



TAX ALERT

December 2022

SUPREME COURT DECISIONS

CUSTOMS BROKERS ARE NOT OBLIGATED TO GO BEYOND THE DOCUMENTS PRESENTED TO THEM WHEN FILING IMPORT AND EXPORT DECLARATIONS. HENCE, ANY RESULTING MISDECLARATION CANNOT BE CONSIDERED AS AN INTENT TO EVADE TAXES. *Danilo L. Opiniano v. People of The Philippines, G.R. No. 243517 dated December 05, 2022.*

THE COURT OF TAX (“CTA”) APPEALS EN BANC HAS JURISDICTION TO ISSUE WRITS OF CERTIORARI OVER DECISIONS, RESOLUTIONS OR ORDERS OF THE CTA DIVISION INVOLVING CRIMINAL OFFENSES ARISING FROM VIOLATIONS OF THE NATIONAL INTERNAL REVENUE CODE, WHICH INCLUDES A JUDGMENT OF CONVICTION OR ACQUITTAL. *People v. Court of Tax Appeals, G.R. Nos. 250736 & 250801-03, dated December 5, 2022.*

COURT OF TAX APPEALS DECISIONS

A LETTER OF AUTHORITY (“LOA”) IS REQUIRED BEFORE A REVENUE OFFICER MAY BE AUTHORIZED TO PERFORM ASSESSMENT FUNCTIONS SUCH AS: (1) EXAMINING THE TAXPAYERS; OR (2) RECOMMENDING THE ASSESSMENT OF ANY DEFICIENCY TAX.. *Basic Housing Solutions, Inc. v. Commissioner, Bureau of Internal Revenue, C.T.A. Case No. 9905, dated December 5, 2022.*

THE 180-DAY PERIOD TO FILE A PETITION FOR REVIEW IS COUNTED FROM THE EXTENDED DEADLINE GRANTED BY THE BIR ON THE TAXPAYER’S SUBMISSION OF RELEVANT SUPPORTING DOCUMENTS. *Commissioner of Internal Revenue v. Solutions Using Renewable Energy, Inc., C.T.A. EB Case No. 2387 (C.T.A. Case No. 8974), dated December 6, 2022.*

THE IMMEDIATE ISSUANCE OF THE FINAL ASSESSMENT NOTICE WITH FORMAL LETTER OF DEMAND PRIOR TO THE LAPSE OF THE 15-DAY PERIOD TO FILE A REPLY TO THE PRELIMINARY ASSESSMENT NOTICE RENDERS THE ASSESSMENT VOID. *Commissioner of Internal Revenue v. Solutions Using Renewable Energy, Inc., C.T.A. EB Case No. 2387 (C.T.A. Case No. 8974), dated December 6, 2022; Bright Alliance Enterprises Corp. v. Commissioner of Internal Revenue FI, C.T.A. Case No. 9696, dated December 18, 2022.*

THE FAILURE OF THE TAXPAYER TO IMMEDIATELY INFORM THE CTA OF ITS AVAILMENT OF THE TAX AMNESTY PROGRAM VIOLATES THE RULE ON

FORUM-SHOPPING. HENCE, A GROUND FOR THE DISMISSAL OF THE PETITION. *Cagayan de Oro Doctors, Inc. (Madonna and Child Hospital) v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2234 (C.T.A. Case No. 9260) (Resolution), dated December 6, 2022.*

IF A TAXPAYER DENIES RECEIVING AN ASSESSMENT FROM THE BIR, IT IS INCUMBENT UPON THE LATTER TO PROVE BY COMPETENT EVIDENCE THAT SUCH NOTICE WAS INDEED RECEIVED BY THE ADDRESSEE. *Commissioner of Internal Revenue v. Square One Realty Corp., C.T.A. EB Case No. 2396 (C.T.A. Case No. 9484) (Resolution), dated December 7, 2022.*

THE ACCUSED'S OFFER TO COMPROMISE THE DEFICIENCY TAX ASSESSMENTS DUE TO ITS DISTRESSED FINANCIAL CONDITION CREATES A REASONABLE DOUBT AS TO ITS INTENT TO EVADE PAYMENT OF TAXES. *People v. Armel Plastic Co., Inc., C.T.A. Crim. Case Nos. O-725 & O-727, dated December 7, 2022.*

THE BIR MUST PROVE THE CORPORATE OFFICER'S DIRECT PARTICIPATION IN FAILING TO PAY TAXES. The mere presentation of the General Information Sheet for the years subject of the tax assessment does not suffice to prove beyond reasonable doubt that the officer of the corporation is responsible for the violation of section 255 of the Tax Code. *People v. Armel Plastic Co., Inc., C.T.A. Crim. Case Nos. O-725 & O-727, dated December 7, 2022.*

IN A CLAIM FOR REFUND OF UNUTILIZED TAX CREDITS, THE LAW ONLY REQUIRES THE SUBMISSION OF BIR FORM 2307, THE TAXPAYER DOES NOT NEED TO SUBMIT THE SUMMARY ALPHALIST OF WITHHOLDING AGENTS OF INCOME PAYMENTS SUBJECTED TO CWT NOR THE MONTHLY ALPHALIST OF PAYEES. *Commissioner of Internal Revenue v. Sonoma Services, Inc., C.T.A. EB Case No. 2416 (C.T.A. Case No. 9771) (Resolution), dated December 7, 2022.*

A LOA IS REQUIRED FOR THE EXAMINATION OF THE TAXPAYER'S RECORDS WHETHER THE AUTHORITY TO CONDUCT SUCH EMANATES FROM THE COMMISSIONER OF INTERNAL REVENUE OR THE REGIONAL DIRECTOR. *Commissioner of Internal Revenue v. Compania De Garay, Inc., C.T.A. EB Case No. 2219 (C.T.A. Case No. 9540) (Resolution), dated December 9, 2022.*

A TAXPAYER'S FAILURE TO MATCH REVENUES DECLARED IN ITS BIR FORM 2307 FROM ITS REVENUES DECLARED IN ITS AUDITED FINANCIAL STATEMENTS AND ANNUAL INCOME TAX RETURN RESULTS IN THE DENIAL OF ITS CLAIM FOR REFUND OF UNUTILIZED TAX CREDITS. *AECOM Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2454 (C.T.A. Case No. 9239), dated December 9, 2022.*

THE DEPARTMENT OF ENERGY CERTIFICATE OF ENDORSEMENT IS NOT REQUIRED TO BE ENTITLED TO VAT ZERO-RATING UNDER SECTION 108(B)(7) OF THE TAX CODE, AS AMENDED, IN RELATION TO SECTION 15 (G) OF REPUBLIC ACT NO. 9513, OR THE RENEWABLE ENERGY ACT OF 2008.

Philippine Geothermal Production Company, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2478 (C.T.A. Case Nos. 9208 and 9274) (Resolution), dated December 13, 2022.

IN CASES INVOLVING CLAIMS FOR REFUND OF INPUT VAT, THE TAXPAYER MUST ELEVATE THE CASE TO THE CTA WITHIN 30 DAYS FROM THE COMMISSIONER OF INTERNAL REVENUE'S INACTION ON THEIR ADMINISTRATIVE CLAIM FOR 120 DAYS [NOW 90 DAYS]. Unlike an assessment where the taxpayer can wait for the decision of the Commissioner of Internal Revenue on the disputed assessment before elevating the dispute to the CTA, cases involving claims for refund of input VAT provide otherwise. ***Lead Export and Agro-Development Corp. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2458 (C.T.A. Case No. 10075), dated December 13, 2022.***

THERE IS NO FRESH 180-DAY PERIOD WHEN A REQUEST FOR RECONSIDERATION IS FILED WITH THE CIR. As regards the administrative remedies to dispute an assessment, there is only one (1) "180-day period" of inaction which shall be counted from the date of filing of the protest (if the protest is a request for reconsideration) or from the submission of the relevant supporting documents (if the protest is a request for reinvestigation), the lapse of which shall give rise to the taxpayer's remedy to elevate the case with the Court of Tax Appeals within 30 days therefrom. ***Segaya v. Commissioner of the Bureau of Internal Revenue, C.T.A. EB Case No. 2526 (C.T.A. Case No. 9875), dated December 13, 2022.***

THE ISSUANCE OF THE FINAL ASSESSMENT NOTICE BEFORE THE PRELIMINARY ASSESSMENT NOTICE RENDERS THE ASSESSMENT VOID FOR VIOLATING THE TAXPAYER'S DUE PROCESS. ***Commissioner of Internal Revenue v. Global Fresh Products, Inc., C.T.A. EB Case No. 2392 (C.T.A. Case No. 9718) (Resolution), dated December 15, 2022.***

IN AN ADMINISTRATIVE REFUND CLAIM THAT WAS RE-FILED WITHIN THE PRESCRIPTIVE PERIOD, IT IS NECESSARY TO PROVIDE PROOF OF ABANDONMENT AND WITHDRAWAL OF THE INITIAL REFUND CLAIM TO RECKON THE 120-DAY [NOW 90-DAY] INACTION PERIOD FROM THE DATE OF RE-FILING. FAILURE TO PROVIDE PROOF OF ABANDONMENT AND WITHDRAWAL LEADS TO THE RECKONING OF THE 120-DAY INACTION PERIOD FROM THE DATE OF INITIAL FILING. ***Lantro Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2406 (C.T.A. Case No. 9436) (Resolution), dated December 20, 2022.***

AGENCY FEES PAID BY FOREIGN CORPORATION TO A DOMESTIC CORPORATION TO SCREEN FILIPINO SEAMEN AND/OR ENGINEERS FOR EMPLOYMENT ON BOARD THEIR VESSELS DO NOT ENJOY VAT ZERO-RATING. The activity does not create earnings or profits for the foreign corporation. ***Commissioner of Internal Revenue v. BW Shipping Philippines, Inc., C.T.A. EB Case Nos. 2481 & 2482 (C.T.A. Case No. 9660), dated December 22, 2022.***

BIR Issuances

FURTHER AMENDING CERTAIN PROVISIONS OF REVENUE REGULATIONS (“REV. REGS.”) NO. 2-98, AS AMENDED BY REV. REGS. NO. 11-2018, ON MERALCO PAYMENTS. *Revenue Regulations No. 15-2022, dated November 22, 2022.*

CLARIFIES FURTHER THE TRANSITORY PROVISIONS FOR THE VAT ZERO-RATING INCENTIVES UNDER SECTIONS 294(E) AND 295(D), TITLE XIII OF THE TAX CODE, AS AMENDED. This Circular provides further clarification and guidelines to several issues raised in the implementation of the transitory provisions of Revenue Regulations No. 21-2021 and as explained in Revenue Memorandum Circular Nos. 24-2022 and 49-2022. *Revenue Memorandum Circular No. 152-2022, dated December 7, 2022.*

ANNOUNCES THE AVAILABILITY OF THE BIR ONLINE REGISTRATION AND UPDATE SYSTEM (ORUS). *Revenue Memorandum Circular No. 153-2022, dated December 7, 2022.*

SUPERSEDING THE PROVISIONS OF REVENUE MEMORANDUM CIRCULAR NO. 142-2019 WHICH PRESCRIBED THE REQUIREMENTS FOR AVAILING THE BALANCE ADJUSTMENT FACILITY OF THE ELECTRONIC DOCUMENTARY STAMP TAX SYSTEM. The Circular clarifies that the balance adjustment facility of the system shall be available only for reasons arising from technical/system errors while the tax credit/refund remedy provided for under Sections 204(C) and 229 of the 1997 Tax Code, as amended, shall apply for reasons other than purely technical/system errors (i.e., erroneously encoded information details, double/multiple affixtures of DST by the taxpayer on the same documents, etc.). *Revenue Memorandum Circular No. 154-2022 issued on December 16, 2022.*

FURTHER EXTENDING THE ACCEPTANCE OF MANUALLY-ISSUED CERTIFICATE OF ENTITLEMENT OF REGISTERED BUSINESS ENTERPRISES AS AN ATTACHMENT TO THEIR ANNUAL INCOME TAX RETURN. *Revenue Memorandum Circular No. 155-2022 issued on December 27, 2022.*

PUBLISHES THE NOVEMBER 23, 2022 LETTER FROM FOOD AND DRUG ADMINISTRATION (FDA) DIRECTOR GENERAL SAMUEL A. ZACATE ENDORSING UPDATES TO THE “LIST OF VAT-EXEMPT MEDICINES” UNDER REPUBLIC ACT NO. 11534 (CREATE ACT), WHICH NOW INCLUDES CERTAIN MEDICINES PRESCRIBED FOR HYPERTENSION, DIABETES, HIGH CHOLESTEROL, TUBERCULOSIS, MENTAL ILLNESS AND CANCER. *Revenue Memorandum Circular No. 156-2022 issued on December 27, 2022.*

PUBLISHES THE NOVEMBER 28, 2022, LETTER FROM FDA DIRECTOR GENERAL SAMUEL A. ZACATE ENDORSING UPDATES TO THE “LIST OF VAT-EXEMPT MEDICINES” UNDER CREATE ACT, WHICH NOW INCLUDES CERTAIN MEDICINES PRESCRIBED FOR MENTAL ILLNESS AND COVID-19 TREATMENT. *Revenue Memorandum Circulars No. 157-2022 issued on December 27, 2022.*

PROVIDING CLARIFICATION ON THE PENALTIES TO BE IMPOSED ON COOPERATIVES THAT FAIL TO SUBMIT THE TAXPAYER IDENTIFICATION NUMBER (TIN) OF THEIR MEMBERS WITHIN SIX MONTHS OF RECEIVING THEIR CERTIFICATE OF TAX EXEMPTION (CTE) AND THE CIRCUMSTANCES UNDER WHICH SUCH PENALTIES MAY BE WAIVED. The Circular provides penalties for first, second, and third offenses, but these may be waived if the TINs of inactive members have been delisted or if the failure to submit the TIN is due to "force majeure." The circular also mandates the submission of a List of Active Members with TIN and Inactive Members a year after the issuance of the original CTE and yearly thereafter to ensure compliance with TIN submission, with penalties imposed on cooperatives that fail to do so. *Revenue Memorandum Circular No. 158-2022 issued on December 27, 2022.*

CIRCULARIZES THE UPDATED LIST OF ACCREDITED MICROFINANCE NON-GOVERNMENT ORGANIZATIONS AS OF DECEMBER 2022. *Revenue Memorandum Circular No. 159-2022 issued on December 27, 2022.*

ANNOUNCES THE AVAILABILITY OF THE REVISED ALPHALIST FORMAT IN THE BIR FORM NO. 1604-C (ANNUAL INFORMATION RETURN OF INCOME TAXES WITHHELD ON COMPENSATION) JANUARY 2018 ENCS. *Revenue Memorandum Circular No. 160-2022 issued on December 27, 2022.*

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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