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TAX ALERT

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COURT OF TAX APPEALS DECISIONS

A DEFICIENCY ASSESSMENT OF LOCAL BUSINESS TAXES BASED ON SUMMARY OF SHIPMENTS IS VOID. Local business taxes should be based on gross sales or gross receipts. A Notice of Assessment assessing a taxpayer for deficiency local business taxes based on the taxpayer's Summary of Shipment from the Mines and Geosciences Bureau could not be a valid source of obligation to pay deficiency local business taxes. *The Municipal Treasurer of the Municipality of Claver v. Platinum Group Metals Corp. PGMC, CTA AC No. 183, 16 April 2019.*

LACK OF NOTICE OF HEARING IS CURED BY AN OPPORTUNITY TO COMMENT. The general rule is that the three-day notice requirement for motions under Sections 4 and 5 of the Rules of Court is mandatory. It is an integral component of procedural due process. Nevertheless, the three-day notice requirement is not a hard and fast rule. When the adverse party had been afforded the opportunity to be heard and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed realized. *South China Resources, Inc. v. Office of the City Treasurer and/or Makati City, CTA AC No. 196, 16 April 16, 2019.*

THE RULE THAT FAILURE TO RAISE THE DEFENSE OF PRESCRIPTION AT THE ADMINISTRATIVE LEVEL PREVENTS THE TAXPAYER FROM RAISING IT ON APPEAL IS NOT ABSOLUTE. An exception to the rule against raising the defense of prescription for the first time on appeal is when the pleadings or the evidence on record show that the claim is barred by prescription. A waiver of the statute of limitations is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed. *RCBC Savings Bank, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9001, 16 April 2019.*

PENDING THE COMMISSIONER OF INTERNAL REVENUE'S ("CIR") ACTION ON THE TAXPAYER'S APPLICATION FOR ABATEMENT, THE PAYMENT ON SAID APPLICATION WILL BE DEDUCTED FROM THE TAXPAYER'S ENTIRE TAX LIABILITY. While the taxpayer's application for abatement has not yet been acted upon by the CIR, there is sufficient basis to consider said payment in the computation of the taxpayer's remaining tax liability. *Iconic Beverages, Inc. v. Commissioner of Internal Revenue, CTA EB Case Nos. 1563 and 1564, 17 April 2019.*

BIR CONFIRMATION IS NOT REQUIRED BEFORE A DE FACTO MERGER MAY BE CONFERRED WITH TAX-EXEMPT STATUS. Nowhere in Section 40(C)(2)(a) in relation to 40(C)(6)(b) of the NIRC requires a prior BIR ruling validating an exchange transaction as tax-free before the taxpayer may reap the benefits of the foregoing provisions. The statute only requires a corporation to exchange all or substantially all of its property for shares of stock of another corporation under a legitimate business objective. Similarly,

Revenue Regulations No. 18-2001 does not mandate a tax certification or ruling confirming the exchange as being absolved from tax as a prerequisite for the enjoyment of the benefit conferred under Section 40(C)(2) of the NIRC. It merely serves as a guide for the BIR to track the basis of a property and/or shares of stock received through an exchange transaction contemplated by the foregoing provision in the event of subsequent disposition thereof. *Commissioner of Internal Revenue v. Premium Tobacco Redrying & Fluecuring Corp., CTA EB Case No. 1755, 22 April 2019.*

THE JURISDICTION TO ADJUDICATE A TAX DISPUTE BETWEEN THE BIR AND A GOVERNMENT BUREAU, SUCH AS A GOCC, IS LODGED WITH THE SECRETARY OF JUSTICE AND NOT WITH THE CTA. Pursuant to Sections 2 and 3 of P.D. No. 242, jurisdiction over tax controversies solely between the government and a government-owned and controlled corporation lies with the Secretary of Justice. *Commissioner of Internal Revenue v. Power Sector Assets and Liabilities Management Corp., CTA EB Case Nos. 1618 & 1619 (Resolution), 22 April 22, 2019.*

EXPANDED WITHHOLDING TAX ("EWT") AND FRINGE BENEFIT TAX ("FBT") RETURNS SHOULD BE PRESENTED IN EVIDENCE TO ESTABLISH THE DATES OF THEIR FILING. To make a proper ruling on prescription, EWT and FBT returns should be presented in evidence to prove the dates of their filing so that the Court will be able to determine when prescription began to run and when it lapsed. The Court cannot assume that the returns were filed on or before the last day prescribed by law for purposes of determining if prescription has already set in. *Izone Technologies Phil. v. Commissioner of Internal Revenue, CTA Case No. 8696, 29 April 2019.*

THE ARTICLES OF PARTNERSHIP OF THE GENERAL PROFESSIONAL PARTNERSHIPS ("GPP") TO WHOM INCOME PAYMENTS ARE MADE SHOULD BE PRESENTED TO PROVE THAT INCOME PAYMENTS ARE NOT SUBJECT TO INCOME TAX AND, CONSEQUENTLY, TO EWT. Under Section 22 of the NIRC, GPPs are defined as partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business. And this sole purpose of exercising a common profession can be confirmed in the Articles of Partnership. Billing Statements and Official Receipts from the alleged GPPs to whom the income payments were made merely prove the existence of the transactions (i.e., the services rendered to and the payments made). They do not in any way prove that the persons who issued said documents are GPPs as defined in the NIRC to warrant exemption from income tax and EWT. *Izone Technologies Phil. v. Commissioner of Internal Revenue, CTA Case No. 8696, 29 April 2019.*

PRESENTATION OF CERTIFICATE OF COMPLIANCE ("COC") ISSUED BY THE ENERGY REGULATION COMMISSION ("ERC") IS REQUIRED FOR A TAXPAYER TO QUALIFY FOR VAT ZERO-RATING UNDER THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 ("EPIRA"). Under the EPIRA law, all new generation companies and existing generation facilities are required to obtain a COC from the ERC. New generation companies must show that they have complied with the requirements, standards, and guidelines of the ERC before they can operate. As for existing generation facilities, they must submit to the ERC an application for a COC together with the required documents within ninety (90) days from the effectivity of the EPIRA Rules and Regulations. Based on the documents submitted, the ERC will determine whether the

applicant has complied with the standards and requirements for operating a generation company. If the applicant is found compliant, only then will the ERC issue a COC and only then it qualifies for VAT zero-rating under the EPIRA. The burden of proof to establish entitlement to refund is on the claimant taxpayer. Being in the nature of a claim for exemption, refunds are construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the EPIRA Law in order to successfully pursue one's claim. A COC from the ERC is not among the matters which the law mandatorily requires the Court to take judicial notice of without any introduction of evidence. *Hedcor Sibulan, Inc. v. Commissioner of Internal Revenue, CTA EB Case No. 1751 (C.T.A. Case No. 8014), 29 April 2019.*

AN AUDIT INVESTIGATION BASED ON A LETTER NOTICE ("LN") AND NOT A LETTER OF AUTHORITY ("LOA") RESULTS TO AN INVALID ASSESSMENT. Revenue officers must be authorized by a LOA to validly examine the accounting records of a taxpayer. In the absence of such LOA, the tax assessments issued by the BIR are void. *Commissioner of Internal Revenue v. Catering Professionals, Inc., CTA EB Case No. 1818 (C.T.A. Case No. 8852), 29 April 2019.*

"CONTINUOUS HEAVY LOSSES" IS NOT ONE OF THE INSTANCES UNDER THE NIRC THAT JUSTIFIES THE CIR'S EXERCISE OF POWER TO ABATE A TAX LIABILITY. Section 204(B) of the NIRC of 1997 empowers the CIR to abate or cancel a tax liability but only in the following instances: (1) the tax or any portion thereof appears to be unjustly or excessively assessed; or (2) the administration and collection of costs involved do not justify the collection of the amount due. As regards the first instance, the word "unjust" (as the root word for "unjustly") means "deficient in justice and fairness" while the term "excessive" (the adjective form of "excessively") means "greater than what is usual and proper characterized by or exhibiting excess, greater than usual amount or degree. Thus, a tax is said to be "unjustly" assessed, when compared to other taxpayers, the concerned taxpayer was not given the same treatment in the tax assessment as that of the former. On the other hand, a tax is considered as "excessively" assessed when the tax assessment is over and above the tax imposition made under the law. On either case, there must be a dispute as to the correctness of the assessment. "Continuous heavy losses incurred by the taxpayer for the last two (2) years" cannot be treated as falling under the category of a tax being "unjustly" assessed. There is no showing that there is a rational connection between being "unjustly" assessed of a tax and sustaining "continuous heavy losses" regardless of the duration thereof. Furthermore, the taxpayer failed to prove that compared to other taxpayers, it was not accorded the same treatment as that of other taxpayers in the issuance of the tax assessment. Neither was it established that there is a dispute as to the correctness of such assessment. *Lepanto Consolidated Mining Co. v. Commissioner of Internal Revenue, CTA EB Case No. 1720, 3 May 2019.*

WHILE FRAUD CANNOT PRESUMED, IT DOES NOT MEAN THAT IT MAY NOT ARISE, AND BE LEGITIMATELY DEDUCED, FROM CIRCUMSTANTIAL EVIDENCE. Fraud is not to be assumed of a transaction, in the absence of proof afforded by intrinsic evidence of unfairness in the transaction itself, or extrinsic facts and circumstances leading to that conclusion. The general rule, therefore, must be understood only as affirming that a contract or conduct apparently honest and lawful must be treated as such until it is shown to be otherwise by either positive or circumstantial evidence. Fraud may be, and often

is, proved by or inferred from circumstances, and the circumstances proved may in some cases raise a presumption of its existence. *National Grid Corp. of the Phil. v. Commissioner of Customs, CTA EB Case No. 1574, 7 May 2019.*

BUREAU OF INTERNAL REVENUE ISSUANCES

POLICIES, GUIDELINES, AND PROCEDURES IN THE PROCESSING OF APPLICATIONS FOR TAX AMNESTY ON DELINQUENCIES PURSUANT TO REPUBLIC ACT (RA) NO. 11213 OTHERWISE KNOWN AS THE "TAX AMNESTY ACT." *Revenue Memorandum Order No. 23-2019, 8 May 2019.*

REVISED GUIDELINES AND MANDATORY REQUIREMENTS FOR THE PROCESSING AND GRANT OF VALUE-ADDED TAX (VAT) REFUND CLAIMS WITHIN THE 90-DAY PERIOD PURSUANT TO SECTION 112 OF THE TAX CODE OF 1997, AS AMENDED. *Revenue Memorandum Circular No. 47-2019, 16 April 2019.*

DECENTRALIZATION OF THE ACCREDITATION OF CASH REGISTER MACHINES (CRM), POINT-OF-SALE (POS) MACHINES, SALES RECEIPTING SOFTWARE, AND OTHER SALES MACHINES GENERATING RECEIPTS/ INVOICES AT THE NATIONAL OFFICE, REVENUE REGION AND REVENUE DISTRICT OFFICE LEVELS. *Revenue Memorandum Circular No. 49-2019, 29 April 2019.*

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) 633-9418, facsimile number (632) 633-1911, or at the indicated e-mail address:

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