

# TAX ALERT

December 16, 2019 – January 15, 2020

## Supreme Court

**PETITION FOR CERTIORARI AND/OR PROHIBITION IS THE PROPER REMEDY TO SEEK DECLARATION OF UNCONSTITUTIONALITY OF REVENUE ISSUANCE, NOT PETITION FOR DECLARATORY RELIEF; PETITION FOR DECLARATORY RELIEF MAY BE CONSIDERED PETITION FOR CERTIORARI AND/OR PROHIBITION; RMC NO. 65-2012 WHICH SUBJECTS ASSOCIATION DUES, MEMBERSHIP FEES, AND OTHER ASSESSMENTS/CHARGES OF CONDOMINIUM CORPORATION IS INVALID; CONDOMINIUM CORPORATION IS NOT ENGAGED IN TRADE OR BUSINESS; ASSOCIATION DUES, MEMBERSHIP FEES, AND OTHER ASSESSMENTS/CHARGES ARE NOT SUBJECT TO INCOME TAX, VALUE-ADDED TAX, AND WITHHOLDING TAX**

Revenue Memorandum Circular No. 65-2012 insofar as it subjects association dues, membership fees, and other assessments/charges of condominium corporations is a departure from the pronouncement of the Supreme Court in *Yamane v. BA Lepanto Condominium Corp.*, 510 Phil. 750, 775-777 (2005).

Association dues, membership fees, and other assessments/charges of condominium corporations are, likewise, not income since they do not represent a flow of wealth or revenue on the part of the condominium corporations. Consequently, no withholding tax should be due on the corporation's collection of said dues and/or fees.

Association dues, membership fees, and other assessments/charges of condominium corporations do not arise from transactions involving the sale, barter or exchange of goods or property, nor are they generated by performance of services. As such, they are not subject to value-added tax. *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.*, G.R. No. 215801 / 218924, January 15, 2020.

## Court of Tax Appeals

**TAXPAYER, IN CLAIMING EXEMPTION FROM EXPANDED WITHHOLDING TAX (“EWT”) ON PAYMENTS MADE TO GENERAL PROFESSIONAL PARTNERSHIPS (“GPP”) MUST PROVIDE ARTICLES OF PARTNERSHIP OF SAID ENTITIES; IN CLAIMING THAT PAYMENTS MADE TO PROFESSIONALS ARE SUBJECT TO 10%, PROOF MUST BE SUBMITTED THAT GROSS INCOME OF PAYEES DID NOT EXCEED P720,000.00 FOR THE YEAR; IN CASE AN EWT ASSESSMENT FOR THE ENTIRE YEAR HAS PARTIALLY PRESCRIBED, IT IS INCUMBENT ON THE TAXPAYER TO SHOW WHICH PART OF THE ASSESSMENT HAS PRESCRIBED.**

Without being able to provide the Articles of Partnership of the entities claimed to be GPPs, the Court is unable to determine whether the amounts were indeed paid to GPPs who are exempt from

EWT on professional fees. In the absence of proof that the gross income of professionals did not exceed P720,000.00 for the year, it is assumed that the EWT rate on the payment to the professional is 15%. In cases when an EWT assessment is made for the entire year, but the right to assess deficiency taxes for certain months of the year has prescribed, it is incumbent upon the taxpayer to show which part of the EWT assessment has prescribed. If the taxpayer is unable to show which part has prescribed, the entire EWT assessment shall be considered as pertaining to the unprescribed months. *First Phil. Holdings Corp. v. Commissioner of Internal Revenue, CTA Case No. 8991, December 17, 2019.*

**THE REGIONAL DIRECTOR OF THE PREVIOUS REVENUE REGION HAS NO AUTHORITY TO ISSUE A FORMAL ASSESSMENT NOTICE (“FAN”).**

In cases when a taxpayer with an ongoing tax audit/investigation transfers office outside the jurisdiction of the revenue region conducting the investigation, Revenue Memorandum Order (“RMO”) No. 11-2005 mandates the transmittal of the docket from the previous revenue region to the new revenue region, the regional director of which has the authority to issue the FAN. *Costner Trading Corp. v. Commissioner of Internal Revenue, CTA Case No. 9428, January 3, 2020.*

**BOTH THE SECURITIES AND EXCHANGE COMMISSION (“SEC”) CERTIFICATE OF NON-REGISTRATION OF CORPORATION/PARTNERSHIP AND PROOF OF FOREIGN INCORPORATION/ASSOCIATION/BUSINESS REGISTRATION ARE REQUIRED TO PROVE THAT AN ENTITY IS A NON-RESIDENT FOREIGN CORPORATION NOT DOING BUSINESS IN THE PHILIPPINES.**

*Commissioner of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd., CTA EB No. 1815-16 (CTA Case No. 8065), January 3, 2020.*

**FAN/FINAL LETTER OF DEMAND (“FLD”) MUST CONTAIN A DUE DATE OR DEMAND FOR PAYMENT WITHIN A PRESCRIBED PERIOD. OTHERWISE, THE FAN/FLD IS VOID.**

*Apo Int’l Marketing Corp. v. Commissioner of Internal Revenue, CTA Case No. 9071, January 7, 2020.*

**REVOCAION OF BIR RULING BY AN RMO APPLIES PROSPECTIVELY IN THE ABSENCE OF MISREPRESENTATION, SUBSTANTIAL DIFFERENCE FROM FACTS PRESENTED, AND BAD FAITH.**

*Meridien East Realty & Dev’t Corp. v. Commissioner of Internal Revenue, CTA Case. No. 9130, January 7, 2020.*

#### Revenue Issuances

**REVENUE REGULATIONS NO. (“REV. REGS.”) 1-2020 AMENDS SECTION 8 OF REV. REGS. 11-2018 IN RELATION TO THE DOCUMENTS TO BE SUBMITTED BY THE EMPLOYEE IN CONNECTION WITH HIS/HER EMPLOYMENT.** The employer must require employees to accomplish BIR Form No. 1902 in triplicate if the employee does not have an existing tax identification number. In cases when there are changes in the data contained in BIR Form No. 1902, the employee shall furnish the employer a copy of the Application for Registration

Information Update (BIR Form No. 1905) stamped received by the Revenue District Office (“RDO”) where the employee is registered. *Rev. Regs. 1-2020, January 9, 2020.*

**RMC 141-2019 REITERATES SALIENT POINTS OF RMO 14-16 ON THE PROPER EXECUTION OF WAIVERS OF THE DEFENSE OF PRESCRIPTION.** RMC 141-2019 reiterates that RMO 14-2016 repeals all earlier issuances on the requirements for the validity of waivers of defense and prescription and provides the following guidelines:

1. The waiver is a unilateral and voluntary undertaking which shall take legal effect and be binding on the taxpayer immediately upon execution thereof.
2. The waiver need not specify the type of taxes to be assessed nor the amount thereof.
3. It is no longer required that the delegation of authority to a representative be in writing and notarized.
4. The taxpayer cannot seek to invalidate his waiver by contesting the authority of his own representative.
5. It is the duty of the taxpayer to submit his waiver to the officials listed in the said RMO prior to the expiration of the period to assess or collect as the case may be.
6. In addition to the previously authorized officials, the RDO or Group Supervisor as designated in the Letter of Authority or Memorandum of Assignment can accept the waiver.
7. The date of acceptance by the BIR Officer is no longer required to be indicated for the validity of waivers.
8. The taxpayer shall have the duty to retain a copy of the submitted waiver.
9. Notarization of the waiver is not a requirement for its validity.
10. The taxpayer is charged with the burden of ensuring that his waiver is validly executed when submitted to the BIR. Thus, the taxpayer must ensure that his waiver:
  - a. Is executed before the expiration of the period to assess or to collect taxes.
  - b. Indicates the expiry date of the extended period.
  - c. Indicates the type of tax (for waiver of the prescriptive period to collect).
  - d. Is signed by his authorized representative.
11. There is no strict format for the waiver. The taxpayer may utilize any form with no effect on its validity. Given the sparse requirements of RMO No. 14-16, an illustration of its key elements is attached to the RMC as Annex “A”. *RMC 141-2020, December 20, 2019. Note: most of the requirements in RMC 141-2019 are contrary to the essential requisites of a valid waiver under existing jurisprudence.*

**RMC 143-2019 CLARIFIES ENTITIES INCLUDED IN THE LIST OF TOP 20,000 PRIVATE CORPORATIONS.** RMC 143-2019 clarifies that Top 20,000 private corporations whose payments to suppliers are subject to the 1% / 2% EWT, are determined as such for their potential to contribute to the government revenues. For this purpose, Operations Memorandum (“OM”) No. 20-2019 was issued by the Deputy Commissioner for Operations Group to all Regional Directors and Revenue District Officers. The OM excludes the following taxpayers who were classified as part of the top 20,000 private corporations:

1. National government agencies, government owned and controlled corporations, state universities and colleges, and local government units;
2. Taxpayers who were included because of one-time transactions (i.e. estate and donor’s tax);

3. Individual taxpayers deriving income on commission basis such as but not limited to insurance agent, and real estate broker, subject to the verification of their duly-filed 2018 Quarterly Income Tax Return (BIR Form No. 1701Q) in order to determine the regularity of their transactions. Accordingly, if the P12M criteria has been satisfied in only one (1) taxable quarter, the taxpayer shall not be qualified as a Top Withholding Tax Agent (“TWA”); and
4. Taxpayers who are tax exempt from the payment of income taxes with no proprietary activities (i.e. foundations, non-stock, non-profit and tax exempt educational institutions, religious and charitable institutions, etc.)

If taxpayers are published in the newspaper as a TWA, but the said taxpayer does not satisfy the criteria of Rev. Regs. 7-2019, or if the taxpayer may have satisfied said criteria, if they fall under any of the exclusions in the OM, then the same are not TWAs for purposes of withholding the 1% / 2% EWT on suppliers. ***RMC 143-2019, December 16, 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) 8633-9418, facsimile number (632) 8633-1911, or at the indicated e-mail address:

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