

TAX ALERT

July 2020

COURT OF TAX APPEALS DECISIONS

A GENERATION COMPANY CAN ENJOY THE PRIVILEGE OF VAT ZERO-RATING ONLY UPON ISSUANCE OF A CERTIFICATE OF COMPLIANCE (“COC”). The sale of power from renewable sources of energy by a generation company is subject to zero percent VAT provided the generation company is duly authorized by the Energy Regulatory Commission to operate facilities used in the generation of electricity in accordance with the Electric Power Industry Reform Act. The privilege of VAT zero-rating does not retroact to cover the period prior to the issuance of the COC. *Trans-Asia Renewable Energy Corp. v. Commissioner of Internal Revenue, CTA Case No. 9516, July 1, 2020.*

A TAX INVESTIGATION REMAINS VALID PROVIDED THAT ONE OF THE EXAMINERS NAMED IN THE LETTER OF AUTHORITY (“LOA”) REVIEWS THE FINDINGS. A memorandum submitted by a team not specifically named in the LOA but was reviewed by one of the individuals named in the LOA in some other capacity, such as an Assistant Division Chief of RLTD I, does not make the investigation invalid. *Green Valley Marketing Corp. v. Commissioner of Internal Revenue, CTA EB No. 1801, July 2, 2020.*

AN AUDIT INVESTIGATION REMAINS VALID EVEN IF THE LOA IS NOT REVALIDATED. Failure on the part of the Revenue Officer (“RO”) to request for revalidation or the expiration of the “revalidation” period does not nullify the LOA nor will it affect or modify the rules on reglementary period within which an assessment may be validly issued. However, this shall be considered as a ground for the imposition of disciplinary action and demerit in the performance rating of the concerned RO, including the reassignment of the case to another RO. *Commissioner of Internal Revenue v. GS MTE Grains Corp., CTA EB No. 1958, July 6, 2020.*

A MEMORANDUM OF ASSIGNMENT (“MOA”) CANNOT BE TREATED AS A LOA. The requirement that an audit investigation be covered by a valid LOA is not merely an administrative requirement but a statutory requirement which is vital to the validity of an audit of a taxpayer, and necessarily, to the validity of the Final Assessment Notice (“FAN”), that may be issued after the audit. A MOA cannot be treated as a LOA as precisely, any reassignment of cases requires the issuance of a new LOA. *JED Marketing Corp. v. Commissioner of Internal Revenue, CTA Case No. 9709, July 9, 2020.*

COMPROMISE PENALTIES ARE WRONGFULLY COLLECTED IF THE REQUIREMENTS OF REVENUE MEMORANDUM ORDER (“RMO”) NO. 19-2007 ARE NOT OBSERVED. RMO No. 19-2007 which mandate that all amounts of compromise penalties shall be itemized in separate assessment notices/ demand letters. For failure of BIR to strictly observe the requirements of RMO No. 19-2007, the amount of compromise

penalties paid by petitioner are deemed collected without authority and are thus, refundable. *Henryville, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9365, July 10, 2020.*

THE COURT OF TAX APPEALS (“CTA”) HAS NO JURISDICTION OVER A PETITION WHERE THE PETITIONER FAILED TO FILE A PROTEST TO THE FAN. The FAN became final, executory, and demandable and thus did not become a “disputed assessment” within the contemplation of the CTA’s exclusive appellate jurisdiction. *Imaginet Int’l, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9777, July 13, 2020.*

THE CTA HAS NO JURISDICTION OVER IMPOSITIONS THAT ARE REGULATORY IN NATURE. Mayor’s permit, business license, and miscellaneous fees are primarily regulatory in nature, and not revenue-raising. Such exactions are within the ambit of police power and not of taxation. The CTA has exclusive appellate jurisdiction to review by appeal the decisions, orders, or resolutions of the Regional Trial Court (“RTC”) in the exercise of its original or appellate jurisdiction. Considering that the impositions involved are regulatory fees, the CTA has no jurisdiction to rule upon the same. *NLEX Corp. v. Municipality of Guiguinto Bulacan, CTA AC No. 217, July 13, 2020.*

THE PHILIPPINES AS SIGNATORY TO THE ASIAN DEVELOPMENT BANK (“ADB”) CHARTER AGREEMENT AND ADB HEADQUARTERS AGREEMENT RETAINED ITS RIGHT TO TAX THE SALARIES AND EMOLUMENTS OF FILIPINO ADB EMPLOYEES. The Philippines entered into two international agreements: the ADB Charter Agreement and the ADB Headquarters Agreement. Both were ratified by the Government of the Republic of the Philippines and the Senate of the Philippines with the clear and categorical reservation of its power to tax its citizens and nationals. The accession, therefore, to said international agreements which grant tax exemption to ADB personnel is conditional and not absolute. *Canzon v. Dulay, CTA EB No. 2040, July 16, 2020.*

DISTRIBUTION OF PROPERTY DIVIDENDS IS NOT SUBJECT TO DONOR’S TAX. Distribution of property dividends is a realization of income on the part of the taxpayer’s stockholders, by virtue of their capital investment in the corporation. Since dividends are distributions from unrestricted earnings arising from the capital invested in the corporation, they cannot be considered donations made out of the liberality of the corporation. *Commissioner of Internal Revenue v. Trans-Asia Oil and Energy Dev’t Corp., CTA EB No. 2009, July 21, 2020.*

AN ASSESSMENT IS INVALID IF THE AMOUNT OF INTEREST IS INDEFINITE. The Formal Letter of Demand and Final Decision on Disputed Assessment are invalid if they fail to provide the exact amount of tax liability, such as if interest will be adjusted depending on the time of payment. *Robinsons Land Corp. v. Commissioner of Internal Revenue, CTA Case No. 9163, July 9, 2020* and *Zenith Foods Corp. v. Commissioner of Internal Revenue, CTA Case No. 9165, July 29, 2020.*

BUREAU OF INTERNAL REVENUE ISSUANCES

REGULATIONS TO IMPLEMENT SECTION 1 OF R.A. NO. 11467, FURTHER AMENDING SECTION 109(AA) OF THE NATIONAL INTERNAL REVENUE CODE

OF 1997, AS AMENDED BY RA. NO. 10963 (TRAIN LAW), PROVIDING FOR VAT EXEMPTION ON THE SALE AND IMPORTATION OF DRUGS AND MEDICINES PRESCRIBED FOR DIABETES, HIGH CHOLESTEROL, HYPERTENSION, CANCER, MENTAL ILLNESS, TUBERCULOSES, AND KIDNEY DISEASE. *Revenue Regulations No. 18-2020, July 8, 2020.*

PRESCRIBES THE POLICIES, GUIDELINES, AND PROCEDURES FOR THE INSPECTION OR SUPERVISION OF THE DESTRUCTION/DISPOSAL AND DETERMINATION OF DEDUCTIBLE EXPENSE PERTAINING TO INVENTORY OF GOODS/ASSETS WHICH HAVE BEEN DECLARED AS WASTE OR OBSOLETE. *Revenue Memorandum Order No. 21-2020, July 10, 2020.*

AMENDS AND/OR CLARIFIES CERTAIN PROVISIONS OF REVENUE MEMORANDUM CIRCULAR (“RMC”) NO. 34-2020 RELATIVE TO THE SUSPENSION OF THE RUNNING OF THE STATUTE OF LIMITATIONS. The salient provisions of RMC No. 74-2020 are as follows: “The cited provisions and stated circumstances therefore warrant the suspension of the running of the Statute of Limitations under Section 203 and 222 of the Tax Code, as amended, for a period starting on March 16, 2020 until the lifting of the extreme community quarantine (“ECQ”) and for sixty (60) days thereafter. The suspension of the running of the Statute of Limitations shall likewise apply with respect to the issuance and service of assessment notices, warrants and enforcement and/or collection of deficiency taxes. This Circular shall apply nationwide on areas placed under ECQ.” *Revenue Memorandum Circular No. 74-2020, July 22, 2020.*

EXTENDS THE DEADLINE FOR BUSINESS REGISTRATION OF THOSE INTO DIGITAL TRANSACTIONS UNDER REVENUE MEMORANDUM CIRCULAR NO. 60-2020 UNTIL AUGUST 31, 2020. *Revenue Memorandum Circular No. 75-2020, July 29, 2020.*

CLARIFIES CERTAIN ISSUES ON THE FILING OF BIR FORM NO. 1709 (RELATED PARTY TRANSACTION FORM) AND ITS ATTACHMENTS. Filing of the new form is extended until September 30, 2020. *Revenue Memorandum Circular No. 76-2020, July 29, 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 address:

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