MONTHLY TAX UPDATES

May 2018

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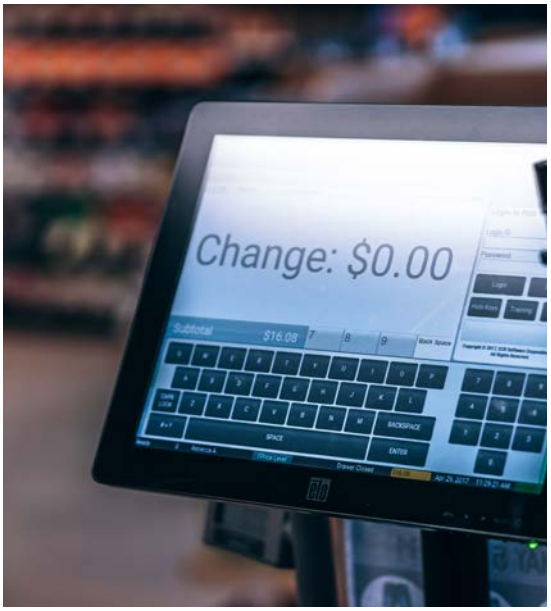

BIR ISSUANCES

TAXPAYERS USING CRS/POS MACHINES MAY OPT TO USE TYPE OF PAPERS DEPENING ON BUSINESS REQUIREMENTS.

All taxpayers using Cash Register Machine/Point Of Sales (CRS/POS) machines or other invoice/receipt generating machine/software shall have the option to use the type of paper depending on their business requirements, subject to the retention and preservation of accounting records for a period within which the Commissioner is authorized to make an assessment and collection of taxes. *Revenue Regulations No. 16-2018.*

SERIAL NUMBER OF THE CRM/POS MACHINE MUST BE PRINTED ON THE TAPE RECEIPTS. All tape receipts issued and the data printed on the tape receipts shall show the serial number of the CRM/POS machine. *Ibid.*

BUYER/CUSTOMER MAY RETUN THE ISSUED TAPE RECEIPT TO THE SELLER AND REQUEST FOR THE USSUANCE OF MANUAL INVOICE OR RECEIPT. For tape receipts issued by cash register machine and/or point of sale, buyer/customer who may be needing proof of payment to be able to claim for expense (for income tax purposes) or input tax (for VAT purposes), may return the issued tape receipt to the seller and request for issuance of a manual invoice or receipt. Whenever so requested by the buyer/ customer, the seller shall issue the manual receipt/invoice, whichever is applicable, to replace the previously issued tape receipt. Sales generated from CRM / POS machines where tape receipts issued were replaced by manual invoice / receipt shall be deducted from the sales to be reported in the eSALES system of the BIR. This deduction shall be reflected as an adjustment in the CRM Sales Book/Back end report. The returned tape receipt shall be attached to the duplicate copy of the manually issued invoice / receipt and shall be the basis in adjusting the sales. However, the sales that were replaced with manual invoice / receipt shall still be included but separately indicated in the Summary List of Sales required to be submitted by VAT registered taxpayers. *Ibid.*

REVENUE MEMORANDUM CIRCULAR NO. 30-2018 issued on May 3, 2018 amends the documentary requirements for new business registrants. The Books of Account has been removed from the list of documents required in securing a Certificate of Registration and Authority to Print. The Books of Account for new business registrants shall be registered by the taxpayer

within thirty (30) days from the date of business registration. Failure to register such within the prescribed period shall be subject to penalties pursuant to existing revenue issuances. In case of an authorized representative who will transact with the BIR on behalf of the taxpayer, the following shall be required:

a. For Individual
   i.) Special Power of Attorney (SPA); and
   ii.) Identification Card (ID) of the authorized person
b. For Non-Individual
   i.) Board Resolution indicating the name of the authorized representative;
   ii.) Secretary's Certificate; and
   iii.) ID of authorized person.

A "DEED OF EXCHANGE OF REAL PROPERTY" EXECUTED FOR THE CONVENIENCE OF THE PARTIES IS SUBJECT TO TAX. There is neither an apparent nor inadvertent error committed in the titling to justify the exchange of properties considering that the subdivided lots were aptly distributed to both parties according to their Agreement. The "Deed of Exchange of Real Property" was effected not to correct a mistake or inadvertent error attending the titling of the subject properties necessitating the exchange by or reconveyance to the rightful owner thereof, but is more for the convenience of the parties. Thus, it shall be treated as any other sale of real property subject to capital gains tax or to the expanded withholding tax, depending on the classification of the property whether the properties exchanged are capital assets or ordinary assets of the parties. The Deed of Exchange shall also be subject to the documentary stamp tax based on the gross selling price or fair market value as determined in accordance with Section 6 (E) of the 1997 Tax Code, whichever is higher. *BIR Ruling No. 794-18, issued on May 10, 2018.*

THE TRANSFER OF SHARES IN THE NAME OF THE REPUBLIC OF THE PHILIPPINES, WITHOUT ANY MONETARY CONSIDERATION, AND MADE IN ORDER TO GIVE EFFECT TO THE SUPREME COURT'S DECISIONS IS NOT SUBJECT TO TAX. Section 27 (D) (2) of the 1997 Tax Code, as amended, provides for the taxability of gains derived by a domestic corporation from the sale, exchange or other disposition of shares of stock not traded in the stock exchange. It is not applicable if does not involve sale, barter or exchange of shares. The transfer of the subject shares made pursuant to the Supreme Court's Decisions mandating UCPB to cancel the subject shares of stock and to issue the equivalent number of shares in the name of the Republic of the Philippines, without any monetary consideration, and made in order to give effect to the Supreme Court's Decisions, is not subject to capital gains tax. The transfer is also not subject to donor's tax as there is no intention to donate as the transfer was made in compliance with the above Supreme Court's Decisions. The transfer of the legal title to the Republic of the Philippines is only a confirmation of its ownership over the said shares, and there is no donative intent or act of liberality involved. Lastly, the transfer of the subject shares by UCPB in favor of the Republic of the Philippines is likewise not subject to documentary stamp tax considering that there is no sale, agreement to sell or memorandum of sale, or delivery or transfer contemplated under Section 175 of the Tax Code. However, the notarial acknowledgement on the Deed of Compliance is subject to the documentary stamp tax under Section 188 of the same Code. *BIR Ruling No. 824-18, dated May 17, 2018.*

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THE SALE OR IMPORTATION OF FERTILIZERS; SEEDS, SEEDLINGS AND FINGERLINGS; FISH, PRAWN, LIVESTOCK AND POULTRY FEEDS, INCLUDING INGREDIENTS, WHETHER LOCALLY PRODUCED OR IMPORTED, USED IN THE MANUFACTURE OF FINISHED FEEDS ARE VAT EXEMPT.

"Ingredients" means any single article of feed or feeding stuff which enters into the composition of a ration, concentrate, or supplement. Importation of products classified as feed additives, feed ingredients, or feed supplements based on the Bureau of Animal Industry Certificates of Product Registration, and are primarily used for the production of livestock and poultry feeds is exempt from VAT. However, same shall not be released from customs custody unless a duly approved ATRIG is secured. *BIR Ruling No. 816-18, May 15, 2018.*

OVERTIME PAYS, PERFORMANCE BONUS, LONG SERVICE AWARD AND CHRISTMAS BONUS RECEIVED EMPLOYEE SHOULD BE ADDED TO HIS REGULAR COMPENSATION INCOME TO DETERMINE HIS GROSS ANNUAL COMPENSATION INCOME.

Section 4 and the first paragraph of Section 5 of RR No. 11-2010 provides that tt the start of the year or at the start of the employee's employment, as the case may be, it is important to determine whether the employee shall receive, or is due to receive under a contract of employment, a gross annual compensation equivalent to or above the compensation threshold stated in Section 3 (b) of these regulations. The determination should, as far as practicable, included both regular taxable compensation income and supplementary compensation income. *BIR Ruling No. 813-18, May 11, 2018.*

A CONTRACT OF USUFRUCT IS NOT SUBJECT TO CAPITAL GAINS TAX; HENCE, A CERTIFICATE AUTHORIZING REGISTRATION IS NOT REQUIRED IN ORDER FOR THE SAME TO BE ANNOTATED ON THE TITLE OF THE PROPERTY.

A Contract of Usufruct does not involve transfer, conveyance or disposition of any portion of the real property or its ownership. A Contract of Usufruct is not a sale of transfer of real property because the owner of the property retains ownership thereof as it is expressly stated in the Contract that landowner reserves the right to sell, transfer, dispose of, mortgage, charge, hypothecate, create liens over or encumber the property to, or in favor of, a third party. Such being the case, the landowner is not subject to the payment of capital gains tax (CGT) imposed under Section 27 (D) (5) of the NIRC of 1997, as amended. It is however understood that the income, if any, derived by the Usufructuaries from and as a consequence of the grant of the right to use the said property is subject to income tax.It should be noted that CGT is a tax imposed on the gains presumed to have been realized by the seller from the sale, exchange, or other disposition of capital assets located in the Philippines, including *pacto de retro* sales and other forms of conditional sale. *BIR Ruling No. 810-18, May 10, 2018.*

"ACTIVITIES OF PROFESSIONAL ORGANIZATION" RENDERS AN ORGANIZATION SUBJECT TO TAX.

Labor, agricultural or horticultural organization not organized principally for profit is tax-exempt It should be noted that in the "industry classification" of the SEC and Bureau of Internal Revenue (BIR), the Company is registered as performing "activities of professional organizations." Thus, it is not tax-exempt. In addition, being registered as a non-stock and non-profit corporation does not, by this reason alone, completely exempt an institution from tax "Non-stock" means "no part of its income is distributable as dividends to its members, trustees, or officers" and that any profit "obtained as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized." "Non-profit" means that "no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit." *BIR Ruling No. 803-18, May 10, 2018.*

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AMOUNTS RECEIVED BY MEMBERS OF THE BOARD OF DIRECTORS ARE PRIVATE INUREMENTS, WHICH IS PROHIBITED IN NON-STOCK NON-PROFIT ORGANIZATION. THUS, THE ENTITY IS TREATED AS ORDINARY CORPORATION. The Amended Articles of Incorporation provides that "the trustees of the non-profit association do not receive any compensation or remuneration," but the Certificate under Oath executed by the Treasurer on October 11, 2016 provides that members of the Board of Directors are paid an amount of One Thousand (P1,000) monthly. The payment of monthly transportation allowance to members of the Board of Directors are considered distribution of equity (including the net income) of the taxpayer These are forms of private inurements which the law prohibits in the organization and operation of a non-stock, non-profit associations. These acts are not in accordance with the definition of "non-profit" that "no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the association's purposes and all its activities conducted not for profit." Thus, the entity shall be treated as an ordinary corporation subject to regular corporate income tax and the applicable internal revenue taxes imposed by the Tax Code of 1997, as amended. *BIR Ruling No. 803-18, May 10, 2018.*

TRUSTOR'S TRANSFER OF TITLE BY VIRTUE OF DEED OF TRUST IN FAVOR OF TRUSTEES IS TAX-EXEMPT. Capital gains presumed to have been realized from the sale, exchange, or disposition of lands and/or buildings which are not actually used in the business of the corporation and are treated as capital assets shall be taxed at the rate of 6% based on the gross selling price or the fair market value thereof, whichever is higher. There is no sale, exchange or disposition of real property involved between a trustor/owner and trustees. Accordingly, the transfer of titles over the subject condominium units from trustor to the individual trustees, without any monetary consideration and by virtue of the Deed of Trust each individual had executed separately, which effectively acknowledges the existence of a trust by and between them and trustor, is not subject to the CGT nor to the CWT. Furthermore, the said transfer is not subject to the donor's tax, since there is no donative intent on the part of trustor to donate the subject properties to the trustees considering that it was made clear in the Deeds of Trust that the trustees are merely holding said properties for and on behalf of trustor. Moreover, considering that the conveyance by trustor of the subject properties is pursuant to an express trust, it cannot be considered a transfer made in the ordinary course of trade or business, hence, not be subject to. The said transfer is also not subject to the DST. However, the notarial acknowledgements to the Deeds of Trust are subject to the DST of P15.00 pursuant to Section 188 of the same Code. *BIR Ruling No. 779-18, May 8, 2018.*

COURT OF TAX APPEALS DECISIONS

I. Assessment

A COLLECTION LETTER ISSUED AFTER THE FIVE-YEAR PRESCRIPTIVE PERIOD IS NULL AND VOID.

Any internal revenue tax assessed within the prescriptive period, i.e. within the three-year or ten-year period, may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax. In the instant case, the FAN/FLD dated January 7, 20 11, was sent through registered mail on January 10, 2011, and was received by petitioner on January 18, 2011. Counting five years from January 10, 2011, respondent had until January 10, 2016 within which to collect on the assessment through distraint, levy, or court proceeding. Clearly, the Preliminary Collection Letter dated May 4, 20 16 was issued beyond the five (5)-year prescriptive period and therefore null. *Bisazza Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9372, May 21, 2018.*

ANY RE-ASSIGNMENT/TRANSFER OF CASES TO ANOTHER REVENUE OFFICER SHALL REQUIRE ISSUANCE OF NEW LETTER OF AUTHORITY ("LOA"); THE LOA WAS VALID EVEN WITHOUT REVALIDATION AFTER THE LAPSE OF 120 DAYS.

The use of the word "shall" in RMO 43-90 can only mean that the issuance of a new LOA in cases of reassignment is mandatory. Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. In the absence of such an authority, the assessment or examination is a nullity. Further, failure to revalidate the LOA within the required period does not nullify the LOA but merely subjects the revenue officer to disciplinary action. *Ibid.*

WAIVERS MUST BE PROPERLY EXECUTED FOR IT TO TOLL THE PERIOD OF PRESCRIPTION.

The Court ruled that respondent's right to assess has already prescribed. Pursuant to *CIR vs. Kudos Metal Corporation,* waivers must be executed properly, based on RMO 20-90 and RDAO 05-01. [1]In *Kudos Metal,* Supreme Court found that: (1) the waivers were executed without the notarized written authority of the signatory to sign the waiver in behalf of Kudos Metal, (2) the waivers failed to indicate the date of acceptance, and (3) the fact of receipt by Kudos Metal of its file copy was not indicated in the original copies of the waivers. Due to these defects, the Court ruled that the waivers did not extend the period to assess. Where the waivers did not indicate the date of acceptance and fact of receipt by petitioner, the prescriptive period is not tolled. The Court noted that three copies of the waiver executed on April 19, 2013 were still attached to the BIR Records of the case, leading to the conclusion that petitioner was not furnished a copy of the accepted waiver. Estoppel cannot apply in this case since it was solely the BIR who caused the defects in the waivers, and must bear the consequences of such. It cannot shift the blame to the taxpayer. A waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed. *Ms. Mary Susan R. Fortich v. Myrna S. Leonida, CTA Case No. 9036, May 10, 2018.*

[1] This has been amended by Revenue Memorandum Order (RMO) No. 14-2016, where it provides, among others, that the waiver may not be necessarily in the form prescribed by RMO No. 20-90 or RDAO No. 05-01 as long as the waiver is executed before the expiration to assess or collect; waiver is signed by the taxpayer himself or his duly authorized representative; expiry date after the regular three-year period of prescription should be indicated.

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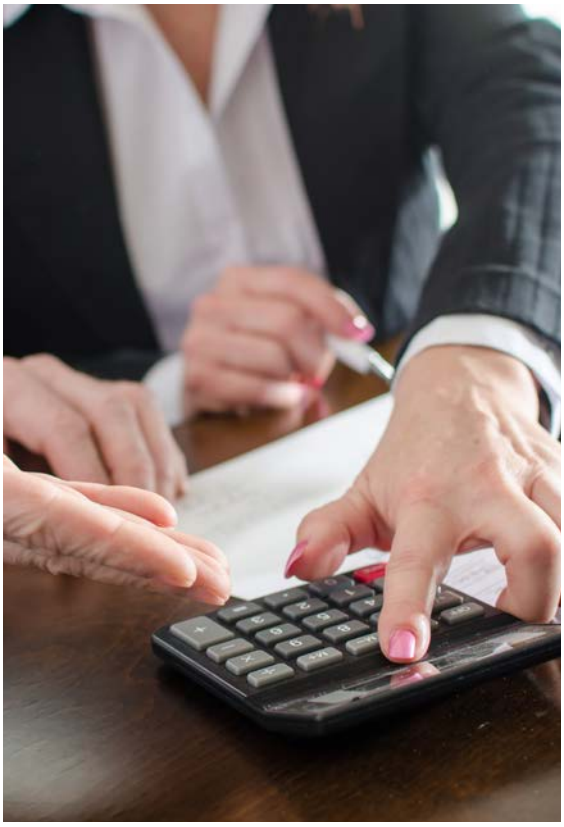

DIRECT DENIAL OF THE RECEIPT OF THE MAIL SHIFTS THE BURDEN UPON THE PARTY FAVORED BY THE PRESUMPTION TO PROVE THAT THE MAILED LETTER WAS INDEED RECEIVED BY THE ADDRESSEE. Commissioner sufficiently established the presumption that the FAN and FLD were properly mailed received by the addressee as soon as they could have been transmitted in the ordinary course of the mail. The proper mailing however same is merely a disputable presumption. Where there is a direct denial of the receipt of the FAN and FLD in this case, the burden of proof shifts on the respondent. It is a requirement of due process that the taxpayer must actually receive an assessment. Where the Commissioner failed to establish that the FAN was received, the assessment never attained finality. The Supreme Court said that proceeding heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle that taxpayers should be able to present their case and adduce supporting evidence. *Feati University v. Commissioner of Internal Revenue, CTA Case No. 8659, dated 02 May 2018.*

A TAXPAYER CANNOT BE PREJUDICED IF HE CHOOSES TO WAIT FOR THE FINAL DECISION OF THE CIR OR HIS AUTHORIZED REPRESENTATIVE ON THE PROTESTED ASSESSMENT. In case of disputed assessment, the taxpayer has two (2) options, either: (1) file a petition for review with the CTA within thirty (30) days after the expiration of the 180-day period from submission of documents; or (2) await the final decision of the Commissioner of Internal Revenue or his authorized representative on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision. In arguing that the assessment became final, executory and unappealable by the sole reason that petitioner failed to file the Petition for Review within thirty (30) days after the 180-day reglementary period, respondent, in effect, limited the remedy of petitioner, as a taxpayer to just one, that is - to appeal the inaction of the CIR or his authorized representative on the protested assessment after the lapse of the 180-day period. *Rickermann Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8715, dated May 2, 2018.*

THE BIR, NOT THE BOI, HAS THE POWER TO ASSESS AND COLLECT TAX. BOI'S POWER IS LIMITED TO THE IMPLEMENTATION OF EXECUTIVE ORDER NO. 266. The BOI, under the Department of Trade and Industry (DTI), is an agency mandated to promote and generate investments and improves the image of the Philippines as a viable investment destination. It pursues a planned, economically feasible, and practicable dispersal of globally competitive industries. On the other hand, the BIR, under the Department of Finance (DOF), is mandated to assess and collect all national internal revenue taxes, fees and charges. It administers supervisory and police powers conferred by NIRC, as amended, or other laws. While the BOI has the power to decide controversies, such, however, is limited to those concerning the implementation of EO No. 226 between registered enterprises or investors and government agencies. But with regard to the assessment and collection of the taxes, fees and charges, it is the BIR who was exclusively vested with said directive. Notwithstanding their independent mandate, both perform analogous functions. In fact, in the BOI decisions dated July 28, 2010 and October 18, 2012, it was categorically stated therein that the amount granted for EHI's income tax exemption is subject to adjustment, if any, by the BIR. Such statement is a recognition of the BIR's authority over tax assessment and collection. *Commissioner of Internal Revenue v. Enjay Hotels, Inc., CTA Case No. 1498, dated May 22, 2018.*

A VAT ASSESSMENT IS NOT REQUIRED TO COVER SINGLE TAXABLE QUARTER ONLY. Section 114(A) of the NIRC, as amended, discusses the return and payment of value-added tax. It states that, "Every person liable to pay the value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis. xxx" The provision reveals that it only provides for the time within which to file a VAT Return and the period to pay the corresponding VAT liability. In fact, the provision does not even mention anything about a VAT assessment. There

being no provision of law or existing jurisprudence requiring a VAT assessment must pertain to only one taxable quarter, respondent's issuance of a FAN/FLD for deficiency VAT covering the periods of January to March, and April to June of TY 2012 does not impair the assessment's validity/efficacy. *Keansburg Marketing Corporation v. Commissioner of Internal Revenue, CTA Case No. 9076, May 23, 2018.*

A NOTICE OF DISCREPANCY ISSUED TO THE TAXPAYER TO PROVE THE BASIS OF THE ASSESSMENT SATISFIES THE REQUIREMENT OF DUE PROCESS. Taxpayer shall be informed in writing of the law and the facts upon which the assessment is based. Otherwise, the assessment is void. The Supreme Court considered a Detailed Notice of Discrepancy or a justification on how the deficiency taxes were arrived at as sufficient to prove the factual and legal bases in a BIR assessment. Respondent's FAN/FLD was accompanied by Details of Discrepancies. Having sufficiently laid down the factual and legal bases for the disallowance of petitioner's input taxes in a Details of Discrepancies, respondent undoubtedly observed the due process requirement on assessment under Section 228 of the NIRC, as amended and settled case-law on the matter. *Ibid.*

SUBSTANTIAL COMPLIANCE IS NOT ENOUGH TO ESTABLISH EXISTENCE OF INPUT TAXES. The Supreme Court declared that a VAT registered taxpayer is strictly required to present VAT O.Rs and/or invoices which are in harmony with all the substantiation requirements set forth under the NIRC, as amended and its implementing regulations. No valid input taxes can be demanded for non-compliant VAT O.Rs. and/or invoices, much more, if no VAT O.Rs and/or invoices were presented. *Ibid.*

A FINDING OF DEFICIENCY TAXES RESULTING FROM A MERE THIRD-PARTY INFORMATION (BIRTPI) AND SLS/SLP WITHOUT PROOF THAT IT WAS VERIFIED WITH EXTERNALLY-SOURCED DATA IS NOT SUFFICIENT TO SUPPORT A VALID ASSESSMENT. The presumption that an assessment is correct presupposes that it rests on actual facts. The same cannot be predicated on another presumption, no matter how reasonable or logical said presumptions may be. *Ibid.*

II. Value-Added Tax

IN VAT REFUND CASES, TAXPAYER IS NOW REUIRED TO COMPLETE THE SUPPORTING DOCUMENTS AT THE TIME OF FILING THE CLAIM. IT IS BARRED FROM SUBMITTING ADDITIONAL DOCUMENTS THEREAFTER. The application for VAT refund/tax credit must be accompanied by complete supporting documents as provided by RMC 54-2014 with a statement under oath attesting to the completeness of the submitted documents. Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision on the refund shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding denial letter to the taxpayer/claimant. *Dedon Manufacturing, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8926, May*

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TAXPAYER HAS TWO (2) YEARS FROM THE CLOSE OF THE TAXABLE QUARTER "TIN-V" AND "COLLECTED IN BEHALF OF ANOTHER ENTITY" WARRANT THE DISALLOWANCE OF THE INPUT VAT.

CTA *en banc* upheld the disallowed input VAT based on the observation of the CTA in Division that the supporting VAT ORs were not compliant with the rules for they indicate "TIN-V" only. Moreover, it likewise upheld the Division's ruling which disallowed the input VAT for being supported by VAT OR collected in behalf of CEN Holdings, Inc. For based on the VAT system, it is the VAT OR issued by the seller or supplier which must be presented as evidence when the buyer claims a refund of its input VAT. The subject VAT OR shows that the issuing entity was Century Properties Management, Inc., thus it may appear it was the supplier or seller of Coral Bay. However, the note on the VAT OR itself states "Collected In Behalf Of CEN Holdings Corp.," would hint that CEN Holdings Corp. was the supplier or seller and not Century Properties Management, Inc. Under these obtaining circumstances, the requirement that the VAT OR issued by the seller or supplier must be presented in evidence to substantiate the input VAT being refunded has not been satisfied. *Commissioner of Internal Revenue v. Coral Bay Nickel Corporation, CTA EB No. 1418, May 17, 2018.*

VAT OFFICAL RECEIPT IS NOT A SUFFICIENT PROOF TO ESTABLISH ZERO-RATED SALES.

The supply of services to be VAT zero-rated, the following requisites must be met: (a) the services must be other than processing, manufacturing, or repacking of goods; (b) the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and (c) the recipient of such services is doing business outside the Philippines. Where the Company merely presented as evidence to the said service a VAT Official Receipt to substantiate the sale to a non-resident foreign entity, it does not reflect the nature of services rendered by the Company. In the absence of any other evidence to prove that the Company rendered services other than processing, manufacturing or repacking of goods to the non-resident foreign entity, the gross receipts from the said entity, these gross receipts may not be considered as subject to zero percent (0%) VAT. *Vesta Services Philippines, Inc. v. Commissioner of Internal Revenue CTA Case No. 9382 dated May 09, 2018.*

III. Excise Tax

TO BE EXEMPT FROM TAX ON IMPORTATION OF JET A-1 FUEL, THE ARTICLES, SHOULD NOT BE LOCALLY AVAILABLE IN REASONABLE QUANTITY, QUALITY OR PRICE. CERTIFICATIONS BY AIR TRANSPORTATION OFFICE ("ATO") (NOW CIVIL AVIATION AUTHORITY OF THE PHILIPPINES ["CAAP"]) ARE GIVEN WEIGHT. IT IS NOT ONLY THE DEPARTMENT OF ENERGY WHICH IS IN A BEST POSITION TO DETERMINE THE LOCAL AVAILABILITY IN REASONABLE QUANTITY, QUALITY AND PRICE OF THE SUBJECT JET A-1 AVIATION FUEL. Based on Section 13 of PD No. 1590, for PAL to be exempt from all taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations, the following requisites must be satisfied: (1) The basic corporate income tax or franchise tax, whichever is lower, must be paid, under the conditions provided in Section 13 of PD No. 1590; (2) The articles, materials or supplies imported should be for its use in its transport and non-transport operations and other activities incidental thereto; and (3) The articles, materials or supplies should not be locally available in reasonable quantity, quality or price. As regards the third requirement, Certifications issued by ATO, stating to the effect that the imported Jet A-1 aviation fuel was not locally available in reasonable quantity, quality and price and is necessary/incidental for the operation of APC, and these ATO Certifications are given weight. ATO, in relation with its authority to issue certifications, would show that it has the power to cooperate, assist and coordinate with any research and technical studies related to air navigation facilities, including aircraft fuel and oil. It has the means of knowing the facts stated in the subject ATO Certifications. Thus, it is not only the Department of Energy which is in a best position to determine the local availability in reasonable quantity, quality and price of the Jet A-1 Aviation fuel. *Commissioner of Internal Revenue et. al. v. Air Philippines Corporation, CTA EB Case No. 1545 (CTA Case Nos. 8039, 8069, 8104, 8113), May 21, 2018.*

IMPORTED PRODUCTS ARE EXCLUDED FROM THE DETERMINATION OF LOCALLY AVAILABLE SUPPLY OF JET A-1 FUEL. The Supreme Court ruled that "domestic" means locally manufactured or produced. No less than the Supreme Court equated "domestic" with "local," therefore, the "locally available supply" of Jet A-1 fuel could never refer to products which are imported. CTA also recognized the testimony of former Secretary of DOE, who testified that "local supply" and "locally available supply" is equivalent to, and has always been deemed to be equivalent to local refinery production only. The question here is not as to the practice of CAAP in including the imported Jet A-1 fuel in its list of locally available supply, but as to the proper inclusion of such in the said category, and based on testimony of an expert witness and interpretation of the law, imported products should never be included in the term "locally available" supply. As correctly observed in the alleged Decision, if locally available Jet A -1 fuel includes both local production and imports, there will never be an instance when the Jet A-1 fuel available is insufficient to meet the demands of the domestic market. *Ibid.*

AUTHORITY TO RELEASE IMPORTED GOODS ("ATRIG") IS A PRIMA FACIE EVIDENCE TO PROVE THAT THE AVIATION FUEL IMPORTED IS FOR USE OF TAXPAYER'S TRANSPORT AND NON-TRANSPORT OPERATIONS AND OTHER ACTIVITIES INCIDENTAL THERETO. In determining taxpayer's entitlement to the claimed refund for excise taxes paid on importations of Jet A-1 fuel, one of the requirements is that the aviation fuel imported is for use in taxpayer's transport and non-transport operations and other activities incidental thereto. In relation thereto, ATRIGs provide prima facie proof that the imported Jet A-1 fuel are to be used for taxpayer's transport and non-transport operations, and other activities incidental thereto. Considering that BIR presented no controverting evidence, the taxpayer's ATRIGs and testimonies of witnesses have sufficiently proven this requisite. *Commissioner of Internal Revenue et. al. v. Air Philippines Corporation, CTA EB No. 1537 &1550, May 21, 2018.*

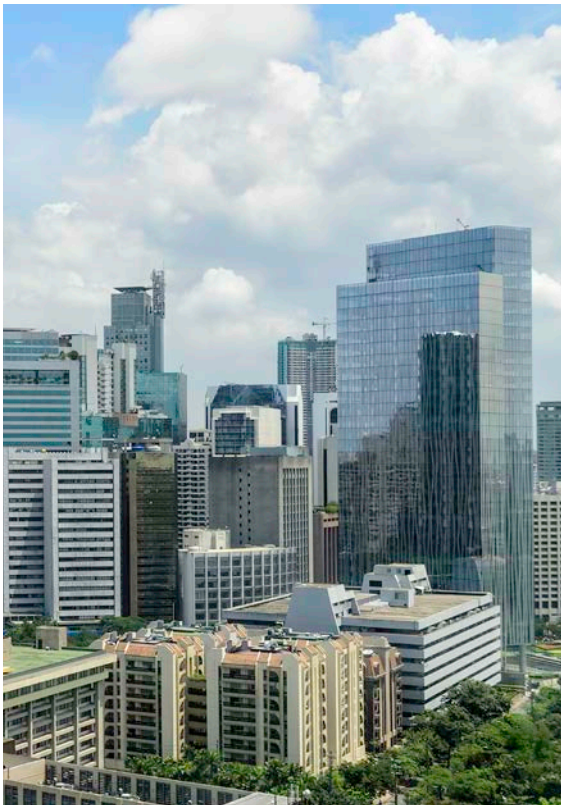
IV. Real Property Tax

THE PROPER PARTY TO APPEAL THE LOCAL ASSESSOR'S ACTION IS THE PERSON ADVERSELY AFFECTED BY THE RULING OR THE PARTY REQUIRED TO PAY THE TAX. The Local Government Code limits the right to appeal the local assessor's action to the owner or the person having legal interest in the property. An appeal by way of petition for review from a decision or ruling of Central Board of Assessment Appeals in the exercise of its appellate jurisdiction must be filed by the "party adversely affected." Legal interest should be one that is actual and material, direct and immediate, not simply contingent or expectant. The National Power Corporation ("NPC") has no legal standing to protest the assessment considering it did not initially pay the tax assessment under protest at the Local Board of Assessment Appeals ("LBAA") and notices of assessment were not addressed to it. Thus, NPC is a stranger to the real property tax assessments, and not a party adversely affected by the CBAA decision and resolution. *National Power Corporation v. Luzon Hydro Corporation et al., CTA EB No. 1020 (CBAA Case Nos. L-57 &L-59, May 22, 2018).*

ACTUAL USE OF MACHINERIES DETERMINES EXEMPTION FROM REAL PROPERTY TAX. To be exempted from real property tax under the LGC, there must be actual, direct, and exclusive use of machineries. It is the use, and not the ownership, that is of decisive import. In defining "actual use", the actor identified by the LGC is simply and solely "the person in possession" of the property. *Ibid.*

V. Local Business Tax

NON-PRESENTATION OF BOI CERTIFICATE OF REGISTRATION UPON ASSESSMENT OF LOCAL BUSINESS TAX DOES NOT NEGATE A BOI-REGISTERED ENTERPRISE'S ENTITLEMENT TO A REFUND. Section 133(g) of the LGC prohibits provinces, cities, municipalities and barangays from imposing tax on business enterprises certified by the Board of Investments ("BOI") as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively, from date of registration. Corollary thereto, Section 195 of the LGC gives taxpayers the right to claim a refund of erroneously or illegally collected local business tax ("LBT"). The right to file a claim for refund necessarily includes the right to submit documents in support thereof. Thus, while the City Government may be justified in assessing and collecting the LBT from the Company at the time of its application for retirement of business for failure to present documents to prove its exemption from LBT, it is erroneous for the City Government on the Company's non-entitlement to the claim for refund merely on the ground that the BOI Certificate of Registration was not submitted at the time of the application for retirement of business or payment of the assessed LBT, notwithstanding actual submission of the said Certificate. *The City Government of Makati v. South Luzon Tollway Corporation CTA AC No. 187 dated May 09, 2018.*



CITY MAY IMPOSE BUSINESS TAXES ON BANKS AND OTHER FINANCIAL INSTITUTIONS, SUBJECT TO LIMITATIONS UNDER THE LOCAL GOVERNMENT CODE. The city's taxing power extends to the imposition of income tax on the gross receipts derived by banks and other financial institutions on its interest and dividends. The taxing power does not extend to the levy of taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units. Respondent City of Davao may impose tax on banks and financial institutions on their gross receipts derived from interest and dividends at the rate of 0.55%. In this case, there is no showing that petitioner ASC Investors, Inc. is a nonbank financial intermediary. There is no indication that petitioner is authorized by the BSP to perform quasi-banking activities. Further, there is nothing on record that shows that petitioner is actually engaged in the functions of a financial intermediary as cited in the General Banking Act, RR No. 09-2004, and the SSP's Manual of Regulations for Non-Bank Financial Institutions. Lastly, it was

never established that the enumerated functions were performed by petitioner "on a regular and recurring, not on an isolated, basis". Moreover, as held in the *COCOFED case,* petitioner is one of the Coconut Industry Investment Fund (CIIF) companies. Thus, dividend and interest income earned by petitioner may not be subjected to local business tax. *ASC Investors, Inc. v. City of Davao and Hon. Rodrigo S. Riola, CTA EB No. 1568 dated May 17, 2018; City of Davao v. First Meridian Development, Inc. CTA EB No. 1590 (CTA AC No. 132) dated May 10, 2018. DISSENTING OPINION (J. Castañeda, Jr.)* Whether petitioner is a non-bank financial intermediary cannot be based on a finding that it is not authorized by the BSP to act as such. It is clear in this case that petitioner's income come only from dividends and interest income from ASCI's money market placements, which it could not have earned if it does not act as a non-bank financial intermediary albeit, without authority from the BSP.

VI. Rules of Procedure

BEFORE AN APPEAL MAY BE FILED WITH THE COURT EN BANC, THE APPEAL MUST BE PRECEDED BY THE FILING OF A TIMELY MOTION FOR RECONSIDERATION OR NEW TRIAL WITH THE DIVISION THAT RENDERED THE QUESTIONED AMENDED DECISION. Pursuant to the *Asiatrust case,* the failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of a petition before the CTA En Banc. Here, petitioner received the Amended Decision of this Court's Division, but failed to file a motion for reconsideration and instead, appealed to the *Court En Banc* by filing a Petition for Review. Evidently, petitioner's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of this case, as the Amended Decision has attained finality. Petitioner may no longer question the merits of the case before CTA *En Banc*. Perfection of an appeal in the manner and within the period laid down by law is jurisdictional. The failure to perfect an appeal precludes the appellate court from acquiring jurisdiction over the case. *Greenhills Properties, Inc. v. Commissioner of Internal Revenue, CTA EB No. 1604 dated May 17, 2018.* CONCURRING AND DISSENTING OPINION *(J. Del Rosario)*: The *Asiatrust case* should not be construed in a way where the rule against the filing of a second motion for reconsideration in appropriate instances is totally nullified. The fact that an amended decision is eventually issued does not necessarily alter its nature as a resolution of a motion for reconsideration. If the amended decision results from a re-evaluation of the parties' respective positions which the Court originally rejected but which it eventually considered as meritorious, a second motion for reconsideration by the party whose pleaded relief was granted in whole or in part in the amended decision is unwarranted.

WHEN THE RESPONDENT WAS ABLE TO ESTABLISH PRIMA FACIE ITS RIGHT TO THE REFUND BY TESTIMONIAL AND OBJECT EVIDENCE, THE PETITIONER SHOULD HAVE PRESENTED REBUTTAL EVIDENCE TO SHIFT THE BURDEN OF EVIDENCE BACK TO THE RESPONDENT. It is axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer. An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements. In this case, petitioner was able to prove its entitlement to the capital gains tax and documentary stamp tax it erroneously paid on December 20, 2012. The respondent did not however present any rebuttal evidence to shift the burden of evidence back to petitioner after the latter established its entitlement to a claim of refund. There is no cogent reason to reverse or modify the assailed Decision promulgated on December 8, 2017. *Sartorious Aketiengesellschaft v. Commissioner of Internal Revenue, CTA Case No. 8951, dated May 2, 2018.*

CARPO LAW & ASSOCIATES

THE CTA HAS JURISDICTION OVER PETITIONS FOR CERTIORARI ASSIALING INTERLOCUTORY ORDER OF REGIONAL TRIAL COURT ("RTC") IN LOCAL TAX CASES. While Republic Act No. 1125, as amended, clearly states that the CTA has exclusive appellate jurisdiction over decisions, orders or resolutions of the RTC in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction, no categorical statement therein provides that the CTA has jurisdiction over petitions of certiorari assailing interlocutory orders issued by the RTC in local tax cases filed before it. The foregoing notwithstanding, with respect to the CTA, the Constitution provides that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that the judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. Thus, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack of excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. For any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of certiorari. As consistently ruled by the same court, simply put, if a case may be appealed to a particular court or judicial tribunal or body, then the said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of certiorari, in aid of its appellate jurisdiction. *The Local Board of Assessment Appeals of the Province of Bulacan v. Manila Water Co., Inc. and Maynilad Water Services, Inc., CTA EB No. 1505 (CBAA Case Nos. L-82 & L-83; LBAA Case Nos. 2005-02) dated May 10, 2018.*

THE 2-YEAR PRESCRIPTIVE PERIOD TO FILE ADMINISTRATIVE AND JUDICIAL CLAIM FOR REFUND APPLIES TO REFUND OF EXCISE TAXES PAID IN ADVANCE FOR LOCALLY MANUFACTURED PRODUCTS WHICH WERE SUBSEQUENTLY EXPORTED. The Company's excise taxes must be paid through advance deposit as specifically provided under Revenue Regulations ("RR") 03-08, which requires all manufacturers of articles subject to excise tax to pay the excise tax on every removal thereof from the place of production even if intended for exportation or sale/ delivery to international carriers or to tax exempt entities/agencies. The advance payment may be refunded by filing a claim for excise tax credit/refund or product replenishment. The advance excise tax payment is like a withholding tax which is considered a deposit or advance or portion of the annual income tax due, to be adjusted at the proper time when the complete tax liability is determined. By analogy, while the excise taxes paid in advance by the Company were initially collected legally, the advance payment is erroneously collected when the goods manufactured subject to tax are exported The Company is entitled to claim a refund or credit of the excise taxes paid in advance, provided there is strict compliance with the conditions for the claim for refund. At this point, CTA applied Sections 204 and 229 of the 1997 Tax Code, as amended, with regard the period within which to claim a refund of internal revenue taxes which were erroneously, illegally and wrongfully collected i.e., two (2) years after the payment of the said tax. *Philip Morris Philippines Manufacturing, Inc. v. Commission of Internal Revenue CTA Case No. 8791 dated May 09, 2018.*

THE DEPARTMENT OF JUSTICE HAS JURISDICTION OVER DISPUTES BETWEEN GOVERNMENT AGENCIES INVOLVING CLAIM OF VAT REFUND. All controversies involving government offices, bureaus, agencies and instrumentalities, including government owned and controlled corporation fall within the initial jurisdiction of the Department of Justice. The interpretation of PD No. 242 in the PSALM case should be applied in determining the proper forum with jurisdiction to resolve disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government. Applying this jurisprudential disquisition to the case at hand, petitioner Duty Free Philippines Corporation is an

agency attached to Department of Tourism which is a national government agency while respondent BIR is a bureau under the supervision of DOF, which is also a national government agency. The opposing parties are both agencies of the government. Hence, the jurisdiction belongs to the Secretary of Justice and the disputes should be resolved pursuant to PD 242. *Duty Free Philippines Corporation v. BIR, CTA Case No. 9355 dated May 8, 2018.*

THE COURT OF TAX APPEALS CAN GO BEYOND THE JUSTICIABLE ISSUE IN THE PETITION FOR REVIEW FILED BEFORE IT. Only Supreme Court decisions constitute binding precedents, being part of the Philippine legal system. The interpretation or ruling made by a lower court such as the regional trial court, at the very least can only serve as reference in CTA's final adjudication of the merits of a claim for refund. Working on the principle that claims for tax refunds or credit like a claim for tax exemption is construed strictly against the taxpayer, CTA is under strict obligation and well within its jurisdiction, to study all facets of the claim both legal and factual to determine whether or not the same should be granted. It is also well established that the [CTA] extends to the review of the rulings of the Commissioner of Internal Revenue. *Licel Calderon et. al. v. Commissioner of Internal Revenue, CTA Case No. 9090, May 23, 2018.*

THE SUPREME COURT HAS PLACES A PREMIUM ON TAXPAYER'S RELIANCE ON AN ERRONEOUS INTERPRETATION OF THE LAW, PARTICULARLY ON A DIFFICULT QUESTION OF LAW, AND APPLIES THE PROSPECTIVITY RULE IN ORDER TO AVOID INJUSTICE. In this case, the petitioners relied heavily on the various pronouncements made by revenue officials with regard to the taxability of the income tax payments of ADB personnel. The CTA considered the taxpayer's reliance on the position taken by the tax authorities on the issue of whether or not the income of Filipino ADB personnel is subject to income tax. Hence, they should not be faulted for not paying the taxes on their compensation income prior to the issuance of RMC 31-2013 because the provisions in question present a "difficult question of law." *Ibid.*

A MOTION TO WITHDRAW PETITION FOR REVIEW MAY BE GRANTED BY THE COURT OF TAX APPEALS AND THE CASE WOULD BE CONSIDERED CLOSED AND TERMINATED. The Bureau of Customs (BOC), is the government agency deputized by the Bureau of Internal Revenue (BIR) to issue Tax Credit Certificate/s (TCC) involving claims for refund of taxes on importations. The BOC issued a TCC in favor of the petitioner and the petitioner is satisfied with the partial grant of its refund claim by the BOC. Hence, petitioner prayed that the Court grants the withdrawal of the Petition. The CTA granted the Motion. *Petron Corporation v. Commissioner of Internal Revenue, CTA Case No. 9528, May 23, 2018.*

VI. Philippine Economic Zone Authority

A PEZA-REGISTERED ENTERPRISE IS ENTITLED TO THE CLAIM FOR REFUND ON CUSTOMS DUTIES. Among the incentives granted to a PEZA-registered ECOZONE Export Enterprise ("EEE") under RA 7916, as amended, is exemption from duties and internal revenue taxes on "merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description brought into the ECOZONE restricted area by an EEE to be processed, whether directly or indirectly related in the PEZA-registered activity." Such tax-and-duty-free incentive to an otherwise local purchase is based on the principle that an ECOZONE is treated as a foreign territory. Any purchases made by a PEZA-registered entity from a local supplier based outside the ECOZONE are considered importation which should not be subject to any customs duties or internal revenue taxes. Accordingly, considering that the case involves customs duties passed-on by a PEZA-registered entity's supplier for purchases of petroleum products to be used in the manufacture of its glass products for export, the PEZA-registered entity to which the economic burden of the tax is shifted is entitled to claim for the refund. *AGC Flat Glass Philippines, Inc. v. Bureau of Customs CTA Case No. 8752 dated May 09, 2018.*