BANIQUED & BELLO
ATTORNEYS-AT-LAW

TAX ALERT

March 16, 2019 to April 15, 2019

SUPREME COURT DECISION

THE TWO-YEAR PRESCRIPTIVE PERIOD TO CLAIM REFUND ACTUALLY COMMENCES TO RUN, AT THE EARLIEST, ON THE DATE OF THE FILING OF THE ADJUSTED FINAL TAX RETURN. The two-year period in filing a claim for tax refund is crucial. While the law provides that the two-year period is counted from the date of payment of the tax, jurisprudence, however, clarified that the two-year prescriptive period to claim a refund actually commences to run, at the earliest, on the date of the filing of the adjusted final tax return because this is where the figures of the gross receipts and deductions have been audited and adjusted, reflective of the results of the operations of a business enterprise. Thus, it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures. ***Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.), G.R. No. 231581 dated April 10, 2019.***

COURT OF TAX APPEALS DECISIONS

THE LOA IS PROOF THAT THE PERSON/S NAMED THEREIN IS/ARE AUTHORIZED TO CONDUCT THE NECESSARY INVESTIGATION/AUDIT. The LOA is the proof that the person/s named therein is/are authorized to conduct the necessary investigation/audit, an express grant of authority. Thus, absent the necessary issuance of a new LOA specifically naming the person to whom the case will be reassigned with the corresponding annotation per RMO No. 43-90, there is no authority to conduct the investigation/ audit. ***Commissioner of Internal Revenue v. Wellington Investment & Manufacturing Corporation, CTA EB No. 1773 (CTA Case No. 8726) dated April 11, 2019.***

EXAMINATION OR ASSESSMENT OF INTERNAL REVENUE TAXES IS VOID IF CONDUCTED BY VIRTUE OF A TAX VERIFICATION NOTICE AND NOT BY A VALID LETTER OF AUTHORITY. A revenue officer must be clothed with authority before proceeding with an examination or assessment of a taxpayer. More importantly, the said authority must be embodied in a Letter of Authority (LOA) and not in a mere notice to the taxpayer. In the case at bar, the assessment and examination of petitioner's internal revenue taxes was conducted by virtue of a Tax Verification Notice, and not by a valid LOA. Considering that the revenue officers who conducted the examination of petitioner's books of account and other accounting records was not validly authorized to do so under a validly issued LOA, the subject tax assessment or examination issued against petitioner was void. ***Missouri Square, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 8688 dated March 26, 2019.***

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A MEMORANDUM REFERRAL DOES NOT CONSTITUTE A VALID AUTHORITY TO CONDUCT AUDIT. A Memorandum Referral, authorizing a revenue officer (RO) and group supervisor to continue the audit/investigation of petitioner which resulted in the issuance of a Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN), does not constitute a valid authority to conduct audit. Section C(1) and (5) of RMO No. 43-90 explicitly requires the issuance of a new Letter of Authority (LOA) in cases of re-assignment/transfer of cases to another RO. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time, it authorizes or empowers a designated RO to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period. Without a validly issued LOA, the resulting assessment or examination conducted is a nullity. ***Linde Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 8783 dated March 28, 2019.***

A REVENUE OFFICER (RO) MAY ONLY EXAMINE THE TAXPAYER'S BOOKS PURSUANT TO AN LOA ISSUED BY THE REGIONAL DIRECTOR. A REFERRAL MEMORANDUM DIRECTING ANOTHER RO TO CONTINUE THE EXAMINATION IS NOT EQUIVALENT TO A LETTER OF AUTHORITY. In this case, although an LOA was issued, the examination was reassigned to new revenue officers (RO) pursuant only to a Memorandum of Assignment signed by the OIC-Chief of Regular Large Taxpayers Audit Division (RLTAD) II. In *Commissioner of Internal Revenue vs. Composite Materials, Inc.*, the Supreme Court categorically held that an RO may only examine the taxpayer's books pursuant to an LOA issued by the Regional Director and emphasized that the Referral Memorandum issued by the Revenue District Officer ("RDO") directing another RO to continue with the examination of records is not equivalent to an LOA nor does it cure the RO's lack of authority. The necessity of a valid LOA in audit investigations is not merely an administrative requirement but a statutory requirement which is vital to the validity of an audit of a taxpayer, and consequently, to the validity of the FAN, that may be issued after said audit. Here, the absence of an LOA authorizing the RO to audit petitioner rendered the assessment void. ***Travellers International Hotel Group, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9168 dated April 2, 2019.***

REPLACEMENT OF A LETTER OF AUTHORITY (LOA) OR ELECTRONIC LOA WITH A NEW ELECTRONIC LOA PURSUANT TO RMO NO. 29-2010, WHICH IS FOR ADMINISTRATIVE PURPOSES ONLY, DOES NOT INVALIDATE THE ORIGINAL LOA ISSUED. ***Robinsons Diversified Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 9149 dated April 2, 2019.***

TAXPAYER SHOULD QUESTION THE VALIDITY OF THE ELECTRONIC LOA AT THE EARLIEST OPPORTUNITY, THAT IS, IMMEDIATELY DURING THE EXAMINATION AND REPEATEDLY IN THE RESPONSE TO NOTICE OF INFORMAL CONFERENCE, REPLY TO PRELIMINARY ASSESSMENT NOTICE AND PROTEST TO THE FINAL LETTER OF DEMAND. ESTOPPEL BARS TAXPAYER FROM QUESTIONING THE VALIDITY OF THE PROCESS IN WHICH IT PARTICIPATED ACTIVELY. ***Robinsons Diversified Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 9149 dated April 2, 2019.***

CTA CAN RESOLVE THE ISSUE INVOLVING AUTHORITY OF REVENUE OFFICERS TO CONDUCT THE AUDIT, ALBEIT THE SAME WAS NOT RAISED BY THE PARTIES IN THEIR PLEADINGS OR MEMORANDA. ***Travellers International Hotel Group, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9168 dated April 2, 2019.***

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. 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. The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or memoranda. ***Nanox Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB No. 1629 (CTA Case No. 8433) dated April 15, 2019.***

A PAN NEED NOT CONTAIN A DEFINITE AND UNEQUIVOCAL DEMAND FOR PAYMENT OF TAXES BECAUSE IT MERELY INFORMS THE TAXPAYER OF THE PROPOSED ASSESSMENT. Petitioner now argues that the Preliminary Notice and the April 1, 2014 letter of respondent do not contain a definite and unequivocal demand for payment of taxes. Based on Section 3.1.2 of RR No. 12-99, a PAN need not contain a definite and unequivocal demand for payment of taxes because it merely informs the taxpayer of the proposed assessment. Thus, respondent did not err vis-à-vis the contents of the subject Preliminary Notice because he was merely informing petitioner of the proposed assessment. ***New Coast Hotel, Inc. v. Commissioner of Internal Revenue, CTA EB No. 1758 (CTA Case No. 9146) dated April 15, 2019.***

A VALID FORMAL ASSESSMENT MUST DEMAND PAYMENT OF THE TAXES DESCRIBED WITHIN A SPECIFIC PERIOD. 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 Formal Letter of Demand (FLD) and Assessment Notices negates the CIR's demand for payment and makes the assessment void. ***Commissioner of Internal Revenue v. Saturn Holdings Corporation, CTA EB No. 1747 (C.T.A. Case No. 9085) dated April 4, 2019.***

ISSUANCE OF FAN SIX (6) DAYS AFTER RECEIPT OF PAN IS A DENIAL OF TAXPAYER'S RIGHT TO DUE PROCESS AND RENDERS THE ASSESSMENT VOID. In the case at bar, petitioner received the PAN dated December 29, 2014 on January 8, 2015. Thus, it had fifteen (15) days from January 8, 2015, or until January 23, 2015 to file its response to the PAN. However, as stipulated by the parties, the FAN was issued on January 14, 2015 or only six (6) days after petitioner received the PAN. Thus, there is already a failure of the CIR to strictly comply with the requirements laid down by law and its own rules and regulations, which is a denial of petitioner's right to due process, and thereby rendering the assessment void. That petitioner received the FAN on February 4, 2015, or after it has filed its reply to the PAN, does not denigrate

from the fact that it was deprived of due process. Thus, the fifteen-day period granted to the taxpayer to reply to the PAN before a FAN can be issued is mandatory. ***Monza SPV-AMC ("Asset Management Co."), Inc. v. Commissioner of Internal Revenue, CTA Case No. 9153 dated April 15, 2019.***

COMPROMISE PENALTY IN TAX CASES IS APPLICABLE ONLY IN THE SETTLEMENT OF CRIMINAL LIABILITY. Considering that an assessment case is merely civil in nature, no compromise penalty may be imposed. Settled is the rule that the imposition of the same without the conformity of the taxpayer is illegal and unauthorized. Revenue Memorandum Order No. 1-90 expressly provides that "compromise penalties are only amounts suggested in settlement of criminal liability and may not therefore be imposed on, or exacted from, the taxpayer in the event that a taxpayer refuses to pay the suggested compromise penalty." ***AGM Packaging System Ltd. Corp., v. Commissioner of Internal Revenue, C.T.A. EB Nos. 1734 and 1739 (C.T.A. Case No.8947) dated March 29, 2019.***

A DEFECTIVELY EXECUTED WAIVER MAY RESULT IN AN EXTENSION OF CIR'S PERIOD TO ASSESS INTERNAL REVENUE TAXES WHEN FACTUAL CIRCUMSTANCES DISPLAY THAT THE PARTIES TO THE EXECUTION OF THE WAIVER ARE IN PARI DELICTO, OR AT EQUAL FAULT IRRESPECTIVE OF THE NUMBER OF WAIVER/S ACCOMPLISHED OR EXECUTED. ***Active Multi-Marketing & Merchandising Services, Inc. v. Commissioner of Internal Revenue, C.T.A. EB No. 1728 (C.T.A. Case No. 8744) dated March 25, 2019.***

REQUEST FOR RECONSIDERATION IS NOT TANTAMOUNT TO REQUEST FOR REINVESTIGATION FOR PURPOSES OF PRESCRIPTION ON COLLECTION. It is clear from the foregoing that Asia United Insurance, Inc. (AUII) is not protesting the Final Assessment Notice (FAN), but instead it is requesting a reconsideration to reduce the amount of interest to be paid. Also, the said request cannot be considered a request for reinvestigation since AUII did not submit any additional evidence but merely appealed to the CIR to reduce the interest due to the former's financial capacity to pay. Since respondent AUII did not request for reinvestigation, the prescriptive period for collection was not suspended. Thus, when the Warrant of Distraint and/or Levy (WDL) was issued on December 18, 2013, the same has already prescribed for having been issued more than five (5) years from the date of receipt of the assessment. ***Commissioner of Internal Revenue v. Asia United Insurance, Inc., C.T.A. EB No. 1725 (C.T.A. Case No. 8916 dated March 27, 2019*.**

COMMISSIONER OF INTERNAL REVENUE'S (CIR) RIGHT TO COLLECT DEFICIENCY TAXES HAS LAPSED WHEN IT DENIED TAXPAYER'S REQUEST FOR RECONSIDERATION AFTER 5 YEARS FROM RECEIPT OF FINAL ASSESSMENT NOTICE (FAN). In the Protest against the FAN and Letter of Demand both dated May 5, 2004 for alleged deficiency documentary stamp tax (DST) covering taxable year ending December 31, 2001, petitioner acknowledged receipt of FAN on May 5, 2004. Consequently, the Bureau of Internal Revenue (BIR) had 5 years from May 5, 2004, or until May 5, 2009, to initiate collection against petitioner. However, respondent did nothing to pursue his assessment until January 31, 2017 when the CIR denied petitioner's Request for Reconsideration of the Decision dated September 20, 2004 of Regional Director Teodorica R. Arcegar. Evidently, respondent's right to

collect the Deficiency DST under Assessment Notice No. 34-2001, within the five (5) year prescriptive period has lapsed. ***Standard Insurance Co., Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9550 dated March 25, 2019.***

INACTION DURING THE 180-DAY PERIOD UNDER SECTION 228 OF THE NIRC DOES NOT APPLY TO ADMINISTRATIVE APPEAL OR REQUEST FOR RECONSIDERATION TO THE CIR OF A DECISION ON THE PROTEST BY THE CIR'S DULY AUTHORIZED REPRESENTATIVE. ONLY A FINAL DECISION BY THE CIR ON THE ADMINISTRATIVE APPEAL IS APPEALABLE TO THE CTA. In this case, Ritegroup did not appeal the inaction of the BIR on its protest within 30 days after the lapse of the 180-day period. Instead, Ritegroup opted to wait for the CIR's authorized representative's decision on the protest. After receiving the final decision of the CIR's authorized representative, Ritegroup filed the Letter Appeal with the CIR. When CIR failed to act on the Letter Appeal within 180 days, Ritegroup field its Petition for Review with the CTA. To stress, in case of an administrative appeal, Section 3.1.5 of Revenue Regulations No. 12-99 is explicit that the protest shall be decided by the CIR. It must be emphasized that even if the CIR failed to act within 180 days from the filing of Ritegroup's Letter of Appeal, the inaction is no longer appealable to this Court. It is only after the CIR shall have rendered its final decision on the said Letter of Appeal that Ritegroup may file an appeal thereto. Correspondingly, since the CIR has yet to issue a final decision on Ritegroup's Letter of Appeal at the time of filing Ritegroup's Petition for Review, the said Petition for Review should have been dismissed by the Court in Division for lack of jurisdiction and prematurity. ***Commissioner of Internal Revenue v. Ritegroup Incorporated, C.T.A. EB 1686 and 1687, C.T.A. Case No. 8651 dated March 25, 2019.***

IF AN ADMINISTRATIVE CASE HAS BEEN APPEALED DUE TO INACTION AT THE ADMINISTRATIVE LEVEL, THE COURT MAY GIVE CREDENCE TO ALL EVIDENCE PRESENTED DURING TRIAL ON THE MERITS, INCLUDING THOSE THAT MAY NOT HAVE BEEN SUBMITTED TO THE CIR. A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA. In the present case, however, petitioner filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon, there was no decision for the CTA to review on appeal *per se*. Consequently, the CTA may give credence to all evidence presented, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance. ***Oncho Philippines, Incorporated v. Commissioner of Internal Revenue, CTA Case No. 9442 dated April 5, 2019.***

FORGOTTEN EVIDENCE IS NOT A VALID GROUND FOR NEW TRIAL. Forgotten evidence refers to evidence already in existence or available before or during a trial, known to and

obtainable by the party offering it, and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence. ***Taganito Mining Corporation v. Commissioner of Internal Revenue, CTA Case No. 9369 dated April 12, 2019.***

A MERE LIST OF SUPPLIERS WITH AMOUNTS THAT WAS SUPPOSED TO REPRESENT THE DISCREPANCY FOUND BY THE EXAMINERS, WITHOUT STATING HOW THE AMOUNTS WERE COMPUTED AND WHAT DOCUMENTS WERE EXAMINED, DOES NOT CONSTITUTE FACTUAL BASIS OF THE ASSESSMENT. ***Robinsons Diversified Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 9149 dated April 2, 2019.***

REQUIREMENTS FOR DEDUCTIBILITY OF NET OPERATING LOSS CARRYOVER (NOLCO) FROM GROSS INCOME. On the basis of law and jurisprudence, for NOLCO to be validly deducted from gross income, the following facts must be clearly established by the taxpayer-claimant: 1) The net operating loss was not previously offset as a deduction from gross income; 2) The said net operating loss has not been carried over for more than three (3) consecutive taxable years; 3) There was no substantial change in the ownership of the business or enterprise in that not less than 75% in nominal value of outstanding issued shares or not less than 75% of the paid up capital of the corporation, if the business is in the name of the corporation, is held by or on behalf of the same persons; 4) The net operating loss from the preceding year(s) which was carried over is substantiated by documentary evidence, showing the items of gross income and allowable deductions from the said preceding year(s), on the basis of which such net operating loss was computed; 5) The NOLCO, as a special deduction, must have been shown as a separate item, with proper labeling and breakdown of the specific accounts, in the Profit and Loss Statement/Income Statement for the year in which such NOLCO is claimed; and 6) The NOLCO, as a special deduction, must be fully explained in the Notes to the Financial Statements. ***SM_Residences Corp., v. Commissioner of Internal Revenue, CTA Case No. 9395 dated April 10, 2019.***

AN ACTIVITY NOT PART OF THE TAXPAYER'S ACTIVITY REGISTERED WITH PHILIPPINE ECONOMIC ZONE AUTHORITY SHALL BE SUBJECT TO 30% REGULAR CORPORATE INCOME TAX AND SHALL NOT BE ENTITLED TO THE 5% GROSS INCOME TAX REGIME. ***AGM Packaging System Ltd. Corp., v. Commissioner of Internal Revenue, C.T.A. EB Nos. 1734 and 1739 (C.T.A. Case No.8947) dated March 29, 2019.***

THE USE OF INCOME TAX RATE OF 32% IN COMPUTING DEFICIENCY WITHHOLDING TAX ON COMPENSATION, WHICH AROSE FROM A MERE COMPARISON OF THE TOTAL SALARIES AND WAGES REPORTED IN FINANCIAL STATEMENTS AND THE ALPHA LIST OF EMPLOYEES, HAS NO FACTUAL BASIS AS IT IS CLEAR THAT EMPLOYEES DO NOT ALL BELONG TO

THE SAME INCOME BRACKET. ***Robinsons Diversified Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 9149 dated April 2, 2019.***

DEFICIENCY TAXES PAID UNDER PROTEST, ARISING FROM A DEFICIENCY TAX ASSESSMENT SUBSEQUENTLY DECLARED VOID, CONSTITUTES ERRONEOUSLY OR ILLEGALLY COLLECTED TAXES CLAIMABLE FOR REFUND. Petitioner protested the Final Assessment Notice (FAN) and, subsequently, paid the same under protest. Petitioner then filed an administrative claim for refund of erroneously and illegally collected deficiency taxes. Meanwhile, the FAN was declared void for lack of a validly issued Letter of Authority (LOA). In view of the foregoing, the deficiency tax assessments paid under protest constitutes erroneously or illegally collected tax. ***Linde Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 8783 dated March 28, 2019.***

THE OPTIONS AVAILABLE TO A CORPORATION WHENEVER IT OVERPAYS ITS INCOME TAX FOR THE TAXABLE YEAR, THAT IS, TAX CREDIT OR REFUND, ARE IN THE ALTERNATIVE AND THE CHOICE OF ONE PRECLUDES THE OTHER. There are two options available to a corporation whenever it overpays its income tax for the taxable year: (1) to carry over and apply the overpayment as tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (also known as automatic tax credit) until fully utilized (meaning, there is no prescriptive period); or (2) to apply for a cash refund or issuance of a tax credit certificate within the prescribed period. In *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, the Supreme Court held that in exercising its option, the corporation must signify in its annual corporate adjustment return, by marking the option box provided in the BIR form, its intention either to carry over the excess credit or to claim for a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other. However, once the carry-over option is taken actually or constructively, it becomes irrevocable for that taxable period. The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. Evidently, a corporate taxpayer is not legally allowed a change of heart once it has chosen an option from the two alternative remedies, for the choice of one precludes the other. ***AECOM Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9239 dated April 2, 2019.***

WHEN TAX IS PAID IN INSTALLMENTS, THE PRESCRIPTIVE PERIOD OF TWO (2) YEARS FOR REFUND SHOULD BE COUNTED FROM THE DATE OF THE FINAL PAYMENT. ***Linde Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 8783 dated March 28, 2019.***

THREE BASIC REQUISITES IN ORDER FOR A TAXPAYER TO BE ENTITLED TO A REFUND OR AN ISSUANCE OF TCC FOR UNUTILIZED EXCESS CWT. Based on relevant jurisprudence and BIR Revenue Regulations, in order for a taxpayer to be entitled to refund or issuance of TCC for unutilized excess CWT, the following three (3) basic requisites must be sufficiently established: (1) The claim for refund must be filed within the two-year prescriptive period as provided under Sections 204(C) and 229 of the Tax Code, as amended; (2) The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and (3) The income upon which the taxes were withheld must be included in the return of the recipient.

Tulett Prebon (Philippines), Inc. v. Commissioner of Internal Revenue, CTA Case No. 9320 dated April 12, 2019.

INPUT TAX SHALL BE CREDITABLE AGAINST OUTPUT TAX ONLY IF THE SAME IS EVIDENCED BY A VAT INVOICE OR OFFICIAL RECEIPT ISSUED IN ACCORDANCE WITH SECTION 113 OF THE NIRC OF 1997, AS AMENDED. Pursuant to Section 110(A)(1) and (B) of the National Internal Revenue Code ("NIRC") of 1997, as amended, any input tax shall be creditable against output tax only if the same is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, and in claiming excess/unutilized input tax from zero-rated transactions, it is the excess input tax over the output tax which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input tax credits to cover its output tax liability for the current taxable year. Considering that petitioner failed to present its VAT invoices or official receipts to prove the existence of the "Input Tax Carried Over from Previous Period" in the amount of P331,752,463.44, said amount cannot be validly applied against petitioner's output tax. ***Maxima Machineries, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9210 dated April 5, 2019.***

TO BE CONSIDERED NON-RESIDENT FOREIGN CORPORATION DOING BUSINESS OUTSIDE THE PHILIPPINES, SUCH MUST BE PROVEN BY PRESENTING, FOR EACH CORPORATION INVOLVED, AT THE VERY LEAST, BOTH SECURITIES AND EXCHANGE COMMISSION (SEC) CERTIFICATION OF NON-REGISTRATION AND PROOF OF INCORPORATION OR REGISTRATION, AND THAT THERE IS NO OTHER INDICATION WHICH WOULD DISQUALIFY SAID ENTITY FROM BEING CLASSIFIED AS A NONRESIDENT FOREIGN CORPORATION. ***NCR Cebu Development Center, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9255 dated April 4, 2019.***

TO PROVE THAT THE SUBJECT CLAIM IS NO LONGER INCLUDED IN THE "INPUT TAX CARRIED OVER FROM PREVIOUS PERIOD", IT IS SUFFICIENT THAT IT IS SHOWN IN AT LEAST TWO (2) SUCCEEDING QUARTERLY VAT RETURNS, WHICH REPRESENT TWO (2) SUCCEEDING PERIODS, THAT THE INPUT VAT BEING CLAIMED WAS NOT APPLIED TO THE OUTPUT VAT. ***Lepanto Consolidated Mining Company v. Commissioner of Internal Revenue, CTA Case No. 9101 dated April 11, 2019.***

BIR RULINGS AND ISSUANCES

RESCISSION OF CONTRACT EMBODYING A TAX-FREE EXCHANGE OF PROPERTIES PENDING ISSUANCE OF A BIR RULING CONFIRMING THE TAX-FREE NATURE OF THE TRANSACTION DOES NOT CONSTITUTE REPURCHASE OF PROPERTIES (CAPITAL ASSETS) AND IS NOT SUBJECT TO CAPITAL GAINS TAX (CGT) AND DOCUMENTARY STAMP TAX (DST). ***BIR Ruling No. 221-19 dated April 3, 2019.***

FREEPORT ZONE-REGISTERED ENTERPRISES THAT GENERATE INCOME FROM OUTSIDE THE ZONE OR WITHIN CUSTOMS TERRITORY NOT EXCEEDING 30% OF ITS TOTAL INCOME FROM ALL SOURCES SHALL REMAIN ENTITLED TO THE 5% PREFERENTIAL TAX REGIME. OTHERWISE, ITS INCOME FROM ALL SOURCES SHALL BE SUBJECT TO RELEVENT INTERNAL REVENUE TAXES UNDER THE NIRC OF 1997, AS AMENDED. ***BIR Ruling No. 222-19 dated April 3, 2019.***

AN AWARD OF BACKWAGES IS A REMUNERATION FOR SERVICES THAT IS SUBJECT TO INCOME TAX, AND, CONSEQUENTLY, TO WITHHOLDING TAX ON WAGES. The illegally dismissed employee is required to report such income (back wages) for the years he was suspended from service as he files and pays his corresponding income tax thereon by allocating or spreading his back wages through the years from the time of his suspension to actual reinstatement or actual separation, as the case may be, crediting in the process the corresponding income tax withheld from said wage payments**.** ***BIR Ruling No. 224-19 dated April 3, 2019.***

JOINT VENTURE OR CONSORTIUM FORMED FOR THE PURPOSE OF UNDERTAKING CONSTRUCTION PROJECTS IS NOT TAXABLE AS A CORPORATION PROVIDED IT SATISFIES ALL OF THE CONDITIONS UNDER SECTION 3 OF REVENUE REGULATIONS NO. 10-2012. ABSENT ANY OF THE REQUIREMENTS, THE JOINT VENTURE OR CONSORTIUM SHALL BE CONSIDERED AS A TAXABLE CORPORATION. ***BIR Ruling No. 225-19 dated April 4, 2019.***

RECONVEYANCE OF REAL PROPERTY HELD AS CAPITAL ASSET BY THE TRUSTEE TO THE TRUSTOR/OWNER IS SUBJECT TO CGT AND DST. The reconveyance is subject to CGT under Section 24(D)(1) of the NIRC of 1997. The phrase "other disposition" includes within its purview all kinds of dispositions of real property under Section 24(D)(1). Moreover, the reconveyance being a disposition of real property is likewise subject to DST imposed in Section 188 of the NIRC of 1997. ***BIR Ruling No. 233-19 dated April 4, 2019.***

IN ORDER FOR AN ENTITY TO QUALIFY AS A NON-STOCK AND/OR NON-PROFIT CORPORATION/ASSOCIATION/ORGANIZATION EXEMPT FROM INCOME TAX UNDER SECTION 30 OF THE NIRC OF 1997, ITS EARNINGS OR ASSETS SHALL NOT INURE TO THE BENEFIT OF ANY OF ITS TRUSTEES, ORGANIZERS, OFFICERS, MEMBERS OR ANY SPECIFIC PERSON. The giving of reasonable allowance to the members is considered a distribution of equity (including net income). This is a form of private inurement which the law prohibits in the organization and operation of a non-stock, non-profit corporation. Moreover, the articles of incorporation and by-laws must contain provisions that expressly provide that, in the event of dissolution, its assets shall be distributed to one or more entities formed for the purpose/purposes similar to its own, or to the Philippine government for public purposes. ***BIR Ruling No. 235-19 dated April 4, 2019.***

CIRCULAR PRESCRIBING THE NEWLY REVISED BIR FORM NO. 1701 [ANNUAL INCOME TAX RETURN FOR INDIVIDUALS (INCLUDING MIXED INCOME

EARNER), ESTATES AND TRUSTS]. ***Revenue Memorandum Circular No. 37-2019 dated March 18, 2019.***

CIRCULARIZING THE IMPLEMENTING RULES AND REGULATION OF REPUBLIC ACT (R.A.) 10932 UNDER ADMINISTRATIVE ORDER NO. 2018-0012 OF THE DEPARTMENT OF HEALTH. Paragraph 8.1 of the Administrative Order No. 2018-0012 provides that basic emergency care to poor and indigent patients provided by the hospital or medical clinic not reimbursed by PhilHealth and PCSO shall be deductible from gross sales/receipts. The documentary requirements and details of mechanics on availment of the deduction shall be covered by a Revenue Regulation to be issued by the BIR. ***Revenue Memorandum Circular No. 39-2019 dated March 18, 2019.***

REGULATIONS TO IMPLEMENT SECTION 150-A ON THE EXCISE TAX ON NON-ESSENTIAL SERVICES OF THE NIRC, AS INTRODUCED BY SECTION 46 OF THE TRAIN LAW. ***Revenue Regulations No. 2-2019 dated February 20, 2019, issued on March 19, 2019.***

REGULATIONS TO MANDATE THE LRA TO USE THE ECAR SYSTEM WITH BARCODE DEVELOPED AND OWNED BY THE BIR AS AGREED IN A MEMORANDUM OF AGREEMENT (MOA CIRCULATED THROUGH REVENUE MEMORANDUM CIRCULAR (RMC) NO. 28-2015, AND TO OBLIGE THE BIR TO UPLOAD ITS DATA TO LRA USING THE PHILIPPINE LAND REGISTRATION AND INFORMATION SYSTEM (PHILARIS) OF THE LATTER TO ENSURE ACCURATE AND SECURE EXCHANGE OF INFORMATION SUBJECT TO THE PROVISIONS OF R.A 10173, OTHERWISE KNOWN AS THE DATA PRIVACY ACT OF 2012, AND SECTION 270 OF THE NIRC OF 1997, AS AMENDED. ***Revenue Regulations No. 3-2019 dated March 28, 2019***

REGULATIONS IMPLEMENTING THE TAX INCENTIVES PROVISIONS OF R.A. 10771, OTHERWISE KNOWN AS THE "PHILIPPINE GREEN JOBS ACT OF 2016". ***Revenue Regulations No. 5-2019 dated April 12, 2019.***

REGULATIONS IMPLEMENTING R.A. 11213, OTHERWISE KNOWN AS THE "TAX AMNESTY ACT", PROVIDING FOR GUIDELINES ON THE PROCESSING OF TAX AMNESTY APPLICATION ON TAX DELINQUENCIES. ***Revenue Regulations No. 4-2019 dated April 5, 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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