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TAX ALERT

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COURT OF TAX APPEALS DECISIONS

A PRELIMINARY COLLECTION LETTER ("PCL") MAY BE CONSIDERED AS THE COMMISSIONER OF INTERNAL REVENUE'S ("CIR") APPEALABLE FINAL DECISION ON A DISPUTED ASSESSMENT IF IT COMMUNICATES TO THE TAXPAYER IN CLEAR AND UNEQUIVOCAL LANGUANGE AS TO WHAT CONSTITUTES THE COMMISSIONER'S FINAL DETERMINATION OF THE DISPUTED ASSESSMENT. ***Facts***: July 24, 2015: the taxpayer timely protested, in the form a request for reinvestigation, the assessments issued by the Bureau of Internal Revenue ("BIR"). September 22, 2015: the taxpayer filed a supplemental protest against the assessments. May 24, 2018: the BIR issued a letter to the taxpayer granting the taxpayer's request for reinvestigation. September 4, 2018: the taxpayer received a letter from the BIR dated July 30, 2018 which informed the taxpayer that due to alleged failure to submit relevant supporting documents, the assessment have become final and executory, therefore, due for collection enforcement. October 9, 2018: the taxpayer received another the letter from the BIR dated September 17, 2018 informing him that the request for reinvestigation was not pursued. April 4, 2019: the taxpayer received a PCL from the BIR. April 11, 2019: treating the PCL as the appealable decision, the taxpayer filed a petition for review. The BIR argued that the petition was filed out of time since the appealable decision is the BIR's July 30, 2018 letter which the taxpayer received on September 4, 2018. ***Held***: the PCL received on April 4, 2019 is the appealable decision because it communicates to the taxpayer in clear and unequivocal language the CIR's final determination on the disputed assessment. Thus, when the taxpayer appealed the PCL to the Court of Tax Appeals ("CTA") on April 11, 2019, it was made within the 30-day period to appeal. The July 30, 2018 letter cannot be considered as the final decision because it merely the taxpayer of his alleged failure to submit relevant supporting documents. ***Yap v. Bureau of Internal Revenue, CTA Case No. 10063, November 29, 2022.***

THERE IS ONLY ONE 180-DAY PERIOD COUNTED FROM THE FILING OF THE PROTEST OR SUBMISSION OF RELEVANT SUPPORTING DOCUMENTS. WHERE AN AUTHORIZED REPRESENTATIVE OF THE CIR DENIES THE PROTEST WITHIN THE 180-DAY PERIOD, AND THE TAXPAYER APPEALS THE DECISION TO THE OFFICE OF THE CIR ("OCIR") , THE CIR ONLY HAS THE REMAINDER OF THE 180-DAY PERIOD TO ACT ON THE APPEAL. UPON THE LAPSE OF THE 180-DAY PERIOD WITHOUT ANY ACTION ON THE OCIR APPEAL, THE TAXPAYER MAY APPEAL THE INACTION WITHIN 30 DAYS FROM THE LAPSE OF THE 180-DAY PERIOD. OTHERWISE, THE TAXPAYER'S ONLY REMEDY IS TO WAIT FOR THE DECISION OF THE CIR BEFORE APPEALING TO THE CTA. There is only one 180-day period, *i.e.* the period counted from the filing of the protest or the submission of the required documents. Accordingly, if an

authorized representative of the CIR denies the protest within the 180-day period and the taxpayer appeals to the CIR, the CIR has the remainder of the 180-day period within which to act. If the CIR does not act on the appeal within the 180-day period, the taxpayer may appeal to the CTA within 30 days after the lapse of the said remaining period. It also follows that if the taxpayer waits for the decision of the CIR's representative and the same is issued after the lapse of the 180-day period, the same may be appealed to the CTA or to the CIR. In case of the latter, the 180-day period is no longer a consideration and the only remedy for the taxpayer is to wait for the CIR's decision before elevating its case to the CTA, if the same is not favorable. ***Hijo Agrarian Reform Beneficiaries Cooperatives v. Commissioner of Internal Revenue, CTA Case No. 9797, November 28, 2022.***

BILLING STATEMENTS/ASSESSMENTS ISSUED BY THE LOCAL CITY TREASURER, PURSUANT TO THE TAXPAYER'S APPLICATION FOR BUSINESS PERMITS, ARE NOT ASSESSMENTS CONTEMPLATED UNDER SECTION 195 OF THE LOCAL GOVERNMENT CODE OF 1991 ("LGC"). The taxpayer, a general professional partnership, was issued several billing statements for local business taxes ("LBT") as a contractor when it renewed its business permit for the year 2014. Since the Makati government will not issue business permits without payment of the LBT, the taxpayer was forced to pay the same under protest. The taxpayer then filed an administrative claim for refund of the LBT paid, which the City of Makati denied, which then prompted the taxpayer to file a petition for review with the Regional Trial Court ("RTC"). The RTC denied the petition asserting in its decision that the billing statement issued by the City of Makati constituted an assessment which should have been protested by the taxpayer within 60 days. ***Held:*** The CTA ruled that the taxpayer was correct in asserting that the billing statements do not constitute an "assessment" within the ambit of Section 195 of the LGC. It is clear that there was no prior investigation or examination of the taxpayer's books of accounts that resulted in a "finding" of deficiency taxes. Neither was there any letter of authority authorizing the examination of the taxpayer's books before the billing statements/assessments were made. The issuance was not triggered by a "finding" of deficiency or incorrect payments of the local treasurer after an examination of the books were conducted. ***Casas+ Architects v. City of Makati, CTA AC No. 259, November 24, 2022.***

BUSINESS TAXES ARE DUE IN THE CITY WHERE THE TAXPAYER'S PRINCIPAL PLACE IS SITUATED OR WHERE TRADE OR COMMERCIAL ACTIVITY ARE CONDUCTED. In other words, in order for a city to validly impose local business tax, the situs *(i.e. principal place of business or branch and sales office)* thereof must be in that city. For purposes of collection of LBT under Section 143 of the LGC, distributors maintaining or operating a branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the city where the sale or transaction is made. The sale then shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality. Notable, the term "business" means trade or commercial activity regularly engaged in, as a means of livelihood or with a view to profit. Thus, where a business that used to have its principal office in one locality subsequently transfers its principal office to another locality and without maintaining any branch or sales office in the first locality, the business ceases to be

subject to LBT in the first locality where its principal office was formerly located. ***Lazada e-Service Phil., Inc. v. City of Makati, CTA AC No. 261, November 23, 2022.***

FOR AN INPUT TAX TO BE CREDITABLE AGAINST OUTPUT TAX, ALL THE TAXPAYER NEEDS TO PRESENT IS A VAT INVOICE OR OFFICIAL RECEIPT ISSUED IN ACCORDANCE WITH THE TAX CODE. THE TAXPAYER IS NOT REQUIRED TO VERIFY THE LOCAL SUPPLIER'S VAT REGISTRATION WITH THE BIR. Neither the law nor the implementing Rev. Regs. No. 16-05 requires the taxpayer to verify first its supplier's VAT registration with the BIR before the input taxes derived from purchases may be credited against output tax. Unless an invalid TIN or non-VAT TIN is apparent from the invoices or official receipts, the BIR cannot disallow input taxes on the mere ground that it was derived from suppliers with invalid TIN and/or TIN not VAT registered based on the BIR's own verification procedure. ***Tetra Pak Phil., Inc. v. Commissioner of Internal Revenue, CTA Case No. 10113, dated November 23, 2022.***

THE OBLIGATION OF THE BIR UNDER SECTION 228 OF THE TAX CODE TO INFORM THE TAXPAYER IN WRITING OF THE LAW AND OF THE FACTS ON WHICH THE ASSESSMENT IS MADE APPLIES TO THE PRELIMINARY ASSESSMENT NOTICE ("PAN"), THE FORMAL LETTER OF DEMAND ("FLD") AND THE CORRESPONDING FINAL ASSESSMENT NOTICE ("FAN"), AND THE FINAL DECISION ON DISPUTED ASSESSMENT ("FDDA"). Section 3.1.3 of Rev. Regs. 12-99, implementing Section 228, provides that the PAN, FLD/FAN, and FDDA, must state among others, the facts and the law on which the assessment is based, as part of due process. Otherwise, the FLD/FAN and/or FDDA shall be void. The specific facts relied upon by the BIR must appear on record and the concerned taxpayer must not be left unaware on how the BIR appreciated the explanations or defenses raised in connection with the assessment. ***RCBC Savings Bank, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9832, dated November 22, 2022.***

FAILURE TO FILE A PROTEST WITHIN THE PRESCRIBED PERIOD NOT ONLY PRECLUDES PETITIONER FROM CONTESTING THE VALIDITY OR CORRECTNESS OF THE ASSESSMENT, BUT ALSO DEPRIVES THE CTA OF THE JURISDICTION TO DECIDE ON THE SAME. Observance of the prescribed period to file a protest is jurisdictional on the part of the CTA. The taxpayer's failure to file a protest within the prescribed period results in the assessment being final, executory, and demandable. ***E-Power Security and Investigation Services, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10143, dated November 21, 2022.***

PRINTED SCREENSHOTS OF OFFICIAL WEBSITES OF THE FOREIGN JURISDICTIONS WHERE THE NON-RESIDENT FOREIGN CORPORATIONS ("NRFC") ARE REGISTERED OR INCORPORATED SHOULD BE ACCORDED PROBATIVE VALUE. In the absence of proof of actual manipulation of the printed screenshots, the same cannot be simply disregarded as proof that clients-affiliates are not doing business in the Philippines, in lieu of the Certificates/Articles of Foreign Incorporation/Association. However, only those printed screenshots that are accessible and

verifiable can be given probative value. ***AIG Shared Services Corp. (Phil.) v. Commissioner of Internal Revenue, CTA EB No. 2424 (CTA Case No. 8850), dated November 17, 2022.***

THE FACT THAT THE TAXPAYER'S REGISTERED ADDRESS IS LOCATED IN THE PHILIPPINES AND THAT IT MADE PURCHASES OR INCURRED EXPENSES IN THE PHILIPPINES IS NOT SUFFICIENT TO PROVE THAT SERVICES RENDERED TO NRFCS WERE PERFORMED IN THE PHILIPPINES. The issue of whether the taxpayer performed services in the Philippines is a question of fact and must be proven by specific evidence. ***IBEX Phil., Inc. v. Commissioner of Internal Revenue, CTA EB No. 2533 (CTA Case No. 9802), dated November 10, 2022.***

THE BIR'S RESPONSE TO A TAXPAYER'S REQUEST TO CANCEL A LETTER OF AUTHORITY ("LOA") IS NOT A DECISION ON "OTHER MATTERS" ARISING UNDER THE NIRC, WHICH MAY BE APPEALED TO THE CTA. The BIR's response to a taxpayer's request to cancel an LOA cannot be considered a decision or quasi-judicial act that may be the subject of a petition for certiorari. There are other available remedies, such as filing a motion or request for reconsideration with the appropriate officers. ***St. Timothy Construction Corp., v. Bureau of Internal Revenue, CTA Case No. 10472, dated November 3, 2022.***

BIR ISSUANCES

RULES AND REGULATIONS IMPLEMENTING THE PROVISIONS OF REPUBLIC ACT NO. 11900, RELATIVE TO THE IMPORTATION, MANUFACTURE, SALE, PACKAGING, DISTRIBUTION, USE, AND COMMUNICATION OF VAPORIZED NICOTINE AND NON-NICOTINE PRODUCTS, AND NOVEL TOBACCO PRODUCTS. ***Revenue Regulations ("Rev. Regs.") No. 14-2022 issued on November 11, 2022.***

PUBLISHING THE FULL TEXT OF DEPARTMENT OF TRADE AND INDUSTRY MEMORANDUM CIRCULAR NO. 22-19, S. 2022, PRESCRIBING THE GUIDELINES ON THE REGISTRATION WITH THE BOARD OF INVESTMENTS OF EXISTING REGISTERED BUSINESS ENTERPRISES IN THE INFORMATION TECHNOLOGY BUSINESS PROCESS MANAGEMENT SECTOR. ***Revenue Memorandum Circular ("RMC") No. 142-2022 issued on November 2, 2022.***

CLARIFYING ISSUES RELATIVE TO REVENUE REGULATIONS NO. 13-2022 ON INCOME TAX TREATMENT OF EQUITY-BASED COMPENSATION. ***RMC No. 143-2022 issued on November 9, 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 send us an email at mail@baniquedlaw.com.

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