

## TAX ALERT

March 2022

### COURT OF TAX APPEALS DECISIONS

**THE TWO-YEAR PRESCRIPTIVE PERIOD TO CLAIM A REFUND OF CAPITAL GAINS TAX (“CGT”) PAID ON A SALE OF REALTY SUBSEQUENTLY RESCINDED IS RECKONED FROM THE DATE OF PAYMENT OF THE TAX, NOT FROM THE RESCISSION OF THE SALE.** *Facts:* Pursuant to a Contract to Sell dated June 4, 2013, the taxpayer agreed to sell parcels of land to the buyer after receiving a 30% downpayment. On July 5, 2013, the corresponding CGT was paid. Due to a contract dispute that led the buyer to annotate adverse claims against the land, the taxpayer filed a case for the cancellation of the adverse claim. On July 12, 2016, the court rendered judgment approving the compromise agreement between the parties who agreed to rescind the sale. On July 3, 2018, the taxpayer filed an administrative claim for refund with the Bureau of Internal Revenue (“BIR”), followed by a judicial claim for refund filed with the Court of Tax Appeals (“CTA”) on July 6, 2018. The taxpayer asserts that the two-year prescriptive period for claiming a refund under Sec. 204(C) of the National Internal Revenue Code of 1997 (“1997 NIRC”) should be reckoned from the rescission of the agreement and not from the date of payment of the tax. *Held:* petition denied and affirmed by the CTA *en banc*. The taxpayer’s claim for refund is barred for being filed beyond the two-year prescriptive period reckoned from the date of payment of the CGT. Sec. 229 of the 1997 NIRC provides that the two-year prescriptive period applies “regardless of any supervening cause that may arise after payment.” Therefore, the subsequent rescission of the contract does not affect the validity of the CGT payment made and extend the prescriptive period. *Euroversal Properties, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2393 (C.T.A. Case No. 9869) dated March 1, 2022.*

**INSTRUCTIONAL LETTERS AND JOURNAL AND CASH VOUCHERS EVIDENCING ADVANCES EXTENDED TO AFFILIATES QUALIFY AS LOAN AGREEMENTS AND ARE SUBJECT TO DOCUMENTARY STAMP TAX (“DST”) AS LAID DOWN IN THE FILINVEST CASE.** The taxpayer was held liable for DST for its non-interest-bearing loans and advances to affiliates and related parties for taxable years 2008 to 2011. The *Filinvest* case (G.R. Nos. 163653 and 167689) promulgated in 2011, which interpreted Section 180 of the Tax Code (now Section 179), may be applied retroactively to the taxpayer’s case. Judicial interpretation placed upon a law by the Supreme Court becomes a part of the law interpreted as of the date when the law was originally passed because it establishes the contemporaneous legislative intent of the law. The only exception is that when there is already a prevailing doctrine or interpretation of the Supreme Court, and the High Court overrules or reverses the said doctrine, then the new doctrine must be applied prospectively. *Eagle I Landholdings, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case Nos. 2222 & 2227 (C.T.A. Case No. 9638) dated March 1, 2022.*

**SETTLED IS THE RULE THAT AN ASSESSMENT SHOULD CONTAIN NOT ONLY A COMPUTATION OF TAX LIABILITIES, BUT ALSO A DEMAND FOR PAYMENT WITHIN A PRESCRIBED PERIOD.** Thus, absent a specific date or period within which the alleged tax deficiencies must be settled or paid by the taxpayer, the Final Assessment Notice (“FAN”) with Formal Letter of Demand (“FLD”) is fatally infirm. Consequently, the Final Decision on Disputed Assessment which is rooted from the said FLD/FAN is likewise void. The deficiency tax assessments contained in the FLD/FAN are of no consequence as a void assessment bears no fruit. *Commissioner of Internal Revenue v. Apo Int’l Marketing Corp., C.T.A. EB Case No. 2270 (C.T.A. Case No. 9071) dated March 2, 2022.*

**THE REASSIGNMENT OR TRANSFER OF A REVENUE OFFICER REQUIRES THE ISSUANCE OF A NEW OR AMENDED LETTER OF AUTHORITY (“LOA”) FOR THE SUBSTITUTE OR REPLACEMENT REVENUE OFFICER TO CONTINUE THE AUDIT INVESTIGATION.** Unless undertaken by the Commissioner of Internal Revenue (“CIR”) himself or his duly authorized representatives, other tax agents cannot validly conduct an examination without prior authority. The result of the absence of the LOA is the nullity of the examination and assessment based on the violation of the taxpayer’s right to due process. Although the service of the memorandum of assignment, referral memorandum, or any equivalent document may notify the taxpayer of the substitute or replacement revenue officer, it cannot serve as proof of the existence of the authority granted to the substitute revenue officer. A LOA is not a general authority to any revenue officer. It is a special authority granted to a particular revenue officer. The practice of reassigning or transferring revenue officers, who were the original authorized officers named in the LOA, and subsequently substituting them with new revenue officers who do not have a separate LOA issued in their name, is in effect a usurpation of the statutory power of the CIR or his duly authorized representative. *Commissioner of Internal Revenue v. Liberty Flour Mills, Inc., C.T.A. EB Case No. 2321 (C.T.A. Case No. 9603) dated March 2, 2022.*

**A TAX ASSESSMENT ISSUED BY THE BIR MAY BE PROTESTED ADMINISTRATIVELY BY FILING EITHER A REQUEST FOR RECONSIDERATION OR REINVESTIGATION, IN SUCH FORM AND MANNER AS MAY BE PRESCRIBED BY IMPLEMENTING RULES AND REGULATIONS.** Based on Section 228 of the 1997 NIRC and Revenue Regulations No. (“Rev. Regs.”) 12-99, as amended by Rev. Regs. 18-2013, the protest must state the following: (1) the nature thereof, whether reconsideration or reinvestigation, and in case of the latter, it must specify the newly discovered or additional evidence that the taxpayer intends to present; (2) date of the assessment notice; and (3) the applicable law, rules and regulations, or jurisprudence on which his protest is based. Otherwise, the protest shall be considered void, and without force and effect. *Ortiz Memorial Chapel, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 9805 dated March 10, 2022.*

**THE PROVISIONS OF THE TAX CODE ARE DEEMED WRITTEN ON EVERY ASSESSMENT. IN CASE OF CONFLICT IN THE PERIOD TO FILE PROTEST, THE NUMBER OF DAYS PRESCRIBED IN THE TAX CODE SHOULD PREVAIL.** In this case, the Formal Letter of Demand (FLD) only gave the taxpayer 15 days from receipt to file a protest, contrary to the 30-day period prescribed under Section 228 of the 1997 NIRC. This error alone will not invalidate the assessment. Instead, the incorrect period should be disregarded, and the

period prescribed in the 1997 NIRC should prevail. *Commissioner of Internal Revenue v. Alphaland Makati Place, Inc., C.T.A. EB Case No. 2292 (C.T.A. Case No. 9609), March 14, 2022.*

**A MERE PLEA FROM THE TAXPAYER TO HOLD IN ABEYANCE THE COLLECTION OF TAX DOES NOT PRECLUDE THE BIR FROM ENFORCING COLLECTION VIA DISTRAINT AND/OR LEVY AND, THEREFORE, DOES NOT TOLL THE RUNNING OF THE FIVE-YEAR PRESCRIPTIVE PERIOD TO COLLECT DELINQUENT TAXES.** The taxpayer’s request to hold in abeyance the service and execution of the warrants of distraint/levy and garnishment cannot validly toll the running of the prescriptive period. Further, the said request does not amount to a waiver of the prescriptive period to collect the assessed deficiencies. *Commissioner of Internal Revenue v. Standard Insurance Co., Inc., C.T.A. EB Case No. 2090 (C.T.A. Case No. 9550) (Resolution) dated March 18, 2022.*

### **BIR ISSUANCES**

**PRESCRIBING MODIFIED GUIDELINES AND PROCEDURES IN THE ISSUANCE OF AUTHORITY TO RELEASE IMPORTED GOODS (“ATRIG”) FOR VALUE ADDED TAX (“VAT”) EXEMPT DRUGS AND MEDICINES COVERED UNDER SECTION 109(AA) OF THE 1997 NIRC.** This Order amends Revenue Memorandum Order No. 25-2002 on the issuance of ATRIG to eliminate undue delays in the processing of ATRIG specific to the importation of VAT-exempt drugs and medicines prescribed for diabetes, high cholesterol, hypertension, cancer, mental illness, tuberculosis, and kidney diseases covered under Section 109(AA) of the 1997 NIRC. *Revenue Memorandum Order No. 20-2022 dated March 31, 2022.*

**SUSPENSION OF THE INCOME TAX INCENTIVES GRANTED TO REGISTERED BUSINESS ENTERPRISES FOR VIOLATING THE WORK-FROM-HOME THRESHOLD AS PRESCRIBED BY THE FISCAL INCENTIVES REVIEW BOARD.** *Revenue Memorandum Circular No. 23-2022 dated March 9, 2022.*

**CLARIFYING ISSUES RELATIVE TO REV. REGS. 21-2021 IMPLEMENTING THE AMENDMENTS TO THE VAT ZERO-RATING PROVISIONS UNDER SECTIONS 106 AND 108 OF THE 1997 NIRC, IN RELATION TO SECTIONS 294(E) AND 295(D), TITLE XIII OF THE 1997 NIRC, INTRODUCED BY REPUBLIC ACT NO. 11534 (CREATE ACT), AND SECTION 5, RULE 2, AND SECTION 5, RULE 18 OF THE CREATE ACT IMPLEMENTING RULES AND REGULATIONS.** The Circular is issued to clarify the transitory provisions under Rev. Regs. 20-2021 and certain issues pertaining to the effectivity and VAT treatment of transactions by registered business enterprise, particularly registered export enterprises. *Revenue Memorandum Circular No. 24-2022 dated March 9, 2022.*

**SUBMISSION OF THE CERTIFICATE OF ENTITLEMENT TO TAX INCENTIVES (“CETI”) UNDER REPUBLIC ACT NO. 11534 (CREATE LAW).** This repeals the provisions stated in Revenue Memorandum Circular No. 14-2022 which required the submission of a Certificate for Entitlement to Income Tax Holidays, now CETI, within 30 days from filing of the Annual Income Tax Return (“AITR”) of registered business enterprises (“RBE”). The Circular

now requires all RBEs to apply for a CETI with their concerned Investment Promotion Agency (IPA) prior to the filing of the AITR. The CETI shall then be attached to the AITR. The CETI is a requirement for all RBEs to avail of the income tax holiday or preferential rate granted by the CREATE Law. *Revenue Memorandum Circular No. 28-2022 dated March 16, 2022.*

**AVAILABILITY OF REVISED BIR FORM 2316 (CERTIFICATE OF COMPENSATION PAYMENT/TAX WITHHELD) SEPTEMBER 2021 ENCS.** BIR Form 2316 was revised to include an additional line for the 5% tax credit under Personal Equity and Retirement Account (PERA) Act of 2008. *Revenue Memorandum Circular No. 34-2022 dated March 31, 2022.*

### **SEC ISSUANCES**

**GUIDELINES ON CORPORATE DISSOLUTIONS UNDER SECTIONS 134, 136, AND 138 OF THE REVISED CORPORATION CODE.** *SEC Memorandum Circular No. 5, Series of 2022.*

**DISQUALIFICATIONS OF DIRECTORS, TRUSTEES AND OFFICERS OF CORPORATIONS; AND GUIDELINES ON THE PROCEDURE FOR THEIR REMOVAL.** *SEC Memorandum Circular No. 4, Series of 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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