

## TAX ALERT

October 2020

### SUPREME COURT DECISIONS

**BUREAU OF INTENAL REVENUE (“BIR”) MUST PROVE THAT THE TAXPAYER HAS INDEED RECEIVED THE ASSESSMENT NOTICES.** The Rules of Court provides for a disputable presumption that a letter duly mailed was received by the recipient. However, once the taxpayer categorically denies receipt of the assessment notices, the burden is shifted to the BIR to prove that the mailed assessments were indeed received by the taxpayer. Mere presentation of registry receipts is not sufficient to prove such receipt. *Commissioner of Internal Revenue vs. T Shuttle Services, Inc. G.R. No. 240729 dated August 24, 2020 (uploaded in Supreme Court website on October 13, 2020)*

### COURT OF TAX APPEALS DECISIONS

#### *WITHHOLDING TAX REFUND*

**THE ACT OF WITHHOLDING BY THE WITHHOLDING AGENT IS TANTAMOUNT TO BIR’S RECEIPT OF TAXES. THUS, A TAXPAYER NEED NOT PROVE WITHHOLDING AGENT’S ACTUAL REMITTANCE OF TAXES WITHHELD TO SUPPORT ITS REFUND CLAIM.** *Commissioner of Internal Revenue vs. Ayala Corporation, CTA EB No. 2118 dated October 14, 2020, and Sonoma Services, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9808 dated October 1, 2020*

#### *VAT ASSESSMENT*

**INTEREST INCOME IS SUBJECT TO VALUE-ADDED TAX (“VAT”) EVEN IF INCIDENTAL ONLY TO TAXPAYER’S BUSINESS.** In this case, the Honorable Court of Tax Appeals (“CTA”) ruled that the taxpayer’s interest income is subject to VAT because it is incidental to its business and that the taxpayer itself issued VAT official receipt for interest payments it received. *Ishida Philippines Tube Co, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9729 dated October 8, 2020*

#### *VAT REFUND*

**IN AN APPEAL OF AN ADMINISTRATIVE CLAIM FOR REFUND DENIED BY THE BIR, TAXPAYER MUST NOT ONLY SHOW THAT IT IS ENTITLED TO REFUND UNDER SUBSTANTIVE LAW BUT ALSO THAT IT SATISFIED ALL THE DOCUMENTARY AND EVIDENTIARY REQUIREMENTS FOR THE GRANT OF THE REFUND CLAIM.** The CTA citing *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* distinguished an appeal due to inaction and that dismissed by the BIR due to failure to submit supporting documents. For the latter, it is crucial for the taxpayer to “show that its

administrative claim should have been granted in the first place and should not have been denied”. ***First Gen Hydro Power Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9889 dated October 29, 2020***

**IN CLAIMS FOR REFUND OF VAT APPEALED TO THE CTA, TAXPAYERS MAY PRESENT NEW AND ADDITIONAL EVIDENCE NOT PRESENTED AT THE ADMINISTRATIVE LEVEL.** The CTA, citing *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*, ruled that it shall not be governed strictly by technical rules of evidence and thus claimant may present new and additional evidence to support its tax refund case. Further, as cases litigated before it are litigated *de novo*, taxpayers may present evidence to prove every minute aspect of their cases, including those that may not have been submitted to the BIR. ***Carmen Copper Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9592 dated October 1, 2020***

**FILING OF JUDICIAL CLAIMS FOR REFUND BEYOND THE 30-DAY PERIOD AFTER THE LAPSE OF THE 120-DAY (NOW 90-DAY) PERIOD IS PROHIBITED.** ***Lapanday Foods Corporation vs. Commissioner of Internal Revenue, CTA Case No. 10122 dated October 14, 2020, Lapanday Foods Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9966 dated October 12, 2020, and Philippine Airport Ground Support Solutions, Inc. vs. Commissioner of Internal Revenue, CTA Case EB No. 2107 dated October 7, 2020***

**INPUT TAX CARRIED OVER FROM PREVIOUS PERIOD MUST BE SUBSTANTIATED WITH OFFICIAL RECEIPTS, INVOICES, OR OTHER PERTINENT DOCUMENTS TO VALIDLY APPLY AGAINST CURRENT OUTPUT VAT LIABILITY.** Petitioner claims that it has enough input VAT credit from previous periods to cover any output tax liability for the 3<sup>rd</sup> and 4<sup>th</sup> quarters of fiscal year (FY) ending March 31, 2014 and that the amount being claimed for refund was not utilized or applied to the current VAT liability. A careful review of the evidence and the records of the case reveals that petitioner failed to fully substantiate with official receipts, service invoices, or other pertinent documents, its input VAT credit from previous periods albeit its quarterly VAT Return for the 3<sup>rd</sup> quarter of FY ending March 31, 2014 reflected the amount of P435,817,931.49 as "Input Tax Carried Over from Previous Period". Therefore, the input VAT carry-over of P435,817,931.49 cannot be validly applied against petitioner's output VAT liability pursuant to Section 110(A) in relation to Section 110(8) of the NIRC of 1997, as amended. ***Maxima Machineries, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9838 dated October 6, 2020***

#### ***EXCISE TAX REFUND***

**IMPORTATION OF ALKYLATE IS SUBJECT TO EXCISE TAX.** The CTA held that “as long as the process of distillation is employed, whether directly or indirectly, the resulting product thereon may fall within the ambit of ‘other similar products of distillation’, subject to excise tax under Section 148(e)”. Hence, even if *alkylate* is not produced by distillation but by alkylation, the CTA still held that it is subject to excise tax since raw materials used to produce it are a product of distillation. ***Petron Corporation vs. Commissioner of Internal Revenue, Commissioner of Customs and Collector of Customs (Port of Limay, Bataan), CTA Case No. 8544 dated October 21, 2020***

*ASSESSMENT*

**SERVICE OF ASSESSMENT NOTICES TO TAXPAYER’S REGISTERED ADDRESS IS VALID WHEN TAXPAYER FAILED TO NOTIFY BIR OF ITS CHANGE OF ADDRESS.** *Citair Industrial Services, Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9713 dated October 14, 2020*

**REASSIGNMENT NOTICE MAY ONLY BE CONSIDERED AS EQUIVALENT OF A LETTER OF AUTHORITY (“LOA”) IF SIGNED BY THE COMMISSIONER OF INTERNAL REVENUE OR THE REGIONAL DIRECTOR.** *Commissioner of Internal Revenue vs. Ryan Neil Erasmo Alvez, CTA EB No. 2076 dated October 8, 2020*

**AN LOA MUST BE SERVED OR PRESENTED TO THE TAXPAYER WITHIN THIRTY DAYS FROM THE DATE OF ISSUANCE, OTHERWISE, IT BECOMES NULL AND VOID, UNLESS REVALIDATED.** *Joselito Ranada Laraya vs. The Commissioner of the Bureau of Internal Revenue, through Jose A. Tan, Director Region 9, San Pablo City, CTA Case No. 8890 dated October 1, 2020*

**SUBSEQUENT ISSUANCE OF LOA FOR THE PURPOSE OF REINVESTIGATION WILL NOT CURE THE ABSENCE OF A VALID LOA IN FAVOR OF THE REVENUE OFFICERS DURING THE TIME THEY CONDUCTED THE INVESTIGATION.** *Bicyclepoker, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9868 dated October 7, 2020*

*LOCAL BUSINESS TAX*

**A STOCK AND PROPRIETARY EDUCATIONAL INSTITUTION IS NOT EXEMPT FROM LOCAL BUSINESS TAXES.** *Far Eastern University vs. City of Manila, CTA AC No. 223 dated October 14, 2020*

**BIR ISSUANCES**

**PROVIDING TAX INCENTIVES TO DONORS OF PERSONAL COMPUTERS, TABLETS, OR SIMILAR EQUIPMENT TO PUBLIC SCHOOLS.** *Revenue Regulations No. 26-2020 dated October 6, 2020*

**MOVING THE DEADLINE TO FILE VAT REFUND CLAIMS AND SUSPENDING THE 90-DAY PROCESSING PERIOD.** Extended deadlines to file VAT refund are as follows:

| <b>Taxable Quarter</b>                     | <b>Deadline</b>   |
|--|-------------------|
| Calendar quarter ending September 30, 2018 | December 31, 2020 |
| Fiscal quarter ending October 31, 2018     | January 15, 2021  |
| Fiscal quarter ending November 30, 2018    | January 31, 2021  |
| Calendar quarter ending December 31, 2018  | February 15, 2021 |

***Revenue Regulations No. 27-2020 dated October 15, 2020***

**PROVIDING EXEMPTION FROM VAT, EXCISE TAX AND OTHER FEES ON IMPORTATION OF CRITICAL PRODUCTS, ESSENTIAL GOODS, EQUIPMENT OR SUPPLIES NEEDED TO CONTAIN AND MITIGATE COVID-19. *Revenue Regulations No. 28-2020 dated October 15, 2020***

**IMPLEMENTING THE PROVISIONS OF REPUBLIC ACT (“RA”) NO. 11494 OR THE "BAYANIHAN TO RECOVER AS ONE ACT" RELATIVE TO THE TAX EXEMPTION OF CERTAIN INCOME PAYMENTS *Revenue Regulations No. 29-2020 dated October 15, 2020***

**RULES AND REGULATIONS IMPLEMENTING SECTIONS 11(O) AND (G) OF RA 11494 THAT IDENTIFY TAXES DERIVED FROM GAMING AND NONGAMING OPERATIONS AS OTHER SOURCES OF FUNDING TO ADDRESS THE COVID-19 PANDEMIC. *Revenue Regulations No. 30-2020 dated October 30, 2020***

**CLARIFICATION ON THE PROPER MODES OF SERVICE OF AN ELECTRONIC LOA. Revenue Officers may serve LOA to taxpayers using the same modes of service of assessment notices such as personal service, substituted service, or by mail. *Revenue Memorandum Circular No. 110-2020 dated October 6, 2020***

**CLARIFICATION OF CERTAIN ISSUES RELATIVE TO THE VOLUNTARY ASSESSMENT AND PAYMENT PROGRAM (“VAPP”) *Revenue Memorandum Circular No. 111-2020 dated October 13, 2020***

**PROVIDING SYSTEM WALKTHROUGH FOR THE MANDATED FILING OF BIR FORM NO. 2200-S IN THE EFPS. *Revenue Memorandum Circular No. 114-2020 dated October 20, 2020***

**CERTIFICATES OF ZONAL VALUES OF REAL PROPERTIES SHALL ONLY BE ISSUED BY THE CONCERNED REVENUE DISTRICT OFFICES HAVING JURISDICTION OVER THE LOCATION OF THE PROPERTY. *Revenue Memorandum Circular No. 114-2020 dated October 20, 2020***

**GUIDELINES AND PROCEDURES IN THE REFUND OF ERRONEOUSLY PAID VAT ON IMPORTED DRUGS PRESCRIBED FOR DIABETES, HIGH CHOLESTEROL, AND HYPERTENSION AS IMPLEMENTED UNDER RR 18-2020 PURSUANT TO SECTION 204(C) OF THE TAX CODE OF 1997, AS AMENDED. *Revenue Memorandum Order No. 36-2020 dated October 15, 2020***

**POLICIES, GUIDELINES, AND PROCEDURES IN THE PROCESSING OF APPLICATIONS FOR VAPP. *Revenue Memorandum Order No. 39-2020 dated October 19, 2020***

*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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