

# TAX ALERT

October 2021

## SUPREME COURT DECISIONS

**THE COMMISSIONER OF INTERNAL REVENUE’S (“CIR”) FAILURE TO PROVE THE TAXPAYER’S RECEIPT OF THE PRELIMINARY ASSESSMENT NOTICE (“PAN”) INVALIDATES THE ASSESSMENT.** Tax collection must be preceded by a valid assessment to allow the taxpayer to protest the assessment, present its case and adduce supporting evidence. Without complying with the unequivocal mandate of, first, informing the taxpayer of the government’s claim, there can be no deprivation of property, because no effective protest can be made. Indeed, while the government cannot be estopped by the negligence or omission of its agents, the mandatory provisions of Sections 203 and 228 of the National Internal Revenue Code of 1997 (“1997 NIRC”) cannot be rendered nugatory by the mere act of the CIR. *Commissioner of Internal Revenue v. Unioil Corp., G.R. No. 204405 (Aug. 4, 2021).*

**IN DETERMINING WHETHER THE RETURN FILED IS FALSE OR FRAUDULENT, JURISPRUDENCE HAS CONSISTENTLY HELD THAT FRAUD IS NEVER IMPUTED. THE COURT HAS REFRAINED FROM SUSTAINING FINDINGS OF FRAUD UPON CIRCUMSTANCES WHICH, AT MOST, CREATE ONLY SUSPICION.** The mere understatement of a tax is not itself proof of fraud for the purpose of tax evasion. *Commissioner of Internal Revenue v. Unioil Corp., G.R. No. 204405 (Aug. 4, 2021).*

**THE COURT OF TAX APPEALS (“CTA”) HAS NO JURISDICTION ON THE ENFORCEMENT OF A FINAL AND EXECUTORY JUDGMENT AS IT IS ACTUALLY CIVIL IN NATURE.** Before a case can be raised on appeal to the CTA, the action before the Regional Trial Court must be in the nature of a tax case, or one which primarily involves a tax case. A local tax case is a dispute between the local government unit (“LGU”) and a taxpayer involving the imposition of the LGU’s power to levy tax, fees, or charges against the property or business of the taxpayer concerned. A local tax case may involve the legality or validity of the real property tax assessment, protest of assessments, disputed assessments, surcharges or penalties; the validity of a tax ordinance; claim for tax refund/credit; claims for tax exemption; actions to collect the tax due; and even prescription of assessments. The instant petition is a Petition for Declaratory Relief with prayer for the issuance of a writ of mandatory injunction (to compel respondent to issue a business permit) and the issuance of a writ of prohibitory injunction (to stop respondent from using an incorrect tax base in collecting local taxes pursuant to a previous final and executory judgment). Hence, while the case may be related to a tax case because the previous final and executory judgment sought to be enforced is a local tax case, the truth of the matter is that it is actually civil in nature. *Mactel Corp. v. City Government of Makati, G.R. No. 244602 (Jul. 14, 2021).*

**CTA DECISIONS**

**IT IS SETTLED THAT WHILE A MAILED LETTER IS DEEMED RECEIVED BY THE ADDRESSEE IN THE COURSE OF MAIL, THIS IS MERELY A DISPUTABLE PRESUMPTION SUBJECT TO CONTROVERSION, THE DIRECT DENIAL OF WHICH SHIFTS THE BURDEN TO THE SENDER TO PROVE THAT THE MAILED LETTER WAS, IN FACT, RECEIVED BY THE ADDRESSEE.** Considering that the taxpayer directly denies due receipt of the subject notices, the burden was shifted to the CIR to prove that the same were indeed received by the taxpayer or by its authorized representative. *Altimax Broadcasting Co., Inc. v. Commissioner of Internal Revenue, CTA Case No. 10044 (Oct. 6, 2021).*

**SERVICE OF NOTICES BY REGISTERED MAIL MUST BE MADE BY SENDING SAID NOTICES “TO THE REGISTERED OR KNOWN ADDRESS OF THE [CONCERNED] PARTY” AND “WITH INSTRUCTION TO THE POSTMASTER TO RETURN THE MAIL TO THE SENDER AFTER TEN (10) DAYS, IF UNDELIVERED.”** Moreover, to constitute sufficient proof of mailing, the registry receipt issued by the post office must contain sufficiently identifiable details of the transaction. Furthermore, it is required that the “the server shall accomplish the bottom portion of the notice” and “shall also make a written report under oath before a Notary Public or any person authorized to administer oath[s] under Section 14 of the NIRC, as amended, setting forth the manner, place and date of service, the name of the person...who received the same and such other relevant information”. The mere presentation of registry receipts is not sufficient. It is still required that the said registry receipts be signed by the concerned taxpayer’s duly authorized representative, and that the signatures are identified and authenticated. Such being the case, the CIR, not only failed to prove that the taxpayer actually received the said notices, he, likewise, neglected to show compliance with the requirements under the Bureau of Internal Revenue’s (“BIR”) own rules and regulations. Since these due process requirements were not fulfilled, for failure of the CIR to properly serve the notices, the subject assessments are null and void. *Altimax Broadcasting Co., Inc. v. Commissioner of Internal Revenue, CTA Case No. 10044 (Oct. 6, 2021).*

**TO PROVE THE FACT OF MAILING, THE CIR MUST PRESENT THE REGISTRY RECEIPT ISSUED BY THE BUREAU OF POSTS OR THE REGISTRY RETURN CARD WHICH WOULD HAVE BEEN SIGNED BY THE TAXPAYER OR ITS AUTHORIZED REPRESENTATIVE.** In the absence of the said documents, a Certification issued by the said Bureau of Posts, and any other pertinent document executed with its intervention, must be presented to establish the fact of mailing. Failure to prove that the notices were properly and duly served upon or received by the taxpayer, the assessments made against the taxpayer are void, for failure to accord the taxpayer due process in the issuance thereof. *Drugmaker’s Biotech Research Laboratories, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9635 (Oct. 15, 2021).*

**THE BIR CAN ISSUE A LETTER OF AUTHORITY (“LOA”) COVERING MORE THAN ONE TAXABLE PERIOD, MORE SO IN AUDITS CONDUCTED BY THE NATIONAL INVESTIGATION DIVISION WHEN THE INVESTIGATION OF PRIOR OR SUBSEQUENT YEARS IS NECESSARY IN ORDER TO DETERMINE THE TRANSACTIONS OR SCHEME EMPLOYED BY THE TAXPAYER IN NOT PAYING**

**THE CORRECT TAXES.** However, what the guidelines prohibit is the issuance of LOAs covering “unverified prior years”. In the event an LOA is issued covering a specific taxable year and “unverified prior years”, the LOA will not be rendered void in its entirety but will be valid as to the declared taxable year. *Villarica v. Commissioner of Internal Revenue, CTA Case No. 9343 (Oct. 21, 2021).*

**EXCEPT FOR THE FIVE INSTANCES ENUMERATED IN SECTION 228 OF THE 1997 NIRC, THE ISSUANCE OF PAN IS MANDATORY.** The sending of a PAN to the taxpayer to inform him of the assessment made is an indispensable “due process requirement in the issuance of a deficiency tax assessment”, the absence of which invalidates any assessment made by the tax authorities. *Commissioner of Internal Revenue v. Clark Water Corp., CTA EB No. 2218 (CTA Case No. 8648) (Oct. 12, 2021).*

**THERE ARE TWO MATTERS WHICH MUST BE SHOWN BY THE TAXPAYER UPON APPEAL OF AN UNSUCCESSFUL ADMINISTRATIVE CLAIM FOR REFUND OF UNUTILIZED INPUT VALUE ADDED TAX: FIRST, ALL DOCUMENTARY AND EVIDENTIARY REQUIREMENTS FOR AN ADMINISTRATIVE CLAIM WERE SATISFIED AT THE BIR LEVEL, AND SECOND, THE TAXPAYER’S ENTITLEMENT TO THE CLAIM FOR REFUND OR TAX CREDIT UNDER SUBSTANTIVE LAW.** The first matter involves a review or determination of whether the CIR has basis in fact and/or in law to deny the administrative claim; while the second matter to be proved entails a determination of the taxpayer’s compliance with the requisites established by law. *Phil. Mining Service Corp. v. Commissioner of Internal Revenue, CTA Case No. 9763 (Oct. 29, 2021).*

**THE 90-DAY PERIOD WITHIN WHICH THE CIR SHOULD ACT ON THE ADMINISTRATIVE CLAIM SHALL BE RECKONED FROM THE DATE OF FILING OF THE ADMINISTRATIVE CLAIM.** Contrary to the taxpayer’s contention, its submission of supporting documents cannot be considered for purposes of counting the 90-day period because it was made beyond the date of filing of the administrative claim on which date the submission of complete supporting documents must coincide. Indeed, the taxpayer is now required to submit complete documents upon the filing of an administrative claim for VAT refund or tax credit. *Mitsuba Phil. Technical Center Corp. v. Commissioner of Internal Revenue, CTA Case No. 10025 (Oct. 6, 2021).*

**BOTH THE ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND SHOULD BE FILED WITHIN THE TWO-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. WHILE BOTH CLAIMS WERE FILED WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD, THE ADMINISTRATIVE CLAIM WAS**

**FILED WITH THE BIR MERELY DAYS BEFORE THE LAPSE OF THE TWO-YEAR PERIOD AND THE JUDICIAL CLAIM WITH THE CTA IMMEDIATELY FOLLOWED THE NEXT DAY.** The CTA held that this displayed a stark disregard of the rule requiring the exhaustion of administrative remedies. *Phil. Airlines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9990 (Oct. 21, 2021).*

**UPON EXPIRATION OF THE 90-DAY PERIOD WITHOUT THE BIR ACTING ON THE REFUND CLAIM, THE CONCERNED TAXPAYER MUST FILE AN APPEAL BEFORE THE CTA WITHIN 30 DAYS; OTHERWISE, THE APPEAL IS NOT COGNIZABLE BY THE CTA.** The said taxpayer need not wait for the BIR to come up with a decision after the said 90-day period. *MTI Advanced Test Dev't Corp. v. Commissioner of Internal Revenue, CTA Case No. 10112 (Oct. 13, 2021).*

**LOCAL BUSINESS TAXES ARE IMPOSED BY LGUs ON THE PRIVILEGE OF DOING BUSINESS WITHIN THEIR JURISDICTIONS.** The phrase “doing business” means some “trade or commercial activity regularly engaged in as a means of livelihood or with a view of profit.” Correspondingly, if the privilege is not shown to have been exercised by respondent in the LGU’s jurisdiction, the latter cannot validly impose local business taxes on respondent. *The City Government of Makati v. Eastbay Resorts, Inc., CTA AC No. 218 (Oct. 12, 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 send us an email at [mail@baniquedlaw.com](mailto:mail@baniquedlaw.com).

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