

## TAX ALERT

October 16, 2019 – November 15, 2019

### COURT OF TAX APPEALS DECISIONS

**WHILE IT IS A GENERAL RULE THAT APPEALS CAN ONLY RAISE QUESTIONS OF LAW OR FACT THAT (A) WERE RAISED IN THE COURT BELOW, AND (B) ARE WITHIN THE ISSUES FRAMED BY THE PARTIES THEREIN, THE SAME ADMITS OF CERTAIN EXCEPTIONS, NAMELY: (I) IN THE INTEREST OF JUSTICE, MATTERS OF RECORD HAVING SOME BEARING ON THE ISSUE SUBMITTED WHICH THE PARTIES FAILED TO RAISE OR THE LOWER COURT IGNORED, AND (II) QUESTIONS INVOLVING MATTERS OF PUBLIC IMPORTANCE.**

The question of whether the revenue officers (“RO”) who conducted the investigation of the taxpayer’s books of accounts and other accounting records for taxable year 2009 were authorized to do so is a *matter of record*. The BIR records submitted by the CIR vis-a-vis the evidence presented by the parties in the proceedings below can easily be examined to answer the said question. Furthermore, the same question is a *matter of public importance*. Taxpayers must always be assured that the ROs who conduct examination of their books of accounts and other accounting records for any given period are properly authorized by a letter of authority (“LOA”), pursuant to Section 6(A) of the National Internal Revenue Code (NIRC) of 1997, and as enunciated in the *Medicard* case. *Opulent Landowners, Inc. v. Commissioner of Internal Revenue, CTA En Banc No. 1802, October 16, 2019*

**SECTION 17 OF THE NIRC OF 1997, PROVIDING FOR THE TRANSFER OR RESHUFFLING OF ROs CANNOT BE USED AS A LEGAL BASIS TO DISPENSE WITH THE ISSUANCE OF AN LOA TO AUTHORIZE ROs WHO WOULD PERFORM ASSESSMENT FUNCTIONS.**

The Court *En Banc* is mindful that there can be instances where an RO, previously authorized through an LOA, may not be able to complete the examination of the concerned taxpayer, by reason of retirement, reassignment, illness, or death, of the said RO. But what is not acceptable to this Court is the CIR’s proposition that because of such instances, there can already be an excuse not to issue an LOA. However, the said proposition finds no basis in law and jurisprudence. Despite the presence of any of the above-enumerated instances, the CIR or his duly authorized representative can still legally issue another LOA in favor of the ROs who are intended to replace the one previously authorized. *Opulent Landowners, Inc. v. Commissioner of Internal Revenue, CTA En Banc No. 1802, October 16, 2019*

**A DISPUTE REGARDING AN ASSESSMENT MADE BY THE CIR WITH GOVERNMENT AGENCIES AND OFFICES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, WHICH ARE UNDER THE EXECUTIVE CONTROL AND SUPERVISION OF THE PRESIDENT, SHALL BE GOVERNED BY P.D. 242 AS EMBODIED IN CHAPTER 14, BOOK IV OF E.O. 292. *Philippine Mining Dev’t Corp. v. Commissioner of Internal Revenue, CTA En Banc No. 1900, October 16, 2019***

**THE AUTHORITY GRANTED TO ANOTHER REVENUE OFFICER UNDER AN LOA FOR THE CONTINUITY OF THE AUDIT/EXAMINATION CANNOT BE REPLACED BY A MEMORANDUM OF ASSIGNMENT (“MOA”).**

In the instant case, an LOA was issued specifying the revenue officers who will be conducting the audit/examination of the taxpayer’s internal revenue taxes for taxable year 2009. Subsequently, a Memorandum of Assignment was issued replacing the revenue officers indicated in the LOA, and no new LOA was issued/attached to the said memorandum. Clearly, as no new LOA was issued, the revenue officers under the MOA have no authority to conduct the audit/investigation or issue an assessment; the assessment, therefore, is null and void. *Montalban Methane Power Corp. v. Commissioner of Internal Revenue, CTA Case No. 9408, October 16, 2019*

**THE CIR’S DENIAL OF AN OFFER FOR COMPROMISE MAY BE CONSIDERED AS “OTHER MATTERS ARISING FROM THE NIRC OF 1997, AS AMENDED AND OTHER LAWS BEING ADMINISTERED BY THE BIR”, THUS APPEALABLE TO THE CTA.**

The discretionary authority to compromise granted to the CIR is never meant to be absolute, uncontrolled and unrestrained. No such unlimited power may be validly granted to any officer of the government. The CIR would have to exercise his discretion within the parameters set by the law, and in case he abuses his discretion, the CTA may correct such abuse if the matter is appealed to them. *Commissioner of Internal Revenue v. United Coconut Planters Bank, CTA En Banc No. 1943, October 22, 2019*

**FOR RATE CASES, AN LOA SIGNED BY THE COMMISSIONER OF INTERNAL REVENUE IS VALID. *Kingsam Express Inc. v. People of the Phil., CTA En Banc Crim. No. 054, October 24, 2019***

**TO AVAIL OF THE FISCAL INCENTIVES GRANTED UNDER R.A. 9513, THE RENEWABLE ENERGY ACT OF 2008, THE RENEWABLE ENERGY DEVELOPER SHOULD FIRST REGISTER WITH THE DEPARTMENT OF ENERGY AND SECURE A CERTIFICATION FROM THE RENEWABLE ENERGY MANAGEMENT BUREAU. *Commissioner of Internal Revenue v. CBK Power Co. Ltd., CTA En Banc No. 1861, October 25, 2019***

**WHILE THE LAW SPECIFICALLY REQUIRES AN LOA TO BE ADDRESSED TO AN RO BEFORE AN EXAMINATION OF A TAXPAYER AND RECOMMENDATION OF AN ASSESSMENT MAY BE HAD, THE LAW DOES NOT SPECIFICALLY REQUIRE THE SAME FOR PURPOSES OF RECOMMENDING A FINAL DECISION ON A DISPUTED ASSESSMENT.**

Considering that an assessment is different from a decision, then, a new LOA addressed to the revenue officer who conducted the reinvestigation per protest letter is not necessary for purposes of recommending a final decision on a disputed assessment (“FDAA”). As provided under Revenue Memorandum Order (RMO) No. 69-2010, a MOA shall be issued for protested cases/cases for reinvestigation; and RMO No. 08-06 provides that protested cases under reinvestigation shall not be assigned to the same RO who handled the original investigation. Hence, the reinvestigation of petitioner’s protest letter was referred to a different revenue officer,

specifically, RO Jerry C. Angeles; and considering that it was reassigned to him by virtue of a MOA, then, the FDDA, issued upon the recommendation of RO Jerry C. Angeles, should not be invalidated. *Sabre Travel Network (Phil.) Inc. v. Commissioner of Internal Revenue, CTA Case No. 9532, October 25, 2019*

**FOR A VALID WAIVER, IT MUST SPECIFY THE KIND OF TAX AND AMOUNT OF TAX DUE.**

Although there is no precise requirement in RMO No. 20-90 and RDAO 05-01 for the waiver to specify the kind of tax and the amount of tax due, the Supreme Court in multiple cases has required such, holding that, "there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated. Hence, specific information in the waiver is necessary for its validity." *Sabre Travel Network (Phil.) Inc. v. Commissioner of Internal Revenue, CTA Case No. 9532, October 25, 2019*

**FOR PURPOSES OF DETERMINING WHEN PETITIONER CAN BE SAID TO BE LEGALLY ENTITLED TO CLAIM A REFUND OF INPUT TAXES INCURRED OR PAID, WHAT SHOULD MATTER IS NOT THE DATE WHEN THE PURCHASES OF GOODS OR SERVICES WERE MADE AND THE CORRESPONDING INPUT TAXES WERE INCURRED OR PAID, BUT RATHER, THE DATE WHEN PETITIONER'S ZERO-RATED SALES WERE MADE. FOR IT IS ONLY THEN THAT PETITIONER CAN ESTABLISH WITH DEFINITENESS THAT THE INPUT TAXES INCURRED/PAID WERE IN FACT, EITHER DIRECTLY ATTRIBUTABLE OR OTHERWISE ALLOCABLE TO ITS ZERO-RATED SALES. *Rio Tuba Nickel Mining Corp. v. Commissioner of Internal Revenue, CTA Case No. 9127, October 29, 2019***

**FOR A CRIMINAL VIOLATION OF THE NIRC, THE PROSECUTION MUST PROVE THE ROLE OR DESIGNATION/POSITION OF THE ACCUSED IN THE CORPORATION WHEN THE ALLEGED CRIME WAS COMMITTED. *People of the Phil. v. Yambao, CTA Crim. Case No. O-674 & O-675, November 7, 2019***

**THE AUTHORITY TO ISSUE LOAs, WHICH WAS DELEGATED TO REGIONAL DIRECTORS UNDER SECTION 13 OF THE NIRC OF 1997, CANNOT BE FURTHER DELEGATED TO THE REVENUE DISTRICT OFFICER. A Memorandum of Assignment, signed by the Revenue District Officer, cannot be regarded as a valid LOA within the context of the law. *Sunnyphil Inc. v. Commissioner of Internal Revenue, CTA Case No. 9710, November 8, 2019***

**AS SECTION 354 [NOW SECTION 281] OF THE NIRC STANDS, VIOLATIONS OF THE TAX CODE ARE PRACTICALLY IMPRESCRIPTIBLE FOR AS LONG AS THE PERIOD FROM THE DISCOVERY AND INSTITUTION OF JUDICIAL PROCEEDINGS FOR ITS INVESTIGATION AND PUNISHMENT, UP TO THE FILING OF THE INFORMATION IN COURT DOES NOT EXCEED FIVE (5) YEARS. *People of the Phil. v. Ulysses Falconet Consebido, CTA Crim. Case Nos. O-700, O-702, & O-703, November 8, 2019***

**THE IMPOSITION OF DEFICIENCY INTEREST UNDER SECTION 249(B) OF THE NIRC APPLIES TO "ALL TAXES" PER SECTION 247 OF THE SAME LAW. *SM***

*Residences Corp. v. Commissioner of Internal Revenue, CTA Case No. 9395, November 11, 2019*

**AN ASSESSMENT WITH AN AMOUNT OF LIABILITY DUE WHICH IS HINGED UPON THE PERIOD WHEN THE TAXPAYER RESOLVES TO PAY HIS TAX DEFICIENCIES IS LEGALLY INFIRM.**

Despite the assessment stating the computation of the taxpayer's purported tax liabilities, the amount remained indefinite as the tax due and interest thereon were still subject to modification depending on actual date of payment. The assessment provided, "Please note that the interest and the total amount will have to be adjusted if paid beyond March 30, 2012. Thus, the assessment was rendered invalid. *Linde Phil. Inc. v. Commissioner of Internal Revenue, CTA Case No. 8783, November 15, 2019*

### **BIR RULINGS AND ISSUANCES**

**UNDER RA NO. 9513 OR THE ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA), DEVELOPERS OF RENEWABLE ENERGY ENJOY VAT ZERO-RATING ON THEIR SALE OF POWER/ENERGY GENERATED FROM RENEWABLE SOURCES AND THEIR LOCAL PURCHASE OF GOODS AND SERVICES NEEDED FOR THE DEVELOPMENT, CONSTRUCTION AND INSTALLATION OF THE RENEWABLE ENERGY POWER PLANT FACILITIES. *BIR Ruling No. 668-19, October 21, 2019***

**THE INTERNATIONAL TAX AFFAIRS DIVISION OF THE BIR SHALL BE IN CHARGE OF RECEIVING AND PROCESSING APPLICATIONS FOR THE ISSUANCE OF TAX RESIDENCY CERTIFICATES OF PHILIPPINE RESIDENTS WITH FOREIGN- SOURCED INCOME. *Revenue Memorandum Order No. 51-2019, October 22, 2019***

**CLARIFYING THE TAX TREATMENT OF INCOME EARNED BY ALIEN INDIVIDUALS EMPLOYED IN THE PHILIPPINES BY REGIONAL OR AREA HEADQUARTERS AND REGIONAL OPERATING HEADQUARTERS OF MULTINATIONAL COMPANIES, OFFSHORE BANKING UNITS AND PETROLEUM SERVICE CONTRACTORS AND SUBCONTRACTORS PURSUANT TO SECTION 4.C OF REVENUE REGULATIONS (RR) NO. 8-2018.**

The respective incomes of the alien individuals employed by the said entities are now similarly taxed as income of regular employees of locally-established entities. Accordingly, these alien individuals are subject to the same administrative requirements of the BIR being imposed on other regular employees, such as the substituted filing, issuance of BIR Form No. 2316, inclusion in the Monthly Withholding Tax Remittance on Compensation, as well as in the prescribed Alphalists, etc.

Alien individuals who are employed by foreign principals and who are assigned to render services exclusively to these local entities (otherwise known as seconded employees or secondees), are likewise subject to the regular income tax rates. It is grounded on the principle of situs of taxation considering that the services rendered by these alien individuals are being performed within the Philippines, regardless of whether their salaries are being paid by the foreign principals or advanced by these local entities.

The local entities, to whom the seconded employees render their services, shall comply with the same administrative requirements, except for substituted filing, imposed by the BIR for regular employees. In addition to these prescribed requirements, the following procedures shall be complied with by all concerned:

- a. A separate employment status and description for seconded employees shall be provided in the 'Current Employment Status' of the Alphabetical List of Employees/Payees from Whom Taxes Were Withheld under BIR Form No. 1604C, as well as in the Alphalist Data Entry and Validation Module version 6.1.
- b. These seconded employees shall file their Annual Income Tax Return and pay the income tax due, if applicable, on or before the prescribed deadline of April 15 of each year, together with the attached BIR Form No. 2316 duly issued by the local entities.
- c. In all copies of BIR Form No. 2316 to be issued to these employees, the phrase "For Seconded Employee" shall be typed or printed in bold capital letters enclosed in open and close parenthesis immediately under the form's title 'Certificate of Compensation Payment/Tax Withheld'.
- d. In case of termination of their services before the end of the taxable year, the local entities shall ensure that the withholding tax on their last salaries shall be computed using the annualized withholding tax method, pursuant to the provisions of Sec. 2.29.(B).(5).(b) of RR No. 2-98, as amended. ***Revenue Memorandum Circular No. 116-2019, November 6, 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 us at any of the indicated e-mail address:

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