Jan. 24, 2022.*

REVENUE OFFICERS MUST BE AUTHORIZED, THROUGH A LETTER OF AUTHORITY (“LOA”), IN ORDER THAT SAID OFFICERS MAY VALIDLY EXAMINE THE BOOKS OF ACCOUNTS AND OTHER ACCOUNTING RECORDS OF A TAXPAYER. In the absence of an LOA, the tax assessments issued by the BIR against such taxpayer shall be void. *Metro Main Star Asia Corp. v. Commissioner of Internal Revenue, CTA Case No. 9302 dated Jan. 26, 2022.*

AN LOA SIGNED BY THE CHIEF OF THE BIR REGULAR LT AUDIT DIVISION 1 IS INSUFFICIENT TO AUTHORIZE THE REVENUE OFFICER TO CONTINUE THE AUDIT INVESTIGATION. LOAs shall be issued and approved by the Assistant Commissioner/Head Revenue Executive Assistants. Considering the foregoing, the subject assessments are void. *Metro Main Star Asia Corp. v. Commissioner of Internal Revenue, CTA Case No. 9302 dated Jan. 26, 2022.*

BIR ISSUANCE

THE BIR EXTENDS THE FILING OF RETURNS AND PAYMENTS OF THE CORRESPONDING TAXES DUE THEREON, INCLUDING SUBMISSION OF REQUIRED DOCUMENTS, APPLICATION FOR TAX REFUND AND ISSUANCE OF ASSESSMENT NOTICES AND WARRANTS OF DISTRAINT AND LEVY FOR TAXPAYERS WITHIN THE JURISDICTION OF REVENUE REGIONAL AND DISTRICT OFFICES OF THE BIR CLASSIFIED UNDER ALERT LEVER 3 OR HIGHER. These regulations shall extend the statutory deadlines falling due during the period declared as Alert Level 3 or higher by the IATF this month of January 2022 for thirty (30) calendar days from their due dates. *Revenue Regulations No. (“Rev. Regs.”) 1-2022 dated January 20, 2022, as clarified by Revenue Memorandum Circular No. (“RMC”) 16-2022 dated January 31, 2022.*

DOCUMENTARY STAMP TAX (“DST”) IS LEVIED ON THE EXERCISE BY A PERSON OF CERTAIN PRIVILEGES CONFERRED BY LAW FOR THE CREATION, REVISION, OR TERMINATION OF SPECIFIC LEGAL RELATIONSHIPS THROUGH EXECUTION OF SPECIFIC INSTRUMENTS. DST is in the nature of an excise tax. Thus, the following transfers of shares of stock shall also be subject to DST under Section 175 of the 1997 Tax Code: 1) transfer pursuant to a Deed of Donation; 2) transfer pursuant to a will of the decedent as approved by the probate court in a Judicial Settlement of Estate; and 3) generally, transfer of shares of stock from the decedent’s estate to the heirs thru intestate succession (without a will) is not subject to DST under Section 175 of the 1997 Tax Code as ownership of such shares is transferred to the heirs via succession by operation of law. However, it would be different if, in case of a Judicial Settlement of Estate as approved by the probate court or an Extra Judicial Settlement (both without a will), the heir/s specifically waive/s or renounce/s his or her shares over the inheritance, then, in such a situation, the renounced/waived shares of stock to be transferred to another heir/s shall also be subject to DST pursuant to Section 175 of the 1997 Tax Code. In this case, the rules set forth in RMC 94-2021 apply. *RMC 6-2022 dated November 23, 2021.*

CIRCULARIZING REPUBLIC ACT NO. 11595, ENTITLED “AN ACT AMENDING REPUBLIC ACT NO. 8762, OTHERWISE KNOWN AS THE ‘RETAIL TRADE LIBERALIZATION ACT OF 2000’, BY LOWERING THE REQUIRED PAID-UP CAPITAL FOR FOREIGN RETAIL ENTERPRISES, AND FOR OTHER PURPOSES.” *RMC 11-2022 dated January 24, 2022.*

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 send us an email at mail@baniquedlaw.com.

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