

TAX ALERT

September 1 to 30, 2021

COURT OF TAX APPEALS DECISIONS

REQUIREMENTS FOR RENEWABLE ENERGY (“RE”) DEVELOPERS TO QUALIFY FOR VAT ZERO-RATING UNDER REPUBLIC ACT NO. (“RA”) 9513 AND ITS IMPLEMENTING RULES AND REGULATIONS (“IRR”). RE Developers must secure the following in order to qualify for VAT zero-rating under RA 9513 and its IRR: (1) Department of Energy (“DOE”) Certificate of Registration; (2) Registration with Board of Investments (“BOI”); and (3) Certificate of Endorsement (“COE”) by the DOE. In this case, the taxpayer was able to show DOE Certificate of Registration No. WESC-2009-09-005-A and WESC-2009-09-005, and BOI Certificate of Registration No. 2011-128 dated June 21, 2011 but it was unable to submit the requisite COE by the DOE. Accordingly, the taxpayer’s failure to comply with the foregoing requirement means that its sales could not qualify for VAT zero-rating. *North Luzon Renewable Energy Corp. v. Commissioner of Internal Revenue, CTA Case No. 9886 dated September 6, 2021.*

IN CLAIMS FOR REFUND OR TAX CREDIT, EVEN IF THE TAXPAYER’S FULL COMPLIANCE WITH THE REQUIREMENTS SET FORTH BY LAW IS NOT SPECIFICALLY RAISED AS AN ISSUE BY THE BUREAU OF INTERNAL REVENUE (“BIR”), IT IS STILL INCUMBENT UPON THE TAXPAYER TO PROVE ITS COMPLIANCE WITH THE SAME. With respect to the taxpayer’s argument that the lack of a COE issued by the DOE was never raised by the BIR, the CTA stressed that the CTA is a court of record, and the cases filed before it are litigated *de novo*, hence, party litigants should prove every minute aspect of its case. It is a claimant’s burden to prove the factual basis of a claim for refund or tax credit. Hence, even if the taxpayer’s full compliance with the requirements set forth by law is not specifically raised as an issue by the BIR, it is still incumbent upon the taxpayer to prove its compliance with the same. Settled is the rule that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption. Exemptions from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. *North Luzon Renewable Energy Corp. v. Commissioner of Internal Revenue, CTA Case No. 9886 dated September 6, 2021.*

BIR RULINGS AND ISSUANCES

CONSOLIDATED REVENUE REGULATIONS ON THE AFFIXTURE OF INTERNAL REVENUE STAMPS ON IMPORTED AND LOCALLY MANUFACTURED CIGARETTES, HEATED TOBACCO PRODUCTS AND VAPOR PRODUCTS FOR DOMESTIC SALE OR FOR EXPORT AND THE USE OF THE ENHANCED INTERNAL REVENUE STAMP INTEGRATED SYSTEM (ENHANCED IRSIS) FOR THE ORDERING, DISTRIBUTION, MONITORING, REPORT GENERATION AND INCORPORATING THE STRICT SUPERVISION OF PRODUCTION, RELEASE, AFFIXTURE, INVENTORY AND SALE OF CIGARETTES. *Revenue Regulations No. 18-2021 dated September 10, 2021 (published in the Manila Standard on September 14, 2021).*

CIRCULAR PRESCRIBING THE POLICIES AND GUIDELINES ON THE LAUNCHING OF THE 3RD GENERATION INTERNAL REVENUE STAMPS FOR PURPOSES OF ORDERING AND INVENTORY PLANNING OF IMPORTERS AND LOCAL MANUFACTURERS OF CIGARETTES, HEATED TOBACCO PRODUCTS AND VAPOR PRODUCTS DUE TO THE EFFECTIVITY AND IMPLEMENTATION OF REVENUE REGULATIONS NO. 18-2021. *Revenue Memorandum Circular No. 102-2021 dated September 21, 2021.*

REVISED NON-DISCLOSURE AGREEMENT (“NDA”) FORM. ALL INTERNAL REVENUE OFFICIALS, EMPLOYEES AND OTHERS CONCERNED. This Order amends the NDA form prescribed to be used/accomplished by BIR revenue personnel and/or third parties engaged/involved in BIR projects, undertakings and/or activities requiring access to BIR applications/systems and/or data/information., as provided for under Revenue Memorandum Order No. 15-2014 (Revised Information and Communications Technology [ICT] Security Policy). *Revenue Memorandum Order No. 26-2021 dated August 9, 2021.*

CIRCULAR CLARIFYING THE ISSUES RELATIVE TO THE VALUE-ADDED TAX (VAT) EXEMPTION OF CERTAIN MEDICINES AND OTHER MEDICAL DEVICES FOR COVID-19 UNDER SECTIONS 109(1)(AA) AND 109(L)(BB)(II) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED. *Revenue Memorandum Circular No. 99-2021 dated August 16, 2021.*

EXTENSION OF DEADLINE FOR THE FILING OF APPLICATIONS AND SUSPENSION OF THE 90-DAY PROCESSING OF VALUE ADDED TAX (“VAT”) REFUND CLAIMS PURSUANT TO SECTION 112 OF THE TAX CODE OF 1997, AS AMENDED BY RA 10963 (TRAIN LAW) WITH THE VAT CREDIT AUDIT DIVISION (“VCAD”). Following the temporary closure of the VCAD until October 3, 2021 in compliance with the existing health protocols for the mitigation of the COVID-19 pandemic, the filing of VAT refund claims, where the two-year period within which to file the claim falls on September 30, 2021, is extended until October 15, 2021. The 90-day period for processing all VAT refund claims pending with the VCAD during the temporary closure is also suspended pursuant to Section 5(3) of Revenue Regulations No. 27-2020. *Revenue Memorandum Circular No. 101-2021 dated September 17, 2021.*

SEC ISSUANCES

EXTENSION OF SUBMISSION OF FORMS/NOTICES PURSUANT TO MEMORANDUM CIRCULAR NO. 28, SERIES OF 2020. In view of the Commission's effort to bolster the economic recovery of the business sector during the pandemic, the SEC has extended the deadline for Corporations, Partnerships, and Individuals under the jurisdiction and supervision of the Commission to comply with SEC Memorandum Circular No. 28, Series of 2020, without penalty, until November 11, 2021. *SEC Notice dated September 8, 2021.*

TRANSITION OF APPLICATIONS FOR REGISTRATION OF PARTNERSHIPS AND LICENSING OF FOREIGN CORPORATIONS FROM CRS TO SEC ESPARC. Starting 15 September 2021, the SEC Company Registration System (CRS), which was the previous registration/licensing system for partnerships and foreign corporations, will no longer accept and process the aforementioned applications. Instead, the said applications shall now be processed and approved for payment in the SEC Electronic Simplified Processing of Application for Registration of Company (eSPARC). *SEC Notice dated September 14, 2021.*

FREQUENTLY ASKED QUESTIONS (FAQs) ON BENEFICIAL OWNERSHIP. *SEC Notice dated September 17, 2021.*

SURVEY QUESTIONNAIRE ON BENEFICIAL OWNERSHIP: FOR ALL CORPORATE SECRETARIES, DIRECTORS/TRUSTEES AND OFFICERS OF SEC REGISTERED CORPORATIONS. The Survey Questionnaire must be accomplished and submitted online on or before 30 September 2021, 5:00 PM. *SEC Notice dated September 21, 2021.*

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 telephone number (632) 8633-9418, facsimile number (632) 8633-1911, or email us at mail@baniquedlaw.com.

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