

# TAX ALERT

September 2022

## SUPREME COURT DECISIONS

**A COMPANY DERIVING DIVIDENDS AND INTEREST FROM INVESTMENTS IN SHARES OF STOCKS IS NOT DEEMED TO BE DOING BUSINESS AS A BANK OR OTHER FINANCIAL INSTITUTION AND IS THEREFORE NOT SUBJECT TO LOCAL BUSINESS TAX AS SUCH.** *City of Davao v. ARC Investors, Inc., G.R. No. 249668, July 13, 2022.*

## COURT OF TAX APPEALS DECISIONS

**AN ASSESSMENT MADE THROUGH A MEMORANDUM UNDER BLANKET REFERRAL DOCUMENT INSTEAD OF A LETTER OF AUTHORITY IS NOT VALID.** A Letter of Authority may be dispensed with only if the assessment is conducted by the Commissioner of Internal Revenue himself. Otherwise, the long-standing rule that an assessment is void without a letter of authority shall apply. *People of the Phil. v. Active Travel and Tours, Inc., CTA EB Crim No. 088, September 22, 2022.*

**A WAIVER OF THE DEFENSE OF PRESCRIPTION EXTENDING THE PRESCRIPTIVE PERIOD OF TAX ASSESSMENT MUST INDICATE THE SPECIFIC TAX AND THE EXACT AMOUNT TO BE ASSESSED TO BE VALID.** *Commissioner of Internal Revenue v. First Phil. Industrial Corp., CTA EB No. 2376 (CTA Case No. 9000), September 29, 2022.*

**AN ASSESSMENT SHALL BE INVALID FOR LACK OF A NOTICE OF DISCREPANCY.** Due process requires that the taxpayer be given a notice of discrepancy and an opportunity to present his side of the case through a discussion of discrepancy as required under the rules and to settle the alleged deficiency taxes at the earliest possible time without the need for the issuance of a formal assessment. Due process further requires that the taxpayer must be fully informed of the factual and legal basis of the assessment. A vague reference to ‘source documents’ as the basis of the assessment may render the same null and void. *Sps. Pacquiao v. Commissioner of Internal Revenue, CTA Case No. 8683, September 29, 2022.*

**THE 15-DAY PERIOD TO SUBMIT A REPLY TO A PRELIMINARY ASSESSMENT NOTICE MUST EXPIRE BEFORE A FINAL ASSESSMENT NOTICE IS ISSUED.** Otherwise, the assessment shall be void for being prematurely issued. *Commissioner of Internal Revenue v. Integrated Solutions Technology Limited, CTA EB No. 2401 (CTA Case No. 9608), September 13, 2022.*

**A FINAL ASSESSMENT NOTICE THAT DOES NOT PROVIDE A DUE DATE FOR THE PAYMENT OF TAX IS INVALID AS IT NEGATES THE BIR'S DEMAND FOR PAYMENT. *People of the Phil. v. Errizaro Shoe Corp., CTA Crim. Case No. O-704, September 28, 2022.***

**A FINAL ASSESSMENT NOTICE/ FORMAL LETTER OF DEMAND THAT CONTAINS A NOTATION STATING THAT THE AMOUNTS DUE ARE SUBJECT TO ADJUSTMENT IS NOT VALID. An assessment shall be void if it does not state a clear due date and a fixed and determinate amount of tax liability. *Ritegroup Inc. v. Commissioner of Internal Revenue, CTA Case No. 96708, September 22, 2022.***

**AN ASSESSMENT MADE BY THE BUREAU OF INTERNAL REVENUE MUST BE VALID BEFORE A TAXPAYER MAY BE JUDGED TO BE CIVILLY AND CRIMINALLY LIABLE FOR NON-PAYMENT OF TAX. *People of the Phil. v. Cosco Petroleum Co. Inc., CTA Crim Case No. O-804, September 21, 2022.***

**IMPOSITION OF COMPROMISE PENALTIES WITHOUT THE CONFORMITY OF THE TAXPAYER IS ILLEGAL AND UNAUTHORIZED. *Commissioner of Internal Revenue v. Tann Phil. Inc., CTA EB No. 2415 (CTA Case No. 9433), September 14, 2022.***

**THE INVOICING REQUIREMENTS STATED UNDER SECTIONS 110 AND 113 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 DO NOT APPLY TO IMPORTED GOODS. The provisions are applicable only to VAT-registered persons and not to foreign sellers who are not subject to Philippine tax laws and are not VAT-registered. *Philex Mining Corp. v. Commissioner of Internal Revenue, CTA EB Case No. 2497 (CTA Case No. 10037), September 29, 2022.***

**IN PROTESTING AN ASSESSMENT OF LOCAL TAX, THE TAXPAYER MAY OPT TO PAY UNDER PROTEST OR PROCEED WITHOUT PAYMENT OF THE ASSESSED TAX UNDER SECTION 195 OF THE LOCAL GOVERNMENT CODE. *Barlis v. GF & Partners, Architects, Co., CTA AC No. 247, September 16, 2022.***

#### **BIR ISSUANCES**

**PURSUANT TO REPUBLIC ACT NO. 9999, LAWYERS OR PROFESSIONAL PARTNERSHIPS RENDERING ACTUAL FREE LEGAL SERVICES SHALL BE ENTITLED TO AN ALLOWABLE DEDUCTION FROM THE GROSS INCOME EQUIVALENT TO THE LOWER OF (A) THE AMOUNT THAT COULD HAVE BEEN COLLECTED FOR THE ACTUAL FREE LEGAL SERVICES RENDERED; OR (B) TEN PERCENT (10%) OF THE GROSS INCOME DERIVED FROM THE ACTUAL PERFORMANCE OF THE LEGAL PROFESSION. *Revenue Regulations No. 12-2022, September 13, 2022.***

**POLICIES, GUIDELINES AND PROCEDURES IN THE ISSUANCE AND USE OF NOTICE TO ISSUE RECEIPT/INVOICE (NIRI) PURSUANT TO REVENUE**

**REGULATIONS NO. 10-2019.** The Order applies to new business registrants and online sellers and merchants, vloggers, social media influencers, online content creators earning income from the platform and/or advertising. “Ask for Receipt” Notice previously issued shall be valid until June 30, 2023 and shall be replaced through staggered issuance of NIRI to the existing business registrants based on the ending digit of the Taxpayer Identification Number. All registered business taxpayers requesting for the replacement of their old “Ask for Receipt” Notice are required to update their registration information before the release of the NIRI. A designated official company email address shall be required which shall be used by the BIR in serving its orders, notices, letters, communications and other processes to taxpayers. *Revenue Memorandum Order No. 4302922, September 29, 2022.*

### SEC ISSUANCES

**EFFECTIVE SEPTEMBER 26, 2022, THE ACCOUNT TO BE ENROLLED IN ELECTRONIC FILING AND SUBMISSION TOOL (EFAST) SHALL BE SUBJECTED TO REVIEW BEFORE IT WILL BE ACTIVATED. IN THIS PROCESS, IT IS RECOMMENDED THAT INFORMATION TO BE DECLARED OR ENROLLED AND REQUIRED DOCUMENTS TO BE SUBMITTED/UPLOADED ARE CONSISTENT, CORRECT AND IN PROPER ORDER. SEC Notice to the Public dated September 19, 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](mailto:mail@baniquedlaw.com).

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