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TAX ALERT

January 31, 2023

SUPREME COURT DECISIONS

THE RUNNING OF THE PRESCRIPTIVE PERIOD SHOULD COMMENCE FROM THE DATE OF THE FILING OF THE AMENDED RETURN IF THE AMENDMENT IN THE CONTENTS OF THE RETURN IS SUBSTANTIAL. A substantial amendment in the VAT return could have consisted of an increase or reduction of either taxable sales/receipts or input VAT for any of the months of the taxable quarter in question, which would have led also to a corresponding change in the amount of VAT payable for the entire quarter. The wisdom in reckoning the prescriptive period for assessment from the date of the filing of the amended return is to prevent tax evasion by the devious scheme of initially making false entries in the tax returns (*i.e.*, reporting heavy losses) and amending the same more than three years later when the Commissioner had lost the right to assess the proper taxes. ***Lapanday Foods Corp. v. Commissioner of Internal Revenue, G.R. No. 186155 (Jan. 17, 2023).***

IN ORDER FOR A TRANSACTION TO BE CONSIDERED INCIDENTAL TO THE MAIN LINE OF BUSINESS, HENCE, SUBJECT TO VAT, THERE MUST BE SHOWN SOME INTIMATE CONNECTION BETWEEN THE TRANSACTION IN QUESTION AND THE MAIN BUSINESS ACTIVITY. FOR AN ACTIVITY TO BE SUBJECT TO VAT, IT MUST BE IN PURSUIT OF A COMMERCIAL OR ECONOMIC UNDERTAKING. Otherwise, it makes no sense to hold a transaction incidental to a primary business activity where no causal link or tie could even be traced. It is unfortunate that the Court of Tax Appeals ("CTA") *En Banc* did not elaborate on why the loan transactions in this case are incidental to Lapanday's business as a management service provider. The tax court reached its conclusion solely on the basis of its finding that Lapanday's main purposes, as spelled out in the latter's articles of incorporation, include "assisting" clients. Upon a review of the records, We find that the CTA *En Banc* erred in holding that Lapanday's loan transactions are incidental to its main line of business. The records support Lapanday's submission that it granted loans to affiliates only on few occasions. The loans were granted only to accommodate affiliates which did not have existing credit lines with banks. Thus, We sustain Lapanday in its claim that whatever interest it may have earned from the loan accommodations is merely passive. Being such, it could not also be considered as derived from a commercial or economic undertaking. As correctly pointed out by Lapanday, for an activity to be subject to VAT, it must be in pursuit of a commercial or economic undertaking. ***Lapanday Foods Corp. v. Commissioner of Internal Revenue, G.R. No. 186155 (Jan. 17, 2023).***

A REGIONAL OPERATING HEADQUARTERS ("ROHQ") PERFORMS SERVICES IN THE PHILIPPINES FOR ITS NON-RESIDENT AFFILIATES. To qualify for VAT zero-rating, Section 108(B)(2) requires the concurrence of four conditions: *first*, the services rendered should be other than "processing, manufacturing or repacking of goods;" *second*, the services are

performed in the Philippines; …The first and second requisites are undisputed. As an ROHQ, Chevron Holdings performs services to its affiliates in the Asia-Pacific, North American, and African Regions, such as general administration and planning, business planning and coordination, sourcing and procurement of raw materials and components, corporate finance advisory services… and business development. Certainly, the services it renders in the Philippines are not in the same category as "processing, manufacturing or repacking of goods." ***Chevron Holdings, Inc. v. Commissioner of Internal Revenue, G.R. No. 215159 (Jul. 5, 2022) (uploaded in SC website, Jan. 25, 2023).***

FOR SALES TO A NON-RESIDENT FOREIGN CORPORATION TO QUALIFY FOR ZERO-RATING, IT MUST BE PROVED THAT THE SERVICE RECIPIENT IS A PERSON ENGAGED IN BUSINESS CONDUCTED OUTSIDE THE PHILIPPINES. The Court emphasized in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd*. (G.R. No. 234445 dated July 15, 2020) that for sales to a non-resident foreign corporation to qualify for zero-rating, the following must be proved: "(1) that their client was established under the laws of a country, not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines…Therefore, the taxpayer-claimant must present, at the very least, **both** the SEC Certificates of Non-Registration – to prove that the affiliate is foreign; **and** the Articles or Certificates of Foreign Incorporation, printed screenshots of US SEC website showing the state/province/country where the entity was organized, or any similar document – to prove the fact of not engaging in trade or business in the Philippines at the time the sales are rendered. ***Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue, G.R. No. 215159 (Jul. 5, 2022) (uploaded in SC website, Jan. 25, 2023).***

FAILURE TO COMPLY WITH THE INVOICING REQUIREMENTS IS SUFFICIENT GROUND TO DENY THE CLAIM FOR REFUND OR TAX CREDIT. Failure to comply with the invoicing requirements is sufficient ground to deny the claim for refund or tax credit. The reason for this is simple – only a VAT invoice or official receipt can give rise to input tax; without input tax, there is nothing to refund. ***Chevron Holdings, Inc. v. Commissioner of Internal Revenue, G.R. No. 215159 (Jul. 5, 2022) (uploaded in SC website, Jan. 25, 2023).***

THE COURTS CANNOT, ON ITS OWN, DEDUCT THE INPUT TAX ATTRIBUTABLE TO ZERO-RATED SALES FROM THE OUTPUT TAX DERIVED FROM THE REGULAR TWELVE PERCENT (12%) VATABLE SALES FIRST AND USE THE RESULTANT AMOUNT AS THE BASIS IN COMPUTING THE ALLOWABLE AMOUNT FOR REFUND. In this case, the CTA required Chevron Holdings to substantiate its prior quarter's excess input taxes so that there would be sufficient amount to cover its output tax liability, and, only after the output tax had been paid or "covered" that the CTA allowed a refund. The Court cannot adhere to this view…The remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative. The option is vested with the taxpayer-claimant…The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence…The taxpayer only needs to prove non-application or non-charging of the input VAT subject of the claim. There is nothing in the law and rules that

mandate the taxpayer to deduct the input tax attributable to zero-rated sales from the output tax from regular twelve percent (12%) VAT-able sales first and only the "excess" may be refunded or issued a tax credit certificate. To reiterate, these remedies accorded by law to the taxpayers are alternatives. Requiring taxpayers to prove that they did not charge the input tax claimed for refund against the output tax is one thing; requiring them to prove that they have "excess" input tax *after* offsetting it from output tax is another. The former is essential to the entitlement of the refund under Section 112(A); the latter is not. ***Chevron Holdings, Inc. v. Commissioner of Internal Revenue, G.R. No. 215159 (Jul. 5, 2022) (uploaded in SC website, Jan. 25, 2023).***

IT IS NOT FOR THE CTA AND THE SUPREME COURT TO DETERMINE AND RULE IN A JUDICIAL CLAIM FOR REFUND UNDER SECTION 112(A) OF THE 1997 NIRC THAT THE TAXPAYER HAD INSUFFICIENT OR UNSUBSTANTIATED INPUT TAXES TO COVER ITS OUTPUT TAX LIABILITY. The substantiation of input taxes that can be credited against the output tax is an issue relevant to the assessment for potential deficiency output VAT liability. In turn, it is not for the CTA and the Court to determine and rule in a judicial claim for refund under Section 112(A) of the Tax Code that the taxpayer had insufficient or unsubstantiated input taxes to cover its output tax liability. This is for the BIR to determine in an administrative proceeding for assessment of deficiency taxes. ***Chevron Holdings, Inc. v. Commissioner of Internal Revenue, G.R. No. 215159 (Jul. 5, 2022) (uploaded in SC website, Jan. 25, 2023).***

COURT OF TAX APPEALS DECISIONS

THE TEST IN DETERMINING WHETHER AN ORDINANCE IS REGULATORY OR REVENUE-RAISING ARE THE PURPOSE AND EFFECT OF THE ORDINANCE. If the purpose is primarily revenue, or if revenue is at least one of the real and substantial purposes, then the exaction is properly classified as an exercise of the power to tax. On the other hand, if the purpose is primarily to regulate, then it is deemed an exercise of police power in the form of a fee, even though revenue is incidentally generated. Stated otherwise, if generation of revenue is the primary purpose, the imposition is a tax, but if regulation is the primary purpose, the imposition is properly categorized as a regulatory fee. The CTA has no jurisdiction to rule on an issue that does not involve a local tax. ***Taguig City Government v. Serendra Condominium Corp., CTA EB No. 2404 (CTA AC Nos. 229 & 230) (Jan. 30, 2023).***

A WARRANT OF GARNISHMENT ("WOG") FALLS WITHIN THE AMBIT OF THE CTA'S JURISDICTION UNDER "OTHER MATTERS ARISING UNDER THE 1997 NIRC OR OTHER LAWS ADMINISTERED BY THE BIR." Therefore, petitioner is correct in its contention that the validity of the subject WOGs falls under "other matters" over which this Court can validly exercise jurisdiction. ***Country Bank, Rural Bank of Bongabong, Inc. v. Bureau of Internal Revenue, CTA Case No. 10864 (Jan. 31, 2023).***

THE CTA CAN RESOLVE AN ISSUE WHICH WAS NOT SPECIFICALLY RAISED BY THE PARTIES. ***Commissioner of Internal Revenue v. Robinsons Land Corp., CTA EB No. 2430 (CTA Case No. 9163) (Jan. 17, 2023).***

GENERALLY, WITHHOLDING TAXES MAY NOT BE COMPROMISED, UNLESS THE TAXPAYER INVOKES PROVISIONS OF LAW THAT CAST DOUBT ON THE TAXPAYER'S OBLIGATION TO WITHHOLD. The instant compromise agreement case involves Final Withholding Tax and Final Withholding VAT. In its protest to the Formal Letter of Demand ("FLD"), petitioner cited Sections 42 and 108 of the 1997 NIRC to show that services rendered outside the Philippines are not income from sources within the Philippines and are not subject to Philippine income tax, and consequently to withholding tax. Likewise, petitioner said services rendered outside the Philippines are not subject to VAT, and therefore not subject to final withholding VAT. The Court finds that petitioner sufficiently invoked provisions of law that cast doubt on its obligation to withhold taxes. ***Ceva Animal Health (Phil.), Inc. v. Commissioner of Internal Revenue, CTA Case No. 10365 (Jan. 10, 2023).***

IF THE PRELIMINARY ASSESSMENT NOTICE ("PAN"), FLD AND ASSESSMENT NOTICE WERE RECEIVED BY AN EMPLOYEE OF THE TAXPAYER, THERE WILL BE A VALID SUBSTITUTED SERVICE IN ACCORDANCE WITH REVENUE REGULATIONS NO. ("REV. REGS.") 12-99 (SUBSTITUTED SERVICE ON TAXPAYER'S CLERK OR PERSON HAVING CHARGE OF THE PLACE OF BUSINESS). ***People v. The Proprietor of Celia's Handbag, Rodolfo Quezon Reyes, CTA Crim. Case No.O-859 (Jan. 18, 2023).***

THE RECEIPT BY THE SECURITY GUARD MANNING THE COUNSEL'S OFFICE IS DEEMED RECEIPT BY THE COUNSEL. Accordingly, the date of receipt of a court process or notice by such security guard is likewise deemed the date of receipt of such correspondence by the counsel. ***Hi-Stakes Gaming, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2413 (CTA Case No. 10211) (Jan. 25, 2023).***

A WOG CONSTITUTES IMPLIED DENIAL OF THE BIR ON THE PROTEST. The filing of Petition for Review on May 23, 2022 was already time barred. In the instant case, petitioner seeks to assail the validity of the WOGs. The WOGs were dated 28 July 2021. Even if such date could not be considered as the date of petitioner's receipt of the WOGs, it was informed as early as 13 August 2021 that the WOGs were issued, and petitioner obtained copies of the WOGs from its banks. In fact, by 31 August 2021, petitioner was able to write a Letter to respondent requesting the lifting of the said WOGs. To emphasize, the WOG constitutes the implied denial of respondent on petitioner's protest. Even if it will be argued that the WOG is not an implied denial… it must be underscored that a Letter requesting for the lifting of the WOGs has been sent on 31 August 2021, to which a Letter of Denial signed by Regional Director Aninag was received on 2 November 2021. Even at the most lenient of interpretations, petitioner should have filed its Petition for Review within 30 days from receipt of the Letter of Denial, not from receipt of second letter of denial on 21 April 2022 when it filed a second letter request for lifting of WOGs on 26 November 2021. ***Country Bank, Rural Bank of Bongabong, Inc. v. Bureau of Internal Revenue, CTA Case No. 10864 (Jan. 31, 2023).***

THE ONLY REMEDY GRANTED TO THE TAXPAYER IN CASE THE PROTEST OR ADMINISTRATIVE APPEAL TO THE FDDA IS DENIED BY THE COMMISSIONER OF INTERNAL REVENUE ("CIR") IS TO APPEAL TO THE CTA WITHIN 30 DAYS FROM DATE OF RECEIPT OF THE SAID DECISION. The filing of a motion for

reconsideration which will toll the said 30-day period only exists when the denial was made by the CIR's duly authorized representative, and not when it was made by the CIR himself or herself. ***Elta Industries, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9922 (Jan. 23, 2023).***

THE 180-DAY PERIOD REFERRED TO IN SECTION 228 OF THE 1997 NIRC AND SECTION 2.1.4 OF RR NO. 12-99 IS CONFINED ONLY TO THE PERIOD WITHIN WHICH EITHER THE CIR OR HIS/HER DULY AUTHORIZED REPRESENTATIVE MAY ACT ON THE INITIAL PROTEST AGAINST THE FINAL ASSESSMENT NOTICE ("FAN")/FLD. In this case, the taxpayer filed a protest on December 3, 2022 disputing the correctness and validity of the FLD, and requesting for a reinvestigation. Thus, the regional director has 180 days from submission of documents on February 1, 2016, or until July 30, 2016 within which to act on the protest. Instead, the regional director issued a revised FLD only on August 22, 2016 or 23 days after the lapse of the 180-day period. When the taxpayer filed a request for reconsideration on September 20, 2016, the 180-day period had already lapsed, particularly on July 30, 2016. Thus, the taxpayer's only option now is to wait for the decision on his request for reconsideration considering that the 180+30 day period is no longer available. Hence, the filing of the Petition for Review on April 17, 2017, which is within 30 days from the lapse of the alleged 180-day period, counted from September 20, 2016, was premature considering that it has not yet received the decision on the request for reconsideration. ***Commissioner of Internal Revenue v. Yu, CTA EB No. 2352 (CTA Case No. 9595) (Jan. 9, 2023).***

FILING A PETITION FOR REVIEW BEFORE THE CTA *EN BANC* MUST BE PRECEDED BY A TIMELY FILING OF A MOTION FOR RECONSIDERATION OR NEW TRIAL WITH THE DIVISION. Before the CTA *En Banc* could take cognizance of the petition for review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned Court in Division within 15 days from receipt of the assailed decision. Failure to file a motion for reconsideration on time results to losing the right to assail the Court in Division's judgment before the CTA *En Banc*. Failure to file a motion for reconsideration seasonably renders the judgment final and executory. ***Commissioner of Internal Revenue v. Robinsons Land Corp., CTA EB No. 2430 (CTA Case No. 9163) (Jan. 17, 2023).***

A SIGNIFICANT PART OF THE DUE PROCESS REQUIREMENT IN THE ISSUANCE OF TAX ASSESSMENTS IS THAT THE CONCERNED TAXPAYER MUST BE INFORMED, IN WRITING, OF THE LAW AND OF THE FACTS ON WHICH THE ASSESSMENT IS MADE. SUCH REQUIREMENT MUST BE EMBODIED IN THE PAN, FLD/FAN, AND FDDA. When respondent rejects the taxpayer's explanations, she must give some reason for doing so and the particular facts and law upon which her conclusions are based, and those facts must appear on the PAN, FLD/FAN, or FDDA. As a corollary, the concerned taxpayer must not be left unaware on how the respondent or her duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment… Correspondingly, as part of the due process requirement in the issuance of tax assessments, the CIR or respondent must give reason(s) for rejecting petitioner's explanations, and must give the particular facts upon which the conclusions for assessing petitioner are based,

and those facts must appear on record. The CIR or respondent has obviously not observed such requirement in the issuance of the subject FAN, and the subject FDDA. Thus, the lapses committed by respondent's authorized revenue officers in the instant case clearly violated petitioner's right to due process, as recognized under Section 228 of the 1997 NIRC, vis-a-vis Sections 3.1.3 and 3.1.5 of RR No. 12-99, as amended. Consequently, the subject deficiency VAT assessment is rendered void. ***Ajanta Pharma Phil., Inc. v. Commissioner of Internal Revenue, CTA Case No. 10057 (Jan. 23, 2023).***

FAILURE OF THE FLD TO PROVIDE A DUE DATE FOR PAYMENT OF DEFICIENCY TAX RENDERS THE ASSESSMENT VOID. A close perusal of the FLD and assessment notices reveals that both failed to demand payment of the basic deficiency income tax. The FLD specifically states that accused is only "requested" to pay his deficiency tax liabilities in a duly authorized agent bank using the electronic BIR Payment Form without specifying the due date for payment. The enclosed assessment notices, on the other hand, conspicuously left blank the space provided for that would have indicated the due date within which the tax deficiency should be paid. While "Due Date: July 29, 2017" appears on the upper right hand corner of the FLD, said information appears too equivocal *sans* any statement that it is the due date for payment. Truth to tell, such entry may even refer to the due date when the FLD and Ans should be released to the taxpayer. In fine, the assessment is void for lacking a due date for payment in violation of the accused's right to due process. ***People v. The Proprietor of Celia's Handbag, Rodolfo Quezon Reyes, CTA Crim. Case No. O-859 (Jan. 18, 2023).***

THE STATEMENT IN THE FLD THAT "THE INTEREST AND THE TOTAL AMOUNT DUE WILL HAVE TO BE ADJUSTED IF PAID BEYOND JULY 9, 2014," DOES NOT MAKE THE DEFICIENCY TAX LIABILITIES INDEFINITE TO RENDER THE SUBJECT FLD/FANS VOID. THE STATEMENT MERELY REMINDED THAT THE INTEREST WOULD HAVE TO BE ADJUSTED IF THE ASSESSED TAX LIABILITIES ARE PAID AFTER JULY 9, 2014. It bears to emphasize that only the 20% deficiency/delinquency interest per annum will be adjusted if paid beyond July 9, 2014. The basic deficiency taxes and the surcharge remain the same regardless of the date of payment. The interest would be subject to changes, considering that the BIR could not foresee when respondent would pay the deficiency taxes. Consequently, the total amount due will have to be adjusted. Hence, the subject FLD and FANs clearly indicated a fixed and definite amount of respondent's deficiency tax liabilities. ***Commissioner of Internal Revenue v. Robinsons Land Corp., CTA EB No. 2430 (CTA Case No. 9163) (Jan. 17, 2023).***

A FAN IS NOT A VALID ASSESSMENT IF IT DID NOT SET A SPECIFIC DUE DATE, NEGATING THE DEMAND FOR PAYMENT. The last paragraph of the FLD in this case states that respondent is requested to pay its deficiency tax liabilities within the time shown in the enclosed assessment notice. However, a perusal of the enclosed assessment notices reveals that the due date for payment was left blank. While the date July 9, 2014 as indicated on the FLD was the reckoning date for adjustment of interest, it cannot be recognized as the due date for payment, absent any showing that the same is expressly indicated as the due date on the assessment notices. Given the foregoing, the subject assessments are void for failure to state the due date. ***Commissioner of Internal Revenue v. Robinsons Land Corp., CTA EB No. 2430 (CTA Case No. 9163) (Jan. 17, 2023).***

THE TAXPAYER MUST NOT ONLY BE GIVEN AN OPPORTUNITY TO PRESENT ITS DEFENSES, EXPLANATIONS, AND SUPPORTING DOCUMENTS, BUT THE CIR AND THEIR SUBORDINATES MUST GIVE DUE CONSIDERATION TO THESE, IN MAKING THEIR CONCLUSIONS ON THE TAXPAYERS' LIABILITIES, AND SUFFICIENTLY INFORM THE TAXPAYER OF THE REASONS FOR THEIR CONCLUSIONS. FAILURE TO DO SO CONSTITUTES A VIOLATION OF THE TAXPAYER'S RIGHT TO DUE PROCESS. The CIR did not comment or address the matters raised by the taxpayer. There was no discussion of CIR's findings in a manner that taxpayer may know the various issues involved and the reasons for rejecting its refutations and explanations in its Reply to the PAN, and in its Protest to the FLD. Thus, the taxpayer was left unaware of how CIR, or his authorized representatives, appreciated the explanations or defenses raised against the assessments. It is true that the Commissioner is not obliged to accept the taxpayer's explanations; however, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record. The CIR's disregard of the due process standards and rules, and his failure to sufficiently inform the taxpayer of the reasons for his conclusions render the subject deficiency tax assessments null and void. ***Commissioner of Internal Revenue v. Robinsons Land Corp., CTA EB No. 2430 (CTA Case No. 9163) (Jan. 17, 2023).***

WHILE A MEMORANDUM MAY BE ISSUED BY THE HEAD OF THE INVESTIGATING OFFICE IN CASES OF REASSIGNMENT, THE SAME DOES NOT AND COULD NOT PROPERLY CONFER AUTHORITY ON THE ASSIGNED RO TO EXAMINE A TAXPAYER'S BOOKS OF ACCOUNT AND ACCOUNTING RECORDS. This view is espoused in the recent ruling of the Supreme Court in the case of *Commissioner of Internal Revenue v. McDonald's Phil. Realty Corp.* (G.R. No. 242670, 10 May 2021). Moreover, in the case of C*ommissioner of Internal Revenue v. Opulent Landowners, Inc.* (G.R. Nos. 249883-84, 27 January 2020 [Resolution]), the Supreme Court further reiterated that only the ROs actually named in the Letter of Authority ("LOA") are authorized to examine the taxpayer. ***Ong v. Commissioner of Internal Revenue, CTA Case No. 10100 (Jan. 16, 2023).***

A LETTER NOTICE ("LN") IS NOT THE SAME AS A LOA, EVEN IF THE SAID LN WAS ISSUED BY THE CIR HIMSELF OR HERSELF. THE SAID LN MUST STILL BE CONVERTED INTO A LOA. ***Commissioner of Internal Revenue v. Indra Verhomal Menghrajani, CTA EB No. 2338 (CTA Case No. 9269) (Jan. 18, 2023).***

THE AMOUNT ALREADY GRANTED BY THE BIR SHOULD BE DEDUCTED FROM THE TOTAL AMOUNT OF THE JUDICIAL CLAIM. THE TAXPAYER SHOULD HAVE APPEALED BEFORE THE COURT IN DIVISION ONLY THE DISALLOWED PORTION OF ITS REFUND CLAIM. ***Phil. Geothermal Production Co., Inc. v. Commissioner of Internal Revenue, CTA EB Nos. 2455 and 2460 (CTA Case No. 9663) (Jan. 9, 2023).***

THE POWER OF THE CTA TO EXERCISE ITS APPELLATE JURISDICTION DOES NOT PRECLUDE IT FROM CONSIDERING EVIDENCE THAT WAS NOT PRESENTED IN THE ADMINISTRATIVE CLAIM. Accordingly, the Court in Division

may give credence to all evidence presented by the taxpayer claimant, irrespective of whether the documents were submitted at the administrative level. ***Commissioner of Internal Revenue v. Carmen Copper Corporation, CTA EB Nos. 2480 and 2515 (CTA Case No. 10016) (Jan. 10, 2023); see also Commissioner of Internal Revenue v. Gamesa Eolica, SL-Unipersonal Phil. Branch, CTA EB No. 2523 (CTA Case No. 9668) (Jan. 31, 2023).***

DOCUMENTS TO PROVE THAT THE RECIPIENT IS A FOREIGN CORPORATION AND IS DOING BUSINESS OUTSIDE THE PHILIPPINES. Petitioner must submit, for each of its foreign service recipients/clients, at the very least, both: (1) SEC Certificate of Non-Registration of Corporation/Partnership; and (2) proof of incorporation, association or registration showing the state/province/country where the entity was organized (e.g. Articles/Certificate of Incorporation/Registration and/or Tax Credit Certificate). ***Avaloq Phil. Operating Headquarters v. Commissioner of Internal Revenue, CTA Case No. 10119 (Jan. 9, 2023); see also Macquarie Offshore Services Pty. Ltd. – Phil. Branch v. Commissioner of Internal Revenue, CTA EB No. 2431 (CTA Case No. 9722) (Jan. 25, 2023).***

THE PAYMENTS FOR ZERO-RATED SALES, WHICH ARE DULY SUPPORTED BY OFFICIAL RECEIPTS, MUST BE DULY REFLECTED IN THE CERTIFICATES OF INWARD REMITTANCES. OTHERWISE, THE COURT WILL BE UNABLE TO DETERMINE WHETHER THE PAYMENTS WERE ACCOUNTED FOR ACCORDING TO THE RULES AND REGULATIONS OF THE BSP. While petitioner was able to present the schedule of inward remittances and certifications of inward remittances from HSBC purportedly showing the remittances of its foreign clients, the Court cannot ascertain whether the amounts reflected therein correspond to the zero-rated sales. It bears stressing that the amounts reflected in the certifications are in lump sum. As these amounts were not itemized, there is no way for the Court to determine whether the payment for the zero-rated sales were indeed accounted for in accordance with the rules and regulations of the BSP. ***Macquarie Offshore Services Pty. Ltd. – Phil. Branch v. Commissioner of Internal Revenue, CTA EB No. 2431 (CTA Case No. 9722) (Jan. 25, 2023).***

IF THE DOCUMENTS LACKS ANY INDICATION THAT THE SERVICES WERE PERFORMED IN THE PHILIPPINES, THE ICPA CANNOT BE CONSIDERED A COMPETENT WITNESS TO TESTIFY AS TO WHERE PETITIONER RENDERS ITS SERVICES CONSIDERING THAT SHE IS NOT CONNECTED WITH PETITIONER AND IS NOT PRIVY AS TO WHERE PETITIONER RENDERS ITS SERVICES. It must be noted that the issue as to whether or not petitioner performed services in the Philippines is a question of fact; hence, it must be proven by specific evidence. Although petitioner is an ROHQ, it is still necessary on its part to prove that its services were performed in the Philippines. ***Avaloq Phil. Operating Headquarters v. Commissioner of Internal Revenue, CTA Case No. 10119 (Jan. 9, 2023).***

MERE PRINT-OUTS OF PROOF OF OFFICIAL RECORDS OF FOREIGN BUSINESS REGISTRATION DOCUMENTS, RETRIEVED FROM A DATABASE MAINTAINED BY THE TAXPAYER'S HEAD OFFICE ABROAD, CANNOT BE CONSIDERED AS COMPETENT EVIDENCE TO PROVE THAT ITS CLIENTS ARE NON-RESIDENT FOREIGN CORPORATIONS DOING BUSINESS OUTSIDE THE PHILIPPINES. The

taxpayer should have submitted duly authenticated proof of official records of foreign business registration documents, instead of submitting mere printouts thereof, retrieved from the AMINET database. The AMINET database is a database maintained by the taxpayer's head office in Germany. Hence, the information contained therein cannot be given full faith and credit by this Court, as it is prone to manipulation in favor of the taxpayer, and in view of its affinity with the entity that maintains or keeps the database. ***Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue, CTA EB Nos. 2421 and 2423 (CTA Case No. 7921) (Jan. 30, 2023).***

SALES INVOICES THAT CONTAINED ERASURES OR COUNTERSIGNATURES MUST BE SUPPORTED BY NOTARIZED SWORN STATEMENTS OF CORRECTIONS ATTESTING TO THE CORRECTIONS THEREIN TO HAVE PROBATIVE VALUE. The subject sworn statements, having been notarized, are public documents, and prima facie evidence of the facts stated therein. In the absence of timely objections and the utter lack of evidence to rebut the testimonies of taxpayer's witnesses or the notarized sworn statements of corrections, there is no reason to disturb the findings of the Court in Division or question the probative value accorded to the evidence on record. ***Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue, CTA EB Nos. 2421 and 2423 (CTA Case No. 7921) (Jan. 30, 2023).***

IN CASE OF DIFFERENCE BETWEEN THE PROVISIONS OF THE 1997 NIRC AND THE RULES AND REGULATIONS IMPLEMENTING THE SAME, ON ONE HAND, AND THE GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP) AND THE GENERALLY ACCEPTED ACCOUNTING STANDARDS (GAAS), ON THE OTHER HAND, THE PROVISIONS OF THE 1997 NIRC AND THE RULES AND REGULATIONS IMPLEMENTING THE 1997 NIRC SHALL PREVAIL. ***Commissioner of Internal Revenue v. Carmen Copper Corporation, CTA EB Nos. 2480 and 2515 (CTA Case No. 10016) dated January 10, 2023.***

THERE IS NO REQUIREMENT FOR THE INPUT TAX BE DIRECTLY ATTRIBUTABLE OR SHOULD FORM PART OF THE FINISH PRODUCT BEFORE THE SAME MAY BE THE SUBJECT OF CLAIM FOR REFUND. Respondent claims that only those purchases with input taxes that are factored in the chain of production are creditable. In other words, respondent insists that only those purchases which form part of the finished product may be the subject of the claim for refund. We do not agree. A closer reading of Section 112(A) of the 1997 NIRC reveals that the only requirement is that the input tax to be claimed for refund or tax credit is attributable to the zero-rated sale. On the contrary, nowhere in the said provision requires the input tax to be directly attributable to the zero-rated sale. In fact, a further reading thereof instructs that when there are input taxes that cannot be directly and entirely attributable to any of the zero-rated sales, taxable (subject to 12% VAT) or exempt sales, the same may be allocated proportionately to any of the said transactions on the basis of volume of sales. Thus, by allowing the proportionate allocation of those which cannot be directly and entirely attributable to any type of sales only means that there is no requirement for the input tax be directly attributable or should form part of the finish product before the same may be the subject of claim for refund. ***Carmen Copper Corp. v. Commissioner of Internal Revenue, CTA***

Case No. 10201 (Jan. 31, 2023); see also Commissioner of Internal Revenue v. Carmen Copper Corp., CTA EB Nos. 2480 and 2515 (CTA Case No. 10016) (Jan. 10, 2023).

IN ORDER FOR AN EXPORT SALE OF GOODS TO QUALIFY AS ZERO-RATED, THERE MUST BE, ASIDE FROM THE SALE, AN ACTUAL SHIPMENT THEREOF FROM THE PHILIPPINES TO A FOREIGN COUNTRY. In this case, the subject export sales which is covered by Bill of Lading marked as Exhibit "P-66-q" has the notation "CLEAN SHIPPED ON BOARD DATED 04.07.2017". Since the subject goods were actually shipped only on 04 July 2017, the same cannot be considered as valid zero-rated sale for the 2nd quarter of 2017. ***Carmen Copper Corp. v. Commissioner of Internal Revenue, CTA Case No. 10201 (Jan. 31, 2023).***

THE MERE ALLEGATION THAT THE TAXPAYER FAILED TO COMPLY WITH THE INVOICING REQUIREMENTS WILL NOT MERIT A REVERSAL OF THE GRANT OF TAX REFUND OR ISSUANCE OF TCC. The CIR did not adduce any evidence showing that the taxpayer failed to comply with the requisites for refund of issuance of TCC of its excess and unutilized input VAT. The CIR failed to point out the specific invoices and official receipts which should have been disallowed. Bare allegations which are not supported by any evidence, documentary or otherwise, sufficient to support a claim, fall short to satisfy the degree of proof needed. Thus, the Court in Division was correct in maintaining its decision that the taxpayer has sufficiently proven that it is entitled to a refund or issuance of TCC. ***Commissioner of Internal Revenue v. Kepco Ilijan Corp., CTA EB Nos. 2475 and 2477 (CTA Case No. 6966) (Jan. 9, 2023).***

NON-COMPLIANCE WITH INVOICING REQUIREMENTS WILL NOT RENDER THE SUPPOSEDLY ZERO-RATED TRANSACTION SUBJECT TO 12% VAT. The same defect will nevertheless result in the denial of claim for refund or tax credit. ***Carmen Copper Corp. v. Commissioner of Internal Revenue, CTA Case No. 10201 (Jan. 31, 2023).***

THE FILING OF 4th QUARTERLY VAT RETURN ONE DAY LATE AFTER THE DEADLINE MAKES THE IMPOSITION OF PENALTY FOR LATE PAYMENT PROPER. Taxes are considered delinquent when it is proven that the tax was not paid within the last day for payment of the tax. Bad faith is not essential for the imposition of 25% surcharge and interest. Hence, the surcharge is automatically due and the imposition and collection of which is mandatory on which the petitioner has no discretion. ***Commissioner of Internal Revenue v. Tann Phil. Inc., CTA EB No. 2415 (CTA Case No. 9433) (Jan. 26, 2023).***

BIR RULINGS AND ISSUANCES

REGULATIONS IMPLEMENTING THE 10% DISCOUNT AND VAT EXEMPTION UNDER THE EXPANDED SOLO PARENTS WELFARE ACT OR R.A. NO. 11861. ***Revenue Regulations No. 1-2023 dated January 17, 2023.***

CIRCULAR REQUIRING ALL BOOKS OF ACCOUNTS TO BE REGISTERED ONLINE WITH THE BUREAU OF INTERNAL REVENUE'S ONLINE REGISTRATION AND UPDATE SYSTEM ("ORUS"). Instead of the manual stamping of

books of accounts, a Quick Response (QR) Code shall be generated, which can be validated online. Taxpayers who shall register their books of accounts shall use the BIR ORUS at https://orus.bir.gov.ph. Upon successful registration, the system shall generate a QR Stamp which taxpayers shall paste on the first page of their manual books of accounts and permanently bound loose leaf books of accounts. In the case of computerized books of accounts, the QR Stamp shall be attached to the transmittal letter showing detailed content of the USB flash drive where the books of accounts and other accounting records are stored/saved. ***Revenue Memorandum Circular No. 3-2023 dated January 10, 2023.***

CIRCULAR PROVIDING TRANSITORY PROVISIONS FOR THE IMPLEMENTATION OF QUARTERLY FILING OF VAT RETURNS STARTING JANUARY 1, 2023. VAT-registered taxpayers are no longer required to file the Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for transactions starting January 1, 2023 but will instead file the corresponding Quarterly Value-Added Tax Return (BIR Form no. 2550Q) within twenty-five (25) days following the close of each taxable quarter when the transaction transpired in line with Section 37 of R.A. No. 10963 or the TRAIN Law. ***Revenue Memorandum Circular No. 5-2023 dated January 13, 2023.***

CIRCULAR CLARIFYING THE RETURN PROCESSING SYSTEM ("RPS") ASSESSMENT BEING ISSUED BY THE BUREAU OF INTERNAL REVENUE. The contents of RPS Assessment are not tax assessments arising from the conduct of audit/investigation of taxpayer's books of accounts and other relevant records. These are tax payables based on taxpayer's own tax declaration as reflected in the tax returns filed (e.g.: tax return which was filed late but not penalties were paid, tax return filed with tax due, but no corresponding payment was detected, or tax return filed with tax due, but payment detected was only partial). The moment the taxpayer failed to pay the declared tax payable in the return within the prescribed due date, the Bureau considers it already as a "delinquent account" pursuant to Revenue Memorandum Order No. 11-2014. Considering that no books of accounts and accounting records of taxpayer are examined or subjected to audit, the issuance of LOA is not required. An RPS Assessment is a collection letter and sending of which is part of the civil/administrative remedies of the Bureau. ***Revenue Memorandum Circular No. 7-2023 dated January 17, 2023.***

CIRCULAR AMENDING SECTION 2 OF REVENUE MEMORANDUM CIRCULAR NO. 57-2015. Soft copies of the inventory list including other applicable schedules shall be stored/saved in DVD-R or USB Flash Drive, properly labeled and submitted, together with notarized certification duly signed by the authorized representative of the taxpayer certifying that the data/information contained in the DVD-R or USB Flash Drive are true and correct. ***Revenue Memorandum Circular No. 8-2023 dated January 20, 2023.***

CIRCULAR ANNOUNCING THE AVAILABILITY OF ONLINE APPLICATION FOR REGISTRATION INFORMATION UPDATES AND OTHER ONLINE FACILITIES FOR REGISTRATION-RELATED TRANSACTIONS THROUGH THE ORUS STARTING JANUARY 23, 2023. Taxpayers who already have an existing ORUS account may access and avail the online registration updates and other functionalities by logging-in to the system. Taxpayers who do not have an ORUS account and opted to use the said online

registration-related facilities are required to enroll or create an account in ORUS following the guidelines prescribed under RMC No. 122-2022. ***Revenue Memorandum Circular No. 12-2023 dated January 27, 2023.***

SEC ISSUANCES

DOCUMENTS REQUIRED WHEN CLAIMING APPROVED CERTIFICATES, ORDERS OR CERTIFICATIONS FROM THE COMPANY REGISTRATION AND MONITORING DEPARTMENT ("CRMD") OF SECURITIES AND EXCHANGE COMMISSION. Effective February 1, 2023, the "NO APPOINTMENT, NO RELEASE" policy shall be implemented in the releasing of CRMD approved certificates, orders and certifications. The concerned CRMD transacting public will be required to present: (1) Appointment letter, and (2) Original proof of payment, when claiming the approved certificates, orders and certifications. ***SEC Notice dated January 25, 2023.***

CRMD TRANSACTIONS THAT WILL BE CONDUCTED EXCLUSIVELY AT THE SEC ROBSINSON'S GALLERIA SATELLITE OFFICE. (1) Receiving of physical copies of signed and notarized/authenticated approved CRMD applications and supplemental documents with proof of payment; (2) Releasing of Certificates of Incorporation/Amendment/Confirmation of Payment and other approved CRMD applications, through presentment of original copy of proof of payment and appointment letter; (3) Releasing of Orders, such as but not limited to the Petitions to Lift Order of Suspension/Revocation and/or Correction through presentment of original copy of proof of payment and appointment letter; and (4) Registration of Stock and Transfer/Membership Book. ***SEC Notice dated January 25, 2023.***

STARTING FEBRUARY 1, 2023, ALL PAYMENTS FOR CRMD APPLICATIONS WILL BE ACCEPTED EITHER THROUGH ESPAYSEC (https://espaysec.sec.gov.ph/payment-portal/home) OR AT ANY LAND BANK OF THE PHILIPPINES BRANCH NATIONWIDE. ***SEC Notice dated January 25, 2023.***

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 to 19, facsimile number (632) 8633-1911, or email us at mail@baniquedlaw.com.

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