

TAX ALERT

January 16 to February 15, 2020

COURT OF TAX APPEALS DECISIONS

IN ASCERTAINING THE NATURE OF BUSINESS AND THE TYPE OF SERVICE/S BEING PERFORMED BY A CERTAIN CORPORATION, THE COURT OF TAX APPEALS (CTA) MAY RELY ON THE PURPOSE CLAUSE STATED IN THE ARTICLES OF INCORPORATION. Section 45 of the Corporation Code states that "[n]o corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred." Accordingly, in ascertaining the nature of business and the type of service/s being performed by a certain corporation, the CTA may rely on the purpose clause stated in the Articles of Incorporation since the same confers, as well as limits, the powers that a corporation may exercise. Evidently, it is through the purpose clause that prospective investors shall know the kind of business the corporation deals with; the management shall know the limits of their actions; and third party can know whether his/her dealings with the corporation are within its corporate functions and powers. *Deutsche Knowledge Services Pte Ltd. v. Commissioner of Internal Revenue, C.T.A. Case Nos. 8720, 8736, 8754 & 8767 dated February 14, 2020.*

A REGIONAL OPERATING HEADQUARTER (ROHQ) MUST STILL PRESENT SUFFICIENT EVIDENCE TO SHOW THAT THE SERVICES IT PERFORMED FALL UNDER “SERVICES OTHER THAN PROCESSING, MANUFACTURING OR REPACKING OF GOODS”. We do not agree with petitioner's claim that simply because it is an ROHQ by nature, it need not present sufficient evidence to establish that the services it rendered to its aforementioned service recipients fall under services other than processing, manufacturing or repacking of goods. It must be remembered that petitioner, as an ROHQ, is not prohibited from engaging in services of processing, manufacturing or repacking of goods. Hence, it is incumbent upon petitioner to present sufficient evidence to show that the services it rendered to its service recipients fall under "services other than processing, manufacturing or repacking of goods". However, petitioner failed to do so in the instant case. *Deutsche Knowledge Services, Pte. Ltd. v. Commissioner of Internal Revenue, C.T.A. Case No. 9154 dated February 14, 2020.*

SALE OF SERVICES THAT DOES NOT QUALIFY FOR ZERO-RATING, FOR FAILURE TO COMPLY WITH INVOICING REQUIREMENTS, IS NOT AUTOMATICALLY SUBJECT TO 12% VAT. Petitioner's sale of services that does not qualify for zero-rating, for failure to comply with invoicing requirements, does not automatically mean that the subject sale should be subjected to 12% VAT. In the case of *Commissioner of Internal Revenue vs. Euro Philippines Airline Services, Inc. (G.R. No. 222436 dated July 23, 2018)*, the Supreme Court categorically held that a taxpayer-claimant's failure to comply with invoicing requirements as mandated by law, does not make the transaction subject to 12% VAT. Moreover,

in the case of *Commissioner of Internal Revenue vs. Toledo Power Company (G.R. No. 196415 dated December 2, 2015)*, the Supreme Court said that while in some cases, the determination of a taxpayer's liability in a refund case is allowed, thereby allowing the offsetting of taxes, these are only allowed involving cases for tax refund under Section 229 of the Tax Code, but not in claims for tax refund or credit under Section 112 of the NIRC of 1997. In this case, the issue at hand involves a claim for tax refund or credit under Section 112 of the NIRC of 1997, as amended. Thus, the correctness of petitioner's VAT returns is not put in question, as the only issue to be resolved is whether or not petitioner is entitled to its claim for refund of unutilized input VAT. Hence, there is no basis for respondent's contention that petitioner's sales of services that do not qualify for zero-rating should automatically be subjected to 12% VAT. ***Deutsche Knowledge Services Pte Ltd. v. Commissioner of Internal Revenue, C.T.A. Case No. 7940 dated February 6, 2020.***

TO BE REFUNDABLE, THE LAW MERELY REQUIRES THAT THE INPUT VAT IS "ATTRIBUTABLE" TO THE ZERO-RATED OR EFFECTIVELY ZERO-RATED SALES. ***Taganito HPAL Nickel Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 9128 dated February 5, 2020.***

A TAXPAYER CANNOT ARGUE THAT THE NON-COMPLIANT VAT INVOICES OR OFFICIAL RECEIPTS FOR ITS PURCHASES OF GOODS AND SERVICES WERE ISSUED WITHOUT ITS PARTICIPATION AND CONTROL. The argument of Deutsche Knowledge that the subject VAT invoices or official receipts were issued without its participation and control is untenable. While it may be true that the said VAT invoices or official receipts were issued without its participation and control, Deutsche Knowledge, to whom the burden of proof rests in claiming tax refunds, must have been watchful and vigilantly ensured that the issued pertinent VAT invoice or official receipt by its suppliers of goods and services, as the case may be, contained all the information required by law and revenue regulations. It must be emphasized that the taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. ***Deutsche Knowledge Services Pte Ltd. v. Commissioner of Internal Revenue, CTA EB No. 1917 (CTA Case No. 9079) dated February 5, 2020.***

SUBMISSION OF MERE PHOTOCOPIES OF SALES INVOICES/OFFICIAL RECEIPTS IS A GROUND FOR DENIAL OF THE CLAIM FOR INPUT VAT REFUND. While administrative agencies, such as the BIR, are not bound by technical rules of evidence, it may, nevertheless, choose to give weight or ignore evidence submitted to it, depending on its trustworthiness. Such being the case, the BIR, as an administrative agency, is given leeway to decide whether to give weight or ignore any evidence submitted to it, depending on its trustworthiness. Respondent was thus justified in not relying on the photocopies submitted by petitioner at the administrative level which were not certified by the custodian of the pertinent documents, and in denying, on the basis thereof, petitioner's administrative claim. ***Orica Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9717 dated February 4, 2020.***

DOCUMENTS TO PROVE ZERO-RATED EXPORT SALE OF GOODS. Any VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: 1) the sales invoice as proof of sale of goods; 2) the bill of lading or airway

bill as proof of actual shipment of goods from the Philippines to a foreign country; and 3) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services. Whereas, for export sales made to BOI-registered entities to be entitled to exemptions under the Omnibus Investments Code of 1987, any VAT-registered person claiming VAT zero-rated sales must present at least two (2) types of documents, to wit: 1) the sales invoice as proof of sale of goods; and 2) the Certification issued by the BOI certifying that the purchaser is a BOI-registered manufacturer/producer whose products are 100% exported. ***Orica Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9717 dated February 4, 2020.***

IF INPUT VAT ATTRIBUTABLE TO ZERO-RATED SALES IS LOWER THAN OUTPUT VAT NET OF INPUT VAT ATTRIBUTABLE TO VATABLE SALES, THEN THE CLAIM FOR REFUND WILL FAIL. After deducting the input tax attributable to VATable sales to private entities in the amount of P40,366,410.47 from its output VAT liability of P242,839,162.84 on the said sales, petitioner still has a net output VAT payable of P202,472,752.37. Since the input VAT attributable to VATable sales to private entities is not enough to cover its output VAT liability, the valid input VAT attributable to zero-rated sales/receipts shall be utilized against the remaining output VAT liability. However, the input VAT attributable to zero-rated sales/ receipts of P10,639,630.81 is apparently lower than the net output VAT payable of P202,472,752.37. Consequently, petitioner still has net output VAT still due of P191,833,121.56. Verily, in claiming excess or unutilized input VAT from zero-rated transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. Accordingly, the instant claim for refund/issuance of TCC on petitioner's alleged unutilized input VAT must necessarily fail. ***Maxima Machineries, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9499 dated January 28, 2020.***

JUDICIAL CLAIMS SHOULD NOT BE DENIED ON THE SOLE GROUND THAT THE TAXPAYER ALLEGEDLY FAILED TO SUBMIT BEFORE THE BIR THE COMPLETE DOCUMENTS IN SUPPORT OF ITS ADMINISTRATIVE CLAIM FOR REFUND. Non-submission of supporting documents in the administrative level is not fatal to a claim for refund. Judicial claims are litigated de novo and decided based on what has been presented and formally offered by the parties during the trial. It is the taxpayer who ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. After all, he may have already completed the necessary documents the moment he filed his administrative claim. Thereafter, whether these documents are actually complete as required by law is for the CIR and the courts to determine. ***Commissioner of Internal Revenue v. Chevron Holdings, Inc. and Chevron Holdings, Inc. v. Commissioner of Internal Revenue, CTA EB Nos. 1886 and 1887 (CTA Case No. 9021) dated January 21, 2020.***

DOCUMENTS TO ESTABLISH THAT NON-RESIDENT FOREIGN CORPORATIONS ARE NOT DOING BUSINESS IN THE PHILIPPINES. To be entitled to zero-rating under the first paragraph of Section 108(B)(2) of the 1997 NIRC, each entity must be supported at the very least by BOTH: 1) SEC Certificate of Non-Registration of Corporation/Partnership; and 2) Proof of Certificate/ Articles of Foreign Incorporation/Association or printed screenshots of the US SEC Website showing the state/province/country where the entity was organized. The presentation of the above stated documents is indispensable. The SEC's negative certification establishes that the

recipient of the service has no registered business in the Philippines (i.e., not engaged in trade or business within the Philippines). On the other hand, the Certificate/Articles of incorporation/ Association proves two things: (1) That the recipient of the service is indeed foreign; and (2) It is engaged in business in the country of incorporation/ association (i.e., a showing of a continuity of commercial dealings and intention to establish a continuous business). *Commissioner of Internal Revenue v. Chevron Holdings, Inc. and Chevron Holdings, Inc. v. Commissioner of Internal Revenue, CTA EB Nos. 1886 and 1887 (CTA Case No. 9021) dated January 21, 2020.*

A WARRANT OF DISTRAINT AND/OR LEVY, ISSUED BY THE COMMISSIONER OF INTERNAL REVENUE (CIR) AFTER ISSUANCE OF THE FINAL ASSESSMENT NOTICE AND FORMAL LETTER OF DEMAND, CONSTITUTES AN ACT OF THE CIR WHICH MAY BE THE SUBJECT OF AN APPEAL TO THE CTA. *Alphaland Southgate Tower, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9610 dated February 14, 2020.*

CTA HAS THE POWER TO RESOLVE AN ISSUE, EVEN THOUGH NOT RAISED BY THE PARTIES IN THEIR PLEADINGS, BUT IS NECESSARY TO ACHIEVE AN ORDERLY DISPOSITION OF THE CASE. Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA 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. Thus, the CTA is not bound by the issues specifically raised by the parties. The lack of authority of the concerned Revenue Officer (RO) to make an examination goes into the issue of the validity of the assessment itself. Hence, the Court has the power to resolve this related issue, even though the parties had not raised the same in their pleadings. *First Philippine Power Systems, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9067 dated February 14, 2020; Fort 1 Global City Center, Inc. v. Hon. Caesar R. Dulay, C.T.A. Case Nos. 9490 and 9503 dated January 23, 2020.*

AN ASSESSMENT CONTAINS NOT ONLY A COMPUTATION OF TAX LIABILITIES, BUT ALSO A DEMAND FOR PAYMENT WITHIN A PRESCRIBED PERIOD. The requirement to indicate a fixed and definite period within which a taxpayer must pay the tax deficiencies is vital to the validity of the assessment. The absence of the specific period in the FLD and Assessment Notices negates the CIR's demand for payment and makes the assessment void. *Fronterra Brands Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9230 dated February 14, 2020.*

CTA WILL APPROVE SUSPENSION OF PROMULGATION OF DECISION IN AN ASSESSMENT CASE UPON SUBMISSION OF (1) JUDICIAL COMPROMISE AGREEMENT SIGNED BY AUTHORIZED SIGNATORIES AND APPROVED BY THE NATIONAL EVALUATION BOARD; AND (2) PROOF OF FULL PAYMENT OF JUDICIAL COMPROMISE AMOUNT. The instant case is for an assessment of alleged deficiency taxes, hence, no appeal from the decision of the respondent shall suspend the payment, levy or distraint aside from exceptional cases provided for by law. It is only upon submission of a Judicial Compromise Agreement signed by authorized signatories with the approval of the National Evaluation Board and full payment of the Judicial Compromise Amount that the Court sees no bar in approving the same. Absent this, the promulgation of the decision must be in order.

Market Strategic Firm, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9280 dated February 13, 2020.

A HOLDING COMPANY, WHICH IS NEITHER A BANK NOR A NON-BANK FINANCIAL INTERMEDIARY, IS NOT LIABLE FOR LOCAL BUSINESS TAX ON DIVIDENDS AND INTEREST INCOME. *Makati City and the Incumbent City Treasurer of Makati City v. Metro Pacific Assets Holdings, Inc., CTA EB No. 1944 (CTA AC No. 184) dated February 12, 2020.*

A TAXPAYER MUST PAY UNDER PROTEST WITH THE LOCAL TREASURER WITHIN 30 DAYS FROM PAYMENT OF TAX WHEN CLAIMING EXEMPTION FROM PAYMENT OF REAL PROPERTY TAXES. Taxpayer should have first complied with the requirement of payment under protest and the rule on exhaustion of administrative remedies under Sections 252, 226 and 229 of Local Government Code (LGC) of 1991. In this regard, the taxpayer must first pay the tax then file a protest with the Local Treasurer within thirty (30) days from date of payment of tax. If protest is denied or upon the lapse of the sixty (60)-day period to decide the protest, the taxpayer may appeal to the Local Board of Assessment Appeals (LBAA) within sixty (60) days from the denial of the protest or the lapse of the sixty (60)-day period to decide the protest. The LBAA has 120 days to decide the appeal. If the taxpayer is unsatisfied with the Local Board's decision, the taxpayer may appeal before the Central Board of Assessment Appeals (CBAA) within thirty (30) days from receipt of the Local Board's decision. The decision of the CBAA is appealable before the Court of Tax Appeals En Banc. For petitioner's failure to exhaust the administrative remedies available to it and to comply with payment under protest, the assessment therefore attained finality and the collection would be proper. *National Food Authority v. Province of Nueva Vizcaya, CTA AC Case No. 192, dated February 3, 2020.*

A NOTICE OF MERGER FILED WITH THE BIR IS NOT A PRECONDITION FOR THE TRANSFER OF THE ABSORBED CORPORATION'S UNUSED INPUT TAX CREDITS TO THE SURVIVING CORPORATION. In case of a merger, the absorbed corporation's outstanding obligations, if any, shall be transferred to the surviving corporation as clearly provided under Section 80 of the Corporation Code. Petitioner CIR failed to provide a provision of law which requires that the notice of merger filed with the BIR is a precondition for the transfer of the absorbed corporation's unused input tax credits to the surviving corporation in cases of merger. The effects of a closure of a company from a tax perspective should be distinguished from the effects of a statutory merger resulting to a dissolution of the absorbed company under the provisions of the Corporation Code. Although both contemplate a situation wherein an entity is dissolved, the effects under the 1997 NIRC and the Corporation Code are different. The legal effects of a statutory merger is clear from the provisions of Section 79 of the Corporation Code and Section 40 (C)(6)(b) of the 1997 NIRC as implemented by Revenue Regulations No. 14-2005, while Section 80 of the Corporation Code provides the period when these legal effects shall take place. The conditions before the registration of a closing entity is cancelled under the 1997 NIRC are not the same conditions before the legal effects of a statutory merger may take place. Petitioner failed to make this distinction, hence, resulting to an erroneous application of the provisions of the 1997 NIRC to a statutory merger governed by the Corporation Code. *Commissioner of Internal Revenue v. My Solid Technologies & Devices Corporation, CTA EB No. 1767 (CTA Case No. 8854) dated February 11, 2020.*

IN CASE OF RE-ASSIGNMENT OR TRANSFER OF CASES TO ANOTHER REVENUE OFFICER (RO), A NEW LETTER OF AUTHORITY (LOA) WITH A CORRESPONDING NOTATION THERETO, SIGNED BY AN AUTHORIZED OFFICER TO ISSUE AN LOA, MUST BE CERTAIN. RMO No. 43-90 is explicit that the continuation of audit to replace the officer(s) named in a previous LOA requires the issuance of a new LOA in cases of reassignment or transfer to another RO. Clearly, in all tax assessments, the audit investigation must be conducted by a duly designated RO tasked to perform audit and examination of taxpayers' books, pursuant to an LOA issued by the Regional Director. In case of re-assignment or transfer of cases to another RO, a new LOA with a corresponding notation thereto, signed by an authorized officer to issue an LOA, must be certain. In this case, the CIR failed to comply with the issuance of a new LOA, instead a new Memorandum of Assignment (MOA) was issued for the continuation of the investigation. Thus, the investigation conducted was without the requisite authority. *Market Strategic Firm, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9280 dated February 10, 2020.*

ASSESSMENT ARISING FROM A LETTER NOTICE IS VOID. In the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue (G.R. No. 222743 dated April 5, 2017)*, the Supreme Court held that under RMO No. 32-05, the previously issued LN should be converted to an LOA first before a revenue officer can proceed with further examination and assessment of the taxpayer. In the present case, LN No. 079-RLF-10-00-00025 dated June 14, 2012 was issued by Petitioner against Respondent. A Notice of Informal Conference, PAN and FAN/FLD were issued pursuant to the said LN. Evidently, the authority of the revenue officer to conduct an examination of Respondent's tax liabilities is already lacking since the beginning. The LN should have been converted to a LOA before proceeding with the further examination of Respondent and issuance of assessment against her. Accordingly, considering that the examination and assessments were issued pursuant only to a LN, the income tax and VAT assessments are void for lack of authority. *Myrna S. Leonida OIC-Regional Director, BIR Revenue Region No. 12 v. Mary Susan R. Fortich, CTA EB No. 1925 (CTA Case No. 9036) dated February 4, 2020.*

WITHOUT A VALID ASSESSMENT, ACCUSED CANNOT BE MADE LIABLE, CIVILLY OR CRIMINALLY, FOR FAILURE TO PAY OR WITHHOLD AND REMIT TAXES. In the present case, it is undisputed that the second LOA was served on accused outside the thirty (30)-day period from issuance contrary to Revenue Audit Memorandum Order ("RAMO") No. 01-00. As expressly stated in the RAMO, failure to serve the LOA on the taxpayer within the thirty (30)- day period renders such LOA null and void unless revalidated. Considering no such revalidation was made in the case at bar and service of the second LOA was made after the thirty (30)- day period from issuance, any examination conducted by the BIR and resulting assessment pursuant to such void LOA is likewise a nullity. Lacking authority to conduct the examination of the books of accused, any resulting assessment is invalid and cannot become final and executory precisely because there was no authority to conduct such examination in the first place. Necessarily, without a valid assessment, accused cannot be made liable, civilly or criminally, for failure to pay or withhold and remit taxes withheld. *People of the Philippines v. Cross Country Oil & Petroleum Corp., et. al., CTA EB Crim. No. 052 (CTA Crim. Case No. O-631) dated February 7, 2020.*

DEPRIVING TAXPAYER THE OPPORTUNITY TO RESPOND TO THE PRELIMINARY ASSESSMENT NOTICE RENDERS THE ASSESSMENT VOID FOR NONCOMPLIANCE WITH STATUTORY AND PROCEDURAL DUE PROCESS. 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 Formal Letter of Demand (FLD). In the present case, petitioner received the PAN dated February 8, 2012 on February 20, 2012. Counting fifteen (15) days from the date of receipt of the PAN on February 20, 2012, petitioner had until March 6, 2012 to respond to the PAN. However, instead of awaiting petitioner's response, respondent prematurely issued the FLD on February 29, 2012. Clearly, this is a violation of petitioner's right to due process. Respondent rushed into the issuance of the FLD, without waiting for the lapse of the period, depriving petitioner an opportunity to respond to the PAN. Thus, the assessment is void for noncompliance with statutory and procedural due process. *Lanao del Norte Electric Cooperative (LANECO) v. Commissioner of Internal Revenue, C.T.A. Case No. 8769 dated February 4, 2020.*

THE ISSUANCE OF PRELIMINARY COLLECTION LETTER (PCL) AND FINAL NOTICE BEFORE SEIZURE (FNBS) IS TANTAMOUNT TO A DENIAL OF PROTEST. Petitioner should be aware that the issuance of said PCL and FNBS is tantamount to a denial of its protest. In *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue et al. (G.R. No. 148380 dated December 9, 2005)*, the Supreme Court ruled that when taxpayers receive a notice or a letter other than the Final Decision on Disputed Assessment (FDDA) demanding payment of the alleged tax deficiency assessment after the latter filed its protest letter, the same is deemed a denial of such protest. The protest was deemed denied by the issuance of said PCL and FNBS. Hence, petitioner should have appealed to the CTA within 30 days from December 21, 2018 or until January 20, 2019 by filing a Petition for Review (PFR). However, petitioner only filed its PFR on May 20, 2019. Thus, prescription on the filing of said petition for review has already set in, thereby depriving this Court of jurisdiction in hearing the instant case. *Ten-Four Readymix Concrete, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 10081 dated January 16, 2020.*

ACQUITTAL OF TAXPAYER IN A CRIMINAL CASE CANNOT OPERATE TO DISCHARGE HIM OR HER FROM THE DUTY TO PAY TAX. It is well-settled that the acquittal of a taxpayer in the criminal case cannot operate to discharge him or her from the duty to pay tax, because that duty is imposed by statute prior to and independent of any attempt on the part of the taxpayer to evade payment. The obligation to pay the tax is not a mere consequence of the felonious acts charged in the information, nor is it a mere civil liability derived from crime that would be wiped out by the judicial declaration that the criminal acts charged did not exist. *People of the Philippines v. Cross Country Oil & Petroleum Corp., et. al., CTA EB Crim. No. 052 (CTA Crim. Case No. O-631) dated February 7, 2020.*

GUIDELINES FOR SALE OF SHARES TO BE TAXABLE IN THE PHILIPPINES UNDER THE RP-US TAX TREATY. Under the RP-US Tax Treaty, capital gains from the sale of shares of stock shall be taxable in the state where the alienator is a resident. However, the Reservation Clause provides that such sale may be taxed by both the Philippines and the US if the interest being disposed is in a corporation whose assets consist principally of a real property interest located in that country. Conversely, the subject capital gains may be exempt from

Philippine tax if the interest being disposed is in a corporation whose assets do not consist principally of real property interest located in the Philippines. To summarize: (1) capital gains derived by residents of other Contracting States from the disposition of shares or interests in a Philippine corporation are taxable in the Philippines only if the assets of the corporation consist principally of real property interest located in the Philippines; (2) real property interests are interests on properties enumerated in Revenue Regulations No. 4-86, including real properties as defined under Philippine law; (3) principally means more than fifty percent (50%) of the entire assets in terms of value; and, (4) the value of the assets shall be determined from the financial statements as of the date of the sale, as verified by the BIR. ***DOLE Fresh Fruit Company v. Commissioner of Internal Revenue, C.T.A. Case No. 9012 dated February 5, 2020.***

SUPPLEMENTAL EVIDENCE ATTACHED TO A MOTION FOR RECONSIDERATION MAY BE ADMITTED IF THERE IS NO OBJECTION THERETO. CTA *en banc* upholds CTA Division's admission of supplemental evidence attached to a Motion for Reconsideration on distinct but mutually reinforcing grounds, to wit: (1) the Commissioner failed to timely object to the formal offer of supplemental evidence; and (2) the CTA is not governed strictly by the technical rules of evidence. First, the failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence. Second, the CTA is not governed strictly by the technical rules of evidence. The CTA Division's admission of the formal offer of supplemental evidence, without prompt objection from the CIR, was thus justified. ***Commissioner of Internal Revenue v. Stateland, Inc., CTA EB No. 1862 (CTA Case No. 8633) dated February 5, 2020.***

PROOF OF ACTUAL REMITTANCE OF TAXES WITHHELD TO THE BIR IS NOT INDISPENSABLE IN A CLAIM FOR REFUND OF EXCESS CREDITABLE WITHHOLDING TAXES. ***Commissioner of Internal Revenue v. Stateland, Inc., CTA EB No. 1862 (CTA Case No. 8633) dated February 5, 2020.***

CTA DECISIONS DO NOT CONSTITUTE BINDING PRECEDENTS. ***Deutsche Knowledge Services Pte Ltd. v. Commissioner of Internal Revenue, CTA EB No. 1917 (CTA Case No. 9079) dated February 5, 2020.***

FOR THE 10-YEAR PRESCRIPTIVE PERIOD TO APPLY, THE ASSESSMENT NOTICES MUST INDICATE THE SAME AND THE CIR MUST PRESENT EVIDENCE WITH RESPECT TO THE ALLEGED FINDING OF FRAUD WHICH WOULD JUSTIFY THE APPLICATION OF THE 10 YEAR PERIOD. ***Commissioner of Internal Revenue v. Philmay Property, Inc., CTA EB No. 1945 (CTA Case No. 8764) dated February 5, 2020.***

JURISDICTION IN CASES INVOLVING DISPUTED ASSESSMENTS, REFUNDS OF INTERNAL REVENUE TAXES, FEES OR OTHER CHARGES, PENALTIES IN RELATION THERETO, OR OTHER MATTERS ARISING UNDER THE NIRC OR OTHER LAWS ADMINISTERED BY THE BIR. As regards private entities and the BIR, the decision of petitioner is subject to the exclusive appellate jurisdiction of this Court, in accordance with Section 4 of the NIRC; and where the disputing parties are all public entities, the case shall be governed by PD No. 242 (which is now embodied in Chapter 14, Book IV of the Administrative Code of 1987), where the dispute shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues

and government agencies involved. *PNO Exploration Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 9373 dated January 23, 2020.*

THERE IS FAILURE TO PROVE AUTHENTICITY OF FOREIGN DOCUMENTS IF WHAT WAS CONSULARIZED WAS AN APOSTILLE WHICH AUTHENTICATED THE AFFIDAVIT OF A CERTAIN NOTARY PUBLIC WHO IN HIS AFFIDAVIT ATTESTED IN TURN TO THE AUTHENTICITY OF PHOTOCOPIES OF THE FOREIGN DOCUMENTS. Although petitioner-movant was able to produce several foreign documents suggesting FTL's registration in England, namely: (1) FTL's Certificate of Incorporation (COI); (2) FTL's Certificate of Change of Name (COCN); and, (3) the Certification from the Registrar of Companies for England (CRCE), the Court did not lend credence to them for petitioner-movant's failure to duly prove their authenticity in accordance with the Rules of Court. The Court, in its assailed Decision, found that these documents were not properly consularized. What was consularized was an apostille which authenticated the affidavit of a certain, David Noel Lloyd Fawcett, an English notary public who in his affidavit attested in turn to the authenticity of photocopies of the COI, COCN, and the original of the CRCE. In sum, the COI, COCN and CRCE, all pieces of documentary evidence which would have lent confidence to the allegation of FTL's foreign nationality, were in themselves not certified by our own consular officials. This, in effect, resulted in the Court's application of the rule on processual presumption as already adequately discussed in the assailed Decision. *Financial Times Electronic Publishing Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9631 dated January 16, 2020.*

BIR RULINGS AND ISSUANCES

REGULATIONS AMENDING CERTAIN PROVISIONS OF REVENUE REGULATIONS NO. 13-2011, IMPLEMENTING THE TAX PROVISIONS OF THE REAL ESTATE INVESTMENT TRUST (REIT) ACT OF 2009. R.R. No. 3-2020 dated January 29, 2020.

MEMORADUM ORDER PRESCRIBING THE POLICIES AND GUIDELINES IN THE AUDIT/EXAMINATION OF COOPERATIVES. The objectives of this Revenue Memorandum Order are: (1) to ensure the correctness of availment of tax exemptions/incentives of cooperatives pursuant to Republic Act No. 9520, and (2) to effectively monitor tax compliance of cooperatives. The requirement of securing authorization from the Cooperative Development Authority (CDA) before the examination of the books of accounts and other accounting records of the cooperative as provided under Section 61(3) of RA No. 9520 otherwise known as the "Philippine Cooperative Code of 2008" is no longer applicable. *R.M.O. No. 7-2020 dated February 10, 2020.*

CIRCULAR INFORMING THE AVAILABILITY OF BIR FORM NOS. 1600-VT AND 1600-PT JANUARY 2018 VERSION. R.M.C. No. 13-2020 date February 7, 2020.

CIRCULAR INFORMING THE AVAILABILITY OF REVISED BIR FORM NO. 2552 [PERCENTAGE TAX RETURN (FOR TRANSACTIONS INVOLVING SHARES OF STOCKS LISTED AND TRADED THROUGH THE LOCAL STOCK EXCHANGE (LSE)

OR THROUGH INITIAL AND/OR SECONDARY PUBLIC OFFERING)] JANUARY 2018 (ENCS). *R.M.C. No. 12-2020 dated February 4, 2020.*

CIRCULAR CLARIFYING CERTAIN ISSUES ON TAX AMNESTY ON DELINQUENCIES THEREBY AMENDING AND SUPPLEMENTING REVENUE MEMORANDUM CIRCULAR NO. 57-2019. *R.M.C. No. 11-2020 dated February 6, 2020.*

CIRCULAR SUSPENDING THE REQUIREMENT FOR PERMIT TO USE (PTU) COMPUTERIZED ACCOUNTING SYSTEM (CAS), COMPUTERIZED BOOKS OF ACCOUNTS (CBA) AND/OR COMPONENT(S) THEREOF AND ALLOWING THEIR USE SUBJECT TO COMPLIANCE REQUIREMENT. *R.M.C. No. 10-2020 dated February 6, 2020.*

CIRCULAR SUSPENDING DEADLINES IN THE ACCEPTANCE OF TAX RETURNS AND PAYMENT OF INTERNAL REVENUE TAXES OF TAXPAYERS IN THE PROVINCE OF BATANGAS. In view of the announcement of Batangas Governor Mark Leviste, declaring the province of Batangas under the State of Calamity due to the recent volcanic eruption of the Taal Volcano affecting numerous cities, towns and municipalities in its vicinity, this Office found it proper to suspend the deadlines, for the month of January, on the filing and payment of tax returns in the area until such time that the situation returns to normal. *R.M.C. No. 7-2020 dated January 14, 2020.*

CIRCULAR EXTENDING THE SUBMISSION OF SWORN DECLARATION OF INVENTORY PER BRANCH UNTIL JANUARY 31, 2020. In connection with Revenue Memorandum Circular (RMC) No. 2-2020, all concerned Revenue District Offices (RDOs) are notified that the submission of the Year-End Sworn Declaration Inventories of Diesel, Gasoline and Kerosene by all Retail/Gasoline Stations nationwide is hereby extended until January 31, 2020. *R.M.C. No. 6-2020 dated January 15, 2020.*

DELEGATING TO THE ASSISTANT COMMISSIONER OF LEGAL SERVICE THE AUTHORITY TO APPROVE AND SIGN ALL COMPLIANCE CHECK REPORTS FOR TAX TREATY RELIEF APPLICATIONS ON DIVIDENDS, INTEREST AND ROYALTIES. In line with the implementation of Republic Act (RA) No. 11032, otherwise known as the “Ease of Doing Business and Efficient Government Service Delivery Act of 2018”, to further streamline and expedite the issuance of Compliance Check Reports (CCRs) for Tax Treaty Relief Applications (TTRAs) on Dividends, Interest and Royalties under Revenue Memorandum Order (RMO) No. 8-2017 (Procedure for Claiming Tax Treaty Benefits for Dividend, Interest and Royalties), as the exigencies of the service so require, all CCRs are hereby ordered to be approved and/or signed by the Assistant Commissioner Legal Service. *R.D.A.O. No. 1-2020 dated February 7, 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:

Carlos G. Baniqued	<u>cgbaniqued@baniquedlaw.com</u>
Terence Conrad H. Bello	<u>thbello@baniquedlaw.com</u>
Emma Malou L. Gan	<u>eulim@baniquedlaw.com</u>
Agnes Bianca L. Mendoza	<u>almendoza@baniquedlaw.com</u>
Casiano V. Flores III	<u>cvflores@baniquedlaw.com</u>
Mark Roland C. Domingo	<u>mcdomingo@baniquedlaw.com</u>
John Marti C. Duya	<u>jcduya@baniquedlaw.com</u>
Ana Margaret T. Dahilig	<u>atdahilig@baniquedlaw.com</u>
Carla Patrice Cucueco	<u>cscucueco@baniquedlaw.com</u>
Margaret P. Gan	<u>mpgan@baniquedlaw.com</u>

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