

TAX ALERT

June 16 – July 15, 2019

SUPREME COURT DECISION

THE SALE OF POWERPLANTS IS NOT SUBJECT TO VAT SINCE IT IS NOT IN PURSUIT OF A COMMERCIAL OR ECONOMIC ACTIVITY BUT A GOVERNMENTAL FUNCTION MANDATED BY LAW TO PRIVATIZE NPC GENERATION ASSETS. The sale of powerplants is clearly not the same as the sale of electricity by generation companies, transmission, and distribution companies, which is subject to VAT under Section 108 of the NIRC. ***Power Sector Assets and Liabilities Mgt. Corp. v. Commissioner of Internal Revenue, GR No. 226556 dated July 3, 2019.***

COURT OF TAX APPEALS DECISIONS

TAXPAYER WHO DISPUTES A NOTICE OF ASSESSMENT FOR DEFICIENCY LOCAL TAXES BUT PAYS THE TAX UNDER PROTEST MUST STILL FILE A WRITTEN PROTEST.

A taxpayer who disputes a notice of assessment for deficiency local business tax but opts to pay the disputed assessment under protest must still file a written protest within the 60-day statutory period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer, pursuant to Section 195 of the Local Government Code of 1991 (“LGC”). Failing which, the subject local tax assessment will become final and unappealable in accordance with the said Section 195. If, however, there is no notice of assessment issued by the local treasurer, and the taxpayer claims payment of illegally or erroneously collected taxes and intends the refund thereof, then Section 196 of the LGC applies, without regard to the provisions of Section 195 of the law. ***Metro Pacific Tollways Dev’t Corp. v. Makati City and Nelia A. Barlis in Her Capacity as Incumbent City Treasurer of Makati City, CTA AC No. 191 dated July 10, 2019.***

THE CTA HAS JURISDICTION TO RULE ON THE BIR’S NOTICE OF DENIAL OF APPLICATION FOR ABATEMENT AS IT FALLS UNDER THE “OTHER MATTERS” JURISDICTION OF THE CTA. The BIR issued an Audit Results/Assessment Notice (“AR/AN”) assessing the taxpayer for surcharge and interest without a letter of authority (“LOA”). The petitioner appealed the AR/AN through a letter, which the CIR denied through a Notice of Denial. Thereafter, petitioner appealed the Notice of Denial by elevating the same to the CTA. The CTA ruled that it has jurisdiction to rule on the Notice of Denial as it falls under the “Other Matters” jurisdiction of the CTA and found that the assessment is null and void due to failure to observe the due process requirement under the NIRC. ***Del Monte Phil., Inc. v. Commissioner of Internal Revenue, CTA Case No. 9766 dated July 15, 2019.***

IN ORDER TO SUSTAIN A CONVICTION FOR FAILURE TO MAKE OR FILE A RETURN UNDER SECTION 255 OF THE NIRC, THE FOLLOWING ELEMENTS MUST BE ESTABLISHED: 1) the accused was required under the NIRC to pay any tax, make a return to keep any record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; 2) the accused failed to pay the required tax, make a return or keep the required record, or supply the correct and accurate information; and 3) the accused willfully failed to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations. *People of the Phil. v. Sison CTA Crim Case Nos. O-626 and O-628 dated June 28, 2019.*

A LETTER OF AUTHORITY MUST BE SERVED TO THE TAXPAYER WITHIN THIRTY DAYS, OTHERWISE IT IS VOID. *People of the Phil. v. Zapata, CTA Case No. O-653 dated June 28, 2019.*

ONLY THE REGIONAL DIRECTORS, THE DEPUTY COMMISSIONERS AND THE COMMISSIONER OF INTERNAL REVENUE GENERALLY HAVE THE REQUISITE AUTHORITY TO SIGN LETTERS OF AUTHORITY. Revenue officers other than the three aforementioned may sign LOAs but only upon prior authorization by the CIR. Since the LOA was only issued by the OIC-Assistant Regional Director and not by the Regional Director, said LOA was invalid and any assessment issued pursuant to such invalid authority is therefore void. *Amparo Shipping Corp. v. Commissioner of Internal Revenue, CTA Case No. 9387 dated June 28, 2019.*

TRANSACTIONS ENTERED INTO BY THE TAXPAYER WITH RELATED PARTIES NEED NOT BE EMBODIED IN A DOCUMENT OR DEBT INSTRUMENT FOR THE TRANSACTIONS TO BE SUBJECT TO DOCUMENTARY STAMP TAX SINCE THE TAXABLE TRANSACTIONS BETWEEN THEM WERE SATISFACTORILY SHOWN IN THE AUDITED FINANCIAL STATEMENT. *San Miguel Paper Packaging Corp. v. Commissioner of Internal Revenue, CTA Case No. 9288 dated July 2, 2019.*

AN ASSESSMENT MUST CONTAIN NOT ONLY THE COMPUTATION OF TAX LIABILITIES BUT MUST ALSO INDICATE A DEFINITE AMOUNT OF THE TAX DUE, AND A CATEGORICAL DEMAND FOR PAYMENT WITHIN A PRESCRIBED PERIOD. The formal letter of demand (“FLD”) issued to the taxpayer stated, in the space provided for “date due”, “[p]lease note that the interest and the total amount due will have to be adjusted if paid beyond November 30, 2013.” Thus, CTA ruled that the FLD is void. *Commissioner of Internal Revenue v. Northern Tobacco Redrying Co., Inc, CTA EB No. 1760 (CTA Case No. 8857) dated July 2, 2019.*

BIR RULINGS AND ISSUANCES

SECTION 109 OF THE NIRC EXEMPTS EDUCATIONAL SERVICES RENDERED BY PRIVATE EDUCATIONAL INSTITUTIONS ACCREDITED BY, AMONG OTHERS, THE TESDA. However, this exemption does not extend to other activities

involving sale of goods and services, which are subject to VAT. Hence, as long as the taxpayer will not engage in the regular conduct or pursuit of a commercial or economic activity, including transactions incidental thereto, it will remain exempt from VAT. The exemption also does not extend to other programs not covered by the authority/accreditation granted by TESDA, which may be subject to VAT. ***BIR Ruling Nos. 354-19 and 355-19, both dated June 20, 2019.***

FOR THE PURPOSE OF REV. REGS. 2-2001 ENTITLED “IMPLEMENTING THE PROVISION ON IMPROPERLY ACCUMULATED EARNINGS TAX”, OWNERSHIP MUST BE ULTIMATELY TRACED TO THE INDIVIDUAL SHAREHOLDERS TO DETERMINE WHETHER OR NOT A DOMESTIC CORPORATION IS A CLOSELY-HELD CORPORATION OR A PUBLICLY-HELD CORPORATION. Where at least 50% in value of the outstanding capital stock or of the total combined voting power of all classes of stock entitled to vote in a corporation is owned directly or indirectly by not more than twenty (20) individuals, the corporation is considered a closely-held corporation. ***BIR Ruling No. 357-19 dated June 20, 2019.***

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) 633-9418, facsimile number (632) 633-1911, or at the indicated e-mail address:

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