BANIQUED & BELLO
ATTORNEYS-AT-LAW

TAX ALERT

September 1 to 30, 2020

COURT OF TAX APPEALS DECISIONS

PROOF OF ACTUAL REMITTANCE OF TAXES WITHHELD IS NOT A PREREQUISITE IN CLAIMING REFUND OF UNUTILIZED CREDITABLE WITHHOLDING TAX. It must be emphasized that proof of remittance of withholding taxes is the responsibility of the payor-withholding agent and not of the payee. Further, it bears emphasis that the payee-refund claimant, such as respondent in this case, need only prove the fact of withholding of taxes, which is established by a copy of the withholding tax statement; and not its actual remittance to the BIR. ***Commissioner of Internal Revenue v. Stateland, Inc., CTA EB No. 1862 dated September 4, 2020.***

MERE FACT OF REGISTRATION OF THE BUYER WITHIN THE ECOZONE WILL NOT GIVE EFFECT TO THE CONCEPT OF CONSTRUCTIVE EXPORT WHICH IS GRANTED EFFECTIVE ZERO-RATING. It is imperative that the goods or services sold by VAT-registered persons in the customs territory enter an ecozone, which is considered a separate customs territory, in order to give effect to the concept of constructive export which is granted effective zero-rating under VAT laws and regulations, and not just rely on the mere fact of registration of a buyer within the ecozone. Thus, the place of delivery of the goods in this case is material. ***Pag-Asa Steel Works, Inc. v. Bureau of Internal Revenue, CTA Case No. 9506 dated September 2, 2020.***

REQUIREMENTS TO QUALIFY FOR VAT ZERO RATING UNDER RA NO. 9513. The petitioner must prove with sufficient evidence that: (1) it is engaged in the sale of goods and services to Renewable Energy (RE) Developers; (2) the goods and services sold (a) are needed for the development, construction, and installation of the plant facilities of RE Developers, or (b) pertain to the whole process of exploration and development of RE sources up to their conversion into power; and (3) the RE Developers must have secured a Department of Energy (DOE) Certificate of Registration, Registration with the BOI, **and** Certificate of Endorsement by the DOE. ***Gamesa Eolica, SL-Unipersonal Phil. Branch v. Commissioner of Internal Revenue, CTA Case No. 9668 dated September 2, 2020.***

A WAIVER, IN ORDER TO BE VALID AND HAVE THE EFFECT OF EXTENDING THE THREE-YEAR PRESCRIPTIVE PERIOD TO ASSESS, MUST INDICATE THE NATURE AND THE AMOUNT OF THE TAX DUE. According to the High court in *Commissioner of Internal Revenue vs. La Flor Dela Isabela, Inc.* (G.R. No. 211289, January 14, 2019), these details are material as there can be no true and valid agreement between the taxpayer and respondent absent these information. In this case, a cursory reading of the subject Waivers would reveal that they do not indicate the kind and exact amount of the taxes to be assessed or collected. Thus, on the basis of the aforequoted jurisprudence, the said Waivers are invalid.

Correspondingly, the same did not effectively extend the three-year prescriptive period under Section 203 of the NIRC of 1997 on account of their invalidity. ***Medical Center Trading Corp. v. Commissioner of Internal Revenue, CTA Case No. 9412 dated September 23, 2020.***

A WRITTEN DOCUMENT WHICH SIGNIFIES THE INTENTION OF THE CIR OR HIS DULY AUTHORIZED REPRESENTATIVE TO REASSIGN A TAXPAYER'S AUDIT AND ASSESSMENT TO A NEW REVENUE OFFICER MAY BE CONSIDERED AS AN EQUIVALENT OF AN LOA. To reiterate, in order for the MOA to be considered as an equivalent of an LOA, it must be signed by the CIR or his duly authorized representative. However, in this case, it is clear from the aforementioned facts that the MOAs were only signed by Mr. Antonio Jonathan G. Jaminola, OIC-Chief, Regular LTAD 3, who is not the CIR, a Revenue Regional Director, or an Assistant Commissioner/Head Revenue Executive Assistant. Therefore, on this account, the revenue officers have no authority to continue respondent's audit. Considering all the foregoing, the assessments issued against the respondent are void. ***Commissioner of Internal Revenue v. Enjay Hotels, Inc., CTA EB No. 2052 dated September 16, 2020; see also Commissioner of Internal Revenue v. Central Luzon Drug Corp., CTA EB No. 2038 dated September 18, 2020.***

TAX ASSESSMENT MUST NOT ONLY CONTAIN A COMPUTATION OF TAX LIABILITIES BUT MUST ALSO INCLUDE A DEMAND FOR THE SETTLEMENT OF A TAX LIABILITY THAT IS DEFINITE AND FIXED. While the Formal Letter of Demand provides for the computation of petitioner's tax liability, the amount, however, remains indefinite as it states that the total amount of tax due is still subject to adjustment. In other words, the tax assessment is still subject to modification or adjustment, depending on petitioner's date of payment. Similarly, a perusal of the enclosed FANs shows that the spaces for the due dates were conspicuously left blank. Since the said assessment did not indicate the due date when the deficiency tax must be paid, no proper demand thereof within a specific period was validly made. ***Medical Center Trading Corp. v. Commissioner of Internal Revenue, CTA Case No. 9412 dated September 23, 2020.***

IN INSTANCES WHEN A TAXPAYER DENIES HAVING RECEIVED AN ASSESSMENT FROM THE CIR, THE BURDEN OF PROVING OTHERWISE RESTS UPON THE CIR. Considering that respondent-taxpayer denies having received a Final Decision on Disputed Assessment ("FDDA") from the BIR, it becomes incumbent upon the CIR to prove by competent evidence that the said FDDA was indeed received by the taxpayer. Furthermore, the presentation of the registry receipt or the registry return card is essential to prove completeness of service. In this case, the BIR notably failed to do so. Failure to present the registry return cards is fatal to its assertion that the FDDA was validly served upon the taxpayer. ***Commissioner of Internal Revenue v. Manila Medical Services, Inc., CTA EB No. 2014 dated September 1, 2020.***

FOR SALES DISCOUNT TO BE ALLOWABLE AS DEDUCTION FROM GROSS SELLING PRICE, IT MUST BE INDICATED IN THE SALES INVOICE AT THE TIME OF SALE. ***Pag-Asa Steel Works, Inc. v. Bureau of Internal Revenue, CTA Case No. 9506 dated September 2, 2020.***

THE USE OF EFFECTIVE RATE IN COMPUTING WITHHOLDING TAX ON COMPENSATION IS ALLOWED ("WTC"). As for the applicable WTC tax rate, the Court in Division found that since the employees to whom the compensation pertained were not individually identified, it ruled to use the effective rate computed based on the total WTC paid divided by the total amount of taxable compensation reported during taxable year 2011. The taxpayer, however, alleges that the use of the effective rate has no basis in law and that the CIR should have indicated the applicable tax rate for each employee. The contention of the taxpayer is without merit. In numerous cases, the CTA had used the effective tax rate computation in cases where: (1) the taxpayer's employees have different income brackets and (2) the employees to whom the assessed compensation pertained were not individually identified. We find nothing illogical with the use of the effective rate. For circumstances enumerated above, it is a fair and just manner of computing the WTC liability of a taxpayer since the effective rate approximates the average tax rate used by the taxpayer in the computation of its tax due. ***Parity Packaging Corp. v. Commissioner of Internal Revenue, CTA EB Nos. 1938 and 1942 dated August 26, 2020.***

THE ACQUISITION OF PROPERTY BY THE CITY GOVERNMENT DUE TO FAILURE TO EXERCISE RIGHT OF REDEMPTION BY THE TAXPAYER IS A SALE THAT IS SUBJECT TO CAPITAL GAINS TAX. In this case, there was no question that there was a sale of the subject property. As stipulated by the parties, the subject property previously owned by ICC was auctioned by the City Government of Valenzuela due to non-payment of real property tax. Thereafter, ICC failed to exercise its right of redemption within the prescriptive period, and thus, ownership of the subject property was transferred to the City Government of Valenzuela, in accordance with Section 263 of the Local Government Code. Thus, despite the involuntary nature thereof, there is no question that the ownership of the subject property was transferred through a sale, exchange, or disposition, within the purview of Section 27(D)(5) of the NIRC of 1997, as amended. Consequently, the said transaction was correctly subjected to capital gains tax. ***City Government of Valenzuela v. Dulay, CTA Case No. 9872 dated September 17, 2020.***

DEPOSIT ON FUTURE SUBSCRIPTION IS NOT A LOAN AGREEMENT SUBJECT TO DST. A deposit on future subscription is merely an amount of money received by a corporation with a view of applying the same as payment for additional issuance of shares in the future, an event which may or may not happen. There is yet no subscription that creates rights and obligations between the subscriber and the corporation. The description of a deposit on future subscription and definition of a loan agreement are not the same. ***Leadway Holdings, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9835 dated September 9, 2020.***

IN CASE OF PARTIAL PRESCRIPTION, IT IS INCUMBENT UPON THE TAXPAYER TO DISPROVE THE ASSESSMENT BY IDENTIFYING WHICH PART OF THE ASSESSMENT HAS ALREADY PRESCRIBED, AND TO PRESENT EVIDENCE TO SUPPORT THE SAME. In this case, although the taxpayer was able to establish the fact that a portion of the assessment had already prescribed, it failed to identify and prove the specific prescribed transactions in the assessment. Mere allegations without adducing evidence are not sufficient. Allegation is not synonymous with proof. ***Parity Packaging Corp. v. Commissioner of Internal Revenue, CTA EB Nos. 1938 and 1942 dated August 26, 2020.***

EVIDENCE PRESENTED IN THE PREVIOUS CASES CANNOT BE CONSIDERED WITHOUT BEING OFFERED IN EVIDENCE. Petitioner's alternative request of taking judicial notice of the records and testimonies of witnesses in another case pending before the same Court is not an available remedy for petitioner. Without being formally offered in evidence, the testimonies of witnesses in another case are not among the matters which the law mandatorily requires the court to take judicial notice of. The Court will not consider evidence which is not formally offered. ***Orica Phil., Inc. v. Commissioner of Internal Revenue, CTA Case No. 9717 dated September 1, 2020.***

THE TWO-YEAR PRESCRIPTIVE PERIOD SHOULD BE COMPUTED FROM THE TIME OF FILING OF THE ADJUSTMENT RETURN OR ANNUAL INCOME TAX RETURN AND FINAL PAYMENT OF INCOME TAX. Payment of quarterly income tax should only be considered as mere installments of the annual tax due. Verily, since quarterly income tax payments are treated as mere "advance payments" of the annual corporate income tax, there may arise certain situations where such advance payments would cover more than said corporate taxpayer's entire income tax liability for a specific taxable year. Thus, it is only logical to reckon the two-year prescriptive period from the time the Final Adjustment Return or the Annual Income Tax Return was filed, since it is only at that time that it would be possible to determine whether the corporate taxpayer had paid an amount exceeding its annual income tax liability. ***Premiumleisure and Amusement, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9798 dated September 2, 2020.***

DIVIDEND INCOME NOT SUBJECT TO LOCAL BUSINESS TAX. Requiring holding companies to pay a tax on dividend income, which the LGU is not authorized and is in fact prohibited from levying on businesses other than banks and financial institutions, shows a deliberate intent to circumvent the prohibition laid down by Section 133(a) [of the Local Government Code] that the taxing powers of the LGUs shall not extend to the levy of income tax, except on banks and other financial institutions. While local government units, such as petitioners, have the power to create their own sources of revenues and to levy taxes, fees and charges, such power is not absolute. Thus, in the instant case, the taxation of the dividend and interest income of a holding company is not within the powers granted to a local government unit. ***Makati City v. Allons Holdings, Inc., CTA EB No. 2146 dated September 1, 2020.***

THE CITY TREASURER MUST BE AUTHORIZED BY AN ORDINANCE TO FILE THE PETITION FOR REVIEW. Based on Sections 22 and 458(a)(1)(viii) of the Local Government Code, the *Sangguniang Panlungsod* is mandated *inter alia* to approve ordinances and pass resolutions in the proper exercise of its power to sue. And in connection thereto, the said *Sanggunian* shall approve and pass resolutions, among others, determining the powers and duties of city officials, subject to the provisions of the LGC of 1991 and pertinent laws. In other words, except when the power to sue is explicitly granted or designated to a particular city official under the law, a prior ordinance or resolution from the *Sangguniang Panlungsod* is necessary for any city official to exercise such power. In the instant case, the Verification/Certification of Non Forum Shopping was executed and signed by then City Treasurer of Makati, Jesusa E. Cuneta, but no alleged authority was submitted to support her authority to represent petitioners. Thus, the Petition

for Review was rightfully dismissed. ***Makati City Treasurer v. Mermac, Inc., CTA EB No. 2131, dated September 2, 2020.***

A CRIMINAL CASE FOR FAILURE TO PAY TAX IS NOT THE PROPER FORUM FOR THE DETERMINATION OF AN ASSESSMENT'S VALIDITY. ***People of the Phil. v. Cross Country Oil and Petroleum Corp., CTA EB Crim No. 067 dated September 16, 2020.***

BIR RULINGS AND ISSUANCES

REGULATIONS PROVIDING FOR THE POLICIES, PROCEDURES, AND GUIDELINES IN THE IMPLEMENTATION OF VOLUNTARY ASSESSMENT AND PAYMENT PROGRAM (VAPP) FOR THE COLLECTION OF ADDITIONAL TAX REVENUES, WHICH COULD OTHERWISE BE COLLECTED THROUGH AUDIT AND ENFORCEMENT EFFORT. To limit taxpayer contact considering existing COVID-19 related protocols and social distancing measures, while at the same time maximizing revenue collection with the least administrative costs, the Bureau of Internal Revenue (BIR) is reducing the number of audit investigations by encouraging an increase in voluntary tax compliance. Therefore, the taxpaying public is granted the opportunity to help defray the increased expenditures of the Government during this pandemic through voluntary payment of additional tax under the VAPP for the covered period, with or without an audit/investigation, and be entitled to the privilege under these Regulations. These Regulations shall apply to all internal revenue taxes covering the taxable year ending December 31, 2018, and fiscal year 2018 ending on the last day of the months of July 2018 to June 2019, including taxes on one-time transactions (ONETT) such as estate tax, donor's tax, capital gains tax (CGT), as well as ONETT-related creditable withholding tax (CWT)/expanded withholding tax and documentary stamp tax (DST). Qualified persons can avail of the benefits of the VAPP until December 31, 2020, unless extended by the Secretary of Finance. ***Revenue Regulations No. 21-2020 dated August 18, 2020.***

REGULATIONS AMENDING THE PROVISIONS OF REVENUE REGULATIONS NO. 12-1999, AS AMENDED BY RR NO. 8-2013 AND RR NO. 7-2018, PROVIDING FOR THE PREPARATION OF A NOTICE OF DISCREPANCY, INSTEAD OF A NOTICE OF INFORMAL CONFERENCE, IF A TAXPAYER IS FOUND TO BE LIABLE FOR DEFICIENCY TAX OR TAXES. ***Revenue Regulations No. 22-2020 dated September 15, 2020.***

RMC 98-2020, DATED SEPTEMBER 15, 2020, CLARIFIES THE SUBMISSION OF BIR FORM NO. 1709, OR THE RELATED PARTY TRANSACTION (RPT) FORM, AND ITS ATTACHMENTS, AS PRESCRIBED BY REVENUE REGULATIONS NO. 19-2020. Due to the continuing adverse impacts of COVID-19 pandemic and in order to assist taxpayers and give them sufficient time to comply with the mandates of Revenue Regulations No. 19-2020, submission of BIR Form No. 1709 and its required documents shall be further extended as follows:

Annual Income Tax Return	Extended Deadline
For Fiscal Year Ending March 31, 2020 and April 30, 2020	December 29, 2020
For Fiscal Year Ending May 31, 2020 and June 30, 2020	January 31, 2021

For Fiscal Year Ending July 31, 2020 and August 31, 2020	March 1, 2021
For Fiscal Year Ending September 30, 2020 and October 31, 2020	March 31, 2021
For Fiscal Year Ending November 30, 2020 and Calendar Year Ending December 31, 2020	April 30, 2021

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 us at telephone number (632) 8633-9418, facsimile number (632) 8633-1911, or email us at mail@baniquedlaw.com.

Past issues of our Tax Alert are available at our website at www.baniquedlaw.com