

TAX ALERT

January 2021

SUPREME COURT DECISIONS

THE PLACING OF STOCK DIVIDENDS IN AN INTEREST-YIELDING TRUST ACCOUNT BY A HOLDING COMPANY DOES NOT AUTOMATICALLY MAKE SUCH HOLDING COMPANY A FINANCIAL INSTITUTION SUBJECT TO LOCAL BUSINESS TAX UNDER SECTION 143(f) OF THE LOCAL GOVERNMENT CODE OF 1991 (1991 LGC). While the holding company is engaged in investment activities, this does not qualify it as “other financial institutions” referred to in Section 143(f) of the 1991 LGC. To be considered as a financial institution, such entity must satisfy the requisites of a financial institution found in the National Internal Revenue Code of 1997 (1997 NIRC), banking laws, and other pertinent regulations. Mere investment of dividends is not sufficient, since investing is an activity that is essential to the nature of a holding company, the primary purpose of which is to manage properties. *City of Davao v. Randy Allied Ventures, Inc., G.R. No. 241697, July 29, 2019; see also, City of Davao v. AP Holdings, Inc. G.R. No. 245887, January 22, 2020.*

THE LOCAL BUSINESS TAX OF A POWER PLANT WITH A PRINCIPAL OFFICE LOCATED IN A SEPARATE LOCAL GOVERNMENT UNIT (LGU) AND A PLANT (i.e., FACTORY/PLANT) THAT RUNS THROUGH TWO PROVINCES SHALL BE ALLOCATED FOR PAYMENT AS FOLLOWS: 30% TO THE LGU WHERE THE PRINCIPAL OFFICE IS LOCATED; AND 70% DIVIDED BETWEEN THE TWO PROVINCES WHERE THE POWER PLANT’S COMPONENTS RUN THROUGH AND OPERATE. 70% of the sales recorded in the principal office shall be allocated and the corresponding local business taxes paid to the locality where the “factory, project office, plant, or plantation” is situated, as per Section 150 of the 1991 LGC, even if these sites had no sales activity, whereas 30% of the sales recorded in the principal office shall be allocated and the corresponding local business taxes paid to the locality where the principal office is situated. *City of Makati v. Municipality of Bakun and Luzon Hydro Corp., G.R. No. 225226, July 7, 2020.*

COURT OF TAX APPEALS DECISIONS

DIVISION CHIEFS ARE NOT AUTHORIZED TO SIGN A MEMORANDUM OF ASSIGNMENT TO MODIFY A LETTER OF AUTHORITY (LOA). Revenue Memorandum Order (RMO) No. 44-2010 dated May 12, 2012 on the “Electronic Issuance of Letters of Authority” identifies the proper Approving Official of a corresponding Investigating Office. It must be noted that the Division Chief of the Regular Large Taxpayer Audit Division I of the BIR National Office is not one of those Approving Officials listed in the RMO. This is in accordance with Section 7, in relation to Sections 10(c) and 13, of the 1997 NIRC on the delegation powers of the Commissioner of Internal Revenue (CIR), the powers of the Revenue Regional Director,

and authority of Revenue Officers. *Eds Mfg., Inc. v. Commissioner of Internal Revenue, CTA No. 8913, January 5, 2021.*

A REVENUE OFFICER CANNOT EXAMINE A TAXPAYER OR RECOMMEND AN ASSESSMENT OF DEFICIENCY TAXES IN THE ABSENCE OF AN LOA AND ON THE BASIS OF A MERE LETTER NOTICE. *Commissioner of Internal Revenue v. Bostik Phil., Inc., CTA EB No. 2149, January 14, 2021.*

FAILURE TO REVALIDATE AN LOA IN ACCORDANCE WITH DEPARTMENT ORDER NO. 6-99 RESULTS IN THE INVALIDITY OF THE ASSESSMENT FOR LACK OF AUTHORITY OF THE REVENUE OFFICER TO CONTINUE THE TAX INVESTIGATION. An LOA must be revalidated in accordance with Department Order No. 6-99 if the Revenue Officer fails to complete and submit the audit report within 120 days from the issuance of the LOA. Failure to do so would result in the invalidity of the assessment for lack of authority of the Revenue Officer to continue the examination. *Tektite Insurance Brokers, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9184, January 22, 2021.*

PROPERTY DIVIDENDS ARE RETURNS ON CAPITAL OF A CORPORATION'S INVESTORS. THE DISTRIBUTION THEREOF IS NOT MADE OUT OF LIBERALITY OF THE ISSUING CORPORATION, THUS, NOT SUBJECT TO DONOR'S TAX. *Commissioner of Internal Revenue v. Trans-Asia Oil and Energy Dev't Corp., CTA EB No. 2009, January 8, 2021.*

THE CIR CAN ONLY INVOKE THE "BEST EVIDENCE OBTAINABLE RULE" AND, CONSEQUENTLY, USE UNVERIFIED DATA OBTAINED FROM COMPUTER MATCHING AS BASIS FOR AN ASSESSMENT IF A REPORT REQUESTED FROM THE TAXPAYER IS NOT FORTHCOMING OR THERE IS REASON TO BELIEVE THAT THE REPORT SUBMITTED IS INCOMPLETE, FALSE OR ERRONEOUS. In order to invoke the "Best Evidence Obtainable" Rule as basis for an assessment, the BIR should establish that Confirmation Letters requesting documents and information from third parties were sent by registered mail with return cards. If the return cards are not presented in court, the BIR may not rely on unverified data obtained from computer matching. *Commissioner of Internal Revenue v. MCC Transport Sing., Pte. Ltd., CTA EB No. 1961, January 19, 2021.*

MERE PRESENTATION OF REGISTRY RECEIPTS AS PROOF OF DELIVERY OF BIR NOTICES, SUCH AS AN ASSESSMENT, DOES NOT SATISFY THE REQUIREMENTS OF DUE PROCESS. ASIDE FROM PRESENTATION OF THE REGISTRY RECEIPTS, THE RULES ALSO REQUIRE THAT THE SERVER ACCOMPLISH A WRITTEN REPORT UNDER OATH, STATING THE MANNER, PLACE, AND DATE OF SERVICE, THE NAME OF THE PERSON WHO RECEIVED THE SAME, AND OTHER RELEVANT INFORMATION. Failure to comply with these requirements renders any subsequently issued assessment void. *Four Seas Trading Corp. v. Commissioner of Internal Revenue, CTA Case No. 9915 dated January 11, 2021.*

THE DATE OF THE POST OFFICE STAMP ON THE ENVELOPE OR THE REGISTRY RECEIPT IS CONSIDERED AS THE DATE OF FILING OF AN ADMINISTRATIVE

PROTEST SENT BY REGISTERED MAIL. As long as the protest is sent by registered mail and duly dated within the prescriptive period, it shall be considered as timely filed, notwithstanding the dispatch of the protest by the Post Office at a later date. *Commissioner of Internal Revenue v. Lorenzo Shipping Corp., CTA EB No. 1964, January 26, 2021.*

THE FACT THAT A TAXPAYER IS ABLE TO RESPOND TO AN IMPROPERLY SERVED PRELIMINARY ASSESSMENT NOTICE (PAN) DOES NOT NEGATE THE FACT OF IMPROPER SERVICE. HENCE, ANY SUBSEQUENT ASSESSMENT IS VOID FOR VIOLATION OF DUE PROCESS. *Resource One Corp. v. Commissioner of Internal Revenue, CTA Case No 9423, January 29, 2021.*

A FINAL ASSESSMENT NOTICE (FAN) THAT DOES NOT ADDRESS THE EXPLANATION OF THE TAXPAYER SET FORTH IN THE REPLY TO THE PAN IS NULL AND VOID FOR VIOLATION OF DUE PROCESS. The issuance of a PAN is a part of due process, which gives both the taxpayer and the BIR the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN or to reduce the assessment at the earliest opportunity. This purpose is not served when the BIR fails to consider the taxpayer's explanations or arguments before the FAN is issued. Failure of the BIR to give due consideration to the taxpayer's explanations or arguments is a transgression of the right to due process and will render the subsequent deficiency tax assessments null and void. *Dizon Farms Produce, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9711 dated January 5, 2021.*

THE REMEDY OF APPEALING TO THE CIR OR FILING A PETITION FOR REVIEW WITH THE COURT OF TAX APPEALS (CTA) MUST BE AVAILED OF WITHIN 30 DAYS FROM RECEIPT OF THE FINAL DECISION ON A PROTEST AGAINST THE FINAL ASSESSMENT NOTICE. Any other remedy, such as a Petition to Set Aside/Recall Final Decision filed with the Regional Director will not toll the 30-day prescriptive period to appeal the Final Decision on Disputed Assessment. Failure to avail of the proper remedies will result in the finality of the assessment. *Negros Sugar Farmers Multipurpose Cooperative v. Commissioner of Internal Revenue, et al., CTA Case No. 9810, January 11, 2021.*

THERE IS NO NEED TO WAIT FOR THE BIR TO ACT ON THE ADMINISTRATIVE CLAIM FOR REFUND FOR ERRONEOUSLY PAID OR ILLEGALLY COLLECTED TAXES. ALL THE LAW REQUIRES IS THAT AN ADMINISTRATIVE CLAIM BE FILED PRIOR TO THE FILING OF A JUDICIAL CLAIM FOR REFUND AND THAT THE JUDICIAL CLAIM FOR REFUND BE FILED WITHIN TWO YEARS FROM THE ERRONEOUS PAYMENT. *Aeon Credit Service (Phil.), Inc. v. Commissioner of Internal Revenue, CTA Case No. 9770, January 4, 2021.*

BASIC IS THE RULE THAT WHEN THE TAX IS PAID IN INSTALLMENTS, THE TWO-YEAR PRESCRIPTIVE PERIOD SHOULD BE COUNTED FROM THE DATE OF THE FINAL PAYMENT AND NOT FROM A PART OR PORTION THEREOF. This rule proceeds from the theory that there is no payment until the whole or entire tax liability is completely paid. Thus, a payment of a part or portion thereof cannot operate to start the commencement of the statute of limitations. Inasmuch as the payment was done by installment,

the computation of the two-year prescriptive period should be from the date of the last installment. *Commissioner of Internal Revenue v. Linde Phil., Inc. v. CTA EB No. 2194, January 5, 2021.*

A WAIVER EXTENDING THE PRESCRIPTIVE PERIOD MUST COMPLY WITH RMO 20-90 AND MUST INDICATE THE NATURE AND THE AMOUNT OF THE TAX DUE. There can be no true and valid agreement between the taxpayer and the BIR if the kind and amount of the taxes to be assessed or collected were not indicated in the waiver. Nevertheless, the Court may uphold the defective waiver on the basis of *in pari delicto* or “in equal fault”, that is, that the taxpayer was at fault for deliberately executing the defective waiver. *Rural Bank of Bacnotan (La Union) v. Commissioner of Internal Revenue, CTA Case No. 9118, January 21, 2021.*

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 YEARS IN ACCORDANCE WITH SECTION 281 OF THE 1997 NIRC, THE GOVERNMENT'S RIGHT TO FILE A CRIMINAL ACTION DOES NOT PRESCRIBE. Should the filing of the information in court exceed five years from the date of discovery of the violation, the criminal action will then be deemed prescribed. *People of the Phil. v. Consebido, C.T.A. EB Crim No. 069, January 6, 2021.*

THE GENERAL RULE IS THAT A TAXPAYER CANNOT CURE ITS FAILURE TO SUBMIT DOCUMENTS REQUESTED BY THE BIR AT THE ADMINISTRATIVE LEVEL BY FILING THE SAID DOCUMENT WITH THE CTA. HOWEVER, IF THE CLAIM FOR REFUND WAS ELEVATED TO THE CTA DUE TO THE INACTION OF THE BIR, THEN IT BECOMES INCUMBENT UPON THE TAXPAYER TO PROVE ITS ENTITLEMENT TO THE REFUND BY PRESENTATION OF DOCUMENTS, INCLUDING THOSE THAT MAY NOT HAVE BEEN SUBMITTED TO THE BIR. *Commissioner of Internal Revenue v. CE Luzon Geothermal Power Co., Inc., CTA EB No. 2132, January 28, 2021.*

THE DETERMINATION OF THE CTA OF THE PROPER CATEGORIES OF TAXES THAT SHOULD HAVE BEEN PAID IS AN INCIDENTAL MATTER AND DOES NOT AMOUNT TO AN ASSESSMENT. In this case, it would be erroneous for the Court to make a determination of deficiency taxes in a taxpayer’s judicial claim for refund. As held in the Supreme Court case of *SMI-ED Philippines v. Commissioner of Internal Revenue* (G.R. No. 175410, November 12, 2014), any tax deficiency liability of a taxpayer-claimant in a refund case may not be collected in the same refund case where the sole issue therein is the taxpayer claimant's entitlement to refund. *Commissioner of Internal Revenue v. Procter and Gamble Asia, Pte. Ltd., CTA EB No. 1998, January 5, 2021.*

ONLY A FULL DENIAL (INCLUDING AN IMPLIED DENIAL) OR PARTIAL DENIAL OF A VAT REFUND CLAIM CAN BE APPEALED TO THE CTA, AS PER SECTION 112(C) OF THE 1997 NIRC. As such, the Commissioner of Internal Revenue cannot raise an issue on the granted portion of the VAT refund claim. The CTA has no jurisdiction to entertain a counterclaim questioning the validity of a granted VAT refund claim. *Commissioner of Internal Revenue v. Northwind Power Dev’t Corp., CTA EB No. 2151, January 21, 2021.*

A DEFICIENCY ASSESSMENT FOR LOCAL BUSINESS TAXES AS THE SUBJECT OF A COUNTERCLAIM, WITHOUT PRIOR NOTICE TO THE TAXPAYER AS TO THE AMOUNT AND LEGAL BASIS, CANNOT BE ALLOWED AS IT VIOLATES DUE PROCESS. *City Treasurer of Manila v. New Coast Hotel, Inc. CTA AC No. 231, January 13, 2021.*

LOCAL BUSINESS TAXES SHOULD BE BASED ON GROSS RECEIPTS OR THE AMOUNT OF CONSIDERATION ACTUALLY OR CONSTRUCTIVELY RECEIVED BY THE TAXPAYER. THE TAXES CANNOT BE BASED ON THE VALUE OF GOODS DELIVERED BY THE TAXPAYER, WITHOUT REGARD TO WHETHER THE SELLING PRICE HAS BEEN PAID OR NOT. Basing the amount of gross receipts/amount of consideration on the total gross value of total ore transported by the taxpayer, regardless of whether such shipment has been paid by customers or not, is not equivalent to gross receipts as contemplated under Section 131(n) of the 1991 LGC, Section 2(g) of the Local Finance Circular 02-09, and Section 1C.1(h) of Municipal Ordinance No. 2012-02. *Municipal Treasurer of the Municipality of Claver v. Platinum Group Metals Corp., CTA EB No. 2157 dated January 7, 2021.*

THERE IS NO NEED TO WAIT FOR THE LOCAL TREASURER TO RESPOND TO A PROTEST TO A LOCAL BUSINESS TAX ASSESSMENT. THE TAXPAYER MUST FILE AN APPEAL BEFORE THE PROPER COURT WITHIN 30 DAYS UPON THE LAPSE OF 60 DAYS FROM THE FILING OF THE WRITTEN PROTEST. Inaction of the Local Treasurer on the assessment must be deemed as a denial, hence, a failure to file a Petition with the RTC would render the remedy abandoned. *Public Safety Mutual Benefit Fund, Inc. v. Acting City Treasurer, San Juan City, CTA EB No. 2198, January 15, 2021.*

A CLAIM FOR EXEMPTION FROM REAL PROPERTY TAX (RPT) IS ULTIMATELY A QUESTION OF THE REASONABLENESS OR CORRECTNESS OF AN ASSESSMENT, WHEREIN SECTION 252 OF THE 1991 LGC SHOULD APPLY, AS ESTABLISHED IN PRIOR DECISIONS OF THE SUPREME COURT. Thus, seeking an exemption from RPT necessarily requires the payment of the tax under protest as per Section 252 of the 1991 LGC. *Nat'l Grid Corp. of the Phil. v. Central Board of Assessment Appeals, CTA EB No. 1963, January 14, 2021.*

BIR ISSUANCES

CONSOLIDATED GUIDELINES FOR FILING TAX RETURNS, REQUIRED ATTACHMENTS, AND PAYMENT METHOD. The issuance provides for guidelines in filing eBIR forms, guidelines in paying via ePay, and the list of taxpayers required to use eBIR forms; the eFPS-AABs, and list of taxpayers required to use eFPS; the manual filing guidelines; and finally, the guidelines in submission of attachments and filing of “no payment returns”. The step-by-step procedures in paying taxes online via DBP’s Pay Tax Online, Landbank’s Link.biz Portal, Union Bank Online, and GCash may be found in Annex “A” of the circular. *Revenue Memorandum Circular No. 4-2021, January 8, 2021.*

SIMPLIFIED POLICIES ON THE APPLICATION FOR REGISTRATION OF COMPUTERIZED ACCOUNTING SYSTEM, COMPUTERIZED BOOKS OF ACCOUNTS AND/OR ITS COMPONENTS, INCLUDING THE ELECTRONIC STORAGE SYSTEM, MIDDLEWARE AND OTHER SIMILAR SYSTEM. New users seeking to register to use the Systems shall no longer be required to secure a Permit to Use. They shall instead submit documentary requirements listed in Annex A of the Circular in the Revenue District Office where they are registered. An Acknowledgement Certificate shall be issued within three working days from submission of complete requirements. The System to be used must comply with standards laid out in Annex B of the Circular. Pre-evaluation/demonstration of the system is not required. However, post-evaluation shall be conducted to check compliance with BIR standards. The Circular also provides for conditions (enhancements, revocation of PTU, among others) that will require the submission of a new registration. *Revenue Memorandum Circular No. 5-2021, January 8, 2021.*

ANNOUNCEMENT REGARDING THE AVAILABILITY OF THE BIR'S TAX IDENTIFICATION NUMBER (TIN) VERIFIER MOBILE APPLICATION. TIN Validation and TIN Inquiry services are available in the mobile application. It is available for use in both iOS and Android devices. *Revenue Memorandum Circular No. 13-2021, January 27, 2021.*

THE EFFECTIVITY OF RMO NO. 47-2020, WHICH IMPOSED THE NEW DOCUMENTARY REQUIREMENTS FOR THE PROCESSING OF VAT REFUND CLAIMS PURSUANT TO SECTION 112 OF THE TAX CODE, AS AMENDED, SHALL COMMENCE ON JANUARY 19, 2021. Given this, VAT refund claims that were filed prior to January 19, 2021 shall be processed as per the guidelines provided for in RMC 47-2019 and RMO 25-2019. Meanwhile, VAT refund claims filed on or after January 19, 2021 shall be filed and processed in accordance with the guidelines provided for in RMO 47-2020. *Revenue Memorandum Circular No. 14-2021, January 27, 2021.*

THE DEADLINE FOR FILING OF ANNUAL INFORMATION RETURN OF INCOME TAXES WITHHELD ON COMPENSATION AND FINAL WITHHOLDING TAX (1602-C AND 1604-F) USING THE NEW VERSION OF THE ALPHALIST DATA ENTRY AND VALIDATION MODULE UNDER RMC 7-2021 IS EXTENDED FROM JANUARY 31, 2021 TO FEBRUARY 28, 2021. *Revenue Memorandum Order No. 17-2021, January 29, 2021.*

SEC ISSUANCES

THE SEC MAIN OFFICE AND ORTIGAS OFFICE CASHIERS WILL REMAIN OPEN FROM MONDAY TO FRIDAY, EXCEPT FOR HOLIDAYS. OFFICE HOURS ARE 9:00 AM – 3:00 PM FOR THE MAIN OFFICE AND 8:00 AM – 2:00 PM FOR THE ORTIGAS OFFICE. *Financial Management Department, January 4, 2021.*

CORPORATIONS WHO INTEND TO RETAIN THEIR SPECIFIC CORPORATE TERM MUST FILE THEIR “NOTICE TO RETAIN SPECIFIC CORPORATE TERM” WITH AN ATTACHED DIRECTOR’S CERTIFICATE ON OR BEFORE FEBRUARY 23, 2021 VIA EMAIL TO MC22_S2020@SEC.GOV.PH. HARD COPIES MUST LIKEWISE BE FILED

THROUGH THE SEC COMPANY REGISTRATION AND MONITORING DEPARTMENT (SEC CRMD) RECEIVING UNIT FOR THE ISSUANCE OF CERTIFICATE OF FILING NOTICE TO RETAIN SPECIFIC CORPORATE TERM. FAILURE TO FILE THE NOTICE AND DIRECTOR'S CERTIFICATE SHALL BE DEEMED TO HAVE SELECTED A PERPETUAL TERM. *January 13, 2021.*

COMPLIANCE WITH SEC MC 28-2020 (REQUIREMENTS FOR CORPORATIONS, ASSOCIATIONS, PARTNERSHIPS, AND INDIVIDUALS TO CREATE AND/OR DESIGNATE EMAIL ACCOUNT ADDRESS AND CELLPHONE NUMBER FOR TRANSACTIONS WITH THE SEC) IS EXTENDED TO FEBRUARY 22, 2021. FILING OF THE HARD COPIES SHALL BE OPTIONAL. *Markets and Securities Regulations Department, January 18, 2021.*

THE BENEFICIAL OWNERSHIP TRANSPARENCY GUIDELINES. The rules provide for the guidelines in disclosure and recording of transfer of shares, other information subject to mandatory disclosures, period to submit disclosures, and entities exempt from disclosure requirements, among others. Beneficial Ownership Records are also now required to be kept and preserved in the principal office. *SEC Memorandum Circular No. 1, s. 2021 (Posted January 27, 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 any of the indicated e-mail addresses below:

Carlos G. Baniqued	cgbaniqued@baniquedlaw.com
Terence Conrad H. Bello	thbello@baniquedlaw.com
Emma Malou L. Gan	eulim@baniquedlaw.com
Agnes Bianca Mendoza	almendoza@baniquedlaw.com
Casiano V. Flores	cvflores@baniquedlaw.com
Mark Roland C. Domingo	mcdomingo@baniquedlaw.com
Carla S. Cucueco	cscucueco@baniquedlaw.com
Patricia D. Ibañez	pdibanez@baniquedlaw.com
Kryztelle Pearl V. Gabay	kvgabay@baniquedlaw.com

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