

TAX ALERT

March 2023

COURT OF TAX APPEALS DECISIONS

FAILURE TO SUBMIT THE DOCUMENTS LISTED UNDER REVENUE MEMORANDUM ORDER (RMO) NO. 53-98 AND REVENUE REGULATIONS (REV. REGS.) NO. 2-2006 AT THE ADMINISTRATIVE LEVEL IS NOT FATAL TO THE JUDICIAL CLAIM FOR REFUND. A perusal of RMO No. 53-98 and Rev. Regs. No. 2-2006 reveal that there is nothing in said regulations which requires the submission of all the documents specified therein before a taxpayer may be entitled to a refund. The Court of Tax Appeals (“CTA”) is not limited by the evidence presented in the administrative claim filed with the Bureau of Internal Revenue (“BIR”). The claimant may present new and additional evidence to the CTA to support its case for tax refund. *Zuellig Pharma Corporation v. Commissioner of Internal Revenue. CTA Case No. 9030 dated March 2, 2023.*

TIMELINESS OF THE FILING OF REFUND CLAIM OF ERRONEOUSLY OR ILLEGALLY COLLECTED TAX IS MANDATORY AND JURISDICTIONAL. THUS, THE COURT CANNOT TAKE COGNIZANCE OF A JUDICIAL CLAIM FOR REFUND FILED EITHER PREMATURELY OR OUT OF TIME. Within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with the BIR before filing its judicial claim with the courts of law. Both claims must be filed within the two (2)-year reglementary period. *Diddley Bow Investment Holdings B.V., v. Commissioner of Internal Revenue. CTA Case No. 9759 dated March 2, 2023.*

IN A CLAIM FOR REFUND OR TAX CREDIT UNDER SECTION 112 OF THE NIRC (UNUTILIZED INPUT VAT ATTRIBUTABLE TO ZERO-RATED SALES), WHICH IS NOT A CLAIM FOR REFUND UNDER SECTION 229 (REFUND OF ERRONEOUSLY OR ILLEGALLY COLLECTED TAXES), THE CORRECTNESS OF THE VAT RETURN IS NOT AN ISSUE AND THUS THERE IS NO NEED FOR THE COURT TO DETERMINE WHETHER THE TAXPAYER IS LIABLE FOR DEFICIENCY VALUE-ADDED TAX (VAT). *Commissioner of Internal Revenue v. AIG Shares Services Corporation (Philippines) [Formerly: Chartis Technology and Operations Management Corporation]. CTA EB No. 2545 (CTA Case No. 9351) dated March 27, 2023.*

TO QUALIFY THE SUPPLY OF SERVICE TO A NON-RESIDENT FOREIGN CORPORATION FOR ZERO PERCENT VAT, THE SAME MUST BE PERFORMED IN THE PHILIPPINES BY VAT-REGISTERED PERSONS. The following elements must be present for a sale or supply of services to be subject to VAT rate of zero percent (0%): (1) The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed; (2) The services fall under any of the categories under Section 108(B)(2); (3) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules; and (4) The services must be performed in the Philippines by a VAT-registered person. *Jinna Maria*

O. Yap v. Bureau of Internal Revenue. CTA Case No. 10019 dated March 9, 2023.

PETITION FOR CERTIORARI IS PROPER WHEN THE AVAILABLE REMEDY IS NOT SPEEDY AND ADEQUATE. The Court has held that the availability of appeal as a remedy does not constitute sufficient ground to prevent or preclude a party from making use of certiorari if appeal is not an adequate remedy or speedy remedy. In this case, the BIR sought to investigate petitioner's books of accounts and accounting records which were previously investigated by respondent and the letter of authority (LOA) issued covering taxable years January 1, 2008 to December 31, 2012 is void as prescription had already set in. Thus, the denial of the Petition for Certiorari will result in a failure of justice as petitioner will be required to the less speedy remedy of going through the tedious and protracted rigors of protesting an assessment in order to have it cancelled on the ground that it is intrinsically invalid for having been issued pursuant to a void LOA and beyond the 3-year prescriptive period to assess. *Philippine Hydro (PH) Inc., v. Commissioner of Internal Revenue. CTA Case No. 10618 dated March 6, 2023.*

PROCEEDINGS IN THE CTA SHALL NOT BE GOVERNED STRICTLY BY TECHNICAL RULES OF EVIDENCE. While it is established that rules of procedure are tools designed to facilitate the attainment of justice, Courts shall not strictly and rigidly apply them if it will only frustrate, rather than promote substantial justice. The general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice. *Citiae Industrial Services Corporation v. Commissioner of Internal Revenue. CTA EB No. 2511 (CTA Case No. 9713) dated March 7, 2023.*

DECISIONS OF THE COMMISSIONER OF INTERNAL REVENUE (CIR) IN RELATION TO THE EXERCISE OF HIS POWER TO ENTER INTO COMPROMISE THAT IS TAINTED BY FAILURE TO ABIDE BY THE PARAMETERS SET BY LAW IS SUBJECT TO THE CTA'S EXCLUSIVE APPELLATE JURISDICTION. *Fidela D. Fernandez, represented by her attorney-in-fact Jose Vicente D. Fernandez v. Hon. Caesar R. Dulay, Commissioner of Internal Revenue, and OIC-RD Gerry O. Dumayas, BIR Revenue Region No. 10, CTA Case No. 9908 dated March 24, 2023.*

MERE PRESENTATION OF REGISTRY RECEIPT IS NOT SUFFICIENT TO PROVE RECEIPT OF NOTICES. THE REGISTRY RECEIPT MUST BE SIGNED BY THE CONCERNED TAXPAYER'S DULY AUTHORIZED REPRESENTATIVE AND THE SIGNATURES MUST BE IDENTIFIED AND AUTHENTICATED. *One Cypress Agri-Solution Inc., v. Commissioner of Internal Revenue, CTA Case No. 9937 dated March 7, 2023.*

SAVE FOR REAL PROPERTY TAXES ON LAND OWNED BY DEVELOPERS, NATIONAL AND LOCAL TAXES MAY NOT BE IMPOSED ON BUSINESS ESTABLISHMENTS OPERATING WITHIN THE ECONOMIC ZONE (ECOZONE), IN LIEU THEREOF, A SPECIAL TAX RATE OF 5% OF ITS GROSS INCOME IS IMPOSED. *Commissioner of Internal Revenue v. Cebu Light Industrial Park, Inc. CTA EB No. 2466 (CTA Case No. 9607) dated March 8, 2023.*

NOWHERE IN THE NATIONAL INTERNAL REVENUE CODE (NIRC)

MANDATES THAT A TAXPAYER MUST OBTAIN A PRIOR APPLICATION FOR ZERO RATING FOR A TRANSACTION WITH PEZA-REGISTERED ENTITIES TO BE CONSIDERED AS ZERO-RATED. BIR regulations additionally requiring an approved application for VAT zero rating cannot prevail over the clear VAT nature of transactions with PEZA-registered entities. *Commissioner of Internal Revenue v. Philippine Mining Service Corporation CTA EB No. 2579 (CTA Case No. 9763) dated March 14, 2023.*

A TAXPAYER IS FREE TO DEDUCT FROM ITS GROSS INCOME A LESSER AMOUNT, OR NOT TO CLAIM A DEDUCTION AT ALL. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein. Thus, even when a taxpayer has not claimed purchases and expenses, or declared a lesser amount thereof, in the Income Tax Return (ITR), such action is allowed, and shall not necessarily result in the imposition of income tax on the undeclared or underdeclared purchases *Benchmark Marketing Corp., v. Commissioner of Internal Revenue. CTA EB No. 2212 (CTA Case No. 9296) dated March 10, 2023.*

A LETTER OF AUTHORITY (LOA) REMAINS VALID EVEN IF THE REVENUE OFFICER (RO) FAILS TO FINISH THE AUDIT AND SUBMIT THE FINAL INVESTIGATION REPORT WITHIN 120 DAYS. RMO No. 044-10, which supersedes RMO No. 38-88, RMC 40-2006 and BIR's *General Audit Procedure and Documentation*, provides explicitly that LOAs are no longer required to be revalidated. Thus, LOA remains valid even if the RO fails to finish the audit and submit the final investigation report within 120 days. *Xpert Air Services, Inc., v. The Commissioner of Internal Revenue CTA Case No. 10171 dated March 14, 2023.*

A WARRANT OF DISTRRAINT AND LEVY ISSUED WHILE THE DEFICIENCY TAX ASSESSMENT IS STILL PENDING APPEAL WITH THE CIR IS VOID AND SHOULD BE OF NO FORCE AND EFFECT. *Xpert Air Services, Inc., v. The Commissioner of Internal Revenue CTA Case No. 10171 dated March 14, 2023.*

DUE PROCESS REQUIRES THAT THE TAXPAYER SHOULD BE INFORMED OF THE NAMES OF THE TAX AGENTS WHO ARE DULY AUTHORIZED TO CONDUCT EXAMINATION OF THE TAXPAYER'S BOOKS AND ACCOUNTING RECORDS AND PERFORM ASSESSMENT FUNCTIONS THROUGH AN LOA. *Metro Rail Transit Corporation v. Commissioner of Internal Revenue CTA Case No. 9651 dated March 23, 2023.*

WITHHOLDING TAX ASSESSMENTS ARE SUBJECT TO PRESCRIPTION. Citing the Supreme Court case *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc, G.R. No. 211289 dated January 14, 2019*, the CTA held that withholding tax assessment is not merely an imposition of penalty on the withholding agent. The collection of withholding taxes falls squarely within the purview of Section 203 of the NIRC. The three (3)-year prescriptive period under Section 203 of the NIRC, thus, applies to withholding tax assessments. *Pet Plans, Inc., v. Commissioner of Internal Revenue CTA Case No. 10002 dated March 23, 2023.*

BIR RULINGS AND ISSUANCES

TRANSFER OF MANILA POLO CLUB (MPC) SHARES THROUGH A DECLARATION OF TRUST IS NOT SUBJECT TO CAPITAL GAINS TAX (CGT), DOCUMENTARY STAMP TAX (DST) AND DONOR'S TAX. A declaration of trust has been defined as an act by which a person acknowledges that the property, title to which he holds, is held by him for the use of another. The transfer of the legal title to trustees-appointees is not subject to CGT and income tax considering that the transfer involves neither monetary consideration nor change in beneficial ownership. Moreover, the transfer cannot be subject to DST as there are no transfer or conveyance of the beneficial ownership of or any right, claim or interest over the MPC shares. Finally, there is no intention to donate the share in favor of the trustees-appointees, thus, the transfer from one nominee to another shall not be subject to donor's tax. *BIR Ruling No. OT-13-2023 dated March 09, 2023.*

CLARIFYING THE APPLICATION OF THE EIGHTEEN (18)-MONTH TRANSITORY PERIOD IN REPUBLIC ACT (RA) NO. 11900, AS REITERATED IN ITS IMPLEMENTING RULES AND REGULATIONS (IRR) AND REVENUE REGULATIONS (RR) NO. 14-2022. The (18)-month transitory period applies only to the requirements of Product Standards and Product Registration. The rest of the executory provisions of the law, or other requirements, are effective immediately. *Revenue Memorandum Circular No. 35-2023 dated March 13, 2023.*

IMPORTED GOODS THAT WILL NO LONGER REQUIRE THE ISSUANCE OF "AUTHORITY TO RELEASE IMPORTED GOODS [ATRIG]" BY THE BIR. To facilitate the release of imported ingredients in the production of fertilizers and finished feeds, ATRIG shall no longer be secured from the BIR. The certificate secured from the Bureau of Animal Industry (BAI), or from other concerned regulatory government agency, which is competent to certify that the ingredients being imported are "*not fit for human consumption or the goods being imported cannot be used for the production of food for human consumption*", shall be directly presented to the Bureau of Customs to effect the release of the imported goods. *Revenue Memorandum Circular No. 31-2023 dated March 16, 2023.*

FILING OF ANNUAL INCOME TAX RETURNS (AITR) FOR CALENDAR YEAR (CY) 2022 AS WELL AS PAYMENT OF TAXES DUE THEREON UNTIL APRIL 17, 2023. Taxpayers may file the AITR for CY 2022 and pay the taxes due to any Authorized Agent Banks and Revenue Collection Officers, notwithstanding the Revenue District Office Jurisdiction. Taxpayers who will manually file and pay taxes due thereon through Revenue Collection Offers may pay in cash up to twenty thousand pesos (P20,000.00) only or in check regardless of the amount; provided that, the check shall be made payable to "Bureau of Internal Revenue." *Revenue Memorandum Circular No. 32-2023 dated March 16, 2023.*

AMENDING CERTAIN PROVISIONS OF RMO NO. 6-2023, PRESCRIBING AN UPDATED AND CONSOLIDATED POLICIES, GUIDELINES AND PROCEDURES FOR BIR AUDIT PROGRAM. Annex A of RMO No. 6-2023, pertaining to the standard template for Termination Letter, is revised to include stipulation regarding discovery of fraud. *Revenue Memorandum Order No. 8-2023 dated March 20, 2023.*

AVAILABILITY OF OTHER REGISTRATION-RELATED ONLINE TRANSACTIONS, FUNCTIONS AND FEATURES IN THE BIR ONLINE

REGISTRATION AND UPDATE SYSTEM (ORUS). The following registration-related online transactions, functions and features shall be available in the BIR ORUS:

- Online Payment (e-Payment) of Annual Registration Fee (RF) for New Business Registrations
- Online Inquiry of RF Payment for BIR Internal Users
- Application for Cancellation of Permit to Use (PTU) Loose-leaf and Acknowledgement Certificate (AC) of Computerized Accounting System (CAS)
- Online Verification of Taxpayer Identification Number (TIN)
- BIR Registered Business Search Facility. *Revenue Memorandum Circular No. 36-2023 dated March 20, 2023*

AVAILABILITY OF THE OFFLINE ELECTRONIC BUREAU OF INTERNAL REVENUE FORMS (EBIRFORMS) PACKAGE VERSION 7.9.4. *Revenue Memorandum Circular No. 40-2023 dated March 21, 2023*

ANNOUNCING THE AVAILABILITY OF INFORMATION MATERIALS IN RELATION TO FILING AND PAYMENT OF TAX RETURNS AND STEP-BY-STEP GUIDE IN FILING BIR FORMS 1701, 1701A, AND 1702-RT. *Revenue Memorandum Circular No. 41-2023 dated March 29, 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 send us an email at mail@baniquedlaw.com

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