

# TAX ALERT

April 2023

## SUPREME COURT DECISIONS

**THE DOCTRINE LAID DOWN IN *COMMISSIONER OF INTERNAL REVENUE V. FILINVEST*, 669 PHIL. 323 (2011) [*FILINVEST CASE*], WHERE THE SUPREME COURT HELD THAT INSTRUCTIONAL LETTERS, AS WELL AS JOURNAL AND CASH VOUCHERS EVIDENCING ADVANCES, QUALIFIED AS LOAN AGREEMENTS SUBJECT TO DOCUMENTARY STAMP TAX (DST) MAY BE APPLIED RETROACTIVELY.** The ruling of the Supreme Court in the *Filinvest Case* is an interpretation of Section 179 of the National Internal Revenue Code (NIRC). Being an interpretation of existing law, the pronouncement making entities liable for DST on advances supported by mere instructional letters and vouchers applies to transactions from the time of the effectivity of the NIRC despite BIR Rulings stating otherwise. *San Miguel Corporation v. Commissioner of Internal Revenue*, G.R. No. 257697, April 12, 2023.

**THE BUREAU OF INTERNAL REVENUE (BIR) AND OTHER TAXING AUTHORITIES ARE REQUIRED TO COMPLY WITH THE RULES ON VALID SERVICE OF NOTICES TO TAXPAYERS.** Taxing authorities may serve notices personally or through substituted service. They are not excused from complying with the requirements of a valid substituted service even if the taxpayer's registered or known address is located inside an establishment with a central receiving station. It is incumbent upon them to provide the fact of such service through the attestation of at least two revenue officers other than the revenue officer serving the notice. Strict compliance with the requirements of substituted service is essential in ensuring the right of the taxpayer to due process. *Commissioner of Internal Revenue v. South Entertainment Gallery, Inc.*, G.R. No. 223767, April 24, 2023.

## COURT OF TAX APPEALS DECISIONS

**THE OFFENSE OF WILLFUL FAILURE TO PAY TAX IS COMMITTED WHEN AN ASSESSMENT BECOMES FINAL AND THE TAXPAYER DELIBERATELY REFUSES TO PAY THE TAXES DUE.** *People of the Phil. v. Hi-Build Construction Inc.*, CTA Crim Case No. O-980, April 25, 2023.

**A CRIMINAL CASE FOR WILLFUL FAILURE TO PAY TAX WILL NOT PROSPER WITHOUT PROOF THAT THE TAXPAYER RECEIVED THE FINAL NOTICE AND DEMAND FOR PAYMENT.** *People of the Phil. v. Elence Marine*, CTA Crim Case No. o-1023, April 19, 2023.

**THE INACTION OF THE BIR ON A CLAIM FOR REFUND SHALL BE DEEMED A DENIAL APPLYING REPUBLIC ACT NO. 1125, NOTWITHSTANDING THE**

**AMENDMENT INTRODUCED IN SECTION 112(C) OF REPUBLIC ACT NO. 10963 (THE “TRAIN LAW”).** In determining the timeliness of the filing of a judicial appeal on claims for refund for excess input VAT, Section 112(C) of the NIRC, as amended, should be read in relation to Section 7(a)(1) and (2) of Republic Act No. 1125 (“CTA Charter”). The CTA Charter clearly provides for the CTA’s jurisdiction to review BIR’s inaction “*where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial.*” The TRAIN Law still provided “*a specific period of action*”. Thus, despite the deletion of the phrase “*or the failure on the part of the Commissioner to act on the application within the period prescribed above*” found under Section 112(C), Section 7(a)(2) of RA 1125 should still be applied. Thus, if BIR fails to act within the 90-day period provided under Section 112(C) of the NIRC, the refund-claimant must already appeal said inaction within 30 days from the expiration of the 90-day period. *Regus Service Centre Philippine B.V.-ROHQ v. Commissioner of Internal Revenue, CTA Case No. 9907, April 19, 2023.*

**A TAXPAYER, WHO, AFTER RECEIVING THE BIR’S COLLECTION LETTER REFERRING TO A FINAL ASSESSMENT, SUBSEQUENTLY RECEIVES SUCH ASSESSMENT, MUST FILE AN ADMINISTRATIVE PROTEST ON SAID FINAL ASSESSMENT BEFORE THE BIR, LEST APPEAL TO THE CTA WILL BE CONSIDERED PREMATURE.** In this case, the respondent taxpayer received a Final Notice Before Seizure (“FNBS”) prior to receipt of a preliminary assessment notice (“PAN”) and/or final assessment notice (“FAN”). After receipt of the FNBS, respondent requested copies of the PAN, FAN and Preliminary Collection Letter. Instead of filing an administrative protest to the FAN, it filed an appeal to the CTA challenging the FAN it requested and received. The CTA held that without a valid administrative protest, the final assessment did not become a disputed assessment. Moreover, by going directly to court, a taxpayer fails to accord the BIR the opportunity to “re-examine its findings and conclusions” and to decide the issues raised within her competence. *Commissioner of Internal Revenue v. Four Seas Trading Corporation, CTA EB No. 2507 (CTA Case No. 9915), April 5, 2023.*

**IT IS NOT MANDATORY FOR A BUYER TO SIGN A SALES INVOICE. THE LACK OF SUCH SIGNATURE CANNOT BE A BASIS FOR THE DISALLOWANCE OF INPUT VAT. NEITHER SECTION 113 OF THE NIRC NOR SECTION 4.113-1 OF REVENUE REGULATIONS NO. 16-2005 REQUIRES THE BUYER OR ITS REPRESENTATIVE TO SIGN A SALES INVOICE.** The purpose of the signature is for the buyer to acknowledge the receipt of the goods delivered by the seller. The terms and conditions imprinted on a sales invoice state that “the person signing hereon is unconditionally deemed duly authorized by the buyer; otherwise, notice must be given to the seller not less than 24 hours from receipt/delivery of good(s).” Evidently, the purpose of requiring the signature of the buyer's representative is to protect the seller from the possibility that the buyer may eventually either deny the receipt of the goods or deny that the goods received were in good order and condition. In other words, the information which includes the “signature and printed name” and the “date received” of the buyer's representative were required only for the seller's protection or convenience. *Maersk Global Services Centres (Philippines) LTD. v. Commissioner of Internal Revenue, CTA EB No. 2541 (CTA Case No. 9537), April 27, 2023.*

**FOR AN ENTERPRISE WITHIN THE ECOZONE TO AVAIL OF THE TAX EXEMPTION, THE ENTITY MUST HAVE A CERTIFICATE OF REGISTRATION ISSUED BY THE ECOZONE AUTHORITY.** A Lease Agreement between the ecozone authority and the enterprise shall not be sufficient to support the claim for tax exemption. *The Teleempire Incorporated v. Commissioner of Internal Revenue, CTA Case No. 9968, April 25, 2023.*

**A BOARD OF INVESTMENTS (BOI)-REGISTERED ENTERPRISE IS REQUIRED TO PROVE THAT ITS DIRECT EXPORT SALES TO FOREIGN ENTITIES ARE PAID FOR IN ACCEPTABLE FOREIGN CURRENCY AND ACCOUNTED FOR IN ACCORDANCE WITH THE BSP RULES AND REGULATIONS, TO QUALIFY FOR ZERO-RATING UNDER SECTION 106(A)(2)(A)(1) AND (5) AND SECTION 112 (A) OF THE NIRC.** *Carmen Copper Corporation v. Commissioner of Internal Revenue, CTA EB No. 2428 (CTA Case No. 9543), April 5, 2023.*

**CERTIFICATE OF REGISTRATION ISSUED BY THE DEPARTMENT OF ENERGY AND BOI ARE REQUIRED TO ACCORD ZERO PERCENT VAT ON RENEWABLE ENERGY (RE) DEVELOPER'S PURCHASES OF LOCAL SUPPLY OF GOODS, PROPERTIES AND SERVICES NEEDED FOR THE DEVELOPMENT, CONSTRUCTION AND INSTALLATION OF ITS PLANT FACILITIES.** *Halliburton Worldwide Limited- Philippine Branch. v. Commissioner of Internal Revenue, CTA EB No. 2476 (CTA Case No. 9670), April 4, 2023.*

**A CALL CENTER COMPANY MUST PRESENT PROOF THAT ITS SERVICES WERE PERFORMED IN THE PHILIPPINES TO BE SUBJECT TO ZERO PERCENT VAT ON ITS SALE OF SUCH SERVICES TO A FOREIGN ENTITY.** *IBEX Philippines Inc. v. Commissioner of Internal Revenue, CTA EB No. 2533 (CTA Case No. 9802), April 18, 2023.*

**IMPOSITION OF LOCAL BUSINESS TAX IN ADDITION TO LOCAL FRANCHISE TAX TO DO BUSINESS IN A LOCAL GOVERNMENT UNIT CONSTITUTES DOUBLE TAXATION SINCE THE TAXES PERTAIN TO THE SAME SUBJECT MATTER WHICH IS TO DO BUSINESS IN THAT JURISDICTION.** *The City of Pasig v. Manila Electric Company, CTA AC No. 248, April 19, 2023.*

### **BIR ISSUANCES**

**THE AVAILMENT OF THE VAT ZERO-RATING ON LOCAL PURCHASES SHALL BE BASED ON THE VAT-ZERO RATING CERTIFICATION ISSUED BY THE INVESTMENT PROMOTION AGENCY, SUBJECT TO THE POST-AUDIT VERIFICATION OF THE BIR.** Local suppliers of goods of registered export enterprise shall no longer be required to apply for approval of VAT zero-rating with the BIR. All applications with accompanying VAT zero-rating certification issued by the concerned IPA which have been received but have not yet acted upon by the concerned office of the BIR upon the effectivity of these Regulations shall be accorded VAT zero-rating treatment from the date of filing of such application subject to the conduct of post audit by the BIR that the goods are indeed directly and

exclusively used by the registered export enterprise in its registered project or activity. *Revenue Regulations No. 03-2023, April 20, 2023.*

**AN AUTHORIZED AGENT BANK (AAB) OR REVENUE COLLECTION OFFICER MAY ACCEPT A LATE RETURN PROVIDED THAT IT HAS BEEN STAMPED WITH THE QUALIFIER “LATE FILING” OR “LATE FILING, INCREMENTS NOT PAID.” UPON RETRIEVAL OF RETURNS FROM THE AABS, THE REVENUE DISTRICT OFFICES AND LARGE TAXPAYER DIVISIONS SHALL IMPOSE THE APPLICABLE PENALTIES ON LATE RETURNS THAT HAVE BEEN STAMPED WITH THE QUALIFIER “LATE FILING” OR “LATE FILING, INCREMENTS NOT PAID” PURSUANT TO SECTIONS 248 AND 249 OF THE TAX CODE. *Revenue Regulations No. 6-2023, April 11, 2023.***

**IN LIEU OF THE LOOSE DOCUMENTARY STAMPS, ALL GOVERNMENT AGENCIES OR INSTRUMENTALITIES SHALL USE THE CONSTRUCTIVE AFFIXTURE OF DOCUMENTARY STAMP CONSPICUOUSLY ON THE FACE OF THE TAXABLE CERTIFICATE WITH THE PHRASE "DOCUMENTARY STAMP TAX PAID," INCLUDING THE SERIAL NUMBER, AND DATE OF THE GOVERNMENT OFFICIAL RECEIPT. *Revenue Regulations No. 2-2023, March 29, 2023.***

**UPDATING THE FLOOR PRICE OF CIGARETTES, HEATED TOBACCO, VAPORIZED NICOTINE AND NON-NICOTINE PRODUCTS AND REITERATING THE IMPOSITION OF PENALTIES, SANCTIONS AND LIABILITIES FOR NONCOMPLIANCE THEREWITH UNDER SEC. 145, 254 & 263-A OF THE NIRC. *Revenue Memorandum Circular No. 49-2023, April 25, 2023.***

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