

TAX ALERT

August 16, 2019 to September 15, 2019

COURT OF TAX APPEALS DECISIONS

A REVIEW OF THE REVENUE OFFICER'S (RO) AUTHORITY TO CONDUCT THE AUDIT IS INTRINSICALLY RELATED TO THE ISSUE OF THE VALIDITY OF THE ASSESSMENTS. *Commissioner of Internal Revenue v. Orient Overseas Container Line, Ltd. Represented by OOCL (Philippines), Inc., CTA EB Case No. 1956 (CTA Case No. 9179) dated August 22, 2019.*

ISSUANCE OF A NEW LETTER OF AUTHORITY (LOA) IN CASES OF REASSIGNMENT OR TRANSFER TO A NEW RO IS MANDATORY. Referral Memorandum issued by the Revenue District Officer directing another Revenue Officer (RO) to continue with the examination of the taxpayer's records is not equivalent to a LOA nor does it cure the RO's lack of authority. The absence of a new LOA naming the new ROs rendered them without authority to continue the examination/audit of petitioner's internal revenue tax liability. Consequently, the investigation and corresponding assessments issued are void. *FPIP Property Developers and Management Corporation v. Commissioner of Internal Revenue, CTA Case No. 8980 dated August 28, 2019; Commissioner of Internal Revenue v. Orient Overseas Container Line, Ltd. Represented by OOCL (Philippines), Inc., CTA EB Case No. 1956 (CTA Case No. 9179) dated August 22, 2019.*

THE REVENUE DISTRICT OFFICER ("RDO") HAS NO AUTHORITY TO REASSIGN THE AUDIT OF A TAXPAYER TO ANOTHER RDO WITH A NEW TEAM OF REVENUE OFFICERS. MOREOVER, THE RDO CANNOT MODIFY THE SCOPE AND COVERAGE OF A VALIDLY ISSUED LETTER OF AUTHORITY ("LOA") MERELY THROUGH A MEMORANDUM OF ASSIGNMENT. *Commissioner of Internal Revenue v. Sugar Crafts, Inc., CT EB No. 1757 dated September 10, 2019.*

SERVICE BY THE BIR OF ASSESSMENT NOTICES TO TAXPAYER'S OLD ADDRESS DESPITE HAVING EARLIER KNOWLEDGE ABOUT ITS NEW ADDRESS IS NOT A VALID NOTICE FOR PURPOSES OF TAX ASSESSMENT. When the BIR acquires information of a taxpayer's new address, notices should be sent to that address alone, lest the assessment shall be invalid and without force and effect. Evidence show that respondent's previous address was at 29th Floor, Enterprise Center, Tower I, 6766 Ayala Avenue Makati City. On December 2, 2009, respondent filed with the BIR an Application for Registration Information Update (BIR Form No. 1905) with notation that its principal office would be transferred to 15th Floor, the Taipan Place F. Ortigas Jr. Road, Ortigas Center, Pasig City. Even prior to the filing of such Application for Registration Information Update, petitioner's Follow-Up Letter dated October 15, 2009 already indicated respondent's new business address in Pasig City. All these are indicia

that as early as 2009, petitioner already had knowledge of respondent's new address in Pasig City. But for reasons only known to him, petitioner mailed the PAN with Details of Discrepancy dated October 8, 2010 to respondent's old address in Makati City. Besides, the PAN mailed to respondent's old address in Makati City was "returned to sender" per the document issued by the Philippine Postal Corporation. This notwithstanding, petitioner still mailed the FAN with Details of Discrepancy dated February 11, 2011 to respondent's old address in Makati City. ***Commissioner of Internal Revenue v. Daewoo Engineering & Construction Company, Limited, CTA EB No. 1799 (CTA Case No. 8892) dated August 29, 2019.***

THE COMMISSIONER OF INTERNAL REVENUE IS REQUIRED TO ISSUE NOTICE OF INFORMAL CONFERENCE, PRELIMINARY ASSESSMENT NOTICE ("PAN") AND FINAL ASSESSMENT NOTICE ("FAN") IN WRITING TO THE TAXPAYER. THE TAXPAYER OR HIS DULY AUTHORIZED REPRESENTATIVE MUST ACTUALLY RECEIVE THE SAME FOR SUCH NOTICES TO BE VALID. *IBM Plaza Condominium Association, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8740 dated September 2, 2019.*

THE REGISTRY RETURN CARD MUST BE AUTHENTICATED TO SERVE AS PROOF OF RECEIPT OF LETTERS SENT THROUGH REGISTERED MAIL. THE PRESENTATION OF THE REGISTRY CARD WITH AN UNAUTHENTICATED SIGNATURE IS NOT EQUIVALENT TO PROOF THAT A LETTER SENT THROUGH REGISTERED MAIL WAS ACTUALLY RECEIVED BY THE ADDRESSEE. In this case, the identity and authority of the persons whose signatures appear on the registry return receipts were not established. Thus, respondent failed to prove that the PAN and FAN were properly and duly served upon and received by petitioner, thus, the assessments made against petitioner are void for failure to accord petitioner due process in the issuance thereof. ***Vitalo Packaging International, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9231 dated September 12, 2019.***

A FAN WITHOUT A DEFINITE DUE DATE FOR PAYMENT IS NOT VALID. MOREOVER, TWO (2) DUE DATES INDICATED IN THE FAN NEGATE THE BIR'S DEMAND FOR PAYMENT OF THE DEFICIENCY TAX LIABILITIES. ABSENT SUCH DEMAND, THE ASSESSMENTS ARE FATALLY INFIRM. In this case, based on the Formal Letter of Demand, petitioner is requested to pay the deficiency tax liabilities "within the time shown in the enclosed assessment notice". However, a perusal of the Audit Result/ Assessment Notices reveals that there are two dates appearing in the "DUE DATE" portion thereof. On the upper portion, the due date indicated is April 30, 2015, while the lower portion indicates July 31, 2015. The two different due dates indicated in the assessment notices leaves the taxpayer in a quandary as to when payment should be made. Thus, similar to when no due date is indicated in the FAN, two (2) due dates indicated in the Assessment Notices negate respondent's demand for payment of the deficiency tax liabilities. Absent such demand, the assessments are fatally infirm. ***Benchmark Marketing Corp. v. Commissioner of Internal Revenue, CTA Case No. 9296 dated September 4, 2019.***

AN APPEAL TO A DENIAL OF A TAXPAYER'S ADMINISTRATIVE CLAIM MAY ONLY BE MADE IF SUCH DENIAL WAS ISSUED WITHIN THE 120-DAY PERIOD.

WHEN THE 120-DAY PERIOD LAPSES WITHOUT ANY DECISION ISSUED BY THE BUREAU OF INTERNAL REVENUE (BIR), ONLY AN APPEAL TO THE INACTION OF BIR MAY BE MADE. *Ibex Philippines, Inc. v. The Commissioner of Internal Revenue, CTA EB No. 1850 (CTA Case No. 8849) dated August 28, 2019.*

WHEN TAX IS PAID IN INSTALLMENT, THE PRESCRIPTIVE PERIOD OF TWO YEARS PROVIDED IN THE NATIONAL INTERNAL REVENUE CODE FOR REFUND OF ERRONEOUSLY PAID TAXES SHOULD BE COUNTED FROM THE DATE OF THE FINAL PAYMENT. *Eagle II Holdco, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9637 dated September 10, 2019*

THE APPELLANT HAS TO SPECIFY IN WHAT ASPECT OF THE LAW OR THE FACTS THAT THE TRIAL COURT ERRED. A GENERAL ASSIGNMENT OF ERRORS IS UNACCEPTABLE UNDER THE RULES. *Commissioner of Internal Revenue v. Macquarie Offshore Services PTY LTD. Philippine Branch, CTA EB No. 1877 (CTA Case Nos. 8936, 8994 & 9040) dated August 28, 2019.*

INCOME FROM PROVISIONAL GAMING LICENSE IS SUBJECT ONLY TO 5% FRANCHISE TAX AND SHALL BE EXEMPTED FROM THE 30% CORPORATE INCOME TAX. *Travellers International Hotel Group, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9275 dated September 9, 2019.*

CHANGE IN OWNERSHIP OF ONE CORPORATION AND, CONSEQUENTLY, A CHANGE IN ITS NAME, WILL NOT RESULT IN THE TRANSFER OF OWNERSHIP OF ITS ASSETS AND, HENCE, SHOULD NOT BE SUBJECT TO TAX ON TRANSFER OF REAL PROPERTY OWNERSHIP UNDER SECTION 135 OF THE LOCAL GOVERNMENT CODE. *Province of Pangasinan & Marilou E. Utanes in her capacity as the Provincial Treasurer of Pangasinan v. Team Sual Corporation, CTA EB No. 1883 (CTA AC No. 173) dated August 30, 2019.*

THE LOCAL GOVERNMENT UNITS ARE PROHIBITED FROM IMPOSING LOCAL BUSINESS TAX ON DIVIDEND AND INTEREST INCOME EXCEPT WHEN IMPOSED ON BANKS AND OTHER FINANCIAL INSTITUTIONS. *City of Davao, et al., v. ARC Investors, Inc., CTA EB No. 1589 (CTA AC No. 130) dated September 11, 2019.*

BIR RULINGS AND ISSUANCES

BACKWAGES AND AMOUNT REPRESENTING UNPAID SALARIES ARE SUBJECT TO INCOME TAX AND CONSEQUENTLY, TO WITHHOLDING TAX ON WAGES. *BIR Ruling No. 471-19 dated August 30, 2019; BIR Ruling No. 501-19 dated September 6, 2019*

CONVEYANCE OF REAL PROPERTIES BY WAY OF AUCTION SALE AS PAYMENT FOR UNPAID SALARY, BACKWAGES AND BENEFITS PLUS DAMAGES IS SUBJECT TO THE APPLICABLE CREDITABLE WITHHOLDING TAX. *BIR Ruling No. 471-19 dated August 30, 2019*

PAYMENTS BY SENIOR CITIZENS OF ASSOCIATION DUES, ASSESSMENTS AND OTHER CHARGES TO CONDOMINIUM CORPORATIONS AND HOMEOWNERS' ASSOCIATIONS ARE NOT ENTITLED TO THE 20% SENIOR CITIZEN DISCOUNT AND ARE SUBJECT TO 12% VAT. HOWEVER, WITH THE ENACTMENT OF RA 10963, OTHERWISE KNOWN AS "TAX REFORM FOR ACCELERATION AND INCLUSION LAW", ASSOCIATION DUES, MEMBERSHIP FEES AND OTHER ASSESSMENTS AND CHARGES COLLECTED ON A PURELY REIMBURSEMENT BASIS BY HOMEOWNERS ASSOCIATIONS AND CONDOMINIUM CORPORATIONS, WHETHER PAYABLE BY A SENIOR CITIZEN UNIT OWNER OR A SENIOR CITIZEN PAYING ON BEHALF OF A REGISTERED UNIT OWNER WHO IS NOT A SENIOR CITIZEN, ARE NOW EXEMPT FROM THE 12% VAT. *BIR Ruling No. 472-19 dated August 30, 2019*

RECONVEYANCE OF REAL PROPERTY PURSUANT TO A COURT ORDER, WITHOUT ANY MONETARY CONSIDERATION AND IN ORDER TO RETURN THE PROPERTY TO THE LEGAL OWNER IS NOT SUBJECT TO 6% CAPITAL GAINS TAX. MOREOVER, THE DEED OF RECONVEYANCE IS NOT SUBJECT TO DOCUMENTARY STAMPT TAX (DST). *BIR Ruling No. 473-19 dated August 30, 2019*

CONVEYANCE OF LAND AND COMMON AREAS TO CONDOMINIUM CORPORATION OWNED BY CONDOMINIUM UNIT OWNERS WITHOUT CONSIDERATION AND NOT IN CONNECTION WITH A SALE BUT ONLY FOR THE PURPOSE OF MANAGEMENT OF THE PROJECT FOR THE COMMON BENEFIT OF THE UNIT OWNERS IS NOT SUBJECT TO CAPITAL GAINS TAX OR CREDITABLE WITHHOLDING TAX AND VAT. MOREOVER, THE CONVEYANCE IS EXEMPT FROM DST. *BIR Ruling No. 474-19 dated August 30, 2019*

TRANSFER OF SHARES OF STOCK BY TRUSTEE IN FAVOR OF THE BENEFICIAL OWNER IS NOT SUBJECT TO CAPITAL GAINS TAX CONSIDERING THAT THE CONVEYANCE IS NOT MOTIVATED BY A VALUABLE CONSIDERATION AND MERELY ACKNOWLEDGES AND CONFIRMS THE LEGAL TITLE AND BENEFICIAL OWNERSHIP OVER THE SHARES OF STOCK. MOREOVER, THE DEED OF ASSIGNMENT IS NOT SUBJECT TO DST. FURTHER, THE CONVEYANCE IS NOT SUBJECT TO DONOR'S TAX SINCE THERE IS NO DONATIVE INTENT. HOWEVER, A CERTIFICATE AUTHORIZING REGISTRATION ISSUED BY THE BIR IS NECESSARY TO EFFECT THE TRANSFER OF THE CERTIFICATE OF STOCKS. *BIR Ruling 475-19 dated August 30, 2019*

PUBLISHING THE FULL TEXT OF REPUBLIC ACT NO. 11346 ENTITLED "AN ACT INCREASING THE EXCISE TAX ON TOBACCO PRODUCTS IMPOSING EXCISE TAX ON HEATED TOBACCO PRODUCTS AND VAPOR PRODUCTS, INCREASING THE PENALTIES FOR VIOLATIONS OF PROVISIONS ON ARTICLES SUBJECT TO EXCISE TAX. *Revenue Memorandum Circular No. 92-2010 dated August 8, 2019*

TWO (2) ELECTRONIC CERTIFICATES AUTHORIZING REGISTRATION WILL BE ISSUED IF THE DOCUMENTS SUBMITTED BY THE TAXPAYER RELATIVE TO TRANSFER OF REAL PROPERTIES ARE TWO (2) SEPARATE DOCUMENTS. *Revenue Memorandum Circular No. 93-2019 dated August 23, 2019*

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) 633-9418, facsimile number (632) 633-1911, or at the indicated e-mail address:

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