

## TAX ALERT

February 2023

### SUPREME COURT (“SC”) DECISIONS

**PAYMENT OF FEES FOR THE ISSUANCE OF BUSINESS PERMITS IS REGULATORY IN NATURE UNDER THE LOCAL GOVERNMENT UNIT’S POLICE POWER. IT IS NOT A TAX FOR REVENUE GENERATION. TAX-EXEMPT ENTITIES, THEREFORE, CANNOT CLAIM TO BE EXEMPTED FROM PAYING FEES FOR BUSINESS PERMITS.** As a test to determine if an exaction is a fee or a tax, one must look into the purpose of its collection. If the exaction is made to raise revenue for the government to discharge its principal functions, the exaction is a tax. If the exaction is primarily regulatory, it is a fee, even if it incidentally raises revenue, as long as the revenue generated does not exceed the cost of regulation. If the revenue exceeds the regulatory costs, it is a tax. Local taxes, in the context of tax exemption statutes, should only refer to those taxes levied by the local government unit primarily for revenue generation. Exactions made in the exercise of police power, that is, fees or “taxes” levied primarily for regulatory purpose, are not included in the exemption, unless the statute categorically provides otherwise. License fees and business permit fees, therefore, are not “local taxes” in exemption statutes. Considering the foregoing, John Hay Special Economic Zone is exempt from paying local and national taxes, but not from the requirement of business permits. *Bases Conversion and Development Authority and John Hay Management Corporation v. City Government of Baguio City, as represented by its Mayor, City Treasurer, and its City Legal officer, G.R. No. 192694 dated February 22, 2023.*

**THE SC HAS CONSISTENTLY HELD THAT IN CASES WHERE THE BUREAU OF INTERNAL REVENUE (“BIR”) CONDUCTS AN AUDIT WITHOUT A VALID LETTER OF AUTHORITY (“LOA”), OR IN EXCESS OF THE AUTHORITY DULY PROVIDED THEREFOR, THE RESULTING ASSESSMENT SHALL BE VOID AND INEFFECTUAL.** *Commissioner of Internal Revenue v. Manila Medical Services, Inc. (Manila Doctors Hospital), G.R. No. 255473 dated February 13, 2023.*

### COURT OF TAX APPEALS (“CTA”) DECISIONS

**ALL AUDITS AND INVESTIGATIONS MUST BE CONDUCTED BY A DULY DESIGNATED REVENUE OFFICER AUTHORIZED TO PERFORM THE AUDIT AND EXAMINATION OF THE TAXPAYER’S BOOKS AND ACCOUNTING RECORDS, PURSUANT TO AN LOA.** In case of reassignment or transfer of cases to another revenue officer, it is mandatory that a new LOA be issued with the corresponding notation thereto. In the absence of such an authority, the assessment or examination is a nullity. Even assuming that a new LOA is no longer necessary in this case, and that a MOA is sufficient to authorize the new revenue officer to continue the audit/investigation, the MOA in the instant case is still insufficient to clothe the revenue officers with authority to continue the audit as it was signed by a Revenue District Officer and not the CIR or Revenue Regional

Director. *Commissioner of Internal Revenue v. Ramon Y. Mendoza, CTA EB No. 2356 (CTA Case No. 9698) dated February 2, 2023.*

**THE NON-ISSUANCE OF AN ELECTRONIC LOA (“eLA”), WHEN A MANUAL LOA HAS BEEN ISSUED, DOES NOT VIOLATE THE TAXPAYER’S RIGHT TO DUE PROCESS.** While Revenue Memorandum Order No. (“RMO”) 69-2010 mandates that a manual LOA shall be replaced by an eLA, the issuance does not state that the conduct of the audit would be invalidated in the event that a new eLA is not issued. Neither does it provide a blanket revocation of the manual LOA if the said manual LOA is not replaced with an eLA. *Commissioner of Internal Revenue v. Medical Center Trading Corporation, CTA EB No. 2473 (CTA Case No. 9412) dated February 22, 2023.*

**THE REQUIREMENT TO INDICATE A FIXED AND DEFINITE PERIOD OR A DATE CERTAIN WITHIN WHICH A TAXPAYER MUST PAY THE ASSESSED DEFICIENCY TAX LIABILITIES IS INDISPENSABLE TO THE VALIDITY OF THE ASSESSMENT.** *Commissioner of Internal Revenue v. Ramon Y. Mendoza, CTA EB No. 2356 (CTA Case No. 9698) dated February 2, 2023.*

**TO BE VALID, AN ASSESSMENT MUST BE BASED ON ACTUAL FACTS AND CREDIBLE EVIDENCE. IT CANNOT BE MADE TO REST ON MERE PRESUMPTIONS NO MATTER HOW REASONABLE OR LOGICAL SAID PRESUMPTIONS MAY BE.** If the taxpayer is refuting the data appearing in the Letter Notice, there must be a confirmation request on the Third-Party Source (“TPI”). In turn, the TPI source should confirm the data through a confirmation certificate. Simply put, the BIR must send a confirmation request of said TPI, who in turn, must validate said TPI. Such requirement was not met. *Grand Geo Spheres Construction Corp. v. Commissioner of Internal Revenue, CTA Case No. 10207 dated February 6, 2023.*

**A LETTER OF DENIAL, THE TENOR OF WHICH IS IMPRESSED WITH FINALITY, MAY BE APPEALED TO THE CTA.** The tenor of the Letter of Denial (“Denial Letter”) is impressed with finality. Accordingly, petitioner cannot be faulted to assume that the Denial Letter is the final decision of BIR in relation to its Protest. In any case, even if the Denial Letter is not to be regarded as the BIR’s final decision on the protest because a Final Decision on Disputed Assessment was subsequently issued after the filing of a Petition for Review, the CTA still has jurisdiction over the case under other matters arising under the National Internal Revenue Code. *Goldxtreme Trading Co. v. Commissioner of Internal Revenue, CTA Case No. 10129 dated February 7, 2023.*

**THE REQUIREMENT TO ISSUE A NOTICE OF INFORMAL CONFERENCE AND THE CONDUCT OF CONFERENCE PRIOR TO THE ISSUANCE OF A PRELIMINARY ASSESSMENT NOTICE (“PAN”) APPLIES CONSIDERING THAT WHEN THE REGULATION REINSTATING SAID REQUIREMENT TOOK EFFECT THE ISSUANCE OF THE PAN WAS STILL PENDING.** *Goldxtreme Trading Co. v. Commissioner of Internal Revenue, CTA Case No. 10129 dated February 7, 2023.*

**A FORMAL LETTER OF DEMAND OR FINAL ASSESSMENT NOTICE (“FAN”) IDENTICAL TO THE PAN WITHOUT ANY DISCUSSION ON THE REASONS FOR REJECTING THE REFUTATIONS AND EXPLANATIONS IN THE REPLY TO PAN IS A VIOLATION OF THE TAXPAYER’S RIGHT TO BE HEARD, WHICH INCLUDES**

**THE RIGHT TO PRESENT EVIDENCE. *Goldxtreme Trading Co. v. Commissioner of Internal Revenue, CTA Case No. 10129 dated February 7, 2023.***

**IT HAS BEEN SETTLED THAT WHILE A MAILED LETTER IS DEEMED RECEIVED BY THE ADDRESSEE IN THE COURSE OF MAIL, THIS IS MERELY A DISPUTABLE PRESUMPTION SUBJECT TO CONTROVERSION, THE DIRECT DENIAL OF WHICH SHIFTS THE BURDEN TO THE SENDER TO PROVE THAT THE MAILED LETTER WAS, IN FACT, RECEIVED BY THE ADDRESSEE.** Considering that the taxpayer denied receipt of the revalidated LOA, the burden of proof was shifted to the BIR to prove by competent evidence that the subject LOA was indeed received by the addressee or his/her authorized representative in accordance with the procedure prescribed by law and regulations. The service of the LOA to an unauthorized person renders the assessment void. Similarly, the service of the LOA to the taxpayer beyond 30 days from its issuance renders the subject LOA and the resulting assessments void. ***Goldxtreme Trading Co. v. Commissioner of Internal Revenue, CTA Case No. 10129 dated February 7, 2023.***

**IT IS IMPERATIVE THAT THE TAXPAYER ACTUALLY RECEIVED THE TAX ASSESSMENT NOTICE.** It is not enough that the notice was sent to the taxpayer by the BIR. The BIR served the assessment notices in an improper address and were received by the wrong person, whom was neither an employee nor an authorized representative of the taxpayer. ***Goldxtreme Trading Co. v. Commissioner of Internal Revenue, CTA Case No. 10129 dated February 7, 2023.***

**CONSIDERING THAT THE TAXPAYER DISCLAIMED RECEIPT OF THE PAN AND FAN, THE BIR MUST PROVE THAT THE TAXPAYER, OR ITS DULY AUTHORIZED REPRESENTATIVE, ACTUALLY RECEIVED THE PAN AND FAN AND ALSO THE LATTER'S CORRESPONDING AUTHORITY TO RECEIVE THE SAME.** In the registry receipt of the mailing of the PAN and FAN, as well as the Affidavit of Service of the FAN, the server failed to indicate the name of the person who received the PAN and FAN, as well as pertinent information surrounding said service, in violation of the requirement under Section 3.1.6 of Revenue Regulations No. 12-99. Ergo, no valid PAN and FAN were issued to and received by the taxpayer, offensive of its right to due process on assessment. ***Grand Geo Spheres Construction Corp. v. Commissioner of Internal Revenue, CTA Case No. 10207 dated February 6, 2023.***

**A TAXPAYER CANNOT BE HELD LIABLE FOR DEFICIENCY TAXES IN THE ABSENCE OF A NOTICE OF ASSESSMENT ISSUED BY THE LOCAL TREASURER.** ***City of Manila as Represented by its City Mayor, Honorable Francisco "Isko Moreno" Domagoso and OIC-City Treasurer v. Marina Square Properties, CTA AC No. 252 dated February 20, 2023.***

**PAYMENT UNDER PROTEST IS NOT NECESSARY FOR THE TAXPAYER TO FILE A VALID PROTEST AS PROVIDED UNDER SECTION 195 OF THE LOCAL GOVERNMENT CODE OF 1991 ("LGC").** As such, the local business tax assessment against the taxpayer has not yet become final and executory, and the CTA has jurisdiction to rule on the merits of the assessment. ***Nelia A. Barlis, in her capacity as the OIC-City Treasurer of the City of Makati, and the City of Makati v. GF & Partners, Architects, Co., CTA AC No. 247 dated February 2, 2023.***

**IT IS A FUNDAMENTAL PRINCIPLE THAT MUNICIPAL ORDINANCES ARE INFERIOR IN STATUS AND SUBORDINATE TO THE LAWS OF THE STATE.** An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. Section 7B.14(c) of the Revised Makati Revenue Code provides that protests must come with a valid payment of the assessed taxes under protest, in contrast to Section 195 of the LGC that does not require the prior payment of the assessed tax in protesting local tax assessment. The LGC must prevail as in every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law. *Nelia A. Barlis, in her capacity as the OIC-City Treasurer of the City of Makati, and the City of Makati v. GF & Partners, Architects, Co., CTA AC No. 247 dated February 2, 2023.*

**IN CRIMINAL ACTIONS, THE PERIOD OF PRESCRIPTION FOR A TAX CASE BEGINS TO RUN FROM DISCOVERY AND INSTITUTION OF PROCEEDINGS FOR ITS INVESTIGATION AND SHALL ONLY BE TOLLED BY THE FILING OF AN INFORMATION WITH THE CTA.** *People of the Philippines v. Remedios De Juan Pensotes, CTA Crim Case No. O-685 dated February 16, 2023; People of the Philippines v. Antonio Valeriano M. Bernardo (A.V.M. Bernardo Engineering), CTA Crim. Case No. O-931 dated February 21, 2023 and CTA Crim Case No. O-0932 to O-934 dated February 28, 2023; People of the Philippines v. Ziegfried Loo Tian, CTA Crim Case No. O-0939 dated February 10, 2023, Crim Case No. O0948 dated February 3, 2023, Crim Case No. O-956 dated February 9, 2023.*

**JUDICIAL CLAIM FOR REFUND OF UNUTILIZED INPUT VALUE ADDED TAX SHOULD BE FILED WITHIN A PERIOD OF 30 DAYS AFTER THE RECEIPT OF THE BIR DECISION OR RULING OR AFTER THE EXPIRATION OF THE 120-DAY [NOW 90-DAY] PERIOD, WHICHEVER IS SOONER.** *CEAMSA Asia, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10148 dated February 3, 2023.*

#### **BIR ISSUANCE**

**PRESCRIBES UPDATED AND CONSOLIDATED POLICIES, GUIDELINES AND PROCEDURES FOR BIR AUDIT PROGRAM.** *Revenue Memorandum Order No. 6-2023 dated February 9, 2023 (Later amended by Revenue Memorandum Order No. 8-2023 dated March 20, 2023).*

**PRESCRIBES THE POLICIES, GUIDELINES AND PROCEDURES IN THE PROCESSING AND MONITORING OF ONE-TIME TRANSACTIONS (ONETT) AND ISSUANCE OF ELECTRONIC CERTIFICATE AUTHORIZING REGISTRATION THRU THE ONETT SYSTEM.** *Revenue Memorandum Order No. 7-2023 dated February 23, 2023.*

#### **BIR RULINGS**

**THE AMOUNTS TO BE REMITTED BY A BRANCH TO ITS HEAD OFFICE CONSISTING OF THE AMOUNTS PREVIOUSLY ADVANCED BY THE HEAD OFFICE AS OPERATING FUNDS TO PAY FOR LABOR, LOCAL MATERIALS AND OTHER OPERATING COSTS AND EXPENSES NEEDED IN THE IMPLEMENTATION OF THE PROJECT, ARE NOT PROFITS BUT CAPITAL**

**CONTRIBUTIONS OF THE HEAD OFFICE AND, THEREFORE, NOT SUBJECT TO THE BRANCH PROFIT REMITTANCE TAX PRESCRIBED IN SECTION 28(A)(5) OF THE TAX CODE.** Mere reimbursements of actual expenses/costs without any mark-up or profit element do not constitute income payments and are, therefore, not subject to Philippine income tax. ***BIR Ruling No. OT-007-2023 dated February 15, 2023.***

**ADVANCES RECEIVED BY EMPLOYEES OF A COMPANY, WHETHER RANK AND FILE OR MANAGERIAL EMPLOYEES, IN ADDITION TO THEIR COMPENSATION, RELATING TO THE ORDINARY AND NECESSARY EXPENSES INCURRED OR REASONABLY EXPECTED TO BE INCURRED BY SUCH EMPLOYEES IN THE PERFORMANCE OF THEIR DUTIES AND RESPONSIBILITIES ARE NOT COMPENSATION SUBJECT TO WITHHOLDING TAX.** Moreover, for managerial employees, allowances received that are necessary to the trade or business or for the convenience of the employer are fringe benefits not subject to fringe benefits tax. ***BIR Ruling No. OT-008-2023 dated February 16, 2023.***

**THE TAX TREATMENT OF FOREIGN EXCHANGE GAINS OF THE COMPANY SHALL DEPEND ON THE ACTIVITIES FROM WHICH THEY ARISE.** Thus, the realized foreign exchange gains attributable to the registered activities of the Company shall be covered by the same income incentive as stated in the terms and condition granted by an Incentive Promotion Agency. Meanwhile, if the foreign exchange gain is not attributed to its registered activities, such gain shall be subject to the regular income tax rate. ***BIR Ruling No. OT-009-2023 dated February 16, 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 send us an email at [mail@baniquedlaw.com](mailto:mail@baniquedlaw.com).

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