

TAX ALERT

February 2021

SUPREME COURT DECISIONS

PROOF OF ACTUAL EXPORTATION OF GOODS SOLD BY A VALUE-ADDED TAX (VAT)-REGISTERED TAXPAYER TO A BOARD OF INVESTMENTS (BOI)-REGISTERED ENTERPRISE IS NECESSARY FOR THE TRANSACTION TO BE CONSIDERED ZERO-RATED EXPORT SALES. The taxpayer claiming a refund or issuance of tax credit certificate for unutilized input VAT attributable to zero-rated sales must submit a certification from the BOI attesting the actual exportation of the products, otherwise the claim shall not be granted. *Commissioner of Internal Revenue v. Filminera Resources Corp., G.R. No. 236325, September 16, 2020.*

THE ENUMERATION IN REVENUE REGULATIONS (RR) NO. 11-2005 OF DIRECT COSTS THAT MAY BE CLAIMED AS DEDUCTION BY A PEZA-REGISTERED ENTERPRISE FROM ITS GROSS INCOME IS NOT EXCLUSIVE. RR No. 11-2005 states that the direct costs allowable as deductions from gross income subject to a special tax of 5% include (1) direct salaries, wages or labor expense, (2) service supervision salaries, (3) direct materials and supplies used, (4) depreciation of machineries and equipment used in the rendition of registered services, and of that portion of the building owned or constructed that is used exclusively in the rendition of registered service, (5) rent and utility charges for buildings and capital equipment used in the rendition of registered services, and (6) financing charges associated with fixed assets used in the registered service business which were not previously capitalized. The list is only made by way of example of the nature and type of expenses that may be deducted. Other costs and expenses directly related to the enterprise's PEZA-registered activity and are not administrative, marketing, selling and/or operating expenses or incidental losses shall also be allowed as deductions for purposes of computing the 5% gross income tax. *Commissioner of Internal Revenue v. East Asia Utilities Corp., G.R. No. 225266, November 16, 2020.*

REGIONAL TRIAL COURTS CANNOT ISSUE AN INJUNCTION AGAINST THE COLLECTION OF DOCUMENTARY STAMP TAX (DST) UNDER SECTION 218 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 (1997 NIRC.) *Games and Amusement Board and Bureau of Internal Revenue v. Klub Don Juan De Manila, Inc., G.R. No. 252189, November 3, 2020.*

COURT OF TAX APPEALS DECISIONS

REPUBLIC ACT NO. (R.A.) 11213, OTHERWISE KNOWN AS THE “TAX AMNESTY ACT”, WAS PASSED WITH THE AIM OF ENHANCING REVENUE COLLECTION, MINIMIZING ADMINISTRATIVE COSTS IN PURSUING TAX CASES, AND THE UNCLOGGING OF DOCKETS OF THE BUREAU OF INTERNAL REVENUE (BIR) AND THE COURTS. A tax amnesty operates as a general pardon by the State of its authority to impose penalties on persons guilty of evasion or violation of a revenue or tax law. Through an amnesty, the government waives its right to collect what is due and gives tax evaders a chance to start with a clean slate. Under R.A. 11213, taxpayers may now avail of amnesty for tax cases with final and executory judgment on or before the Implementing Rules and Regulations took effect on April 24, 2019. *Ithiel Corp. v. Commissioner of Internal Revenue, CTA EB No. 1672 (CTA Case No. 8872) dated February 10, 2021.*

FOREIGN CORPORATIONS MUST SUBMIT A CERTIFICATION OF NON-REGISTRATION ISSUED BY THE SECURITIES AND EXCHANGE COMMISSION (SEC) TO PROVE THAT IT IS NOT REGISTERED AS A CORPORATION IN THE PHILIPPINES. FOREIGN REGISTRATION DOCUMENTS DO NOT SUFFICE SINCE SUCH DOCUMENTS DO NOT DISPEL THE POSSIBILITY OF DOMESTIC REGISTRATION. *Commissioner of Internal Revenue v. NCR Cebu Dev’t Center, Inc., CTA EB No. 2150 (CTA Case No. 9255) dated February 10, 2021.*

GENERALLY, THE PRESENTATION OF BOTH FOREIGN ARTICLES OF INCORPORATION AND SEC CERTIFICATE OF NON-REGISTRATION WOULD SUFFICE TO PROVE THAT THE RECIPIENT OF GOODS AND SERVICES SUBJECT OF A VAT REFUND CLAIM IS A NON-RESIDENT FOREIGN CORPORATION NOT DOING BUSINESS IN THE PHILIPPINES AND, HENCE, THE SALE OF GOODS OR SERVICES THERETO IS ZERO-RATED. HOWEVER, AN AGREEMENT THAT ALLOWS THE FOREIGN CORPORATION TO PARTICIPATE IN THE MARKETING AND DISTRIBUTION OF PRODUCTS IN THE PHILIPPINES IS COVERED BY THE DEFINITION OF "DOING BUSINESS" IN THE PHILIPPINES UNDER SECTION 3(D) OF THE FOREIGN INVESTMENTS ACT AND THEREFORE, CONTRADICTS THE CLAIM THAT IT IS NOT DOING BUSINESS IN THE PHILIPPINES. *Amadeus Phil., Inc. v. Commissioner of Internal Revenue, CTA Case No. 9664 dated February 22, 2021.*

ESSENTIAL ELEMENTS FOR THE GRANT OF VAT ZERO-RATING UNDER SECTION 15(G) OF THE RENEWABLE ENERGY ACT OF 2008: (1) The seller is a Renewable Energy Developer of renewable energy facilities; (2) it sells fuel or power generated from renewable sources of energy, such as wind; (3) the seller is a “generation company”, *i.e.*, a person or entity authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity; and (4) such authority is embodied in a Certificate of Compliance issued by the ERC which must be secured before the actual commercial operations of the generation facility. *North Luzon Renewable Energy Corp. v. Commissioner of Internal Revenue, CTA Case No. 9886 dated February 19, 2021.*

VERBAL REQUESTS FOR ADDITIONAL DOCUMENTS MADE BY AUTHORIZED BIR OFFICIALS MAY BE USED AS BASIS IN DETERMINING THE DEADLINE FOR SUBMISSION OF COMPLETE DOCUMENTS IN SUPPORT OF AN ADMINISTRATIVE CLAIM FOR REFUND OR TAX CREDIT OF INPUT VAT. THERE IS NO REQUIREMENT IN THE 1997 NIRC OR IN REVENUE MEMORANDUM CIRCULAR NO. 49-2003 THAT THE BIR'S REQUEST FOR ADDITIONAL DOCUMENTS SHOULD BE IN WRITING. *Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ v. AV Value Holdings Corp., CTA EB No. 1915 (CTA Case No. 9025) dated February 10, 2021.*

A LETTER FROM THE ASSISTANT COMMISSIONER OF INTERNAL REVENUE (CIR) STATING THAT HE APPROVES THE REPORT OF THE REVENUE OFFICER ON THE CLAIM FOR REFUND, THERE BEING NO OTHER ACTION FROM THE BIR, CONSTITUTES AS THE DECISION WHICH SHALL BE APPEALABLE TO THE COURT OF TAX APPEALS (CTA). *Carmen Copper Corp. v. Commissioner of Internal Revenue, CTA Case No. 9954 dated February 02, 2021.*

WHEN THE 120-DAY (NOW 90-DAY) PERIOD PROVIDED IN SECTION 112 OF THE 1997 NIRC LAPSES WITHOUT ANY ACTION FROM THE CIR ON THE CLAIM FOR REFUND OR TAX CREDIT OF INPUT TAXES, THE TAXPAYER MUST NO LONGER WAIT FOR THE CIR TO COME UP WITH A DECISION SINCE THE INACTION ALREADY AMOUNTS TO DENIAL. The taxpayer must file an appeal within 30 days from the lapse of the 120-day period, otherwise the claim shall be outside the jurisdiction of the CTA. *Lapanday Agricultural and Dev't Corp. v. Commissioner of Internal Revenue., CTA EB No. 2177 (CTA Case No. 10026) dated February 03, 2021.*

SALE OF SERVICES BY PEZA-REGISTERED ENTERPRISES TO A BUYER FROM THE CUSTOMS TERRITORY IS NOT COVERED BY THE 5% SPECIAL TAX REGIME BUT IS SUBJECT TO 12% VAT UNDER THE 1997 NIRC. *Commissioner of Internal Revenue v. Clark Water Corp., CTA EB No. 1920 dated February 04, 2021.*

AN UNREASONABLE SURCHARGE MAY BE THE SUBJECT OF ABATEMENT OR CANCELLATION UNDER SECTION 204 OF THE 1997 NIRC BUT IT MAY NOT BE A SUBJECT OF A CLAIM FOR REFUND OR TAX CREDIT UNDER SECTION 229. *BAP Credit Bureau, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2095 (CTA Case No. 9570) dated February 23, 2021.*

REVENUE MEMORANDUM ORDER (RMO) NO. 43-1990 REQUIRES ANOTHER LETTER OF AUTHORITY (LOA) IN CASES OF REASSIGNMENT OF REVENUE OFFICERS. Despite being issued seven years prior to the 1997 NIRC, RMO No. 43-1990 is still a valid rule. While RMO 08-2006 authorizes the head of the investigating office to issue a memorandum in case of reassignment, the said memorandum does not validly give the revenue officers authority to conduct the audit or investigation of the books of account and other accounting records in the absence of an LOA, as required by law. *Commissioner of Internal Revenue v. Securities Transfer Services, Inc., CTA EB Case No. 2057 (CTA Case No. 8961) dated February 03, 2021.*

THE CIR, REVENUE REGIONAL DIRECTOR, AND THE ASSISTANT COMMISSIONER/ HEAD REVENUE EXECUTIVE ASSISTANT ARE THE ONLY BIR OFFICIALS WHO HAVE THE AUTHORITY TO SIGN AN LOA UNDER THE 1997 NIRC, BIR REGULATIONS AND JURISPRUDENCE. The Officer in Charge-Chief of Regular Large Taxpayers Audit Division (OIC-Chief of RLTAAD) is not an authorized representative of the CIR. Hence, the Memorandum of Authority (MOA) signed by the OIC-Chief of RLTAAD cannot validly confer authority to a revenue officer to conduct an audit and any assessment made pursuant to such MOA shall be void. *Commissioner of Internal Revenue v. Travellers Int'l Hotel Group, Inc., CTA EB No. 2047 (CTA Case No. 9168) dated February 03, 2021.*

THE CTA MAY RULE ON THE VALIDITY OF AN LOA EVEN THOUGH THE PARTIES DID NOT RAISE THE ISSUE IN THE PLEADINGS OR MEMORANDA. *Campaigns and Grey, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9420 dated February 03, 2021.*

RMO NO. 20-1990 REQUIRES THAT THE CIR OR THE AUTHORIZED REVENUE OFFICIAL MUST SIGN THE WAIVER OF STATUTE OF LIMITATIONS, WHICH EXTENDS THE PERIOD WITHIN WHICH THE BIR MAY ISSUE A DEFICIENCY ASSESSMENT AND INDICATE THAT THE BIR HAS ACCEPTED AND AGREED TO THE WAIVER ON A SPECIFIC DATE WHICH MUST ALSO BE CLEARLY STATED. Failure to strictly adhere to these requirements prescribed by RMO No. 20-1990 shall cause the waiver to be defective. *Commissioner of Internal Revenue v. Amparo Shipping Corp., CTA EB No. 2165 (CTA Case No. 9387) dated February 23, 2021.*

ASSESSMENTS OF DEFICIENCY TAXES COMPUTED USING EXTRAPOLATION SUFFER LEGAL INFIRMITY BECAUSE THESE ARE PREMISED ONLY ON MERE PRESUMPTION AND NOT ON EVIDENCE. *Surplus Marketing Corp. v. Commissioner of Internal Revenue, CTA Case No. 9290 dated February 03, 2021.*

LACK OF A DEFINITE DATE OF PAYMENT OF DEFICIENCY TAX LIABILITIES IN THE FORMAL LETTER OF DEMAND AND FINAL ASSESSMENT NOTICE (FLD/FAN) WOULD CAUSE THE DEFICIENCY TAX ASSESSMENT AGAINST THE TAXPAYER TO BE VOID. *Commissioner of Internal Revenue v. Ale Mart Corp., CTA EB Case No. 1983 (CTA Case No. 8998) dated February 18, 2021.*

THE PREMATURE ISSUANCE OF THE FAN, PRIOR TO THE LAPSE OF THE 15-DAY PERIOD GIVEN TO FILE REPLY TO THE PRELIMINARY ASSESSMENT NOTICE (PAN), VIOLATES THE TAXPAYER'S RIGHT TO DUE PROCESS. *Chevron Services Phils., Inc. v. Commissioner of Internal Revenue, CTA Case No. 9571 dated February 17, 2021.*

IN ORDER TO COMPLY WITH THE DUE PROCESS REQUIREMENTS IN THE ASSESSMENT AND COLLECTION OF TAXES, PROPER SERVICE AND ACTUAL RECEIPT MUST CONCUR. The taxpayer must inform the BIR of any change in address, otherwise, any communication previously sent to the former legal residence shall be considered valid and binding. Service of BIR notices to persons who are unidentified or unauthorized

representatives of the taxpayer shall cause the assessments to be void for lack of due process even if the taxpayer was able to protest the assessment due to the goodwill of other persons who informed the taxpayer. *Commissioner of Internal Revenue v. Vitalo Packaging Int'l, Inc., CTA EB No. 2148 (CTA Case No. 9231) dated February 03, 2021.*

IF THE BIR DECIDES TO ENFORCE THE COLLECTION OF UNPAID TAX THROUGH JUDICIAL ACTION, PARTICULARLY THROUGH THE FILING OF A CRIMINAL CHARGE BEFORE THE DEPARTMENT OF JUSTICE, AN ASSESSMENT IS NOT NECESSARY. The NIRC provides two types of remedies to enforce collection of unpaid taxes: (a) summary administrative remedies, such as the distraint and/or levy of taxpayer's property; and/or (b) judicial remedies, such as the filing of a criminal or civil action against the erring taxpayer. Under the first remedy, the BIR may summarily enforce collection only when it has accorded the taxpayer administrative due process, which includes the issuance of a valid assessment. Meanwhile, the second remedy, the government's power to enforce the collection through judicial action is not conditioned upon a previous valid assessment. *People of the Phil. v. Garcia, CTA Crim Case No. O-572, O-573, O-610 dated February 15, 2021.*

A TAXPAYER ACQUITTED IN A CRIMINAL PROCEEDING FOR TAX EVASION IS NOT NECESSARILY EXONTERATED FROM CIVIL LIABILITY TO PAY TAXES. The civil liability to pay taxes is not deemed instituted in the criminal case since it is an obligation arising from law and not from a delict. *People of the Phil. v. Phil. Corinthian Liner Corp., CTA Crim Case No. O-172, O-173, O-174, O-175, O-176, O-177 & O-178 dated February 15, 2021.* *Note: Sec. 7(b)(1) of R.A. 1125 (An Act Creating the Court of Tax Appeals) provides that “[a]ny provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.”*

BIR ISSUANCES

SIMPLIFIED GUIDELINES AND PROCEDURES ON THE USE OF COMPUTERIZED ACCOUNTING SYSTEM (CAS), COMPUTERIZED BOOKS OF ACCOUNTS (CBA), AND/OR ITS COMPONENTS, INCLUDING ELECTRONIC STORAGE SYSTEM (ESS), MIDDLEWARE AND OTHER SIMILAR SYSTEMS. The BIR issued these guidelines to address the issues and concerns particularly on the processing of the applications for Permit To Use (PTU) of large taxpayers and non-large taxpayers intending to use CAS, CBA, and their components as well as taxpayers engaged in business who shall use an Electronic Storage System (ESS), middleware and other similar systems. Rather than applying for a PTU, the taxpayers now only need to inform the Revenue District Office (RDO) / Large Taxpayers Office (LT Office) where it is registered of its intention to use a “System” by submitting the requirements stated on the Checklist of Documentary Requirements (Annex A) manually or via electronic mail. If a branch office is registering ahead of its head office or is adopting a different system, the registration shall be filed at the RDO where the branch office is registered. Affiliated companies, sister companies, franchisees, closely held corporations, other similar companies shall register

with the RDO/LT Office where the aforesaid companies are registered. Within three (3) working days from the submission of the documents, the RDO/LT office shall issue an Acknowledgment Certificate which shall be valid unless revoked by the BIR upon discovery of the taxpayer's non-compliance with related issuances. Tax Service Providers (TSPs) or third-party software providers and the taxpayers availing their services must execute a Joint Sworn Statement with attached Summary of System Description, Commercial Invoices/Receipts/Document Description, Forms/Records and Reports Specification. The registration of the Cash Register Machines (CRMs)/ Point-of-Sale (POS) System and Other Sales Receipting System/Software shall be separate from the registration of "System" and shall follow the provisions on the accreditation and subsequent registration of the CRMs/POS Machines and Other Sales Receipting System/Software based on existing revenue issuances. However, salient details of the CRMs/POS Machines and Other Sales Receipting System/Software that will be linked to any "System" must be declared by the taxpayer in the Annexes of the Sworn Statement at the time of the registration of such "System". If the principal and/or supplementary receipts/invoices are not generated by the registered "System" or if the taxpayer intends to use manual BIR-approved receipts or invoices despite having system-generated versions, the taxpayer should apply for Authority to Print (ATP) such receipts/invoices based on existing revenue issuances. *Revenue Memorandum Order No. 09-2021 dated February 19, 2021.*

CLARIFICATION ON THE FILING OF 2020 ANNUAL INFORMATION RETURN ON INCOME TAXES WITHHELD ON COMPENSATION AND FINAL WITHHOLDING TAXES (BIR FORM NOS. 1604-CF, 1604-E). Mandated-users of Electronic Filing and Payment System (eFPS) must use the previous version of the consolidated form through the eFPS facility while mandated-users of the offline eBIRForms and manual filers must use the new form through the offline eBIRForms. The copies of BIR Form 2316 without the signature of the concerned employee shall be accepted by the BIR, provided that the certificates are duly signed by the authorized representative of the taxpayer-employer. *Revenue Memorandum Circular No. 18-202 dated February 02, 2021.*

WITHHOLDING AGENTS OR DULY AUTHORIZED REPRESENTATIVES OF WITHHOLDING AGENTS WHO ISSUE BIR FORMS 2304, 2306, 2307 AND 2316 MAY USE AN E-SIGNATURE, ASIDE FROM THE MANUAL SIGNATURE. The e-signature shall give rise to the following presumptions: (a) the e-Signature is that of the person to whom it correlates; (2) the e-Signature was affixed by that person with the intention of authenticating or approving the electronic document to which it is related or to indicate such person's consent to the transaction embodied therein; and (3) the methods or processes utilized to affix or verify the e-Signature operated without error or fault. *Revenue Memorandum Circular No. 29-2021 dated February 26, 2021.*

TAXPAYERS MAY ELECTRONICALLY FILE THE ONLINE APPLICATION FOR TAX CLEARANCE FOR BIDDING PURPOSES AND TAX COMPLIANCE VERIFICATION CERTIFICATE (ETCBP/TCVC) THROUGH THE FOLLOWING EMAIL ADDRESSES: etcvc@bir.gov.ph, etcbp@bir.gov.ph. *Revenue Memorandum Circular No. 24-2021 dated February 24, 2021.*

POLICIES AND PROCEDURES IN THE ISSUANCE OF THE NOTICE OF DENIAL ON APPLICATIONS FOR COMPROMISE SETTLEMENT CASES BY THE CONCERNED REGIONAL OFFICES AS WELL AS THE ISSUANCE OF THE AUTHORITY TO CANCEL ASSESSMENT AND CERTIFICATE OF APPROVAL FOR APPLICATIONS DULY APPROVED BY THE NATIONAL EVALUATION BOARD. To lessen the time that the docket will be travelling to and from the BIR head office, all notices of denial of applications for compromise settlement resulting from deliberations conducted by the Regional Evaluation Board (REB) shall be signed by the Regional Director if the basic deficiency tax is P500,000 and below, and by the Commissioner of Internal Revenue if more than the threshold amount. Certificates of Availment (CA) on applications for compromise settlement duly approved by the National Evaluation Board (NEB), including cases subject of Judicial Compromise Agreement, shall be signed by the Assistant Commissioner of the Collection Service or by the Assistant Commissioner of the Large Taxpayers Service if involving large taxpayers' cases. The signed CA together with the entire docket of the case shall then be transmitted back to the office which has jurisdiction thereto. Authority to Cancel Assessments on applications for compromise settlement duly approved by the NEB shall be signed by the concerned Regional Director or the Assistant Commissioner where the case originated. *Revenue Memorandum Order No. 8-2021 dated February 17, 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 any of the following at the telephone number (632) 8633-9418, or at the indicated e-mail addresses:

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Documentary Requirements to Register a “System” under RMO No. 9-2021

1. Sworn Statement by the taxpayer (see Annex “C” of RMO No. RMO No. 09-2021) or Joint Sworn Statement (if system is outsourced or used and maintained by TSPs or third-party software provider (see Annex “E” of RMO No. 09-2021), whichever is applicable, with attached duly accomplished Summary of System Description, Commercial Invoice /Receipts/ Document Description, Forms/Records and Reports Specification, Annex “C-1” of RMO No.9-2021;
2. Sample print-out of Principal and Supplementary Receipts/invoices compliant with RR No. 16-2018 and other accountable forms that will be used, if applicable;
3. Sample print-out of Books of Accounts (BOA) compliant with RR No.0 9-2009 and other reports that can be generated from the system and will be used, if applicable;
4. Printed copy of Audit Trail (activity log generated by the system);
5. Duly accomplished and signed Standard Functional and Technical Requirements (see Annex “B” of RMO 9-2021);
6. If the Software License of the software to be used is under the name of the parent or affiliate: Certification from the purchasing company allowing the taxpayer-applicant to use the same system;