

TAX ALERT

November 16 to December 15, 2019

SUPREME COURT DECISION

DIVIDEND PAYMENT MUST FIRST BE ESTABLISHED IN ORDER TO SUBJECT THE SAME TO FINAL TAX. The essential requisites for a payment to be considered a dividend are: 1) the concerned corporation must have earnings or profits; 2) such corporate earnings or profits must be set aside, declared, and ordered by the directors to be paid to the stockholders, on demand or at a fixed time; and; 3) the distribution or payment of said corporate earnings or profits in money or in other property. In the instant case, the three requisites are all absent. First, the respondent has no sufficient unrestricted retained earnings to support the alleged dividend declaration. Second, no document allowing the respondent to declare any dividend was presented. Third, aside from the self-serving statements of the petitioner, no evidence was presented to prove that the respondent actually distributed any of its earnings or profit, whether in the form of cash or property. Considering the absence of any dividend to speak of, the deficiency final tax assessment against the respondent has no factual and legal basis to stand on. In other words, the respondent proved that no dividend was released to any stockholder on the assessed taxable year. *Commissioner of Internal Revenue v. Distribution Management, Inc., G.R. No 209725 dated December 4, 2019.*

COURT OF TAX APPEALS DECISIONS

TAXPAYER NEED NOT PROVE ACTUAL REMITTANCE OF CREDITABLE WITHHOLDING TAXES (CWT) TO THE BUREAU OF INTERNAL REVENUE (BIR) TO BE ENTITLED TO REFUND. Apart from the fact that proof of actual remittance is not among the prerequisites for the grant of CWT refund, the burden of showing the same does not pertain to respondent as the income-payee taxpayer, but to the income payor-withholding agent. *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.), CTA EB Case No. 1789 (CTA Case No. 9027) dated November 22, 2019.*

TO BE CONSIDERED NON-RESIDENT FOREIGN CORPORATION DOING BUSINESS OUTSIDE THE PHILIPPINES, BOTH THE SEC CERTIFICATE OF NON-REGISTRATION OF CORPORATION AND PROOF OF ARTICLES OF FOREIGN INCORPORATION MUST BE PRESENTED. Section 108(B)(2)(1) and (2) and jurisprudence contemplate two (2) situations wherein sales can be regarded as zero-rated for VAT purposes: 1) services were rendered to a person engaged in business conducted outside the Philippines and 2) services were rendered to a non-resident person not engaged in business who is outside the Philippines when the services are performed, and in both instances the consideration for which is paid for in foreign currency and accounted for in accordance with the rules and regulations of the BSP. Further to be considered as a non-resident foreign corporation doing business outside the Philippines, 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 whether the entity is organized. ***Commissioner of Internal Revenue v. CITCO International Support Services Limited-Philippine ROHQ, CTA EB No. 2015 (CTA Case No. 9102) dated November 29, 2019.***

THE COURT MAY NOT LIMIT ITSELF TO ISSUES STIPULATED BY THE PARTIES BUT MAY ALSO RULE UPON RELATED ISSUES NECESSARY TO ACHIEVE AN ORDERLY DISPOSITION OF THE CASE. The Court may touch upon the validity, or invalidity, of an assessment before proceeding to delve on the merits of the said assessment. Thus, while not raised as an argument by petitioner, the Court ruled that where a revenue officer, previously authorized through a Letter of Authority (LOA), may not be able to complete the examination of the books of accounts of a taxpayer by reason of retirement or reassignment, still, there is nothing in the law which would justify non-issuance of a subsequent LOA to authorize another revenue officer, or new set of revenue officers, to continue the examination of the books of accounts and other accounting records of the concerned taxpayer. ***PGA Sompo Insurance Corporation v. Commissioner of Internal Revenue, CTA Case No. 9394 dated November 27, 2019.***

IN CASE OF DENIAL BY THE TAXPAYER THAT SHE RECEIVED THE ASSESSMENT, THE *ONUS PROBANDI* IS SHIFTED TO THE BIR TO PROVE THAT THE TAXPAYER RECEIVED THE SAME IN THE DUE COURSE OF MAIL. It has been 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. To prove the fact of mailing, it is essential to present the registry receipt issued by the Bureau of Post or the Registry return card which would have been signed by the taxpayer or its authorized representative. ***People of the Philippines v. Sixta Lee Go, CTA Crim. Case No. O-659 dated November 27, 2019.***

BIR RULINGS AND ISSUANCES

EXECUTION OF DEED OF EXCHANGE TO CORRECT ERROR IN THE TECHNICAL DESCRIPTION IN THE LAND TITLES IS SUBJECT TO CAPITAL GAINS TAX (CGT) AND DOCUMENTARY STAMP TAX (DST). Due to an error in the technical description in their respective titles, AAA and BBB executed an Absolute Deed of Exchange to rectify said titles and finally determine the lawful ownership. The BIR ruled that the transaction is subject to CGT under “other disposition of real property” which includes within its purview all kinds of dispositions of real property under Section 24(D)(1) of the NIRC, unless specifically excluded therefrom or subject to another tax treatment. Further, conveyance being a disposition of real property is likewise subject to DST. ***BIR Ruling No. 703-19 dated November 25, 2019.***

DISPOSITION OF REAL PROPERTIES FROM PARENTS TO THEIR CHILDREN PURSUANT TO THE DISSOLUTION OF ABSOLUTE COMMUNITY OF PROPERTY REGIME IS SUBJECT TO CGT AND DST. ***BIR Ruling No. 759-10 dated December 9, 2019.***

TRANSFER OF REAL PROPERTY BY WAY OF JUDGMENT ON COMPROMISE IS NOT SUBJECT TO DONOR'S TAX SINCE THERE IS NO DONATIVE INTENT; HOWEVER, SAID TRANSFER IS SUBJECT TO CGT AND DST. *BIR Ruling No. 760-19 dated December 9, 2019.*

GIVING OF PER DIEM TO THE BOARD OF DIRECTORS IS CONSIDERED DISTRIBUTION OF EQUITY OR NET INCOME; A FORM OF PRIVATE INUREMENT, WHICH THE LAW PROHIBITS IN THE ORGANIZATION AND OPERATION OF A NON-STOCK, NON-PROFIT CORPORATION. *BIR Ruling No. 705-19 Dated November 29, 2019; BIR Ruling No. 760-19 Dated December 9, 2019.*

THERE ARE TWO REQUISITES IN ORDER FOR A NON-STOCK, NON-PROFIT EDUCATIONAL INSTITUTION TO BE EXEMPT FROM TAX AS PROVIDED UNDER REVENUE MEMORANDUM ORDER NO. 44-2016, TO WIT: A.) IT IS A NON-STOCK, NON-PROFIT EDUCATIONAL INSTITUTION; AND B) ITS REVENUES ARE ACTUALLY, DIRECTLY AND EXCLUSIVELY USED FOR EDUCATIONAL PURPOSES. *BIR Ruling No. 706-19 dated November 29, 2019; BIR Ruling No. 720-19 dated December 2, 2019; BIR Ruling No. 727-19 dated December 5, 2019; BIR Ruling No. 751-19 dated December 9, 2019; BIR Ruling No. 752-19 dated December 9, 2019; and BIR Ruling No. 762-19 dated December 9, 2019.*

JOINT VENTURE OR CONSORTIUM FORMED FOR THE PURPOSE OF UNDERTAKING CONSTRUCTION PROJECTS MUST COMPLY WITH THE REQUIRES TO BE TAX-EXEMPT. A joint venture or consortium formed for the purpose of undertaking construction projects shall not be taxable as a corporation provided the same should be: (1) for the undertaking of a construction project; (2) should involve joining or pooling of resources by licensed local contractors that is, licensed as general contractor by the Philippine Contractors Accreditation Board of the Department of Trade and Industry; (3) the local contractors are engaged in construction business; and (4) the Joint Venture itself must likewise be duly licensed as such by the Philippine Contractors Accreditation Board of the Department of Trade and Industry. *BIR Ruling No. 707-19 dated November 29, 2019.*

TERMINATING THE SUBMISSION OF SEMESTRAL LIST OF REGULAR SUPPLIERS. *Revenue Memorandum Circular No. 122-2019, November 22, 2019.*

PROVIDING A NEW FORMAT OF NOTICE TO ISSUE RECEIPTS/INVOICES TO THE PUBLIC TO BE EXHIBITED AT PLACE OF BUSINESS. *Revenue Regulations No. 10-2019, December 2, 2019.*

CIRCULARIZING THE EDST SYSTEM'S BALANCE ADJUSTMENT AS AN OPTION FOR RECOVERY OF ERRONEOUSLY DEDUCTED DST. *Revenue Memorandum Circular No. 142-2019, December 12, 2019.*

REITERATING SALIENT POINTS ON THE PROPER EXECUTION OF WAIVERS OF THE DEFENSE OF PRESCRIPTION. *Revenue Memorandum Circular No. 141-2019, December 20, 2019.* Key salient points for the execution of waivers are as follows:

1. The Waiver is a unilateral and voluntary undertaking which shall take legal effect and be binding on the taxpayer immediately upon his execution thereof.
2. The Waiver need not specify the type of taxes to be assessed nor the amount thereof.
3. It is no longer required that the delegation of authority to a representative be in writing and notarized.
4. The taxpayer cannot seek to invalidate his Waiver by contesting the authority of his representative.
5. It is the duty of the taxpayer to submit his Waiver to the officials listed in the said RMO prior to the expiration of the period to assess or to collect as the case may be.
6. In addition to the previously authorized officials, the RDO or Group Supervisor as designated in the Letter of Authority or Memorandum of Assignment can accept the waiver.
7. The date of acceptance by the BIR Officer is no longer required to be indicated for the Waiver's validity.
8. The taxpayer shall have the duty to retain a copy of the submitted waiver.
9. Notarization of the Waiver is not a requirement for its validity.
10. The taxpayer is charged with the burden of ensuring that his Waiver is validly executed when submitted to the BIR. Thus, the taxpayer must ensure that his waiver:
 - a. Is executed before the expiration of the period to assess or to collect taxes.
 - b. Indicates the expiry date of the extended period.
 - c. Indicated the type of tax (for waiver of the prescriptive period to collect).
 - d. Is signed by his authorized representative.
11. There is no strict format for the waiver. The taxpayer may utilize any form with no effect on its validity.

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:

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

Past issues of our Tax Alert are available on our website at www.baniquedlaw.com