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TAX ALERT

June 2022

COURT OF TAX APPEALS ("CTA") DECISIONS

TO VEST JURISDICTION UPON THE CTA, AN ALLEGATION IN THE INFORMATION AS TO THE PRINCIPAL AMOUNT OF TAXES AND FEES INVOLVED MUST BE UNEQUIVOCAL AND UNMISTAKABLE. The amount in the information must be fixed and definite leaving no doubt as to the jurisdiction of the CTA. Thus, when the Bureau of Internal Revenue ("BIR") filed the information indicating an amount of tax being claimed, but is qualified by the phrase "more or less," the same is an unacceptable qualification of the principal amount of tax involved, as it fails to accurately state the amount of tax being claimed, and because the said phrase implies that the amount can be below or lower than P1 million. ***People of the Phil. v. Banzon, CTA Crim. Case Nos. O-501 to O-514 (Jun. 1, 2022)***.

THE CTA HAS EXCLUSIVE JURISDICTION ON CRIMINAL OFFENSES ARISING FROM VIOLATIONS OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 ("1997 NIRC") OR TARIFF AND CUSTOMS CODE AND OTHER LAWS ADMINISTERED BY THE BIR AND THE BUREAU OF CUSTOMS, PROVIDED THE PRINCIPAL AMOUNT OF TAXES AND FEES, EXCLUSIVE OF CHARGES AND PENALTIES IS AT LEAST P1 MILLION. The failure of an Information to allege matters that specifically vests jurisdiction upon the court effectively deprives the court of jurisdiction to take cognizance of the case. ***People of the Phil. v. Yang, CTA Crim Case Nos. O-202 to O-205 (Jun. 1, 2022).***

RE-FILING OF ADMINISTRATIVE CLAIM WITHIN THE PRESCRIPTIVE PERIOD IS NOT PROHIBITED. HOWEVER, TAXPAYER-CLAIMANTS MUST ABANDON THEIR INITIAL ADMINISTRATIVE CLAIM AS THE ACTUAL DATE OF FILING OF REFUND CLAIM IS CRUCIAL FOR PURPOSES OF COUNTING THE 120-DAY [NOW 90-DAY] PERIOD FOR THE COMMISSIONER OF INTERNAL REVENUE ("CIR") TO ACT ON THE CLAIM. The Court *En Banc* held that the re-filing of administrative claims within the prescriptive period is **not** prohibited, however, taxpayer-claimants must be cautioned to act judiciously and with circumspection, considering that the actual date of filing of a refund claim is crucial for purposes of counting the 120-day period [now 90-day period] for the CIR to act on the claim, and thereafter, the 30-day period to file a judicial claim, which ultimately affects the jurisdiction of this Court to entertain the claim for refund. The Court *En Banc* explained that it cannot countenance petitioner's assertion that it re- filed its administrative claim on February 26, 2016 without any showing that it categorically and definitely abandoned its initial administrative claim filed on January 7, 2016, as it will give rise to an undesirable precedent and practice wherein a taxpayer claimant will freely refile its administrative claim, without first withdrawing its earlier claim. ***Lantro Phil., Inc. v. Commissioner of Internal Revenue, CTA EB 2406 (CTA Case No. 9436) (Jun. 9, 2022).***

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THE CIVIL LIABILITY OF A CORPORATE TAXPAYER, BEING PERSONAL TO IT, MAY NOT BE ENFORCED AGAINST ITS CORPORATE OFFICERS. Basic is the rule in corporation law that a corporation is a juridical entity which is vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Thus, obligations incurred by the corporation, acting through its directors, officers, and employees, are its sole liabilities. A director, officer, or employee of a corporation is generally not held personally liable for obligations incurred by the corporation. To pierce the separate legal personality of a corporation, the facts justifying the piercing thereof must be pleaded and proved. There must be clear and convincing proof that the separate and distinct personality of the corporation was purposely employed to commit fraud. The civil liability of a corporate taxpayer, being personal to it, may not be enforced against its corporate officers. Thus, the CTA held that without the corporate taxpayer being held charged in the Information, its corporate officers cannot assume a liability that does not exist. ***People of the Phil. v. Yang, CTA Crim Case Nos. O-202 to O-205 (Jun. 1, 2022).***

CRIMINAL CASES NEED NOT BE PRECEDED BY A VALID ASSESSMENT. The accused points out that no Preliminary Assessment Notice ("PAN"), Final Assessment Notice ("FAN") or Formal Letter of Demand ("FLD") were issued to the accused before the filing of the complaint, and that said documents were only issued thereafter which is a clear violation of his right to due process. The CTA held that there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the 1997 NIRC as held by the Supreme Court in *Ungab vs. Cusi, Jr., et* al. Furthermore, under Sections 254 and 255 of the 1997 NIRC, the government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the 1997 NIRC or the payment thereof. The crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. It is therefore not required that a tax deficiency assessment must first be issued for a criminal prosecution for tax evasion to prosper. It is clear that in the case of a false and fraudulent return with intent to evade tax or of failure to file a return, a proceeding in court, either by civil or criminal action, for the collection of such tax may be filed without assessment, at any time within 10 years after the discovery of the falsity, fraud, or omission. ***People of the Phil. v. Banzon, CTA Crim. Case Nos. O-501 to O-514 (Jun. 1, 2022).***

TO SUSTAIN A CONVICTION FOR WILLFUL FAILURE TO PAY TAX UNDER SECTION 255 OF THE 1997 NIRC, THE FOLLOWING ELEMENTS MUST BE ESTABLISHED: 1.) A PERSON IS REQUIRED UNDER THE TAX CODE OR ITS RULES AND REGULATIONS TO PAY ANY TAX; 2.) SAID PERSON FAILED TO PAY THE TAX REQUIRED AT THE TIME REQUIRED BY LAW OR RULES AND REGULATIONS; 3.) SUCH FAILURE TO PAY THE REQUIRED TAX AT THE TIME REQUIRED BY LAW OR RULES AND REGULATIONS IS WILLFUL. ***People of the Phil. v. IRA General Security Services, Inc., CTA Crim Case Nos. O-0776, O-777, and O-778 (Jun. 22, 2022).***

PREPARATION OF THE DETAILS OF DISCREPANCIES AND THE ISSUANCE THEREOF ARE PART OF THE ASSESSMENT FUNCTION OF A REVENUE OFFICER ("RO") IN A TAX AUDIT INVESTIGATION. ***People of the Phil. v. Yang, CTA Crim Case Nos. O-202 to O-205 (Jun. 1, 2022).***

THE REASSIGNMENT OR TRANSFER OF AN RO REQUIRES THE ISSUANCE OF A NEW OR AMENDED LETTER OF AUTHORITY ("LOA") THAT WILL ENABLE THE SUBSTITUTE OR REPLACEMENT RO TO CONTINUE THE AUDIT OR INVESTIGATION. A memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement RO. Neither is a referral memorandum issued by the Revenue District Officer ("RDO") directing another RO to continue with the examination equivalent to an LOA, nor does it cure the RO's lack of authority. In the absence of a new LOA issued in favor of the ROs who recommended the issuance of the deficiency tax assessments against the taxpayer, the resulting assessments are void. ***Commissioner of Internal Revenue v. Bicyclepoker, Inc., CTA EB No. 2448 (CTA Case No. 9868) (Jun. 9, 2022).***

A LETTER NOTICE ("LN"), EVEN IF SIGNED BY THE CIR, IS NOT EQUIVALENT TO AN LOA. An LN is a mere notification from the BIR to a taxpayer informing the latter that "a discrepancy is found based on the BIR's RELIEF System" through the computerized matching conducted between the taxpayer's return/s and third-party sources. In contrast, an LOA assigns a particular RO to examine the books of accounts and other accounting records of a taxpayer for a particular type of tax for a specific taxable period. These two are separate and distinct from one another and cannot be interchangeable. Thus, the assessment is void in the absence of a valid LOA. ***Commissioner of Internal Revenue v. Compania De Garay, Inc. CTA EB No. 2219 (CTA Case No. 9540) (Jun. 21, 2022).***

A MERE MEMORANDUM OF ASSIGNMENT SIGNED BY AN RDO, A SUBORDINATE OFFICIAL, DOES NOT AND CANNOT CONFER AUTHORITY UPON THE RO NAMED THEREIN TO CONDUCT THE AUDIT OR INVESTIGATION OF THE TAXPAYER'S INCOME TAX HOLIDAY INCENTIVE AVAILMENT. Absence such authority, the assessment or examination is a nullity, and a void assessment bears no fruit. ***Basic Housing Solutions, Inc. v. Commissioner, BIR, CTA Case No. 9905 (Jun. 28, 2022).***

A REGISTRY RETURN RECEIPT, AS PROOF OF RECEIPT OF LETTERS SENT THROUGH REGISTERED MAIL, MUST BE AUTHENTICATED BY PROOF OF ACTUAL RECEIPT BY THE ADDRESSEE OR DULY AUTHORIZED AGENT OF THE ADDRESSEE. In *Ting v. Court of Appeals,* the Supreme Court ruled that to serve as proof of receipt of letters sent through registered mail, Registry Return Receipts must be authenticated by proof of actual receipt by the addressee or duly authorized agent of the addressee. Only the taxpayer or its authorized representative may receive the assessment from the BIR and the mere presentation of the registry receipt is insufficient. To ascertain whether the signatures appearing therein were authorized representatives of the taxpayer, the signatures should be identified and authenticated. ***People of the Phil. v. Yang, CTA Crim Case Nos. O-202, O-203, O-204 and O-205 (Jun. 1, 2022).***

IN CASE THE TAXPAYER DENIES RECEIPT OF THE ASSESSMENT NOTICES FROM THE BIR, THE LATTER HAS THE BURDEN TO PROVE BY COMPETENT EVIDENCE THAT THE REQUIRED NOTICES WERE ACTUALLY RECEIVED BY THE TAXPAYER. ***People of the Phil. v. Tiotangco, CTA EB Crim No. 086 (CTA Crim Case Nos. O-602 and O-605 (Jun. 9, 2022).***

IF THE TAXPAYER ESTABLISHED THAT IT DID NOT RECEIVE THE FAN, SAID NOTICE CAN NEVER BECOME FINAL. It is well-established that if a taxpayer denies ever receiving an assessment from the BIR, the burden of proof is shifted to the BIR and it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. In the instant case, petitioner failed to contravene the allegation of non-receipt of the FLD/FAN. It is for this reason that the allegation of petitioner that the Court does not have jurisdiction cannot be anchored on the basis of the finality of the FAN/FLD because the same can never become final as this was not proven to be received by respondent. The Supreme Court, in C*IR vs. GJM Phils. Manufacturing*, stated that "the BIR's failure to prove GJM's receipt of the assessment leads to no other conclusion that no assessment was issued." It then follows that the FAN/FLD which became the basis for the collection efforts of petitioner is void. Such invalidity stems from the fact that there is a violation of the taxpayer's right to due process, particularly that of a taxpayer's right to be informed in writing of the law and the facts on which the assessment is made which is a requirement prescribed in Section 228 of the 1997 NIRC. ***Commissioner of Internal Revenue v. Square One Realty Corp., CTA EB No. 2396 (CTA Case No. 9484) (Jun. 23, 2022).***

THE BIR VIOLATED THE TAXPAYER'S RIGHT TO DUE PROCESS WHEN IT ISSUED A FAN BEFORE THE TAXPAYER RECEIVED THE PAN AND, THUS, THE ASSESSMENT IS VOID. The fatal infirmity that attended the issuance and receipt of the FAN prior to the receipt of the PAN was not cured by the taxpayer's filing of a protest to the FAN. ***Commissioner of Internal Revenue v. Tektite Insurance Brokers, CTA EB No. 2443 (CTA Case No. 9184) (Jun. 20, 2022).***

THE CIR OR HIS DULY AUTHORIZED REPRESENTATIVE IS DUTY BOUND TO WAIT FOR THE EXPIRATION OF FIFTEEN (15) DAYS FROM THE DATE OF RECEIPT OF THE PAN BEFORE ISSUING THE FAN. Such procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment. ***Commissioner of Internal Revenue v. Solutions Using Renewable Energy, Inc., CTA EB No. 2387 (CTA Case No. 8947) (Jun. 23, 2022).***

THE BIR IS BOUND BY THE EXTENDED PERIOD TO SUBMIT RELEVANT SUPPORTING DOCUMENTS GRANTED BY THE RDO TO THE TAXPAYER AND, CONSEQUENTLY, THE 180-DAY PERIOD FOR THE CIR TO ACT ON THE PROTEST SHOULD BE COUNTED FROM THE EXTENDED PERIOD. The rule that the "government cannot be estopped by the mistakes or errors of its agents" is not absolute. The rule on estoppel cannot be used to perpetrate injustice. ***Commissioner of Internal Revenue v. Solutions Using Renewable Energy, Inc., CTA EB No. 2387 (CTA Case No. 8947) (Jun. 23, 2022).***

A TAXPAYER'S RIGHT TO DUE PROCESS IS VIOLATED WHEN THE TAXPAYER IS LEFT UNAWARE ON HOW THE BIR APPRECIATED THE EXPLANATIONS OR DEFENSES IT RAISED AGAINST THE ASSESSMENTS THEREBY RENDERING THE ASSESSMENTS VOID. The only difference between the PAN and FAN are that: 1.) assessment numbers were indicated; and 2.) the amounts of interest were adjusted. The basic tax due remained the same. It is evident that the BIR merely reiterated the same findings as stated in the PAN, without giving any reason for rejecting the refutations and explanations as well as considerations for clarification as indicated in the reply to PAN. ***Commissioner of Internal Revenue v. Morning Star Milling Corp., CTA EB No. 2419 (CTA Case No. 9294) (Jun. 21, 2022).***

THE BIR'S FAILURE TO COMMUNICATE THE FACTUAL AND LEGAL BASIS OF THE PARTIAL DENIAL OF THE TAXPAYER'S REFUND CLAIM, THROUGH THE UNDATED LETTER, IS A TRANSGRESSION OF THE TAXPAYER'S DUE PROCESS RIGHTS. ***Carmen Copper Corp. v. Commissioner of Internal Revenue, CTA EB No. 2428 (CTA Case No. 9543) (Jun. 22, 2022).***

THE REQUISITES FOR CLAIMING REFUND OR TAX CREDIT CERTIFICATE FOR UNUTILIZED CREDITABLE WITHHOLDING TAX ARE AS FOLLOWS: 1.) THE CLAIM FOR REFUND MUST BE FILED WITH THE CIR WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD FROM THE DATE OF PAYMENT OF THE TAX; 2.) IT MUST BE SHOWN IN THE RETURN OF THE RECIPIENT THAT THE INCOME PAYMENT RECEIVED WAS DECLARED AS PART OF THE GROSS INCOME; AND 3.) THE FACT OF WITHHOLDING MUST BE 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. ***Commissioner of Internal Revenue v. Sonoma Services, Inc. CTA EB No. 2416 (CTA Case No. 9771) (Jun. 16, 2022).***

DIRECT EXPORT SALES BY A VAT-REGISTERED PERSON WHO IS ALSO A BOI-REGISTERED ENTERPRISE ARE CONSIDERED ZERO-RATED WHEN SUBSTANTIATED BY THE FOLLOWING DOCUMENTS: 1.) SALES INVOICE AS PROOF OF SALES OF GOODS; AND 2.) BILLS OF LADING, INWARD LETTERS OF CREDIT, LANDING CERTIFICATES, AND OTHER COMMERCIAL DOCUMENTS AS PROOF OF ACTUAL SHIPMENT OF GOODS FROM THE PHILIPPINES TO A FOREIGN COUNTRY. The BOI-registered enterprise is not required to prove that its sales are paid for in acceptable foreign currency and accounted for in accordance with BSP rules and regulations since Section 106(A)(2)(a)(5) of the 1997 NIRC does not impose such requirement. ***Carmen Copper Corp. v. Commissioner of Internal Revenue, CTA EB No. 2428 (CTA Case No. 9543) (Jun. 22, 2022).***

THE APPLICATION OF THE PROVISIONS OF THE 1997 NIRC MUST BE SUBJECT TO THE PROVISIONS OF TAX TREATIES ENTERED INTO BY THE PHILIPPINES WITH FOREIGN COUNTRIES. Taxpayers could not be deprived of their entitlement to the benefit of a treaty for failure to comply with an administrative issuance requiring the prior application for tax treaty relief since the obligation to comply with a tax treaty must take precedence over Revenue Memorandum Order No. ("RMO") 1-2000. ***Commissioner of Internal Revenue v. Kuwait Airways Corp., CTA EB No. 2525 (CTA Case No. 9874) (Jun. 16, 2022).***

BIR ISSUANCES

IMPLEMENTING THE ESTATE TAX EXEMPTION UNDER REPUBLIC ACT NO. 11597, OTHERWISE KNOWN AS "AN ACT PROVIDING FOR THE REVISED CHARTER OF THE PHILIPPINE VETERANS BANK, REPEALING FOR THE PURPOSE REPUBLIC ACT NO. 3518, AS AMENDED, OTHERWISE KNOWN AS 'AN ACT CREATING THE PHILIPPINE VETERANS BANK, AND FOR OTHER PURPOSES. Any transfer by a veteran of his/her share/s, common or preferred, with the Philippine Veterans Bank shall be exempt from estate tax. ***Revenue Regulations No. ("Rev. Regs.") 5-2022 dated June 20, 2022.***

REMOVAL OF FIVE (5)-YEAR VALIDITY PERIOD ON RECEIPTS/INVOICES, The salient provisions are: 1.) the five-year validity period of the Permit to Use ("PTU") and/or system-generated receipts/invoices based on the abovementioned revenue issuances is hereby removed, hence all PTUs to be issued shall be valid, unless revoked by the BIR; 2.) the phrase "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE" and "Valid Until" shall be omitted at the bottom portion of the system-generated receipts; and 3.) Authority to Print ("ATP") principal and supplementary receipts/invoices inclusive of its seral number and its usage shall also have no expiration, thus, the phrases "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE ATP" AND "Valid Until (MM/DD/YYYY) on the manual receipts/invoices shall also be omitted (or disregarded for unused receipts/invoices). ***Rev. Regs. No. 6-2022 dated May 23, 2022.***

TAX INCENTIVES UNDER THE RENEWABLE ENERGY ACT OF 2008 AND THE POLICIES AND GUIDELINES FOR THE AVAILMENT THEREOF. ***Rev. Regs. 7-2022 dated June 22, 2022.***

PRESCRIBES THE POLICIES AND GUIDELINES FOR THE IMPLEMENTATION OF SECTIONS 237 AND 237-A OF THE 1997 NIRC, AS AMENDED BY RA NO. 10963 (TRAIN LAW), THROUGH THE USE OF THE ELECTRONIC INVOICING/RECEIPTING SYSTEM (EIS). ***Rev. Regs. No. 8-2022 dated June 22, 2022.***

PRESCRIBES THE POLICIES AND GUIDELINES FOR THE ADMISSIBILITY OF SALES DOCUMENTS IN ELECTRONIC FORMAT IN RELATION TO THE IMPLEMENTATION OF SECTIONS 237 (ISSUANCE OF RECEIPTS OR SALES OR COMMERCIAL INVOICES) AND 237-A (ELECTRONIC SALES REPORTING SYSTEM) OF THE 1997 NIRC, AS AMENDED BY RA NO. 10963 (TRAIN LAW). ***Rev. Regs. 9-2022 dated June 30, 2022.***

PUBLISHING THE UPDATED LIST OF REGISTERED MANUFACTURERS/IMPORTERS/EXPORTED WITH CORRESPONDING PRODUCTS/BRANDS/VARIANTS OF CIGARETTES, HEATED TOBACCO AND VAPOR PRODUCTS AND INTEGRATION OF REQUIREMENTS FOR COMPLIANCE PURPOSES. ***Revenue Memorandum Circular No. ("RMC") 79-2022 dated June 6, 2022.***

CLARIFYING THE INCOME TAX TREATMENT OF THE DIFFERENT CLASSIFICATIONS OF EDUCATIONAL INSTITUTIONS AND THEIR TAX OBLIGATIONS. ***RMC 78-2022 dated June 8, 2022.***

CIRCULARIZING THE LISTS OF WITHHOLDING AGENTS REQUIRED TO DEDUCT AND REMIT THE 1% AND 2% CREDITABLE WITHHOLDING TAX FOR THE PURCHASE OF GOODS AND SERVICES UNDER REV. REGS. 31-2020. ***RMC 80-2022 dated June 6, 2022.***

CLARIFIES THE SERVICE OF LETTER OF AUTHORITY PURSUANT TO REVENUE AUDIT MEMORANDUM ORDER NO. 1-2000. While the BIR is of the position that service of an electronic Letter of Authority ("eLA") beyond the 30-day period provided under RMO 1-2000, which was deleted pursuant to RAMO 1-2020, does not invalidate the eLA, the RMC mandates that eLA should be served to the taxpayer immediately upon issuance/assignment thereof. ***RMC 82-2022 dated June 28, 2022.***

PRESCRIBES THE TEMPLATE FOR SWORN DECLARATION TO BE EXECUTED BY THE REGISTERED BUSINESS ENTERPRISE IN RELATION TO Q AND A NO. 36 OF RMC 24-2022. ***RMC 84-2022 dated June 30, 2022.***

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 send us an email at mail@baniquedlaw.com.

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