

# TAX ALERT

October 2022

## COURT OF TAX APPEALS DECISIONS

**SINCE A WAIVER IS A BILATERAL AGREEMENT, SPECIFIC INFORMATION ON THE KIND AND AMOUNT OF TAX DUE IS NECESSARY FOR ITS VALIDITY.** A waiver of the statute of limitations is a bilateral agreement between the taxpayer and the Bureau of Internal Revenue (“BIR”) to extend the period to assess or collect deficiency taxes on a certain date. Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated. Hence, specific information in the waiver is necessary for its validity. Waivers extending the prescriptive period of tax assessments must comply with Revenue Memorandum Order No. 20-90 and Revenue Delegation Authority Order No. 05-01, which includes the requirement to indicate the kind and amount of tax due. *Commissioner of Internal Revenue v. GMA Network Films, Inc., CTA EB Case No. 2441 (CTA Case No. 9381) dated October 17, 2022.*

**THE ISSUANCE OF A NOTICE OF INFORMAL CONFERENCE IS PART OF DUE PROCESS AS ITS ISSUANCE GIVES BOTH THE TAXPAYER AND THE COMMISSIONER OPPORTUNITY TO SETTLE THE CASE AT THE EARLIEST POSSIBLE TIME WITHOUT THE NEED FOR THE ISSUANCE OF A FINAL ASSESSMENT NOTICE.** *Commissioner of Internal Revenue v. IBM Plaza Condominium Association, Inc, CTA EB No. 2229 (CTA Case No. 8740) dated October 14, 2022.*

**A LETTER OF AUTHORITY (“LOA”), AS AN INSTRUMENT OF DUE PROCESS, SHOULD PARTICULARLY NAME THE REVENUE OFFICERS WHO ARE AUTHORIZED TO CONDUCT AN AUDIT.** The Supreme Court declared that a Memorandum of Assignment (“MOA”) cannot substitute for a LOA. A MOA simply notifies a taxpayer of the transfer of an audit/investigation to another set of revenue officers. Unlike a LOA, a MOA does not show the new set of revenue officers who will pursue the audit are properly authorized to do so. A LOA is a special grant of authority to a specific set of revenue officers to examine a taxpayer’s books of accounts and other accounting records for purposes of determining the taxes due. *Shang Property Developers, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9745 dated October 12, 2022.*

**THE APPELLATE JURISDICTION OF THE COURT OF TAX APPEALS (“CTA”) OVER DECISIONS, ORDERS, OR RESOLUTIONS OF THE REGIONAL TRIAL COURT BECOMES OPERATIVE WHEN THE LATTER HAS RULED ON A LOCAL TAX CASE.** The purpose of an imposition will determine its nature as either a tax or a fee. If the purpose is primarily revenue, or if revenue is at least one of the real and substantial purposes, then the exaction is properly classified as an exercise of the power to tax. On the other hand, if the purpose is primarily to regulate, then it is deemed an exercise of police power in the form of a fee, even though revenue is incidentally generated. Stated otherwise, if generation of revenue is the primary purpose, the imposition is a tax but, if regulation is the primary purpose, the imposition is properly categorized as a regulatory fee. The Court finds that the permit fees to slaughter as well as the ante-mortem and post-mortem fees are not taxes. *San Miguel Foods, Inc., v. Office of the City Treasurer, City of Davao, represented by Bella Linda N. Tanjili, CTA AC No. 249 dated October 12, 2022.*

**FOR THE SUPPLY OF SERVICE TO QUALIFY FOR ZERO PERCENT VALUE-ADDED TAX (“VAT”) RATE, THE SAME MUST BE PERFORMED IN THE PHILIPPINES BY VAT-REGISTERED PERSONS.** It is indispensable that a claimant of tax refund must prove that the services it rendered to its foreign affiliates must have been performed or rendered in the Philippines

and not abroad. Based on the Services Agreements, the services may be performed both in the Philippines and abroad. Thus, without convincing proof that the services were actually performed by petitioner in the Philippines only, the services rendered by petitioner to its client-affiliates are not entitled to zero percent (0%) VAT. ***Procter & Gamble International Operations SA-ROHQ v. Commissioner of Internal Revenue, CTA EB No. 9768 & 9829 dated October 5, 2022.***

**THE PRELIMINARY COLLECTION LETTER (“PCL”), HAVING THE TONE OF FINALITY, CONSTITUTES A FINAL DECISION APPEALABLE TO THE CTA.** Petitioner received several Final Assessment Notices (FAN) on January 10, 2014 for the alleged deficiency taxes for taxable year 2010 and filed its protest in the nature of a request for reinvestigation on January 15, 2014. The Regional Director issued a PCL received by petitioner on July 2, 2014. Petitioner then filed a letter manifesting its protest against the PCL on the ground of lack of due process. The Court held that while the concept of finality of decisions is admittedly a contentious issue especially in the absence of a definite and categorical action on the part of the Commissioner of Internal Revenue, the Supreme Court has, in a myriad of relevant cases, treated and defined, albeit in different forms, acts that may constitute as a denial or rejection of the protest filed by a taxpayer. After taking a second look at the contents of the PCL, the Court considered the latter as having passed the standard set by the Supreme Court as having the tone of finality. The PCL made a clear demand for payment of the alleged tax liabilities of petitioner. The categorical demand for payment coupled with the threat to pursue collection of the alleged tax liabilities if payment is not made, characterize the finality of the decision. The failure of petitioner to avail of the remedy within the thirty-day period from receipt of the PCL made the FANs final, executory and demandable.. ***JTKC Land, Inc., v. Commissioner of Internal Revenue, CTA EB No. 2378 (CTA Case No. 9597) dated October 5, 2022.***

#### **BIR RULINGS AND ISSUANCES**

**EXCESS OF INSURANCE PROCEEDS OVER NET BOOK VALUE OF INSURED ASSETS IS SUBJECT TO INCOME TAX.** Section 34(A)(1)(a) and (D) of the National Internal Revenue Code, as amended, provides that all losses actually sustained during the taxable year not compensated by insurance or otherwise are deductible from gross income. Thus, in order that losses to property connected with the trade, business or profession can be claimed as deductions for income tax purposes, the law requires that the loss (1) must be actually sustained and written off in the taxable year; (2) is not compensated by insurance or other forms of indemnity; (3) must be evidenced by closed and completed transactions. ***BIR Ruling No. 406-2022 dated October 07, 2022.***

**THE INSURANCE PROCEEDS TO INDEMNIFY INSURED’S LOSS IS NOT SUBJECT TO VAT.** ***BIR Ruling No. 406-2022 dated October 07, 2022.***

**A TRANSFER OF SHARES FROM A FORMER TRUSTEE BANK TO A NEWLY DESIGNATED TRUSTEE BANK IS NOT SUBJECT TO INCOME TAX, DONOR’S TAX, VALUE ADDED TAX (VAT), OR DOCUMENTARY STAMP TAX (DST).** ***BIR Ruling No. 410-2022 dated October 7, 2022.***

**THE TRANSFER OF SHARES FROM THE TRANSFEROR TO THE TRANSFEREE IS NOT SUBJECT TO CAPITAL GAINS TAX (CGT) AND DST.** In the Declaration of Trust which the appointee executed, he acknowledged that the transfer did not give them any kind of right, claim, or interest whatsoever in the share that he is holding only legal ownership of the same with the beneficial ownership pertaining to the Company. ***BIR Ruling No. 417-2022 Dated October 12, 2022;***

**IF THE COMPANY MAINTAINS A PRIVATE RETIREMENT PLAN WHICH HAVE BEEN DETERMINED BY THE BUREAU OF INTERNAL REVENUE AS A “REASONABLE RETIREMENT BENEFIT PLAN”, THE RETIREMENT BENEFITS THAT WILL BE RECEIVED BY THE EMPLOYEES SHALL BE EXEMPT PROVIDED THE CONDITIONS ARE MET.** ***BIR Ruling No. 413-2022, October 11, 2022.***

**JOINT VENTURE OR CONSORTIUM FORMED FOR THE PURPOSE OF UNDERTAKING CONSTRUCTION PROJECTS MUST COMPLY WITH THE REQUIREMENTS TO BE TAX-EXEMPT.** A joint venture or consortium formed for the purpose of undertaking construction projects shall not be taxable as a corporation provided the same should be: (1) for the undertaking of a construction project; (2) should involve joining or pooling of resources by licensed local contractors, that is, licensed as general contractor by the Philippine Contractors Accreditation Board of the Department of Trade and Industry; (3) the local contractors are engaged in construction business; and (4) the Joint Venture itself must likewise be duly licensed as such by the Philippine Contractors Accreditation Board of the Department of Trade and Industry. ***BIR Ruling No. 418-2022 dated October 12, 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 contact any of the following at telephone number (632) 633-9418, facsimile number (632) 633-1911, or at the indicated e-mail address:

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