

## TAX ALERT

November 2020

### COURT OF TAX APPEALS (“CTA”) DECISION

**QUESTIONING AN ASSESSMENT RELATING TO “THE SHARE OF A LOCAL GOVERNMENT UNIT IN THE NATIONAL WEALTH” IS OUTSIDE THE JURISDICTION OF CTA.** The CTA has jurisdiction over decisions, resolutions, or orders rendered by the Regional Trial Court involving local tax cases. Considering that “the share of a local government unit in the national wealth” is not included in the definition of local taxes, the instant case does not involve a tax dispute under the jurisdiction of the CTA. *CE Casecanan Water and Energy Co., Inc. v. The Municipality of Alfonso Castaneda, CTA AC NO. 221 (Civil Case No. 1026) dated November 6, 2020.*

**THE DENIAL OF AN APPLICATION FOR COMPROMISE SETTLEMENT IS A DECISION ON “OTHER MATTERS” FALLING WITHIN THE JURISDICTION OF THE CTA.** *Digos Market Vendors Multi-Purpose Cooperative v. Commissioner of Internal Revenue, CTA Case No. 9131 dated November 16, 2020.*

**A REFERRAL MEMORANDUM VESTS NO AUTHORITY TO THE NEW SET OF REVENUE OFFICERS TO CONTINUE THE EXAMINATION OF THE TAXPAYER’S RECORDS. MOREOVER, THE MEMORANDUM WAS MERELY ISSUED BY THE REVENUE DISTRICT OFFICER, WHO HAS NO POWER TO ISSUE A LETTER OF AUTHORITY (“LOA”), MUCH LESS TO EFFECT ANY MODIFICATION OR AMENDMENT TO THE PREVIOUSLY ISSUED LOA.** Correspondingly, the examiners not having a valid authority to examine or reinvestigate the taxpayer, the resulting tax assessments issued against the taxpayer are void. *Misamis Oriental II Rural Electric Service Cooperative, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9732 dated November 11, 2020.*

**ABSENT ANY PRIOR AUTHORITY ON THE PART OF THE REVENUE OFFICERS WHO EXAMINED THE TAXPAYER’S BOOKS OF ACCOUNTS AND OTHER ACCOUNTING RECORDS, THE DEFICIENCY TAX ASSESSMENT ARISING THEREFROM IS A NULLITY.** *Marketing Convergence, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9379 dated November 16, 2020.*

**TO BE EFFECTIVE, AN LOA MUST BE ISSUED EITHER BY THE COMMISSIONER OR HIS DULY AUTHORIZED REPRESENTATIVES, AS FOLLOWS: (1) REGIONAL DIRECTORS; (2) DEPUTY COMMISSIONERS; (3) ASSISTANT COMMISSIONERS; AND (4) OTHER OFFICIALS WHO MAY BE AUTHORIZED BY THE COMMISSIONER FOR THE EXIGENCIES OF SERVICE.** Consequently, a Memorandum of Assignment, a Referral Memorandum, or any other letter emanating from the BIR which seeks to authorize the audit/tax investigation of a taxpayer may be considered a valid LOA, provided that any of such documents was issued by any of the authorized

persons listed above. *IMA Land Holdings v. Commissioner of Internal Revenue, CTA Case No. 9505 dated November 23, 2020.*

**THE PRIMA FACIE CORRECTNESS OF A TAX ASSESSMENT DOES NOT APPLY UPON PROOF THAT AN ASSESSMENT IS UTTERLY WITHOUT FOUNDATION, MEANING IT IS ARBITRARY AND CAPRICIOUS. WHERE THE BIR HAS COME OUT WITH A “NAKED ASSESSMENT”, THE DETERMINATION OF THE TAX DUE IS WITHOUT RATIONAL BASIS.** The instant assessment is based on alleged BIR data stating that the taxpayer withdrew refined sugar. However, the BIR did not attach nor show any breakdown nor an explanation how it computed the amount, which renders the assessment void. *ANAPI Multi-Purpose Cooperative v. Commissioner of Internal Revenue, CTA Case No. 9787 dated November 16, 2020.*

**IT IS PART OF ADMINISTRATIVE DUE PROCESS THAT THE ADMINISTRATIVE TRIBUNAL OR BODY MUST CONSIDER THE EVIDENCE PRESENTED, AND THE DECISION THEREOF IS RENDERED IN A MANNER THAT THE PARTIES MAY KNOW THE VARIOUS ISSUES INVOLVED AND THE REASONS FOR THE DECISION.** The revenue officer recommended the issuance of both the Preliminary Assessment Notice (“PAN”) and Final Assessment Notice (“FAN”) relative to her investigation. Thus, the BIR merely reiterated in the FAN the same findings in the PAN; moreover, the BIR did not specify the facts upon which the assessment is based which violates the taxpayer’s right to administrative due process. Hence, the subject tax assessments are null and void. *Titanium Corp. v. Commissioner of Internal Revenue, CTA Case No. 9644 dated November 11, 2020.*

**FAILURE TO OBSERVE THE 15-DAY PERIOD GUARANTEED UNDER REV. REGS. NO. 12-99 WITHIN WHICH TO FILE A REPLY TO THE PAN IS A VIOLATION OF THE TAXPAYER’S RIGHT TO DUE PROCESS WHICH RENDERS THE ASSESSMENT VOID.** *IMA Land Holdings v. Commissioner of Internal Revenue, CTA Case No. 9505 dated November 23, 2020.*

**THERE IS DENIAL OF DUE PROCESS WHEN THE BIR FAILS TO STRICTLY COMPLY WITH THE REQUIREMENTS LAID DOWN BY LAW AND THE BIR’S OWN RULES. AS SUCH, THE RESULTING FAN, AS WELL AS THE SUBSEQUENT WARRANT OF DISTRRAINT AND LEVY, ARE VOID.** The taxpayer received the PAN dated April 7, 2010 on April 21, 2010, thus, the taxpayer had 15 days from April 21, 2010 to respond to the PAN. However, without giving opportunity to the taxpayer to respond to the PAN, the BIR already issued the FAN on April 8, 2010, or one day after the issuance of the PAN. *Digos Market Vendors Multi-Purpose Cooperative v. Commissioner of Internal Revenue, CTA Case No. 9131 dated November 16, 2020.*

**FAILURE TO FILE A PROTEST TO AN AMENDED FAN RENDERS THE ASSESSMENT FINAL, EXECUTORY AND DEMANDABLE.** *ANAPI Multi-Purpose Cooperative v. Commissioner of Internal Revenue, CTA Case No. 9787 dated November 16, 2020.*

**A STATEMENT IN THE FAN THAT “THE INTEREST AND THE TOTAL AMOUNT DUE WILL HAVE TO BE ADJUSTED IF PAID BEYOND FEBRUARY 15, 2013”**

**FALLS SHORT OF THE REQUIREMENT THAT AN ASSESSMENT BE A WRITTEN NOTICE AND DEMAND MADE BY THE BIR ON THE TAXPAYER FOR THE SETTLEMENT OF A DUE TAX LIABILITY THAT IS THERE DEFINITELY SET AND FIXED.** This will not be considered as a valid assessment as the amount of tax due therein remains indefinite because it is subject to modification depending on the date of payment. *Robbie Stylographic and Dev't Corp. v. Commissioner of Internal Revenue, CTA Case No. 9744 dated November 17, 2020.*

**IT IS WELL-SETTLED THAT COMPROMISE PENALTY CANNOT BE IMPOSED OR COLLECTED WITHOUT THE AGREEMENT OR CONFORMITY OF THE TAXPAYER.** A compromise, by its nature, is mutual in essence. It cannot be imposed without a predicate agreement. Thus, the fact that the taxpayer protested the assessment could only signify that there was no agreement to speak of. *Commissioner of Internal Revenue v. First Phil. Electric Corp., CTA EB No. 2091 (CTA Case No. 9199) dated November 11, 2020.*

**REQUISITES WHICH MUST BE COMPLIED WITH BY TAXPAYER-APPLICANT TO SUCCESSFULLY OBTAIN A CREDIT/REFUND OF INPUT VAT:** (A) **TIMELINESS OF THE FILING OF THE ADMINISTRATIVE AND JUDICIAL CLAIMS:** (1) the claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made; (2) in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of 120 (now 90) days from the date of submission of complete documents in support of the application, the judicial claim must be filed with this Court, within 30 days from receipt of the decision or after the expiration of the said 120-day (now 90-day) period; (B) **TAXPAYER'S REGISTRATION WITH BIR;** (3) the taxpayer is a VAT-registered person; (C) **TAXPAYER'S OUTPUT VAT:** (4) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (5) for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with *Bangko Sentral ng Pilipinas* rules and regulations; (D) **TAXPAYER'S INPUT VAT BEING REFUNDED:** (6) the input taxes are not transitional input taxes; (7) the input taxes are due or paid; (8) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionally allocated on the basis of sales volume; and (9) the input taxes have not been applied against output taxes during and in the succeeding quarters. *Ibex Phil., Inc. v. Commissioner of Internal Revenue, CTA Case No. 9802 dated November 18, 2020.*

**PROOF OF THE ACTUAL INPUT VAT INCURRED, SUCH AS INVOICES AND/OR VAT RECEIPTS, EMANATING FROM THE TAXPAYER'S PURCHASES OF GOODS, PROPERTIES AND SERVICES, IN ACCORDANCE WITH THE SUBSTANTIATION REQUIREMENTS PRESCRIBED UNDER THE LAW, IS REQUIRED TO BE PRESENTED TO ESTABLISH ENTITLEMENT TO CLAIMS FOR VAT REFUND.** *Nat'l Dev't Co. v. Commissioner of Internal Revenue, CTA Case No. 9633 dated November 26, 2020.*

**IN REFUND CASES INVOLVING EXCESSIVELY PAID CORPORATE INCOME TAXES, IN WHICH THE CORPORATE TAXPAYER IS REQUIRED TO FILE AND PAY INCOME TAX ON A QUARTERLY BASIS, THE TWO-YEAR PRESCRIPTIVE**

PERIOD SHOULD BE COMPUTED FROM THE TIME OF FILING OF THE FINAL ADJUSTED RETURN OR THE ANNUAL INCOME TAX RETURN (“ITR”). *Prime Investment Korea Inc., v. Commissioner of Internal Revenue, CTA Case No. 9814 dated November 19, 2020.*

THE TAXPAYER-APPLICANT FOR REFUND MUST PROVE ITS ENTITLEMENT TO REFUND BY PRESENTING SOURCE DOCUMENTS TO VALIDATE ENTRIES IN THE ITR WHICH IS THE SUBJECT OF THE REFUND, OTHERWISE, THE CLAIM FOR REFUND MUST BE DENIED. *Sycamore Global Shipping Corp. v. Commissioner of Internal Revenue, CTA Case No. 10070 dated November 19, 2020.*

ALTHOUGH LOCAL GOVERNMENT UNITS HAVE THE POWER TO CREATE THEIR OWN SOURCES OR REVENUES AND TO LEVY TAXES, FEES AND CHARGES, SUCH POWER IS NOT ABSOLUTE. TAXATION OF THE DIVIDEND AND INTEREST INCOME OF A HOLDING COMPANY IS NOT WITHIN THE POWERS GRANTED TO A LOCAL GOVERNMENT UNIT. *Office of the City Treasurer and/or Makati City v. South China Resources, Inc., CTA EB No. 2154 dated November 11, 2020.*

#### BIR ISSUANCES

FURTHER CLARIFIES THE EXEMPTION OF RETIREMENT BENEFITS PURSUANT TO REPUBLIC ACT NO. 11494 (BAYANIHAN TO RECOVER AS ONE) AS IMPLEMENTED BY REV. REGS. 29-2020. *Revenue Memorandum Circular No. 120-2020 dated November 9, 2020.*

THE RE-CONVEYANCE BY THE TRUSTEE TO THE TRUSTOR OF THE SUBJECT PROPERTIES ACQUIRED BY THE FORMER BY VIRTUE OF THE ORIGINAL DEED OF TRUST IS NOT ANOTHER TRANSFER SEPARATE AND DISTINCT FROM THE TRANSFER IN THE ORIGINAL DEED OF TRUST, THUS, THE RE-CONVEYANCE IS NOT SUBJECT TO CAPITAL GAINS TAX. *Missionary Society of St. Columban, BIR Ruling OT-0627-2020 dated November 3, 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 any of the following at telephone number (632) 8633- 9418, facsimile number (632) 8633-1911, or at the indicated e-mail address:

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