MONTHLY TAX UPDATES

June 2018

CARPO LAW & ASSOCIATES

BIR ISSUANCES

A. REVENUE MEMORANDUM CIRCULAR ("RMC")

REDEMPTION OF PROPERTY SOLD IN PUBLIC AUCTION REQUIRES PAYMENT OF ALL TAXES, INTERESTS, AND PENALTIES. A delinquent taxpayer redeeming property sold in public auction must pay: 1) public taxes; 2) penalties; 3) interest from the date of delinquency to the date of sale; and 4) interest on purchase price at the rate of fifteen percent (15%) per annum from the date of purchase to the date of redemption to the Revenue District Officer ("RDO") for the redemption to be valid. Failure to pay all public taxes, including interests and penalties, invalidates the redemption. *RMC No. 046-18, issued on June 05, 2018.*

REVENUE MEMORANDUM CIRCULAR NO. 062-18, DATED JUNE 28, 2018 CLARIFIES THE REQUIREMENTS ON THE WITHDRAWAL FROM THE BANK DEPOSIT ACCOUNT/S OF A DECEASED DEPOSITOR/JOINT DEPOSITOR WITHOUT THE REQUIRED E-CAR.

- An executor, administrator, or any of the legal heir/s of a decedent who, prior to death, maintained bank deposit/s ("EAH") may be allowed to withdraw a bank deposit account/s within one (1) year from the date of death of the depositor/joint depositor subject to payment of six percent (6%) final withholding tax. For joint accounts, the final withholding tax shall be based on the share of the decedent in the joint bank deposit/s.

- Prior to such withdrawal, the bank shall require the EAH to present a copy of the TIN of the estate of the decedent and BIR Form No. 1904 of the estate, duly stamped received by the concerned Revenue District Office ("RDO") of the BIR.

- The bank shall issue the corresponding BIR Form No. 2306 certifying the withholding of six percent (6%) final tax, file the prescribed quarterly return and remit the tax.

- The withdrawal slip/s shall contain: (a) A sworn statement by any one of the surviving joint depositor/s to the effect that all the other joint depositor/s is/are still living at the time of withdrawal; and (b) A statement that the withdrawal is subject to six percent (6%) final withholding tax.

- Bank deposit/s declared for estate tax purposes and indicated in the e-CAR issued by the concerned RDO to the EAH, presented to the bank for withdrawal of the said bank deposit/s, shall not be subject to the six percent (6%) final withholding tax.

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REPUBLIC ACT ("RA") NO. 11032 OR EASE OF DOING BUSINESS AND EFFICIENT GOVERNMENT SERVICE DELIVERY ACT OF 2018 IMPLEMENTED INTERNALLY IN RMO 056-18, ISSUED ON JUNE 25, 2018. THE SALIENT POINTS ARE:

- Coverage. — All government offices and agencies including local government units ("LGUs"), government-owned or controlled corporations, and other government instrumentalities, whether located in the Philippines or abroad, that provide services

- Zero-Contact Policy. — Except during the preliminary assessment of the request and evaluation of sufficiency of submitted requirements, no government officer or employee shall have any contact, in any manner, unless strictly necessary with any applicant or requesting party concerning an application or request. Once the Department of Information and Communications Technology ("DICT") has completed a web-based software enabled business registration system that is acceptable to the public, all transactions shall be coursed through such system. All government agencies, including LGUs, shall adopt a zero-contact policy.

- Prescribed Time Limits for Action of Offices. —

    - Three (3) working days in the case of simple transactions or seven (7) working days in the case of complex transactions from the date the request and/or complete application or request was received;

    - Twenty (20) working days or as determined by the government agency or instrumentality concerned, whichever is shorter - for applications or requests involving activities which pose danger to public health, public safety, public morals, public policy, and highly technical application; and

    - Forty-five (45) working days to act on the application or request, which can be extended for another twenty (20) working days – if the application or request for license, clearance, permit, certification or authorization shall require the approval of the local government or provincial government as the case may be.

- Government's failure to approve or disapprove an application within the prescribed time will render the application deemed approved provided that all required documents have been submitted and all required fees have been paid.

- Penalties apply for the following acts: (a) Refusal to accept application or request with complete requirements being submitted by an applicant or requesting party without due cause; (b) Imposition of additional requirements other than those listed in the Citizen's Charter; (c) Imposition of additional costs not reflected in the Citizen's Charter; (d) Failure to give the applicant or requesting

party a written notice on the disapproval of an application or request; (e) Failure to render government services within the prescribed processing time on any application or request without due cause; (f) Failure to attend to applicants or requesting parties who are within the premises of the office or agency concerned prior to the end of official working hours and during lunch break; (g) Failure or refusal to issue official receipts; and (h) Fixing and/or collusion with fixers in consideration of economic and/or other gain or advantage.

- Penalties and Liabilities. —
    - First Offense: Administrative liability with six (6) months suspension: Provided, however, that in the case of fixing and/or collusion with fixers the penalty and liability under second offense shall apply.
    - Second Offense: Administrative liability and criminal liability of dismissal from the service, perpetual disqualification from holding public office and forfeiture of retirement benefits and imprisonment of one (1) to six (6) years with a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than Two million pesos (P2,000,000.00). Criminal liability shall also be incurred through the commission of bribery, extortion, or when the violation was done deliberately and maliciously to solicit favor in cash or in kind. In such cases, the pertinent provisions of the Revised Penal Code and other special laws shall apply.

RMC 050-18, ISSUED JUNE 8, 2018 CLARIFIES CERTAIN PROVISIONS OF REVENUE REGULATIONS (RR) NOS. 8-2018 AND 11-2018 IMPLEMENTING THE TRAIN LAW.

- Personal and additional exemptions have been removed. Said exemptions of individual taxpayers were replaced with the first P250,000.00 of taxable income which is now subject to zero percent (0%) rate of income tax, practically exempting such income from income tax.

- There is no change in the mandatory deductions from gross compensation of employees. The allowed deductions are the employee's share in the SSS, GSIS, PhilHealth, and Pag-IBIG contributions (limited to compulsory contributions) as well as the union dues. They are deductible to arrive at the taxable compensation income.

- In general, incentives given to employees are considered compensation subject to income tax, unless specifically exempted under a special law or incentives are in the nature of the previously enumerated *"de minimis"* benefits.

- Under the TRAIN law, there is no change in the tax treatment for "de minimis" benefits. They are still considered as compensation not subject to income tax withholding tax, or fringe benefits tax.
    - Benefits given in excess of the maximum amount allowed as "de minimis" benefits are included as part of "other benefits" subject to a *P90,000.00* ceiling. Any amount in excess of the *P90,000* shall be subject to income tax, and consequently, to the withholding tax on compensation.

- Premiums on Health Card paid by the employer for all employees, whether rank and file or managerial/ supervisory, under a group insurance shall be included as part of other benefits of these employees which is subject to the *P90,000.00* threshold. However, individual premiums (not part of group insurance) paid for selected employees holding managerial or supervisory functions are considered "fringe benefits" subject to fringe benefits tax.

- Additional income/benefits, as a result of the benefits provided under the Attrition Law wherein employees who are performing well will receive rewards, whether in the form of cash or reward in kind, shall form part of the compensation income subject to withholding tax on compensation. The fair market value of the reward in kind shall be included in the taxable compensation.

- The commission given to an employee in addition to the regular compensation (income payor/withholding agent) received from the same employer is considered supplementary income. It shall be added to the regular compensation subject to income tax and withholding tax using the withholding tax table on compensation.

- On Minimum Wage Earner (MWE):

  - MWEs are exempt from income tax on their basic statutory minimum wage, overtime (OT) pay, holiday pay, night shift differential (NDP) pay, and hazard pay. Income other than those mentioned is subject to income tax.

  - If the MWE receives service charge which is not included in the enumerated exemptions, the MWE will still be exempt from income tax on his statutory minimum wage (SMW) including the other income earned specifically enumerated as exempt under the law. However, income other than those in the enumeration shall already be taxable. The taxable income shall be computed by deducting the non-taxable/ exempt portion and other deductions from the gross compensation income. Then, the resulting taxable income shall be multiplied by the applicable income tax rate using the prescribed tax table to get the amount of income tax due.

  - If basic pay exceeds the SMW but does not exceed *P250,000.00*, the employee is not considered an MWE since his basic pay is more than the SMW. Thus, the amount of basic pay, OT pay, holiday pay, NDP pay, and hazard pay — is subject to income tax, and withholding tax on compensation.

  - Compensation exempt from tax shall be included as part of those non-taxable compensation and there is no need to segregate the same from the schedule of MWEs since their compensation is also non-taxable.

- On 8% Income Tax rate:

  - The following individuals are not qualified to avail of the 8% Income Tax rate:
    - Purely compensation income earners;
    - VAT-registered taxpayers, regardless of the amount of gross sales/receipts and other non-operating income;
    - Non-VAT taxpayers whose gross sales/receipts and other non-operating income exceeded the *P3,000,000.00* VAT threshold;
    - Taxpayers who are subject to Other Percentage Taxes, as amended, except those who are subject to 3% percentage tax;
    - Partners of a General Professional Partnership (GPP) since their distributive share from the GPP is already net of costs and expenses; and
    - Individuals enjoying income tax exemption such as those registered under the Barangay Micro Business Enterprises (BMBEs), etc., since taxpayers are not allowed to avail of double or multiple tax exemptions under different laws, unless specifically provided by law.

  - Taxpayers qualified for the 8% income tax rate may apply the rate by signifying their intention to do so through filing of the necessary forms. The option to avail of the 8% income tax rate must be done annually, on or before May 15. The election is irrevocable and no amendment is allowed for the said taxable year unless the gross sales/receipts and other non-operating income exceeds the VAT threshold of P3,000,000.00, in which case taxpayer shall automatically be subject to the graduated income tax rate.

  - An individual taxpayer who is qualified to avail of the 8% income tax rate but failed to do so is subject to graduated income tax rates.

  - In case of a purely self-employed/professional individual taxpayer who opts for the 8% income tax, they are no longer required to file and pay 3% percentage tax. The 8% income tax rate is in lieu of the graduated income tax rates and the percentage tax.

  - The 8% income tax rate is based on the gross sales/receipts and other non-operating income, net of returns and cash discounts. However, if the individual earns income purely from business or practice of profession, he/she is entitled to a deduction of *P250,000.00* before computing for the 8% income tax.

  - Only individuals earning income purely from self-employment and practice of profession are entitled to the amount allowed as deduction of *P250,000.00* for the purpose of computing the 8% income tax. Thus, mixed-income earners (earning both from compensation and business/practice of profession) shall no longer be entitled to the *P250,000.00* reduction on their income from business/practice of profession since said amount has already been applied in computing the income tax on compensation.

  - There is no need to divide the amount of *P250,000.00* allowed as reduction into four quarters. The amount is considered in the design of the revised quarterly income tax returns (Form 1701Q) which reflects a cumulative quarterly computation.

- Compensation income shall be subject to the graduated income tax rates. The income from business or practice of a profession shall be subject to the graduated income tax rates or *if qualified*, at taxpayer's option, be subject to the 8% income tax rate based on gross sales/receipts.

- In general, all deposits received are included in the definition of Gross Receipts. However, returnable deposits or deposits held in trust and recorded as Liability are excluded.

- An individual under a contract of service or job order arrangement is considered self-employed.

- The copy of the Certificate of Registration, together with a sworn declaration of gross receipts/sales is required for the withholding agent/payor to determine if the payee is actually registered with the BIR, and if payee is a non-VAT taxpayer who may be qualified to avail of the option to be taxed at 8% flat income tax rate if gross sales/receipts and other non-operating income did not exceed P3M for the taxable year.

- Individuals under a contract of service or a job order arrangement are not exempted from income tax under the TRAIN law.

- If a director receiving the director's fees is also an employee of the same entity, the fees shall form part of the compensation subject to withholding tax on compensation. However, if the director is *not* an employee of the income payor then the subject taxpayer is considered a professional subject to the creditable expanded withholding tax prescribed for professionals, and subject to the applicable business tax. Moreover, in the case of a government employee who seats as board member of other government-owned or controlled corporation and is receiving director's fees, honoraria and/or other benefits shall be subject to creditable withholding tax at the higher rate for professionals at 10%. The said income shall be reported by the payee as other income to be included as part of the compensation income in arriving at the total taxable income. The corresponding withholding tax shall form part of the tax credits against the income tax due.

- A GPP is not subject to income tax and thus, payment to a GPP is not subject to creditable expanded withholding tax. However, a GPP is subject to the applicable business tax. The partners of the GPP is subject to income tax and applicable withholding tax.

- Individual contractors are still subject to the creditable expanded withholding tax at the same withholding tax rate of 2%.

- The withholding tax rate for doctors/consultants submitting their sworn declaration must be 5%, regardless of whether they are availing of the 8% income tax or the graduated income tax rates. If the income payor/withholding agent, however, is a government entity, it should also withhold business tax if the payee selected to be taxed using the graduated income tax rates.

- Failure to submit a sworn declaration to the payor will subject the payment to 10% income tax. The same income payment may also subject to either 3% percentage tax or VAT. Payments from government entities are subject to 5% withholding VAT.

- Individuals with consecutive employers may not avail of the substituted filing of Annual Income Tax Return (AITR). These employees are required to file an AITR.
- Financial Statements are not required when filing an AITR for those who opt and qualify for the 8% income tax rate.
- Taxpayers who opt for OSD are exempt from FS submission.
- Taxpayers opting to use graduated tax rates on professional income shall file a quarterly return of the amount of gross sales, receipts or earnings and pay 3% percentage tax due thereon within twenty-five (25) days after the end of each taxable quarter.

THE PROCESSING TIME OF ONE-TIME TRANSACTIONS FOR THE ISSUANCE OF ELECTRONIC CERTIFICATE AUTHORIZING REGISTRATION (E-CAR) ON SALE/ EXCHANGE/DONATION OF PROPERTIES, UNDER RMO 048-18 ISSUED 6 June 2018 IS AS FOLLOWS:

Transactions	**Processing Time from the Submission of Complete Documentary Requirements (working days)**
Individual Taxpayer/Corporation with 1 Deed of Sale/Exchange/Donation	
1 to 3 properties	3 days
4 to 10 properties	5 days
11 to 50 properties	10 days
More than 50 properties	20 days
Real Estate Developer — 1 Deed of Sale/Exchange	
1 to 10 properties	5 days
11 to 50 properties	10 days
More than 50 properties	20 days

B. REVENUE MEMORANDUM ORDER ("RMO")

RMO No. 26-18, TOP WITHHOLDING AGENTS ("TWA") MUST FILE AND WITHHOLD ONE PERCENT (1%) EWT FROM THEIR INCOME PAYMENTS ON GOODS AND TWO PERCENT (2%) ON SERVICES.

- TWA includes:
  1. Existing top taxpayers classified and duly notified by the Commissioner as any of the following unless previously de-classified as such or had already ceased business operations:

     a. Large taxpayer;
     b. Top twenty thousand (20,000) private corporations; or
     c. Top five thousand (5,000) individual taxpayers.

  2. Taxpayers newly identified and included as Medium Taxpayers, and those under the Taxpayer Account Management Program (TAMP). *RMO No. 26, 2018, issued on June 05, 2018.*

RMO 30-18, REFUND CLAIMS AND E-LA FOR ERRONEOUS PAYMENT OF CGT OR CWT SHALL NOW BE PROCESSED UNDER THE RDO HAVING JURISDICTION OVER THE PLACE WHERE THE PROPERTY IS LOCATED REGARDLESS OF WHETHER THE CLAIMANT IS THE REGISTERED TAXPAYER. The RMO addresses the processing of claims for refund of erroneous payment of CGT or CWT wherein the taxpayer/claimant's registration and the location of the property fall under the jurisdiction of different Revenue District Offices (RDOs). *RMO 030-18, dated June 27, 2018.*

C. BIR RULINGS

AN UNLICENSED JOINT VENTURE UNDERTAKING CONSTRUCTION IS CONSIDERED A TAXABLE CORPORATION. To be a tax-exempt Joint Venture ("JV") undertaking a construction project, the JV itself and the co-venturers must be duly licensed by the Philippine Contractor's Accreditation Board of the Department of Trade and Industry. Otherwise, the JV is taxable as a corporation. Moreover, the transfer of the developed lots from JV to the co-venturers shall be subject to ordinary income tax on the part of the latter based on the current fair market value of the developed lots it received less the costs it actually, directly, and exclusively incurred for the project. Lastly, the subsequent sale, by co-venturers directly or indirectly (by trust or agency), of the developed lots received shall be subject to ordinary income tax, creditable withholding tax, value-added tax, and documentary stamp tax. *BIR Ruling No. 972-18, dated June 06, 2018.*

COURT OF TAX APPEALS DECISIONS

I. Assessment

TAXPAYER MAY FILE ITS PROTEST TO A FAN BY REGISTERED MAIL. If pleadings or other documents are filed via registered mail, then the date of mailing shall be considered as the date of filing. It does not matter when the court actually receives the mailed pleading. Thus, in this case, as the administrative protest was filed within the reglementary period provided by law, it is inconsequential that the same was actually received by BIR. In fact, the BIR guidelines categorically allow filing of administrative protest by registered mail. *Lorenzo Shipping Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8694, dated June 28, 2018.*

AN ASSESSMENT MUST CONTAIN NOT ONLY A COMPUTATION OF TAX LIABILITIES BUT ALSO A DEMAND FOR PAYMENT WITHIN THE PRESCRIBED PERIOD. The Supreme Court canceled the Final Assessment Notice as well as the Audit Result/ Assessment Notice for failure to contain a definite period for payment of the tax assessed. Thus, BIR's FAN cannot be deemed a valid formal assessment notice absent a specific date or period within which the alleged tax liabilities must be settled or paid. The date certain for the payment of tax liabilities is indispensable in an assessment as it dictates the time when the penalties, surcharges, and interest begin to accrue against. *Ibid.*

PRESUMPTION OF FALSITY ARISES ONLY WHEN THERE IS PROOF THAT A TAXPAYER HAS SUBSTANTIALLY UNDERDECLARED ITS SALES, RECEIPT OR INCOME. A prima facie evidence of a false return exists if there is a substantial under-declaration of receipts or income in an amount exceeding 30% of what is declared in the returns. Even the fact that the BIR imposed surcharge against the Company cannot give rise to the presumption of falsity of returns. Hence, in the absence of proof of substantially underdeclared sales, receipt or income, the presumption of falsity of returns cannot be applied. *Commissioner of Internal Revenue vs. Ludo & Luym Corporation, CTA EB No. 1559 (CTA Case No. 8613), dated June 08, 2018.*

ISSUANCE OF A NEW LETTER OF AUTHORIZATION (LOA) IS MANDATORY IN CASES OF REASSIGNMENT AND IN THE ABSENCE OF SUCH AUTHORITY, THE ASSESSMENT OR EXAMINATION IS DECLARED NULL. Before an assessment can be conducted, the Revenue Officer conducting it must first be authorized to do so. Where RO conducting the assessment acted without authority when he conducted the audit due to a faulty LOA, The Final Decision on Disputed Assessment and the Final Assessment Notice should be canceled and withdrawn by the court. *Nikken Philippines, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 1569, dated June 07, 2018.*

WAIVER OF THE STATUTE OF LIMITATION MUST BE STRICTLY OBSERVED; EXCEPTIONS. Internal revenue taxes shall be assessed within three (3) years from the last day prescribed by law for the filing of the return or the day the return was filed, whichever comes later, unless the BIR and the taxpayer timely agree in writing to extend the period to assess thru a valid Waiver of the Statute of Limitation. The guidelines for the execution of a Waiver must be strictly complied with as it is a derogation of the taxpayer's right against unreasonable investigation. However, while faithful compliance must be observed in order for a Waiver to be valid and binding, the equitable principles of in pari delicto, unclean hands, and estoppel should be applied such that the validity of defective Waivers should be upheld in keeping with the lifeblood theory of taxation. Where taxpayer's copy of the Waiver does not bear the signature of the BIR and the date of such acceptance, but a Waiver attached to the BIR records indicates that the same was signed by the BIR and the latter's date of acceptance; and where taxpayer's receipt of the duly accepted

Waiver was not indicated on the original copy of the Waiver attached to the docket of the case, the strict observance of the law should be observed. Since the Waiver in this case was defective due to BIR's actions, it follows that the period to assess granted to respondent was not extended *Davao City Food Industries, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9013, dated June 14, 2018.*

THE TEN-YEAR PRESCRIPTIVE PERIOD TO ASSESS THAT REQUIRES FALSE RETURN BE ATTENDANT WITH INTENT TO DECEIVE OR WITH CULPABLE NEGLIGENCE. A false or fraudulent return as an exception to the period of limitation must be actual and not constructive. It must be intentional, consisting of deception willfully and deliberately done or resorted to. A mistake, not culpable in respect of its value would not constitute a false return. *Commissioner of Internal Revenue vs. Hoya Glass Disk Philippines, Inc., C.T.A. EB Case Nos. 1473 & 1474, dated June 04, 2018.*

A NEW LETTER OF AUTHORITY MUST BE ISSUED IN CASE OF RE-ASSIGNMENT OR TRANSFER OF CASES TO ANOTHER REVENUE OFFICER (RO). Pursuant to a Letter of Authority issued by the Revenue Regional Director, RO assigned to do assessment may examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax or to recommend the assessment of any deficiency tax due. Any reassignment/ transfer of cases to another RO and revalidation of letter of authority which have already expired, requires the issuance of a new letter of authority, with the corresponding notation thereto. In the absence of a new letter of authority, the assessment is invalid for violating the taxpayer's right to due process. Mere memorandum of assignment which does not conform to the mandate of the law. *Nikken Philippines, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 1569 (CTA AC No. 8714), dated June 07, 2018.*

THE PASSING OF THE TRAIN LAW DOES NOT CURE SECTION 249 OF THE 1997 NIRC, WHICH PROVIDES FOR THE DEFICIENCY AND DELINQUENCY INTEREST, SINCE THIS HAS NEVER BEEN DECLARED AS INVALID BY THE SUPREME COURT. The TRAIN Law, which took effect on January 1, 2018, should be applied prospectively. Section 249 of the 1997 NIRC, which provides for the deficiency and delinquency interests was never declared invalid by the Supreme Court, thus, there was nothing to cure by the passing of the TRAIN Law. Prior to the enactment of the TRAIN Law, Section 249 of the 1997 NIRC provided for the simultaneous imposition of deficiency interest and delinquency interest reckoned from the date prescribed for their payment and until the full payment thereof. Thus, that being the prevailing law at the time the assessment was made, it is only proper that petitioner should be liable for deficiency and delinquency interest at 20% per annum from the date prescribed for its payment until December 31, 2017, that is, from January 25, 2008 until December 31, 2017, for deficiency interest; and from January 5, 2012 until December 31,2017 for delinquency interest. *Batangas Electric Cooperative 1 (BATALEC 1) vs. Commissioner of Internal Revenue, CTA Case No. 8423, dated June 01, 2018.*

II. Value-Added Tax

SERVICES RENDERED TO CREW MEMBERS OF NON-RESIDENT FOREIGN CORPORATIONS ARE NOT SUBJECT TO VAT. Businesses in the Philippines which render services to corporations and individuals outside the Philippines qualify for the VAT zero-rating. Services rendered pursuant to a Service Agreement with a non-residential foreign company also qualify for the VAT zero-rating. *Commissioner of Internal Revenue vs. Doehle Shipmanagement Phils. Corp., CTA EB No. 1582 dated June 01, 2018.*

REGISTERED VAT INVOICES OR OFFICIAL RECEIPTS CONTAINING ALL THE NECESSARY INFORMATION, INCLUDING IMPRINTED WORDS "ZERO-RATED" MUST BE SHOWN TO BE ENTITLED TO A REFUND OF INPUT VAT ATTRIBUTABLE TO ZERO-RATED SALES. Any sale of goods and services made by a VAT-registered supplier in the customs territory to any registered enterprise operating in the special economic zones is qualified and legally entitled to 0% VAT, regardless of its class or type of PEZA registration. All VAT-registered persons shall issue duly registered receipts or sales or commercial invoices, which must show: the name, TIN and address of seller; date of transaction; quantity, unit cost and description of merchandise or nature of service; the name, TIN, business style, if any and address of the VAT-registered purchaser, customer or client; the word "zero -rated" imprinted on the invoice covering zero-rated sales; and the invoice value or consideration. *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 7863, dated June 19, 2018.*

BOARD OF INVESTMENT ("BOI") CERTIFICATION ITSELF IS NOT SUFFICIENT TO PROVE ZERO-RATED SALES. For direct export sales to qualify as VAT zero-rated sale, sale and actual shipment of goods from the Philippines to a foreign country are required. To claim VAT zero-rated direct export sales, a taxpayer must present at least 3 types of documents: (1) sales invoice as proof of sale of goods; (2) export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (3) bank credit advice, certificate of bank remittance or any other document proving payment of goods in acceptable foreign currency or its equivalent in goods and services. Herein, the Company presented a BOI Certification certifying that 100% of the Company's sales volume/ value was by way of exports. Such certification does not sufficiently meet the requirement of the law for failure to substantiate the fact of actual shipment. *Carmen Copper Corporation vs. Commissioner of Internal Revenue, CTA EB Case No. 1461 (CTA Case No. 8418), dated June 06, 2018.*

SERVICE AGREEMENTS WITH FOREIGN CLIENTS ARE NOT SUFFICIENT TO PROVE THAT SUCH FOREIGN CLIENTS ARE DOING BUSINESS OUTSIDE THE PHILIPPINES. Service agreements only indicate the names and addresses of petitioner's customers to whom it renders services to, but they do not establish that such customers are non-resident foreign corporations doing business outside the Philippines. *Chevron Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9021, dated June 29, 2018.*

INPUT VAT CARRIED FROM PREVIOUS YEAR CANNOT BE APPLIED AGAINST OUTPUT VAT WITHOUT SUBMISSION OF VAT INVOICES OR OFFICIAL RECEIPTS. Any input VAT shall be creditable against the output VAT only if the same is evidenced by a VAT invoice or official receipt. In claiming excess or unutilized input VAT from zero-rated transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the current taxable year. *Ibid.*

ENTITLEMENT TO A TAX REFUND IS FOR THE TAXPAYER TO PROVE AND NOT FOR THE GOVERNMENT TO DISPROVE; THE FACT THAT BIR FAILED TO PRESENT ANY EVIDENCE OR TO REFUTE THE EVIDENCE PRESENTED BY TAXPAYER DOES NOT IPSO FACTO ENTITLE THE TAXPAYER TO A TAX REFUND. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer. And while the BIR has the power to make an examination of the returns and to assess the correct amount of tax, his failure to exercise such powers does not create a presumption in favor of the correctness of the returns. The taxpayer must still present substantial evidence to prove his claim for refund. There is no automatic grant of a tax refund. *Ibid.*

III. Documentary Stamp Tax

CANCELED INSURANCE POLICIES ARE SUBJECT TO DOCUMENTARY STAMP TAX (DST) WHILE REINSTATED POLICIES ARE NOT SUBJECT TO DST ANEW. The DST must be paid upon the mere issuance of insurance policy without regard to non-payment of the corresponding premium, or whether the contracts which gave rise to them are recissible, void, voidable or unenforceable. Moreover, a reinstated policy does not renew the non-life insurance or take out a new policy and so, it is not subject anew to DST. Reinstatement is defined in insurance as a restoration of the insured's rights under a policy which has lapsed or been canceled. To reinstate, a policyholder or one who has allowed his policy to lapse does not mean new insurance or taking out a new policy, but does mean that the insured has been restored to all the benefits accruing to him under the policy contract, the original policy. *Oriental Assurance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9169, dated June 11, 2018.*

IV Local Business Tax

WHERE AN EXAMINATION OF ACTUAL BUSINESS OF TAXPAYER REVEALS THAT IT IS ENGAGED IN MANUFACTURING, LOCAL BUSINESS TAX MAY NOT BE IMPOSED AS A CONTRACTOR. A contractor is one who is not subject to professional tax and whose activity consists essentially of the sale of services for a fee. On the other hand, a manufacturer is one who, through a physical or chemical process, alters or combines a raw material for the purpose of sale or distribution to others. In both definitions, the performance of a service is essential. However, while a contractor is a more general term for any person who sells a

service for a fee, a manufacturer is more specific and pertains to a person who performs the service which consists of altering or combining a raw material to develop a new product for sale or distribution to others. However, a further determination of the actual business activity engaged in by the entity is necessary to determine whether the rendition of service for a fee is one that should properly classify the business as a contractor or a manufacturer. *Commissioner of Internal Revenue vs. Trans-Asia Power Generation Corporation, CTA EB NO. 1570, dated June 13, 2018.*

NON-BANK FINANCIAL INTERMEDIARY ("NBFI") IS SUBJECT TO LOCAL BUSINESS TAX; REQUISITES. LGUs may impose income tax on banks and other financial institutions, which include NBFI. Among the requirements to be considered NBFI are as follows: a) Authority by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities. Absent authority from BSP, the entity cannot be considered NBFI; b) principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity. The functions must be principal in nature (i.e. chief, main, primary, and dominant). Even if the amended articles of incorporation's primary purpose covers functions of NBFI, lack of proof that the stated functions were principally done will not justify tax imposition; and c) the functions must be regular and recurring, and not isolated. *First Meridian Development, Inc. vs. City of Davao, CTA EB No. 1607, dated June 20, 2018.*

NO INTEREST IN REFUND CASES. Well settled is the rule that in the absence of a statutory provision clearly or expressly directing or authorizing payment of interest on the amount to be refunded to the taxpayer, the Government cannot be required to pay interest. Likewise, it is the rule that interest may be awarded only when the collection of tax sought to be refunded was attended with arbitrariness. Considering that there is no law directing or authorizing the payment of interest on the refundable amount to petitioner, and since there is no showing that the collection of the subject local taxes was arbitrarily made, the court cannot award legal interest on the refunded tax. *Ibid.*

V. Rules of Procedure

COURTS MAY ALLOW EVIDENCE NOT FORMALLY OFFERED TO BE ADMITTED AND CONSIDERED PROVIDED THAT THE EVIDENCE HAS BEEN DULY IDENTIFIED BY TESTIMONY DULY RECORDED AND THEY HAVE BEEN INCORPORATED IN THE RECORDS OF THE CASE. This is an exception to the general rule that evidence not formally offered should not be admitted. Thus, even though the PEZA Certificate had not been formally offered, court had already found the PEZA Certification had been identified by the ICPA in his Judicial Affidavit and had been clarified to be a faithful reproduction of the original. Thus, the exception to the general rule was applied. *Colt Commercial, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9110, dated June 19, 2018.*

THE COMMISSIONER OF CUSTOMS' ACTION IN SETTING A PUBLIC AUCTION FOR A COMPANY'S RICE SHIPMENT CANNOT BE DEEMED THE DECISION APPEALABLE TO THE CTA. The CTA has exclusive appellate jurisdiction to review, by appeal, decisions of the Commissioner of Customs ("COC") in cases involving liability for customs duties, fees or other money charges, among others. COC's action in setting a public auction for a company's rice shipment cannot be deemed a decision appealable to CTA. Thus, a petition for review filed with the CTA without waiting for the COC's decision on the seizure and forfeiture proceedings CTA was prematurely filed. *Danilo Galang, d.b.a. St. Hildegard Grains Enterprises vs. Bureau of Customs and the Commissioner of Customs, CTA EB No. 1451 (CTA Case No. 8885), dated June 07, 2018.*