

# TAX ALERT

February 2022

## COURT OF TAX APPEALS DECISIONS

**THE PREFERENTIAL TAX RATES UNDER THE TAX TREATY BETWEEN CHINA AND THE PHILIPPINES DO NOT COVER ENTITIES ORGANIZED UNDER THE LAWS OF HONGKONG.** Tax treaty benefits are confined to a particular state due to the peculiarity of the laws of each country on aspects such as shipping and air transport, and independent personal services. *Commissioner of Internal Revenue v. Sky Cable Corporation, CTA EB Nos. 2305 and 2309 (CTA Case No. 9069) dated Feb. 10, 2022.*

**A MEMORANDUM OF ASSIGNMENT, REFERRAL MEMORANDUM OR SUCH EQUIVALENT DOCUMENT CANNOT DIRECT THE CONTINUATION OF AUDIT.** In case there is a necessary change in the revenue officer (RO) who shall conduct the assessment, a new Letter of Authority (LOA) must be issued. The practice of reassigning or transferring ROs originally named in the LOA and substituting them with new ROs to continue the audit or investigation without a separate or amended LOA (i) violates the taxpayer's right to due process in tax audit or investigation; (ii) usurps the statutory power of the CIR or his duly authorized representative to grant the power to examine the books of account of a taxpayer; and (iii) does not comply with existing BIR rules and regulations, particularly RMO No. 43-90 dated September 20, 1990. *Intervet Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9909 dated Feb. 24, 2022.*

**A TAX VERIFICATION NOTICE CANNOT SERVE AS A SUBSTITUTE FOR AN LOA.** *Commissioner of Internal Revenue v. Jinzai Experts, Inc., CTA EB No. 2259 dated Feb. 09, 2022.*

**AN LOA ISSUED BY A REVENUE REGION CANNOT BE GIVEN EFFECT AFTER A VALID TRANSFER OF REGISTRATION BY THE TAXPAYER TO ANOTHER REVENUE REGION.** Due to the transfer of registration, the taxpayer is no longer within the jurisdiction of the revenue region that issued the LOA. Hence, a Final Assessment Notice (FLD/FAN) issued pursuant to such LOA is null and void. *Commissioner of Internal Revenue v. Costner Trading Corporation, CTA EB No. 2322 (CTA Case No. 9428) dated Feb. 09, 2022.*

**FAILURE OF THE BUREAU OF INTERNAL REVENUE (BIR) TO AFFORD THE TAXPAYER THE RIGHT TO FILE ITS PROTEST OR RESPONSE TO THE PRELIMINARY ASSESSMENT NOTICE (PAN) WITHIN 15 DAYS FROM RECEIPT IS A VIOLATION OF THE TAXPAYER'S RIGHT TO DUE PROCESS WHICH RENDERS THE ASSESSMENT VOID AND WITHOUT EFFECT.** *Commissioner of Internal Revenue v. Getz Pharma (Phils.), Inc., CTA EB No. 2316 (CTA Case No. 8922) dated Feb. 03, 2022.*

**ERRONEOUS COMPUTATION OF THE TAX BASE DOES NOT AUTOMATICALLY ENTITLE THE TAXPAYER TO REFUND. THE TAXPAYER MUST ESTABLISH THAT THE TAX IS INDEED ERRONEOUS OR ILLEGAL FOLLOWING THE RULE THAT TAX REFUNDS ARE IN THE NATURE OF TAX EXEMPTIONS AND THEREFORE, THE BURDEN OF PROOF FALLS ON THE TAXPAYER. *Matex International, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10180 dated Feb. 15, 2022.***

**COMMERCIAL INVOICES, SUCH AS PROVISIONAL INVOICES, MUST BE DULY REGISTERED WITH THE BIR, MUST BE COVERED BY A VALID AUTHORITY TO PRINT AND MUST ALSO CONTAIN THE INFORMATION TO BE CONTAINED IN A VALUE-ADDED TAX (VAT) INVOICE SUCH AS THE WORDS “ZERO-RATED SALE”, IF APPLICABLE. *Commissioner of Internal Revenue v. Pilipinas Kyohritsu Inc., CTA EB Nos. 2382 and 2395 (CTA Case No. 9706) dated Feb. 22, 2022.***

**MANUALLY INSERTING DETAILS ON THE COMPUTERIZED RECEIPTS/ INVOICES BY HANDWRITING MAY CAUSE THE RECEIPTS/ INVOICES TO BE DISALLOWED FOR VAT ZERO-RATING. *Orica Philippine, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2367 (CTA Case No. 9647) dated Feb. 03, 2022.***

**TO ESTABLISH ZERO-RATED TRANSACTIONS WITH A NON-RESIDENT FOREIGN CORPORATION, THE CLAIMANT MUST ESTABLISH THAT THE FORMER IS (1) NOT A DOMESTIC CORPORATION AND (2) NOT ENGAGED IN TRADE IN THE PHILIPPINES. THERE MUST BE NO DISCREPANCY IN THE NAME OF THE NON-RESIDENT FOREIGN CORPORATION IN THE SEC CERTIFICATE OF NON-REGISTRATION, OTHERWISE, THE CLAIM FOR ZERO-RATING SHALL BE DENIED FOR NOT SATISFYING THE SECOND REQUISITE. *Financial Times Electronic Publishing Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2333 (CTA Case No. 9434) dated Feb. 24, 2022.***

**REPUBLIC ACT NO. 10963, OTHERWISE KNOWN AS THE “TAX REFORM FOR ACCELERATION AND INCLUSION LAW (TRAIN)”, PROHIBITS THE SIMULTANEOUS IMPOSITION OF DEFICIENCY AND DELINQUENCY TAXES. *Philippine Securities Settlements Corp. v. Commissioner of Internal Revenue, CTA Case No. 2277 dated Feb. 22, 2022.***

**REVENUE MEMORANDUM ORDER (RMO) NO. 19-2007, OTHERWISE KNOWN AS “THE CONSOLIDATED REVISED SCHEDULE OF COMPROMISE PENALTIES FOR VIOLATIONS OF THE NATIONAL INTERNAL REVENUE CODE”, MUST BE STRICTLY ADHERED TO IN DETERMINING THE APPROPRIATE PENALTIES UNLESS A COMPROMISE AGREEMENT IS ENTERED INTO BY BOTH THE TAXPAYER AND THE COMMISSIONER OF INTERNAL REVENUE OR WHEN A COMPROMISE OFFER IS MADE IN WRITING. *Commissioner of Internal Revenue V. Dunlevy Food Corporation, CTA EB No. 2294 (CTA Case No. 9361) dated Feb. 08, 2022.***

**THE LOCAL GOVERNMENT CODE DOES NOT REQUIRE PAYMENT OF THE ASSESSED TAX FOR A PROTEST TO BE VALID. *Matex International, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10180 dated Feb. 15, 2022.***

**REPUBLIC ACT NO. 10863, OTHERWISE KNOWN AS THE “CUSTOMS MODERNICATION AND TARIFF ACT”, REQUIRES THAT AN ALERT ORDER BE ISSUED PRIOR TO THE ISSUANCE OF A WRIT OF SEIZURE AND DETENTION (WSD). A WSD ISSUED WITHOUT THE ALERT ORDER IS A VIOLATION OF THE RIGHT TO PROCEDURAL DUE PROCESS AND IS THEREFORE, NULL AND VOID.**

An Alert Order is a written order that serves as the authority of the Alerting Officer to conduct physical or non-intrusive inspection of goods. The Alerting Officer shall recommend the issuance of a WSD only upon a finding of a discrepancy between the goods declaration and the actual goods imported. There is no indication under the said law of any exception as to requirement of an Alert Order. *SL Harbor Bulk Terminal Corporation v. Commissioner of Customs, CTA Case No. 9551 dated Feb. 24, 2022.*

### **BIR ISSUANCES**

**TAX COMPLIANCE REMINDERS FOR THE MAY 09, 2022 NATIONAL AND LOCAL ELECTIONS.** All candidates, political parties or party list groups and campaign contributors are reminded that they are to register with the BIR pursuant to Revenue Regulations (RR) No. 8-2009 and to keep and register with the concerned Revenue District Office books and other accounting records. Candidates and political parties must issue non-VAT Official Receipts for every contribution received. While campaign contributions and donations are exempt from donor’s tax and are not included in the taxable income of the candidate, unutilized or excess funds and donations shall be subject to income tax. Media services, printing jobs, talent or entertainment fees, rentals and other income payments for campaign expenditures are subject to five percent (5%) creditable withholding tax. Post-election, every candidate and Treasurer of the political parties or party list groups shall submit the Statement of Contributions and Expenditures to COMELEC and RDO where the candidates/political parties/party list groups are registered within thirty (30) days after the election. Failure to comply with the requirements of the BIR shall subject the candidates, political parties and party list groups to penalties under RMO No. 7-2015. *Revenue Memorandum Circular No. 22-2022 dated Feb. 21, 2022.*

**GUIDELINES FOR THE FILING OF REQUESTS FOR CONFIRMATION, TAX TREATY RELIEF APPLICATIONS AND TAX SPARING APPLICATIONS.** Taxpayers who were already issued with Certificates of Entitlement to Treaty Benefit (COE), which are intended for dividends, branch profit remittances, interest, royalties, income from air and shipping transport and are containing a proviso stating that the same shall apply to future or subsequent income payment shall no longer need to file a request for confirmation (RFC) or tax treaty relief application (TTRA) for every income of similar nature paid to a nonresident. A new RFC or TTRA shall only be filed in case the requisites mentioned in the COE are not applicable. During a tax audit, the income payor shall only be required to submit a copy of the duly issued COE and proof of satisfaction of the requisites cited therein. For business profits, income from services, capital gains, income derived by teachers, and such other income from non-recurring transactions, the

RFCs or TTRAs shall still be filed following the procedures and requirements laid down in RMO No. 14-2021, as amended by Revenue Memorandum Circular (RMC) No.77-2021. *Revenue Memorandum Circular No. 20-2022 dated Feb. 17, 2022.*

**CLARIFICATION AND GUIDANCE ON SECTION 8 OF RR NO. 5-2021 ON TAX-FREE EXCHANGES OF PROPERTIES UNDER SECTION 40(C)(2) OF THE NATIONAL INTERNAL REVENUE CODE (TAX CODE) OF 1997, AS AMENDED BY REPUBLIC ACT (RA) NO. 11534.** BIR issued these guidelines to ensure that proper taxes are collected despite issuance of Certificates Authorizing Registration without a prior BIR confirmation or tax ruling on the tax-free exchanges of properties. Parties to the transaction shall submit the documentary requirements listed in the Annex B of RMC No. 19-2022 to the RDO having jurisdiction over the place where the property is located, in case of a real property, or in case of shares of stock, the RDO where the issuing corporation is registered to obtain a CAR for the transferred properties pursuant to the tax-free reorganization or exchange. The taxpayer has the option of requesting a ruling/legal opinion with the Law and Legislative Division (LLD) of the National Office in order to clarify legal issue/s that may affect the transactions made pursuant to Section 40(C)(2) of the National Internal Revenue Code, as amended, including the taxability of such transaction. *Revenue Memorandum Circular No. 19-2022 dated Feb. 04, 2022.*

#### SEC ISSUANCES

**SCHEDULE FOR FILING OF ANNUAL FINANCIAL STATEMENTS (AFS) AND GENERAL INFORMATION SHEET (GIS).** Deadline for filing of the AFS and GIS shall depend on the last numerical digit of the SEC registration or license number in accordance with the following schedule through the eFAST:

July 1–15	1 and 2
July 16–31	3 and 4
August 1–15	5 and 6
August 16–31	7 and 8
September 1 –15	9 and 0

Those whose AFS are being audited by COA, listed companies and those which are covered by Section 17.2 of the Securities Regulation Code and those whose fiscal year does not follow the calendar year shall not follow the schedule indicated. All corporations shall file the GIS with 30 calendar days from date of actual annual stockholders' or members' meeting or from the anniversary date of the issuance of the SEC License, in case of foreign corporations. Other reports not available in the eFAST may be submitted by sending through email at [ictdsubmission@sec.gov.ph](mailto:ictdsubmission@sec.gov.ph). *SEC Memorandum Circular No. 02, series of 2022 dated Feb. 08, 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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