

TAX ALERT

September 16 to October 15, 2019

COURT OF TAX APPEALS DECISIONS

A MEMORANDUM OF ASSIGNMENT WHICH REFERS A CASE/DOCKET TO A REVENUE OFFICER (RO) IN ORDER TO CONTINUE THE AUDIT/INVESTIGATION AND TO REPLACE THE PREVIOUSLY ASSIGNED RO DOES NOT CONSTITUTE SUFFICIENT AUTHORITY. In case of re-assignment or transfer of cases to other revenue officers, it is mandatory that a new Letter of Authority be issued with the corresponding notation thereto; otherwise, the assessment shall be deemed void. *Vesta Property Holdings, Inc. v. Commissioner of Internal Revenue, CTA EB No. 1847, September 27, 2019.*

A SUBSTITUTE RO WHO WILL CONDUCT AN EXAMINATION OF TAXPAYERS' RECORDS MAY BE DEEMED AUTHORIZED TO DO SO WITHOUT NEED FOR A NEW LETTER OF AUTHORITY (LOA), ONLY IF THE MEMORANDUM OF ASSIGNMENT IS SIGNED BY THE REVENUE REGIONAL DIRECTOR. *UPS SCS (Philippines), Inc. v. Commissioner of Internal Revenue, CTA Case No. 9462, September 24, 2019.*

FOR LARGE TAXPAYERS, A SUBSTITUTE REVENUE OFFICER WHO WILL CONDUCT THE EXAMINATION MAY BE DEEMED AUTHORIZED TO DO SO WITHOUT NEED FOR A NEW LOA, IF THE LETTER OR NOTICE OR MEMORANDUM IS SIGNED BY THE ASSISTANT COMMISSIONER OR HEAD REVENUE EXECUTIVE ASSISTANT OF THE LARGE TAXPAYERS SERVICE. *Metro Rail Transit Corporation v. Commissioner of Internal Revenue, CTA Case No. 9016, October 2, 2019.*

WHILE RMO NOS. 62-2010 AND 69-2010 PROVIDED THAT MANUAL LETTERS OF AUTHORITY ("LOAS") ARE TO BE RETRIEVED AND REPLACED WITH THE NEW ELECTRONIC LETTERS OF AUTHORITY ("ELAS"), NOTHING IN SAID ISSUANCES INVALIDATES THE MANUALLY-PREPARED LOAS WHEN SAID LOAS ARE NOT RETRIEVED AND REPLACED WITH ELAS. Moreover, in case the manually prepared LOA is not replaced with a new eLA, the remedy of the taxpayer is to invoke Section 6 of RMO No. 62-2010 which allows taxpayers to not entertain any revenue officer, unless a new eLA has been issued. Such right, however, may be waived when the taxpayer continues to allow the audit/investigation without protest. In the instant case, petitioner was given several opportunities to raise the validity of the manual LOA during the Notice of Informal Conference ("NIC") or in its protests to the Preliminary Assessment Notice ("PAN") and Formal Letter of Demand ("FLD"). Petitioner even executed several waivers extending the period to assess. Thus, petitioner cannot raise for the first time in its petition the invalidity of the LOA for non-compliance with RMO Nos. 62-2010 and 69-2010 as it actively participated in the audit/investigation conducted by the revenue

officers authorized under the manually prepared LOA. *Altus Angeles, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9164, October 8, 2019.*

A TAXPAYER WHO PAYS AN ASSESSED TAX SHALL BE ESTOPPED FROM QUESTIONING THE WAIVER IT EXECUTED PRIOR TO THE ISSUANCE OF THE ASSESSMENT. Petitioner is estopped from questioning the validity of the Waivers because it has undisputedly "voluntarily settled the deficiency taxes due on the other issues." If petitioner truly believed that the Waivers were invalid, then it should not have partially paid the deficiency tax assessments. The fact that it had done so is an indication that petitioner recognized the validity thereof. *San Miguel Foods, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9241, October 2, 2019.*

A TAX ASSESSMENT MUST CONTAIN NOT ONLY A COMPUTATION OF TAX LIABILITIES BUT ALSO A DEMAND FOR PAYMENT WITHIN A PRESCRIBED PERIOD. A perusal of the Formal Letter of Demand and Details of Discrepancies shows that there is no fixed date when payment of the subject tax assessments should be made. In the same vein, an examination of the subject Assessment Notices would reveal that the respective "DUE DATE" portion thereof are all left blank. Correspondingly, the subject tax assessments cannot be considered as valid since the same do not contain a demand for payment within a prescribed period. *San Miguel Foods, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9241, October 2, 2019.*

SERVICE OF FORMAL LETTER OF DEMAND PRIOR TO SERVICE OF PRELIMINARY ASSESSMENT NOTICE IS A VIOLATION OF TAXPAYER'S RIGHT TO DUE PROCESS OR TO BE INFORMED OF THE FACTS AND THE LAW ON WHICH THE ASSESSMENT WAS MADE. *Kokoloko Network Corporation v. Commissioner of Internal Revenue, CTA Case No. 9574, September 24, 2019.*

THE COURT OF TAX APPEALS HAS THE EXCLUSIVE APPELLATE JURISDICTION TO DETERMINE THE VALIDITY OR CONSTITUTIONALITY OF ADMINISTRATIVE ISSUANCES. The power to review the validity or constitutionality of RMCs issued by the CIR is initially lodged with the Secretary of Finance. Thereafter, it is this Court which has an exclusive appellate jurisdiction to determine the validity or constitutionality of the said administrative issuances. Correspondingly, Regional Trial Court-Branch 213 of Mandaluyong City is without jurisdiction to decide on the validity or constitutionality of Section 2(d)(1) of RMC No. 31-2013, and therefore, its Decision dated September 30, 2014 is a nullity. *Maria Amparo M. Dato et al. v. Hon. Kim S. Jacinto-Henares, in her capacity as Commissioner of Internal Revenue, CTA Case No. 9321, October 2, 2019.*

DISPUTES BETWEEN PUBLIC ENTITIES, SUCH AS DISPUTES BETWEEN THE BIR AND OTHER GOVERNMENT ENTITIES, SHALL BE GOVERNED BY PRESIDENTIAL DECREE ("PD") NO. 242. Thus, disputes regarding assessments made by the CIR against 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 PD No. 242 as embodied in Chapter 14, Book IV of Executive Order No. 292. *Light Rail Transit Authority v. Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue, CTA EB No. 1874, October 11, 2019.*

FAILURE TO STATE OR INDICATE THE DATE OF RECEIPT OF THE WARRANT OF DISTRRAINT AND/OR LEVY IN THE PETITION FOR REVIEW FILED BEFORE THE COURT OF TAX APPEALS IS TANTAMOUNT TO FAILURE TO PERFECT AN APPEAL. *Commissioner of Internal Revenue v. Drugmaker's Biotech Research Laboratories (through its representative Drugmaker's Laboratories, Inc.), CTA EB No. 1860, September 26, 2019.*

NON-COMPLIANCE WITH THE REQUIREMENT OF VERIFICATION DOES NOT NECESSARILY RENDER THE PLEADING FATALY DEFECTIVE. HOWEVER, FAILURE TO SUBMIT CERTIFICATION AGAINST FORUM SHOPPING (“CAFS”) AND/OR FAILURE TO ATTACH PROOF THAT THE SIGNATORY OF THE CAFS IS AUTHORIZED TO FILE THE PETITION ON BEHALF OF THE CORPORATION ARE GROUNDS FOR DISMISSAL OF THE PETITION. *Northern Mindanao Medical Center, Cagayan De Oro City, represented by its Medical Center Chief II, Jose C. Chan, M.D. v. Commissioner of Internal Revenue, CTA EB No. 1784, September 27, 2019.*

THE CIVIL LIABILITY ARISING FROM A TAXPAYER'S OBLIGATION TO PAY TAX IS NOT DEEMED INSTITUTED IN THE CRIMINAL CASE LIKE TAX EVASION. 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 independently of any attempt on the part of the taxpayer to evade payment. The obligation to pay 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. Rashdi Camlian Sakaluran, CTA Crim. Case No. O-411, September 16, 2019.*

THERE WAS NO VIOLATION OF THE DOCTRINE OF PACTA SUNT SERVANDA WHEN THE BIR, THROUGH SECTION 2(D)(1) OF REVENUE MEMORANDUM CIRCULAR (“RMC”) NO. 31-2013, ONLY EXEMPTED FROM INCOME TAX THE OFFICERS AND STAFF OF THE ASIAN DEVELOPMENT BANK (“ADB”) WHO ARE NOT PHILIPPINE NATIONALS. While officers and staff of the ADB are granted exemption from taxation with respect to salaries and emoluments paid by the said Bank under the “Agreement Between the ADB and the Government of the Republic of the Philippines Regarding the Headquarters of the ADB” (“RP-ADB Agreement”), the same is subject to the qualification that the Philippine Government may exercise its power to tax ADB officers and employees who are citizens or nationals of the Philippines. Section 2(d)(1) of RMC No. 31-2013 is not unconstitutional. The CIR merely exercised her power to interpret the pertinent provisions of the NIRC of 1997 in relation to the RP-ADB Agreement. *Maria Amparo M. Dato et al. v. Hon. Kim S. Jacinto-Henares, in her capacity as Commissioner of Internal Revenue, CTA Case No. 9321, October 2, 2019.*

THE PROVISIONS OF RMC NO. 76-2007 AND RMC NO. 105-2016 DO NOT IMPOSE A REQUIREMENT FOR PAYMENT OF CAPITAL GAINS TAX (“CGT”) AND DOCUMENTARY STAMP TAX (“DST”) ON PREVIOUS TRANSFERS OF REAL PROPERTY IF THE TAXPAYER CANNOT PRODUCE THE CERTIFICATES AUTHORIZING REGISTRATION (“CARS”) OF THE PREVIOUS TRANSACTIONS.

Neither the law nor its implementing regulations contain a statement requiring payments of the CGT and DST on prior transactions and the BIR does not have the authority to impose taxes which are not clearly imposed by a provision or provisions of law. The payments of CGT and DST made by petitioner for prior transactions is not sanctioned by law, hence said payments are considered erroneous and must be refunded. *East West Banking Corporation v. Commissioner of Internal Revenue and the Revenue District Officer of Revenue District Office No. 57-City of Biñan, Bureau of Internal Revenue, CTA Case No. 9762, October 2, 2019.*

INTEREST INCOME FROM LOANS EXTENDED TO AFFILIATES SHALL BE SUBJECT TO VALUE ADDED TAX (“VAT”). WHETHER THE PARENT CORPORATION REALIZED PROFIT OR NOT IS IMMATERIAL, AS LONG AS THE PARENT CORPORATION HAS PROVIDED FINANCIAL ASSISTANCE OR SERVICES FOR A FEE, REMUNERATION OR CONSIDERATION, SUCH SERVICE RENDERED IS SUBJECT TO VAT. *Calamba Premier Realty Corporation v. Commissioner of Internal Revenue, CTA Case No. 9541, October 7, 2019.*

CONSIDERING THAT DIVIDENDS ARE REGARDED AS INCOME, CITIES CANNOT IMPOSE BUSINESS TAX THEREON UNLESS THE IMPOSITION IS MADE ON A BANK AND OTHER FINANCIAL INSTITUTIONS. Based on the provisions of the Revised Makati Revenue Code (“RMRC”), the imposition of local business tax (“LBT”) on a "holding company" shall either be under Section 3A.02(g) for owners or operators of business establishments rendering or offering, inter alia, “business management services”, or under Section 3A.02(h) for owners or operators of banks and other financial institutions. Under Section 3A.02(g), the graduated tax rates are based on the gross sales or receipts, depending on the amount thereof, while under Section 3A.02 (h), the tax rate is fixed at 20% of 1% of the gross receipts derived from dividends, among other income. However, after a careful review of the evidence presented in the proceedings a quo, there is no showing that petitioner falls under the category, or can be considered as within the purview, of the term “Banks and other financial institutions” as defined under Section 131(e) of the Local Government Code of 1991 and Section 3A.01 (e) of the RMRC, so as to justify the collection of LBT by the City Government of Makati on the dividends which were earned by petitioner. *Metro Pacific Tollways Corporation v. Makati City and Hon. Jesusa E. Cuneta in her capacity as incumbent City Treasurer of Makati City, CTA AC No. 204, October 9, 2019.*

BIR RULINGS AND ISSUANCES

TRANSFER AND RECONVEYANCE OF TITLE OF PROPERTIES TO THE TRUSTOR FROM THE TRUSTEE IS NOT SUBJECT TO THE CAPITAL GAINS TAX (“CGT”), CREDITABLE WITHHOLDING TAX (“CWT”), VALUE ADDED TAX (“VAT”), GIFT TAX AND DOCUMENTARY STAMP TAX (“DST”). The transfer of title of property by the trustee in favor of trustor, who is the actual owner thereof is not subject to CGT imposed under Sec. 24 (D) (1) of the Tax Code of 1997, as amended, nor to CWT prescribed in Revenue Regulations (“RR”) No. 2-98, as amended, considering that the transfer and reconveyance is not motivated by a valuable consideration and merely acknowledges, confirms and consolidates the legal title and actual ownership over the properties in the name of trustor/owner. The transfer of the property is not likewise subject to the 12% VAT because the said property is not held primarily for sale to customer or for lease in the ordinary course of trade or business. The transfer and

reconveyance of the property without any monetary consideration is not subject to gift tax imposed under Sec. 98 of the 1997 Tax Code, since there is no donative intent on the part of the trustee. The Deed of Transfer and Reconveyance executed to terminate the trust relationship between the trustor/owner and the trustee, and the consolidation of the legal title and actual ownership over the subject property is a transfer and reconveyance without monetary consideration, and as such not subject to the DST imposed under Sec. 196 of the same Tax Code, as amended. However, the notarial acknowledgment to such deed is subject to the DST of P15.00 under Sec. 188 of the 1997 Tax Code. ***BIR Ruling Nos. 546-19 and 547-19, October 1, 2019.***

SALE OF CHICKEN, WHICH HAS UNDERGONE THE SIMPLE PROCESS OF ROASTING, ON A TAKE-OUT BASIS IS COVERED BY THE VAT EXEMPTION UNDER SECTION 109 (1) (A) OF THE 1997 TAX CODE, AS AMENDED. However, the exemption applies only if the roasted chicken, which has undergone the simple process of roasting, is purchased on a take-out basis. Accordingly, should the taxpayer maintain a facility where the chicken, which has undergone the simple process of roasting, will be offered as a menu to customers who would dine-in, then it will be subject to the VAT on sale of service which is imposed on restaurants and other eateries. ***BIR Ruling No. 557-19, October 3, 2019.***

PAYMENTS RECEIVED BY PETRON IN EXCHANGE FOR THE E-FUEL CARDS IS NOT SUBJECT TO WITHHOLDING TAX IMPOSED UNDER SECTION 57 OF THE 1997 TAX CODE AND RR NO. 2-98, AS AMENDED BY RR NO. 11-2018, SINCE SUCH PAYMENTS ARE NOT CONSIDERED AS REVENUE OR INCOME ARISING FROM THE SALE OF GOODS TO ITS CUSTOMERS AND RETAIL STATIONS. However, in the event of non-use of the cards within their validity period, or in case of breakage or loss of the cards (i.e., 'breakage income'), PETRON shall recognize income or revenue earned from the sale of said cards which is subject to ordinary corporate income tax. ***BIR Ruling No. 585-19, October 10, 2019.***

CLARIFIES THE PROPER TAX TREATMENT OF MATERNITY LEAVE BENEFITS UNDER REPUBLIC ACT NO. 11210 OTHERWISE KNOWN AS THE "105-DAY EXPANDED MATERNITY LEAVE LAW". The maternity benefit of female workers has been expanded from the previous 100% of the average daily salary credit to a full pay of salary which includes now the salary differential as its component aside from the added duration of the maternity leave. Accordingly, it is therefore clear that salary differential is considered as a benefit. Further, since the provisions of Section 2.78.1(B)(1)(e) under Revenue Regulations No. 2-98 do not provide any qualification in granting tax exemption on payments of benefits under the SSS law, the salary differential is exempt from income and withholding taxes. ***Revenue Memorandum Circular No. 105-2019, September 3, 2019.***

ADDITIONAL CLARIFICATION ON ESTATE TAX AMNESTY UNDER TITLE II OF REPUBLIC ACT NO. 11213 OR THE TAX AMNESTY ACT, AS IMPLEMENTED BY REVENUE REGULATIONS NO. 6-2019. ***Revenue Memorandum Circular No. 102-2019, September 25, 2019.***

PRESCRIBES THE REVISED ESTATE TAX AMNESTY RETURN (ETAR), CERTIFICATE OF AVAILMENT (CA) AND CLARIFICATION ON THE ALLOWABLE DEDUCTIONS FROM THE GROSS ESTATE FOR NON-RESIDENT ALIENS

PURSUANT TO THE PROVISIONS OF ESTATE TAX AMNESTY UNDER TITLE II OF REPUBLIC ACT NO. 11213 OR THE TAX AMNESTY ACT, AS IMPLEMENTED BY REVENUE REGULATIONS NO. 6-2019. *Revenue Memorandum Circular No. 103-2019, September 25, 2019.*

CIRCULARIZING THE AVAILABILITY OF REVISED BIR FORM NO. 2316 [CERTIFICATE OF COMPENSATION PAYMENT/TAX WITHHELD]. The revised certificate shall be accomplished by the employer and issued to each employee receiving salaries, wages and other forms of remuneration indicating therein the total amount paid and the taxes withheld therefrom during the calendar year. *Revenue Memorandum Circular No. 100-2019, September 30, 2019.*

CIRCULARIZING THE AVAILABILITY OF REVISED BIR FORM NO. 2000-OT [DOCUMENTARY STAMP TAX DECLARATION/RETURN (ONE TIME TRANSACTIONS)]. *Revenue Memorandum Circular No. 106-2019, October 10, 2019.*

EXTENDING THE VALIDITY PERIOD OF CERTIFICATES OF ACCREDITATION AND PERMITS TO USE (“PTUS”) PURSUANT TO THE PROVISIONS OF RMC NO. 55-2016, AS AMENDED BY RMC NO. 30-2015. This Circular was issued to further extend the Validity Period or Effectivity Date of both the Certificates of Accreditation and PTUs issued to developers/dealers/supplier-vendors/pseudo-suppliers of Cash Register Machines (CRMs), Point-of-Sale (POS) Machines and other sales machines/receipting software as follows:

Date of Issuance	Effectivity Date	Validity/Valid Until
Prior to August 1, 2020	August 1, 2020	July 31, 2025
August 1, 2020 onwards	Actual date of issuance	Five (5) years from the date of issuance

Hence, all primary and supplementary receipts/invoices must reflect the “Effectivity Date” as “Date Issued” and the “Valid Until” based on the provisions stated above and in relation to the compliance requirements of RR No. 16-2018. *Revenue Memorandum Circular No. 107-2019, October 15, 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) 8633-9418, facsimile number (632) 8633-1911, or at the indicated e-mail address:

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