

TAX ALERT

June 2020

COURT OF TAX APPEALS DECISIONS

AN ASSESSMENT IS A WRITTEN NOTICE AND DEMAND MADE BY THE BUREAU OF INTERNAL REVENUE (BIR) ON THE TAXPAYER FOR THE SETTLEMENT OF A TAX LIABILITY THAT IS DUE AND DEFINITELY SET AND FIXED THEREIN. THE AMOUNT DUE IS INDEFINITE IF THE SAME IS SUBJECT TO FURTHER ADJUSTMENT AFTER PAYMENT. MOREOVER, A REQUEST TO PAY IS NOT A DEMAND TO PAY. *Panay Electric Company, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9523 dated June 1, 2020; Clark Water Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 9519 dated June 17, 2020.*

THE ABSENCE OF DUE DATE IN THE FINAL ASSESSMENT NOTICE NEGATES DEMAND FOR PAYMENT RENDERING THE SUBJECT TAX ASSESSMENT VOID. *Apo International Marketing Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 9071 dated June 2, 2020.*

TO PROVE THE FACT OF MAILING, IT IS ESSENTIAL TO PRESENT THE REGISTRY RECEIPT AND THE REGISTRY RETURN CARD ISSUED BY THE POSTMASTER OF THE BUREAU OF POSTS BEARING THE SIGNATURE OF THE RECIPIENT TAXPAYER OR ITS DULY AUTHORIZED REPRESENTATIVE SIGNIFYING RECEIPT OF THE SUBJECT NOTICE OF HEARING. *First Far East Development Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 9678 dated June 4, 2020.*

THE CIR MUST PROVE NOT JUST THE FACT OF MAILING OF A PRELIMINARY ASSESSMENT NOTICE (PAN) BUT ALSO THE FACT OF RECEIPT OF THE PAN BY THE TAXPAYER. Presentation of a registry receipt number and a memorandum of transmittal serves to prove the fact of mailing but not the fact of receipt of the PAN. Any assessment that cannot be proved to have been received by the taxpayer cannot become a final assessment as such would be a violation of due process requirements under section 228 of the NIRC. *Lotte Confectionery Pilipinas Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 8923 dated June 11, 2020.*

PROOF OF SERVICE OF AN ASSESSMENT VIA REGISTERED MAIL CAN BE DONE BY PRESENTING AN AFFIDAVIT OF THE ACTUAL SERVER OF THE LETTER ATTESTING TO THE FACT THAT THE ASSESSMENT WAS ACTUALLY RECEIVED BY THE TAXPAYER. *Ruben U. Yu v. Commissioner of Internal Revenue C.T.A. Case No. 9595 dated June 15, 2020.*

A CRIMINAL CASE FOR VIOLATION OF THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) MUST BE INSTITUTED WITHIN FIVE (5) YEARS FROM THE DAY OF THE COMMISSION OF THE VIOLATION OF THE LAW. THE OFFENSE IS COMMITTED NOT UPON FILING OF THE INCOME TAX RETURN BUT ONLY AFTER THE FINALITY OF THE ASSESSMENT COUPLED WITH TAXPAYER'S WILLFUL REFUSAL TO PAY THE TAXES WITHIN THE ALLOTTED PERIOD. *People of the Philippines v. GH Resources and Training Services, Inc., Grace H. Cartago, C.T.A. Crim. Case No. O-818 dated June 1, 2020; People of the Philippines v. Asian Fuels Inc., Alfred S. Araneta, and Anthony James S. Araneta, C.T.A. Crim. Case No. O-825 dated June 3, 2020.*

THE BASIC RULE IS THAT IF ANY BIR RULING OR ISSUANCE PROMULGATED BY THE COMMISSIONER OF INTERNAL REVENUE (CIR) IS SUBSEQUENTLY REVOKED OR NULLIFIED BY THE CIR HIMSELF OR BY THE COURT, THE REVOCATION/NULIFICATION CANNOT BE APPLIED RETROACTIVELY TO THE PREJUDICE OF THE TAXPAYER. THE EXCEPTIONS TO THIS RULE ARE: (1) WHERE THE TAXPAYER DELIBERATELY MISSTATES OR OMITS MATERIAL FACTS FROM HIS RETURN OR IN ANY DOCUMENT REQUIRED OF HIM BY THE BIR; (2) WHERE THE FACTS SUBSEQUENTLY GATHERED BY THE BIR ARE MATERIALLY DIFFERENT FROM THE FACTS ON WHICH THE RULING IS BASED; OR (3) WHERE THE TAXPAYER ACTED IN BAD FAITH. *Meridien East Realty & Development Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 9130 dated June 3, 2020.*

THE ISSUANCE OF A LETTER OF AUTHORITY (LOA) HAS NO PRESCRIPTIVE PERIOD AND IS NOT SUBJECT TO THE PERIODS OF LIMITATION OR PRESCRIPTIVE PERIODS ENUNCIATED UNDER SECTIONS 203 AND 222 OF THE NIRC. *Hemisphere-Leo Burnett, Inc. v. Commissioner of Internal Revenue, Caesar R. Dulay, OIC-Assistant Commissioner of Large taxpayer Service, Teresita M. Angeles, and the Bureau of Internal Revenue, C.T.A. Case No. 9749 dated June 3, 2020.*

THE DEFECT IN THE REVENUE OFFICER'S AUTHORITY TO CONDUCT THE ASSESSMENT FOR LACK OF LOA IS NOT CURED BY THE ISSUANCE OF A REVALIDATION NOTICE. *People of the Philippines v. Vivetech Corporation/Edwin B. Lumague and Roedel R. Lumague, C.T.A. Crim. Case No. O-666 dated June 3, 2020.*

REASSIGNMENT OF AUTHORITY TO ASSESS A TAXPAYER MUST BE THROUGH A NEW LOA ISSUED BY THE REGIONAL DIRECTOR. While in this case, the first LOA stated that "in case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned Revenue Officer (RO) and/or Group Supervisor (GS)", this statement doesn't give authority to the head of investigating office to reassign to another RO the authority to assess a taxpayer. It merely gives the responsibility to notify the taxpayer and the ROs concerned through a memorandum, should there be a reassignment. Section 13 of the NIRC vests the power to assign, and consequently, reassign, with the Revenue Regional Director (RD) of the BIR upon recommendation of the CIR. A subordinate

officer cannot override the RD's grant of authority to assess and make reassignments of such orders. *Misamis Oriental Rural Electric Service Cooperative I (MORESCI-1), Inc. v. Commissioner of Internal Revenue, CTA Case No. 9700 dated June 4, 2020.*

A MEMORANDUM OF AUTHORITY, LIKE A REFERRAL MEMORANDUM, DOES NOT OPERATE TO GIVE AUTHORITY TO A RO TO CONDUCT TAX ASSESSMENTS. ONLY AN LOA VALIDLY ISSUED BY THE CIR OR RD MAY GIVE NEW SET OF EXAMINERS AUTHORITY TO CONDUCT AN EXAMINATION OF A TAXPAYER'S RECORDS. *Watsons Personal Care Store (Philippines), Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9303 dated June 11, 2020.*

THE AUTHORITY GIVEN BY THE REGIONAL DIRECTOR TO THOSE WHO WERE ORIGINALLY NAMED IN THE LOA, MAY BE REVOKED, TRANSFERRED AND REASSIGNED TO OTHER RO VIA A MEMORANDUM REFERRAL FOR CONTINUANCE OF AUDIT. A Memorandum Referral may be deemed sufficient although the document may not be entitled "Letter of Authority" if it contains all the elements necessary to establish a contract of agency between the CIR and the new RO and if it is signed by the RD, who has authority to assign and revoke authorities to examine and assess. *NYK Fil-Japan Shipping Corp. v. Commissioner of Internal Revenue, C.T.A. Case No. 9120 dated June 25, 2020.*

REVALIDATION OF AN LOA IS REQUIRED FOR EXPIRED LOAS. Revalidation is done by issuing a new LOA. Any assessments issued with an expired LOA is a nullity. *Tektite Insurance Brokers, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9184 dated June 25, 2020.*

A LETTER NOTICE (LN) ASKING A TAXPAYER TO RECONCILE THE FINDINGS OF THE BIR OF UNDER-DECLARATION BETWEEN A TAXPAYER'S TAX RETURNS AND INFORMATION PROVIDED BY THIRD PARTY SOURCES IS NOT THE SAME AS AN LOA. Any examination or assessment issued pursuant to the LN is invalid. *Indra Verhomal Menghrajani v. Commissioner of Internal Revenue, C.T.A. Case No. 9269 dated June 26, 2020.*

AN ENTITY REGISTERED WITH THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA) IS EXEMPT FROM VALUE-ADDED TAX (VAT) ON IMPORTATIONS NOT BECAUSE OF THE 5% PREFERENTIAL INCOME TAX RATE EXTENDED TO PEZA-REGISTERED ENTITITES BUT BECAUSE IT IS, BY LEGAL FICTION, LOCATED IN A FOREIGN TERRITORY. *Commissioner of Internal Revenue v. Philippine International Air Terminals Co., Inc., C.T.A. EB No. 1950 (C.T.A. Case No. 8946) dated June 3, 2020.*

SPECIAL ECONOMIC ZONES (ECOZONE) ARE ACCORDED THE STATUS OF SEPARATE CUSTOMS TERRITORY, THUS, WHILE AN ECOZONE IS A GEOGRAPHICAL TERRITORY OF THE PHILIPPINES, IT IS NEVERTHELESS REGARDED AS FOREIGN SOIL, BY LEGAL FICTION. AS SUCH, THE CROSS BORDER DOCTRINE STATING THAT "NO VAT SHALL BE IMPOSED TO FORM PART OF THE COST OF GOODS DESTINED FOR CONSUMPTION OUTSIDE OF THE TERRITORIAL BORDER OF THE TAXING AUTHORITY" SHALL ALSO APPLY TO

ECOZONES. *Commissioner of Internal Revenue v. Philippine International Air Terminals Co., Inc., C.T.A. EB No. 1918 dated June 3, 2020.*

FAILURE TO SUBMIT A BANK-CERTIFIED CREDIT MEMO OR CERTIFICATE OF INWARD REMITTANCE IS FATAL TO THE CLAIM OF INPUT VAT CREDIT. TO PROVE THAT FOREIGN CURRENCY PAYMENTS WERE ACTUALLY MADE, IT IS CRUCIAL THAT THE PROOF OF INWARD REMITTANCE OF THE PAYMENTS IN FOREIGN CURRENCY CAN BE TRACED TO THE EXPORT SALES TO WHICH IT RELATES. *Orica Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9647 dated June 4, 2020.*

IT IS NOT THE CONTINUITY OF COMMERCIAL DEALINGS OR WHETHER THE FOREIGN ENTITY/SERVICE RECIPIENT IS A NON-RESIDENT FOREIGN CORPORATION, AS DEFINED UNDER THE PROVISIONS OF THE NIRC, THAT DETERMINES WHETHER THE SERVICES RENDERED BY THE PHILIPPINE TAXPAYER IN FAVOR OF SUCH FOREIGN ENTITY QUALIFY AS A ZERO-RATED TRANSACTION, BUT WHETHER SUCH SERVICES ARE RENDERED IN FAVOR OF A FOREIGN ENTITY CONDUCTING BUSINESS OUTSIDE THE PHILIPPINES. *Commissioner of Internal Revenue v. Citco International Support Services Limited-Philippine ROHQ, C.T.A. EB No. 2015 dated June 5, 2020.*

THE IRREVOCABILITY OF THE OPTION TO CARRY OVER OVERPAYMENTS OF INCOME TAX UNDER SECTION 76 OF THE NIRC, AS AMENDED, DOES NOT APPLY TO CASES OF REFUND OF EXCESS AND UNUTILIZED INPUT VAT ATTRIBUTABLE TO ZERO-RATED SALES. *Commissioner of Internal Revenue v. Colt Commercial, Inc., C.T.A. EB No. 2006; Colt Commercial, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2012 dated June 29, 2020.*

NOT ONLY THOSE PURCHASES OF GOODS THAT FORM PART OF THE FINISHED PRODUCT OF THE TAXPAYER CAN BE SUBJECT OF AN INPUT VAT REFUND. Section 110 of the NIRC did not limit input taxes only to those purchases that form part of the finished product of the taxpayer; it includes input tax on lease or use of property from a VAT-registered person. As such, when section 112(a) refers to creditable input tax due or paid "attributable" to such sales, it doesn't just mean input tax that is directly and exclusively attributable to such sales. Rather, it also includes those that are connected to the zero-rated sale, even if not entirely so, such as when the taxpayer is engaged in both exempt and zero-rated sales. *Visayas Geothermal Power Company v. Commissioner of Internal Revenue, C.T.A. Case No. 7889 dated June 10, 2020*

THE CTA'S JURISDICTION IS NOT LIMITED TO CASES WHICH INVOLVE DECISIONS OF THE COMMISSIONER ON MATTERS INVOLVING ASSESSMENTS OR REFUNDS BUT ALSO COVERS OTHER CASES ARISING FROM THE NIRC. *WPP Marketing Communications, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9704 dated June 5, 2020.*

THE DETERMINATION OF THE VALIDITY OF ADMINISTRATIVE ISSUANCES ISSUED BY THE BIR FALLS WITHIN THE EXCLUSIVE APPELLATE JURISDICTION OF THE CTA, NOT THE REGIONAL TRIAL COURTS (RTC). RULINGS OF THE RTC REGARDING THE VALIDITY OR INVALIDITY OF ANY BIR ISSUANCE ARE NOT BINDING ON THE CTA. *Erwin Casaclang v. Commissioner of Internal Revenue, C.T.A. Case No. 9386 dated June 8, 2020.*

THE DETERMINATION OF WHETHER A PARTICULAR PROTEST IS A REQUEST FOR RECONSIDERATION OR REQUEST FOR REINVESTIGATION IS CRUCIAL IN DECIDING WHETHER THE COURT OF TAX APPEALS HAS JURISDICTION TO TAKE COGNIZANCE OF A PETITION FOR REVIEW APPEALING AN INACTION OF THE CIR SINCE THE COMMENCEMENT OF CERTAIN PERIODS VARIES BETWEEN SAID REQUESTS. *Getz Pharma (Phils.) Inc. v. Hon. Commissioner Kim S. Jacinto-Henares, Hon. Alfredo V. Misajon, Regional Director, Revenue Region No. 7, and Hon. Josephine S. Virtucio, Regional District Officer, Revenue District No. 43-A East Pasig, CTA Case No. 9245, dated June 9, 2020.*

THE CTA HAS JURISDICTION TO DECIDE ON THE EXCESSIVENESS OF A COMPROMISE PENALTY. MOREOVER, A COMPROMISE PENALTY IN EXCESS OF THAT PRESCRIBED IN THE SCHEDULE OF PENALTIES, EXCEPT WHEN DULY APPROVED BY THE CIR OR THE RD IN PROPER CASES, IS VOID. *Dunlevy Food Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 9361 dated June 16, 2020.*

TESTIMONIAL EVIDENCE TO SUPPORT THE ALLEGATION THAT A TAXPAYER IS ALREADY APPLYING FOR A TAX CLEARANCE IS INSUFFICIENT FOR PURPOSES OF CLAIMS FOR REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE OF UNUSED INPUT VAT ARISING FROM THE CANCELLATION OF VAT REGISTRATION. *Delteq Systems (Philippines) LTD. v. Commissioner of Internal Revenue, C.T.A. Case No. 9445 dated June 24, 2020.*

THE AUTHORITY OF A REPRESENTATIVE TO SIGN A WAIVER OF THE PRESCRIPTIVE PERIOD FOR ASSESSMENTS MUST BE IN WRITING AND DULY NOTARIZED EVEN IF THE SIGNATORY IS THE PRESIDENT OF THE TAXPAYER CORPORATION. *Sabre Travel Network (Philippines) Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9532 dated June 26, 2020.*

THE NIRC DOES NOT REQUIRE SUBMISSION OF INDIVIDUAL PEZA CERTIFICATIONS OF PEZA-REGISTERED ENTITIES IN SUPPORT OF VAT ZERO-RATING. The law simply mandates convincing proof showing that the entities to whom the refund-claimant sold its goods are PEZA-registered entities. The Certification issued by PEZA that the entities listed therein are PEZA-registered corporations is sufficient to justify the conclusion that sales are subject to 0% VAT on the strength of Section 106(A)(2)(a)(5) of the NIRC, as amended, as implemented by Section 4.106-5 (c) of RR No. 16-2005. *Commissioner of Internal Revenue v. Colt Commercial, Inc., C.T.A. EB No. 2006; Colt Commercial, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2012 dated June 29, 2020.*

BIR ISSUANCES

BIR EXTENDS THE PERIOD TO AVAIL TAX AMNESTY ON DELINQUENCIES UNTIL DECEMBER 31, 2020. *Revenue Regulations No. 15-2020 dated June 19, 2020.*

DEADLINE TO FILE TAX AMNESTY UNDER THE TAX AMNESTY ACT IS EXTENDED FROM JUNE 22, 2020 TO DECEMBER 31, 2020. *Revenue Memorandum Circular No. 61-2020 dated June 15, 2020.*

DUE DATES FOR PROCESSING OF VAT REFUNDS/CLAIMS HAS BEEN SUSPENDED FOR TAXABLE QUARTERS AFFECTED BY THE DECLARATION OF THE NATIONAL STATE OF EMERGENCY. To ease the burden for both the taxpayers as well as the BIR, who will be met with numerous requests, the following due dates for the taxable quarters are as follows:

Calendar Quarter ending March 31, 2018	July 15, 2020
Fiscal Quarter Ending April 30, 2018	July 31, 2020
Fiscal Quarter Ending May 31, 2018	August 15, 2020
Calendar Quarter ending June 30, 2018	August 31, 2020

For areas where the enhanced community quarantine (ECQ) or Modified ECQ is still in force, processing of VAT refunds will remain suspended. The deadline for the filing for such areas will be 30 days upon lifting of the ECQ/MECQ. *Revenue Regulations No. 16-2020, June 19, 2020.*

BIR STREAMLINED BUSINESS REGISTRATION REQUIREMENTS AND ISSUED A REVISED CHECKLIST OF DOCUMENTARY REQUIREMENTS. The requirements for registering a new business have been streamlined by removing the Mayor's Permit as one of the mandatory requirements. *Revenue Memorandum Circular No. 57-2020 dated June 9, 2020.*

NOTICE TO PERSONS DOING BUSINESS THROUGH ELECTRONIC PLATFORMS TO ENSURE THAT THEY ARE REGISTERED WITH THE BIR, AS PER SECTION 236 OF THE TAX CODE, AND TO PAY THEIR TAXES BY JULY 31, 2020 TO AVOID PENALTIES. Payment gateways, delivery channels, internet service providers, and other facilitators are likewise reminded. Unregistered businesses that register no later than July 31, 2020 shall not be penalized for late registration. Registrants are encouraged to declare and pay the taxes on past transactions. There will be no penalty for those who comply with the guidelines. New registrants are reminded to issue ORs/sales invoices, keep registered books of account and other records, withhold taxes where applicable, file tax returns, and pay their correct taxes on time. Guidelines for registration is attached to the circular. *Revenue Memorandum Circular No. 60-2020 dated June 10, 2020.*

PUBLICATION OF THE REVISED GUIDELINES & REQUIREMENTS FOR THE APPLICATION OF BIR CLEARANCE BY POGO LICENSEES IN CONNECTION WITH

THE RESUMPTION OF THEIR OPERATIONS. *Revenue Memorandum Circular No. 64-2020 dated June 24, 2020.*

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 us at any of the indicated e-mail addresses below:

Carlos G. Baniqued	<u>cgbaniqued@baniquedlaw.com</u>
Terence Conrad H. Bello	<u>thbello@baniquedlaw.com</u>
Emma Malou L. Gan	<u>eulim@baniquedlaw.com</u>
Agnes Bianca Mendoza	<u>almendoza@baniquedlaw.com</u>
Casiano V. Flores	<u>cvflores@baniquedlaw.com</u>
Mark Roland C. Domingo	<u>mcdomingo@baniquedlaw.com</u>
John Marti C. Duya	<u>jcduya@baniquedlaw.com</u>
Ana Margaret T. Dahilig	<u>atdahilig@baniquedlaw.com</u>
Carla S. Cucueco	<u>cscucueco@baniquedlaw.com</u>
Margaret P. Gan	<u>mpgan@baniquedlaw.com</u>
Patricia D. Ibañez	<u>pdibanez@baniquedlaw.com</u>

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