BANIQUED & BELLO
ATTORNEYS-AT-LAW

TAX ALERT

December 1 to 31, 2021

COURT OF TAX APPEALS DECISIONS

FAILURE TO INDICATE DETAILS OF THE LETTER OF AUTHORITY ("LOA") IN THE FINAL ASSESSMENT NOTICE ("FAN") WILL NOT INVALIDATE THE ASSESSMENT. There is no requirement that the details of the LOA must be reiterated in the Preliminary Assessment Notice ("PAN") or the FAN. What is required under the law and jurisprudence is that the revenue officers, who are assigned to perform assessment functions, must be clothed with authority to examine the taxpayer's books in the form of an LOA. ***Hard Rock Café (Makati City) Inc v. Commissioner of Internal Revenue, CTA Case No. 9945 dated December 10, 2021.***

AN LOA MUST BE ISSUED IN CASES OF REASSIGNMENT OR TRANSFER OF EXAMINATION TO ANOTHER REVENUE OFFICER. Revenue Memorandum Order No. 43-90 mandates the issuance of a new LOA in cases of reassignment or transfer of examination to another revenue officer. In *Commissioner of Internal Revenue v. McDonalds Philippines Realty Corp.* (G.R. No. 242670, 10 May 2021), the Supreme Court highlighted the difference between a Memorandum of Assignment ("MOA") and LOA. A mere MOA signed by a Revenue District Officer does not and cannot confer authority to a revenue officer to continue the audit or investigation. ***Hard Rock Café (Makati City) Inc v. Commissioner of Internal Revenue, CTA Case No. 9945 dated December 10, 2021.***

REVENUE OFFICERS MUST BE AUTHORIZED, THROUGH AN 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 THE TAXPAYER SHALL BE VOID. ***Tann Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9820 dated December 16, 2021.***

SECTIONS 6(A) AND 13 OF NATIONAL INTERNAL REVENUE CODE OF 1997 ("1997 NIRC") ARE CLEAR THAT THE AUTHORITY OF A REVENUE OFFICER TO CONDUCT AUDIT AND INVESTIGATION MUST BE EXERCISED PURSUANT TO AN LOA. The issuance of an LOA cannot be dispensed with as the same would run counter to Sections 6(A) and 13 of the 1997 NIRC, which is the substantive law on the matter. It must be remembered that the BIR circulars and rulings cannot prevail over the clear and plain language of the Tax Code. In this connection, Sections 6(A) and 13 of the 1997 NIRC is clear that the authority of a revenue officer to conduct an audit investigation must be exercised pursuant to an LOA. ***Commissioner of Internal Revenue v. Lapanday Holdings Corporation, CTA EB No. 1888 (CTA Case No. 8932) dated December 2, 2021.***

8/F Jollibee Centre, San Miguel Avenue, Ortigas Center, Pasig City, 1605 Philippines
Telephone: (632) 8633-9418 • Facsimile: (632) 8633-1911
E-mail: mail@baniquedlaw.com ▪ Web: www.baniquedlaw.com

OFFICIALS AUTHORIZED TO SIGN AN LOA/MEMORANDUM. Only the following officials are authorized to sign an LOA: (1) Commissioner of Internal Revenue ("Commissioner"); (2) Regional Directors; (3) Deputy Commissioners; (4) Assistant Commissioner/Head Revenue Executive Assistants (for Large Taxpayers); and (5) Other officials that may be authorized by the Commissioner for the exigencies of service. A perusal of the subject Memorandum Referral No. 031-0006-10 shows that it is signed by the Revenue District Officer. It is stressed, however, that the power to authorize the examination of any taxpayer and the assessment of the correct amount of tax is statutorily conferred upon the Commissioner or his duly authorized representatives. In the absence of such further delegation by the CIR, the Regional Director is the responsible official primarily designated by statute to issue LOAs for the examination of taxpayers within the region. A Revenue District Officer is *not* one of the officials authorized by law to sign an LOA or confer authority upon a Revenue Officer to perform assessment functions. Hence, even if this Court would accept the Commissioner's proposition that Memorandum Referral No. 031-0006-10 be treated similarly as an LOA, the same would still be invalid as it was not signed by an official empowered by law to sign Letter/s of Authority and/or authorize the examination and audit of a taxpayer. ***Republic of the Philippines v. Robiegie Corporation, CTA EB No. 2339 (CTA OC No. 023) dated December 2, 2021.***

DUE PROCESS IN ASSESSMENT CASES. As a rule, when the Commissioner or his/her duly authorized representative finds that proper taxes should be assessed, the concerned taxpayer must first be notified of the respondent's findings, through a preassessment notice or a PAN. Furthermore, the taxpayer is required to be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. ***Megaconstruct Group, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9992 dated December 2, 2021.***

IN CASE OF CHANGE OF ADDRESS WITH WRITTEN NOTICE TO THE REVENUE DISTRICT OFFICE (RDO) WHERE THE TAXPAYER IS REGISTERED, THE PAN OR FAN SHOULD BE SENT OR MAILED TO THE NEW ADDRESS. Records show that on August 3, 2011, petitioner filed the letter dated July 21, 2011 with RDO 36, informing respondent BIR of its change of address from 42 Manga Ave., Poblacion, Narra, Palawan ["Palawan"] to Lot 4 Block 8 King Philip St. Royale Estates Subd., Bulihan, Malolos City, Bulacan ["Bulacan"]. Thereafter on October 23, 2012, petitioner filed another letter dated August 15, 2012 with the same RDO submitting the Memorandum dated July 30, 2012 issued by Revenue Officer Marita P. Panteriori of RDO 25A, Plaridel, Bulacan, recommending the approval of the transfer of registration of petitioner to Bulacan. Furthermore, petitioner even sent the letter dated June 16, 2017 addressed to OIC-Revenue District Officer Vicente P. Gamad of RDO 36, requesting that all letters to petitioner in relation to the LOA be addressed and delivered to its office address at Bulacan. Thus, all communications from respondent to petitioner, including the subject PAN and FAN, should have already been sent or mailed to the latter's address in Bulacan. Petitioner cannot be faulted for indicating its Palawan address in its Annual ITR and Notes to Financial Statements. This is so because petitioner is still required to file the said tax return with, and pay taxes to, RDO 36 (Palawan), notwithstanding its transfer to RDO 25A (Bulacan). This is consistent with Section 10(5) of Revenue Regulations No. 7-2012. The indication of petitioner's former address in the said Annual ITR and Notes to Financial Statements is of no consequence, insofar as the subject income

tax assessment is concerned. ***Megaconstruct Group, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9992 dated December 2, 2021.***

THE AUTHORIZED REPRESENTATIVE OF THE TAXPAYER MUST BE THE SIGNATORY OF THE REGISTRY RECEIPT TO ESTABLISH ACTUAL RECEIPT OF THE PAN AND FORMAL LETTER OF DEMAND (FLD)/FAN. To prove service of the PAN and FLD/FAN by registered mail, respondent offered Registry Receipts. While the subject Registry Receipts indicate a signatory, there is no indication that the latter are petitioner's duly authorized representative. Thus, said document cannot be treated as proof of the actual receipt of the subject PAN and FLD/FAN by petitioner or its duly authorized representative. ***Megaconstruct Group, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9992 dated December 2, 2021.***

THE PRESENTATION OF REGISTRY RECEIPT, WITHOUT PROPERLY IDENTIFYING AND AUTHENTICATING THE SIGNATURES APPEARING THEREON, IS INSUFFICIENT IN PROVING THE TAXPAYER'S RECEIPT OF AN ASSESSMENT. Although the subject registry return receipt indicates a name and a signature, petitioner was unable to prove that the name appearing on said document is an authorized representative of respondent. Furthermore, the testimony of the Revenue Officer failed to establish that she has personal knowledge as to the fact of the actual mailing of the FAN. Hence, on these grounds, petitioner failed to prove that the FAN was indeed served to respondent. ***Commissioner of Internal Revenue v. Nationwide Health Systems Baguio, Inc., CTA EB No. 2264 (CTA Case No. 9507) dated December 9, 2021.***

ALLEGATIONS OF FALSITY OR FRAUD IN THE FILING OF TAX RETURNS MUST BE PROVEN TO EXIST BY CLEAR AND CONVINCING EVIDENCE AND CANNOT BE JUSTIFIED BY MERE SPECULATION. After a careful evaluation of the records, the Court finds no supporting evidence to prove that petitioner filed a false return because the respondents did not present any witness or evidence to support such allegation of falsity. On the contrary, a scrutiny of the FAN/FLD and the Final Decision on Disputed Assessment (FDDA), reveals that there is no indication that petitioner filed a false return. If indeed there were false returns that had been filed by petitioner, respondents should have imposed in the said FAN/FLD and FDDA a penalty of 50% on the deficiency tax in accordance with Section 248(B) of the 1997 NIRC. ***QL Development, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10291 dated December 11, 2021***

A VALID WRITTEN ASSESSMENT MUST CONTAIN A FIXED AMOUNT OF TAX LIABILITY WITH A DEMAND FOR PAYMENT WITHIN A PRESCRIBED PERIOD. The FLD in the instant case states "[i]n view thereof, you are requested to pay your aforesaid deficiency tax liabilities through eFPS using BIR Payment Form (BIR Form 0605) within the time shown in the enclosed assessment notice." However, the aforesaid enclosed Audit Result/Assessment Notices alluded to did not indicate the due dates for payment in the space provided negating compliance with the requirement that the formal written assessment must contain a demand for payment within a prescribed period. The same inadequacies are present in the FDDA, which contained the following statements: "[i]t is requested that your aforesaid deficiency tax/taxes be paid immediately upon receipt hereof, inclusive of penalties." As with the FLD, the enclosed Assessment Notices to the FDDA did not indicate the due date for payment. On

account of these infirmities in both the FLD and FDDA, the subject assessments are void for failure to comply with the due process requirements of a valid assessment under the 1997 NIRC. ***Robinsons Toys, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9161 dated December 11, 2021.***

AN ASSESSMENT MUST DEMAND PAYMENT OF THE TAXES DESCRIBED THEREIN WITHIN A SPECIFIC PERIOD. A perusal of the FLD shows that it does not state a due date for the payment of the assessed taxes. Neither did the Court in Division find any due date in the corresponding undated Audit Result/Assessment Notice No. IAET- 116-LOA-00000004-10-14-1306. In fact, the space in the Assessment Notice where the due date is to be indicated "remained unaccomplished". Consequently, the failure of the CIR to state the due date for payment invalidates the assessment. ***Commissioner of Internal Revenue v. Universal Robina Corporation, CTA EB No. 2280 (CTA Case No. 9530) dated December 7, 2021.***

THERE SHOULD BE ZERO-RATED SALES DURING THE PERIOD OF THE CLAIM AGAINST WHICH THE INPUT VAT CAN BE ATTRIBUTED. It is incumbent upon petitioner to prove that it actually generated sales from its sale of renewable energy for the subject period of claim. An examination of petitioners Quarterly VAT Returns for the 4th Quarter of 2015 would show that petitioner declared no zero-rated sales against which the claimed input VAT may be attributed. In fact, petitioner reflected no sales in its Quarterly VAT Return during the 4th quarter of taxable year 2015. It is crucial that the presence of zero-rated sales be established for the relevant period of claim, which is the 4th quarter of taxable year 2015 in the present case. The requirement is that there should be zero-rated sales during the period of the claim against which the input VAT can be attributed. Stated otherwise, the relevant taxable year is the year when the zero-rated sales are earned, regardless of when the input VAT were incurred. ***YH Green Energy Incorporated v. Commissioner of Internal Revenue, CTA Case No. 9784 dated December 7, 2021.***

A CLAIM OF EXISTENCE OF VAT ZERO-RATED SALE OF SERVICES MUST BE SUBSTANTIATED BY VAT OFFICIAL RECEIPTS. In *Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue* (G.R. No. 191495 dated July 23, 2018), the Supreme Court emphasized the importance of substantiating zero-rated sales such that when a VAT-taxpayer claims to have zero-rated sale of services, it must substantiate the same through valid VAT official receipts, not any other document, not even a sales invoice, which properly pertains to a sale of goods or properties. ***YH Green Energy Incorporated v. Commissioner of Internal Revenue, CTA Case No. 9784 dated December 7, 2021.***

TO BE CONSIDERED A NON-RESIDENT FOREIGN CORPORATION DOING BUSINESS OUTSIDE THE PHILIPPINES, EACH SERVICE-RECIPIENT MUST BE SUPPORTED, AT THE VERY LEAST, BY BOTH A CERTIFICATE OF NON-REGISTRATION OF CORPORATION/PARTNERSHIP ISSUED BY THE PHILIPPINE SECURITIES AND EXCHANGE COMMISSION (SEC) AND CERTIFICATE*I* ARTICLES OF FOREIGN INCORPORATION/ASSOCIATION. ***Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue, CTA EB No. 2249 (CTA Case No. 9154) dated December 14, 2021.***

SEC CERTIFICATE OF REGISTRATION AND LICENSE IS NOT ENOUGH TO PROVE THAT THE SERVICES PERFORMED TO NON-RESIDENT FOREIGN CORPORATION ARE "OTHER THAN PROCESSING, MANUFACTURING, OR REPACKING OF GOODS." While the Certificate of Registration and License issued by the SEC states the activities that petitioner intends to engage in, the same does not specify which services are rendered to its clients at any given period. It must be pointed out that the *IntraGroup Service Agreement* between petitioner and its non-resident foreign client binds and governs the types of transactions and services between the said parties within the period of said *Agreement* and the period covered by the claim for refund. ***Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue, CTA EB No. 2249 (CTA Case No. 9154) dated December 14, 2021.***

THE SERVICE AGREEMENT BETWEEN CLAIMANT AND NON-RESIDENT FOREIGN CORPORATION MUST BE SHOWN IN ORDER FOR THE COURT TO DETERMINE WHETHER THE SERVICES OTHER THAN PROCESSING, MANUFACTURING, OR REPACKING OF GOODS WAS RENDERED IN THE PHILIPPINES. ***Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue, CTA EB No. 2249 (CTA Case No. 9154) dated December 14, 2021.***

SECTION 112 OF THE 1997 NIRC DOES NOT REQUIRE ABSOLUTE DIRECT ATTRIBUTION OF THE PURCHASES (THE INPUT VAT OF WHICH IS SUBJECT OF A REFUND/TCC CLAIM) TO ZERO-RATED SALES. Section 112 allows the allocation of input VAT that cannot be directly attributed to any of the taxpayer's sales *(i.e.,* zero-rated sales, taxable sales or exempt sales). ***Commissioner of Internal Revenue v. S&WOO Construction Philippines, Inc., CTA EB No. 2340 (CTA Case No. 9731) dated December 10, 2021.***

THERE IS NO NEED FOR INPUT TAX TO COME SOLELY FROM PURCHASES OF GOODS THAT FORM PART OF FINISHED PRODUCT OR MUST BE DIRECTLY USED IN THE CHAIN OF THE PRODUCTION IN ORDER FOR AN INPUT TAX TO BE CREDITABLE. There is nothing in Section 110(A) of the NIRC of 1997, as amended, which states that only those input taxes from purchases of goods that form part of the finished product of the taxpayer or directly used in the chain of the production shall be considered as creditable. Section 110(A) of the NIRC of 1997, as amended, is plain and categorical that any input tax evidenced by a VAT invoice or official receipts on the transactions listed therein shall be creditable. Contrary to CIR's stance, there is no legal basis to limit the source of creditable input tax on purchases or importation of goods that actually form part of the finished products or directly used in the chain of the production only. It is doctrinal that when the words of a statute are clear and unambiguous, courts cannot deviate from the text of the law and resort to interpretation lest they end up betraying their solemn duty to uphold the law and worse, violating the constitutional principle of separation of powers. ***Commissioner of Internal Revenue v. Chevron Holdings, Inc. CTA EB 2355 (CTA Case Nos. 9350 & 9430) dated December 9, 2021.***

IN CLAIMS FOR REFUND OF TAXES ERRONEOUSLY OR ILLEGALLY COLLECTED, THE BIR MUST BE GIVEN SUFFICIENT OPPORTUNITY TO DECIDE THE ADMINISTRATIVE CLAIM FOR REFUND/TAX CREDIT CERTIFICATE. The procedure for filing of administrative and judicial claims for refund is governed by Sections 204(C) and 229 of the 1997 NIRC. As may be gleaned from the foregoing provisions, a taxpayer-claimant must first file an administrative claim for refund before respondent prior to filing a judicial claim before this Court. Both the administrative and judicial claims for refund should be filed within the two (2)-year prescriptive period, and the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription. In this case, petitioner has until 30 January 2019 within which to file both its administrative and judicial claims for refund/TCC. Evidence shows that petitioner filed its administrative claim before BIR RDO 44 on 15 January 2019. This was immediately followed by its judicial claim for refund via the instant Petition, filed on 16 January 2019. Although both the administrative claim and the judicial claim were filed within the 2-year prescriptive period, it cannot escape this Court's attention that petitioner did not give respondent full opportunity to decide the administrative claim. Judging from any perspective, with that measly one (1) day given to him, respondent cannot be said to have been given "every opportunity" to resolve the matter and to exhaust all opportunities for a resolution" on the claim for refund/TCC of petitioner. The filing of the administrative claim in the instant case appears to be merely *pro forma,* without any intent to avail of the remedy before respondent. Indeed, the filing of the judicial claim with the Court soon thereafter is a clear indication of blatant disregard of respondent's administrative powers.. ***AECOM Philippines Consultants Corporation v. Commissioner of Internal Revenue, CTA Case No. 10008 dated December 7, 2021.***

PROOF OF ACTUAL REMITTANCE OF TAX IS NOT AN INDISPENSABLE REQUIREMENT FOR A CLAIM FOR REFUND OR TAX CREDIT OF EXCESS CREDITABLE WITHHOLDING TAX (CWT). The three conditions for the grant of a claim for refund of CWT are: (1) the claim is filed with the BIR within the two-year period from the date of payment of the tax; (2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and (3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom. Nowhere in law, jurisprudence, or existing regulation, is proof of actual remittance of tax required before any claim for refund of excess CWT could prosper. Proof of remittance is the responsibility of the withholding agent. ***Commissioner of Internal Revenue v. Tullet Prebon (Philippines), Inc., CTA EB No. 2373 (CTA Case No. 9804) dated December 16, 2021.***

INACTION OF THE CIR IN INPUT VAT REFUND CASES IS DEEMED A DENIAL OF SUCH CLAIM. THUS, A JUDICIAL APPEAL MUST BE INSTITUTED IMMEDIATELY WITHIN 30 DAYS FROM THE EXPIRATION OF THE 120-DAY [NOW 90-DAY] PERIOD GIVEN TO RESPONDENT TO DECIDE CLAIMS FOR INPUT TAX REFUND. The rationale for the mandatory and jurisdictional 120+30-day period is that inaction by respondent within the 120-day now [90-day] period given him to decide a claim for input tax refund is treated as a denial by itself. Hence, there is no more need for a taxpayer to wait for an actual denial as its request for input VAT refund has been deemed denied, by express provision of

law. ***Lepanto Consolidated Mining Company v. Commissioner of Internal Revenue, CTA EB No. 2273 (CTA Case No. 10079) dated December 16, 2021.***

TAXPAYER'S REMEDIES IN CASE ITS PROTEST REQUESTING FOR REINVESTIGATION IS NOT ACTED UPON BY THE BIR. When a taxpayer's protest requesting for reinvestigation is not acted upon by respondent's duly authorized representative, the remedy for the taxpayer is either: (1) to appeal to the CTA within 30 days after the expiration of the 180-day period reckoned from the date of submission by the taxpayer of the required documents within sixty (60) days from the date of filing of the protest; or (2) to await the final decision of respondent's duly authorized representative on the disputed assessment and within 30 days from receipt of a copy thereof: (a) elevate its protest through a request for reconsideration to respondent; or (b) appeal such decision to the CTA. ***Hard Rock Café (Makati City) Inc v. Commissioner of Internal Revenue, CTA Case No. 9945 dated December 10, 2021.***

THE CTA'S JURISDICTION ON "OTHER MATTERS" INCLUDES DETERMINATION OF THE VALIDITY OF WARRANT OF DISTRAINT AND/OR LEVY ("WDL"). The Court in Division's appellate jurisdiction is not limited to cases involving decisions of the CIR in relation to disputed assessments or refunds. The second portion of Section 7(a)(l) and (2) of the CTA Law clearly covers "other matters" arising under the Tax Code or other laws administered by the BIR. The CTA's "other matters" jurisdiction includes the determination of the validity of the WDL, as ruled by the Supreme Court in the case of *La Flor Dela Isabela, Inc. v. Commissioner of Internal Revenue* (G.R. No. 202105 dated April 28, 2021), citing *Philippine Journalists, Inc. v. Commissioner of Internal Revenue* (G.R. No. 162852 dated December 16, 2004). ***Commissioner of Internal Revenue v. Nationwide Health Systems Baguio, Inc., CTA EB No. 2264 (CTA Case No. 9507) dated December 9, 2021.***

THE CTA'S JURISDICTION ON "OTHER MATTERS" INCLUDES DETERMINATION OF THE ISSUE OF PRESCRIPTION. The term "other matters" under Section 3(a)(1), Rule 4, of the Revised Rules of the CTA, has been ruled to include, but not limited to: review of the BIR's authority and decision to compromise; prescription of the CIR's right to collect taxes; determination of the validity of a WDL issued by the CIR and the validity of a waiver of the statute of limitations. Under the provision quoted above and jurisprudence, the Court has jurisdiction under "other matters" to resolve the issue of prescription of the respondents' right to collect the alleged deficiency taxes for the taxable year 2010. ***QL Development, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10291 dated December 11, 2021***

BASED ON SECTION 1, RULE 14 OF THE 2005 REVISED RULES OF THE COURT OF TAX APPEALS, THE COURT IS NOT BOUND BY THE ISSUES SPECIFICALLY RAISED BY THE PARTIES BUT MAY ALSO RULE UPON RELATED ISSUES NECESSARY TO ACHIEVE AN ORDERLY DISPOSITION OF THE CASE. ***Unioil Petroleum Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9583 dated December 1, 2021.***

MERE ALLEGATIONS CANNOT OVERTURN A RULING BY THE COURT IN DIVISION WHICH IS DULY SUPPORTED BY EVIDENCE ON RECORD. Basic is the rule that mere allegations cannot overturn a judgment which has been rendered painstakingly through the thorough examination of the pieces of evidenced adduced during trial. Indeed, in *Republic of the Philippines v. Team (Phils.) Energy Corporation (formerly, Mirant (Phils.) Energy Corporation)* (G.R. No. 188016, 14 January 2015), the High Court ruled that "the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties." Here, petitioner (CIR) simply generally alleged the often-used argument that respondent, as a taxpayer-claimant, failed to dispose of the burden of proving its entitlement to an input VAT refund. Although he further alleged that respondent intentionally suppressed evidence which was earlier provisionally marked as Exhibit "P-2", and which was supposed to show vital information about the eventual ownership of the parent company of the respondent, he did not discuss nor identify such information contained in Exhibit "P-2" that is supposedly detrimental to respondent's cause and would definitely deny it its right to an input VAT refund. ***Commissioner of Internal Revenue v. MSCI Hong Kong Limited, CTA EB No. 2258 (CTA Case No. 9661) dated December 15, 2021.***

PUBLIC DOCUMENTS ARE SELF-AUTHENTICATING AND REQUIRE NO FURTHER AUTHENTICATION FOR PRESENTATION AS EVIDENCE IN COURT. MEANWHILE, PRIVATE DOCUMENTS OFFERED AS AUTHENTIC MUST BE AUTHENTICATED PURSUANT TO THE MODES RECOGNIZED IN SECTION 20, RULE 132 OF THE REVISED RULES ON EVIDENCE, AS AMENDED. Private documents, whether issued in the Philippines or in a foreign country, must be authenticated. The foreign bills of lading have been authenticated by Ms. Hoa, the agent who prepared the bills of lading and who testified that a mistake has been made. The exporter could not make an affidavit on the mistake considering that it is not the party who made the mistake nor is it the party who prepared the document. ***Samahan ng mga Kapampangan sa San Ildefonso Multipurpose Cooperative v. Commissioner of Customs, CTA Case No. 9383 dated December 7, 2021.***

THE BOND REQUIREMENT UNDER SECTION 11 OF RA 1125 SHOULD BE DISPENSED WITH WHENEVER IT IS DETERMINED BY THE COURTS THAT THE METHOD EMPLOYED BY THE COLLECTOR OF INTERNAL REVENUE IN THE COLLECTION OF TAX IS NOT SANCTIONED BY LAW. Before there could be a complete dispensation of the required cash deposit or bond in its entirety, the movant must prove that there is an extreme violation of the law committed by Respondent in his summary collection methods that is patent and blatant in all aspects. ***Robinsons Toys, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9161 dated December 11, 2021.***

BIR RULINGS AND ISSUANCES

REGULATIONS IMPLEMENTING REPUBLIC ACT NO. ("RA") 11590, OTHERWISE KNOWN AS THE "ACT TAXING PHILIPPINE OFFSHORE GAMING OPERATIONS." ***Revenue Regulations No. 20-2021 dated November 26, 2021 (Published in Manila Times on December 3, 2021).***

REGULATIONS AMENDING SECTIONS 4.106-5 AND 4.108-5 OF REVENUE REGULATIONS NO. 16-2005 TO IMPLEMENT SECTIONS 294(E) and 295(D), TITLE XIII OF THE 1997 NIRC, AS AMENDED BY RA 11534, OTHERWISE KNOWN AS THE CORPORATE RECOVERY AND TAX INCENTIVES FOR ENTERPRISES (CREATE) ACT. This regulation implements the VAT provisions under the CREATE Act, covering the rules on VAT exemption and VAT zero-rating of local purchases. Sale of raw materials, supplies, equipment, packaging materials, and goods, and sale of services, including provision of basic infrastructure, utilities, and maintenance, repair, and overhaul of equipment, to a registered export enterprise, to be used directly and exclusively in its registered project or activity for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended, shall be subject to zero-rate. ***Revenue Regulations No. 21-2021 dated December 3, 2021.***

REGULATIONS EXTENDING THE DEADLINES FOR THE FILING OF TAX RETURNS AND PAYMENT OF CORRESPONDING TAXES DUE THEREON, INCLUDING SUBMISSION OF REQUIRED DOCUMENTS, APPLCIATION FOR TAX REFUND AND ISSUANCE OF TAX ASSESSMENT NOTICES AND WARRANTS OF DISTRAINT AND LEVY FOR TAXPAYERS WITHIN THE JURISDICTION OF BIR THAT WERE ADVERSELY AFFECTED BY TYPHOON ODETTE. ***Revenue Regulations No. 22-2021 dated December 24, 2021.***

CIRCULAR PRESCRIBING THE REVISED BIR FORM NOS. 1707 (CAPITAL GAINS TAX RETURN FOR ONEROUS TRANSFER OF SHARES NOT TRADED THROUGH LOCAL STOCK EXCHANGE) AND 1707 (ANNUAL CAPITAL GAINS TAX RETURN FOR ONEROUS TRANSFER OF SHARES NOT TRADED THROUGH LOCAL STOCK EXCHANGE) DUE TO THE IMPLEMENTATION OF CREATE ACT. The revised manual forms are already available in the BIR's website under BIR Forms – Income Tax Return. However, it is not yet available in eBIRForms; thus, manual and eBIRForms filers shall download the PDF version thereof, print and fill it out completely, otherwise shall be subjected to penalties under Sec 250 of the 1997 NIRC. ***Revenue Memorandum Circular No. 119-2021 dated December 10, 2021.***

CIRCULAR CLARIFYING THE TAXABILITY OF INTEREST PAID BY COOPERATIVES TO ITS MEMBER'S DEPOSIT OR FIXED DEPOSITS OTHERWISE KNOWN AS SHARE CAPITAL. Members of the cooperative are not liable to pay any tax and fee on the interest earned on member's deposits and fixed deposits (share capital). Hence, cooperatives are also not liable to withhold tax on the aforesaid interest payments to members. ***Revenue Memorandum Circular No. 121-2021 dated December 14, 2021.***

CIRCULAR STANDARDIZING THE TAX TREATMENT OF INTEGRATING THE DOMESTIC PASSENGER SERVICE CHARGE (DPSC) AND INTERNATIONAL PASSENGER SERVICE CHARGE (IPSC), COMMONLY REFERRED TO AS TERMINAL FEES, INTO AIRLINE TICKETS AT THE POINT OF SALE. ***Revenue Memorandum Circular No. 122-2021 dated December 14, 2021.***

EXEMPTION FROM GROSS INCOME – RETIREMENT BENEFITS. Pursuant to Section 32(B)(6)(a) of the 1997 NIRC, if the employer does not maintain a reasonable private benefit plan duly approved by the Bureau of Internal Revenue, the provisions of RA 7641 shall apply. Thus, retirement benefits received by an employee shall be exempt from income tax provided two conditions set forth under Section 1 of RA 7641 are met, to wit: (1) the employee had been in the service of the same private firm for at least 5 years; and (2) he is at least 60 years old at the time of retirement. ***BIR Ruling No. 480-2021 dated December 24, 2021.***

TAX EXEMPTION OF AN INVENTOR OF A PATENTED PRODUCT. Section 6 of RA 7459, otherwise known as the "Investors and Inventions Incentives Act of the Philippines", provides that any income derived from technologies developed by local researchers or adapted locally from foreign sources including inventions shall be exempted from all kinds of taxes during the first 10 years from the date of the first sale on a commercial scale. However, this exemption/privilege pertaining to invention can only be availed of by the inventor, or his legal heir or assignee upon his death. This exemption is for the inventor alone and not for any other entity that commercially produces and distributes the invented product. Hence, any income received by the company from such production/distribution/marketing is subject to the payment of appropriate taxes. ***BIR Ruling No. 482-2021 dated December 24, 2021.***

SEC ISSUANCES

ENROLLMENT TO THE ONLINE SUBMISSION TOOL (OST) FOR STOCK AND NONSTOCK CORPORATION IS EXTENDED UNTIL MARCH 31, 2022. ***SEC Notice dated December 22, 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 to contact us at telephone number (632) 8633-9418, facsimile number (632) 8633-1911, or email us at mail@baniquedlaw.com.

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