

# TAX ALERT

July 16, 2019 to August 15, 2019

## COURT OF TAX APPEALS DECISIONS

**SHARE OF PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR) CO-LICENSEE FROM GAMING REVENUES IS NOT SUBJECT TO REGULAR INCOME TAX.** Citing *Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue (BIR)*, the Court of Tax Appeals (CTA) ruled that PAGCOR's exemption from taxes is extended to its licensees. Thus, the co-licensee's share from gaming revenues is subject to 5% franchise tax in lieu of all taxes. *Premiumleisure and Amusement, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9572 dated July 16, 2019*

**THE 60-DAY PERIOD GIVEN TO LOCAL TREASURERS TO DECIDE ON THE PROTEST IS RECKONED FROM THE TIME OF FILING OF THE ORIGINAL PROTEST.** When a taxpayer files a protest and subsequently files a supplemental protest, the 60-day period within which the treasurer should decide is reckoned from the filing of the original protest. Taxpayers have 30 days from the expiration of the 60-day period counting from the filing of the original protest to appeal to the appropriate court. *Kuehne + Nagel, Inc. vs. City of Parañaque and Anthony I. Pulmano, in his capacity as the City Treasurer of Parañaque, CTA AC No. 206 dated July 18, 2019*

**ASSESSMENT MUST BE RECEIVED BY THE TAXPAYER, OTHERWISE IT IS VOID.** When the taxpayer denies receipt of the assessment, the burden of proof is shifted to the BIR to show otherwise. A certification from the post office that the assessment was accidentally missing or misplaced by the postman proves non-receipt of assessment notice, thus rendering the assessment null and void. *Clark Water Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8648 dated July 19, 2019*

**FAILURE TO SERVE LETTER OF AUTHORITY (LOA) TO THE TAXPAYER WITHIN 30 DAYS FROM ISSUANCE RENDERS THE LOA VOID.** *Edmund U. Bermejo IV vs. Commissioner of Internal Revenue, CTA Case No. 9310 dated August 5, 2019*

**ONLY COSTS OF SALES OR DIRECT COSTS ENUMERATED UNDER DOF DEPARTMENT ORDER NO. 3-08 SHALL BE ALLOWED AS DEDUCTION FOR PURPOSES OF CALCULATING GROSS INCOME EARNED.** *Subic Water & Sewerage Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9074 dated August 14, 2019*

**BIR RULINGS AND ISSUANCES**

**BINGO OPERATOR LICENSED BY PAGCOR IS EXEMPT FROM INCOME TAX AND VALUE-ADDED TAX (VAT).** Citing *Bloomberry Resorts and Hotels, Inc vs. Bureau of Internal Revenue*, the CIR ruled that PAGCOR's exemption from taxes extends to holders of gaming license. Thus, income derived by the license holder solely from its bingo gaming operations is subject only to the 5% franchise tax and shall be exempt from corporate income tax and VAT. ***BIR Ruling No. 383-2019 dated July 16, 2019***

**INCOME DERIVED BY REGISTERED HOMEOWNERS' ASSOCIATION FROM DUES, FEES AND OTHER CHARGES COLLECTED ON A REIMBURSEMENT BASIS IS EXEMPT FROM INCOME TAX, VAT OR PERCENTAGE TAX PROVIDED SUCH INCOME IS USED FOR BASIC COMMUNITY SERVICES AND THE LOCAL GOVERNMENT UNIT HAVING JURISDICTION CERTIFIES THAT IT LACKS RESOURCES TO PROVIDE SAID SERVICES.** ***BIR Ruling No. 385-2019 dated July 17, 2019***

**CORPORATION'S TRANSFER OF REAL PROPERTY TO REDEEM PREFERRED SHARES IS NOT TO SUBJECT INCOME TAX AND DOCUMENTARY STAMP TAX (DST).** Citing Revenue Memorandum Circular No. 003-2014, a corporation transferring assets to redeem its own shares is not subject to income tax as it does not realize any gain or loss on the redemption. However, the shareholder's capital gain derived from said redemption is subject to regular income tax. The redemption is not likewise subject to DST. Surrender of shares is not considered a sale, assignment or transfer as the redeeming corporation will not acquire title to said shares. ***BIR Ruling No. 386-2019 dated July 18, 2019***

**FOR IMPROPERLY ACCUMULATED EARNINGS TAX PURPOSES, THE OWNERSHIP OF A CORPORATION SHALL BE TRACED TO INDIVIDUAL SHAREHOLDERS OF THE PARENT COMPANY.** If at least 50% of the outstanding capital or at least 50% of the total combined voting power in a corporation is owned directly or indirectly by at least 21 or more individuals, the corporation is considered publicly held, and thus, exempt from improperly accumulated earnings tax. ***BIR Ruling No. 385-2019 dated July 17, 2019***

**AMENDED POLICIES, GUIDELINES AND PROCEDURE ON THE REGISTRATION OF EMPLOYEES EARNING PURELY COMPENSATION INCOME AND SIMPLIFYING THE PROCESS OF TRANSFERRING EMPLOYEE'S REGISTRATION.** ***Revenue Memorandum Order No. 37-2019 issued on July 23, 2019***

**CLARIFIES THE NATURE, CHARACTER AND TAX TREATMENT OF NON-STOCK, NON-PROFIT CORPORATIONS UNDER SECTION 30 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.** ***Revenue Memorandum Order No. 38-2019 issued on July 24, 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) 633-1911, or at the indicated e-mail address:*

Carlos G. Baniqued	<a href="mailto:cgbaniqued@baniquedlaw.com">cgbaniqued@baniquedlaw.com</a>
Terence Conrad H. Bello	<a href="mailto:thbello@baniquedlaw.com">thbello@baniquedlaw.com</a>
Emma Malou L. Gan	<a href="mailto:eulim@baniquedlaw.com">eulim@baniquedlaw.com</a>
Agnes Bianca L. Mendoza	<a href="mailto:almendoza@baniquedlaw.com">almendoza@baniquedlaw.com</a>
Casiano V. Flores III	<a href="mailto:cvflores@baniquedlaw.com">cvflores@baniquedlaw.com</a>
Mark Roland C. Domingo	<a href="mailto:mcdomingo@baniquedlaw.com">mcdomingo@baniquedlaw.com</a>
John Marti C. Duya	<a href="mailto:jcduya@baniquedlaw.com">jcduya@baniquedlaw.com</a>
Ana Margaret T. Dahilig	<a href="mailto:atdahilig@baniquedlaw.com">atdahilig@baniquedlaw.com</a>
Carla S. Cucueco	<a href="mailto:cscucueco@baniquedlaw.com">cscucueco@baniquedlaw.com</a>
Margaret P. Gan	<a href="mailto:mpgan@baniquedlaw.com">mpgan@baniquedlaw.com</a>

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