TMAP TAX UPDATES

JULY 16, 2019 TO AUGUST 15, 2019

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LAW OFFICES

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COURT OF TAX APPEALS DECISIONS

A Letter Notice is not a substitute for a Letter of Authority

Hon. Thelma S. Milabao, OIC Regional Director, Bureau of Internal Revenue (BIR), Region No. 18 v. Dionisia D. Pacquiao, CTA EB Case Nos. 1782 and 9039, July 5, 2019

A Letter Notice (LN) is entirely different and serves a different purpose from a Letter of Authority (LOA). Due process demands, as recognized under RMO No. 32-2005, that after an LN has served its purpose, the revenue officer should properly secure an LOA before proceeding with further examination and assessment of the taxpayer. There must be a grant of authority (LOA) before any revenue officer may conduct a tax examination and issue an assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the resulting assessment or examination is a nullity.

When imported goods go through reprocessing, the imposition of tax may happen twice: (i) upon their importation and (ii) upon their removal from production site after being used as a blending component or raw material to produce another product.

Petron Corporation (Petron) v. Commissioner of Internal Revenue, CTA EB Case Nos. 1835 and 9111, July 19, 2019

Double taxation exists only when two taxes are imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they are of the same kind or character.

There is no double taxation in this case as alkylates are taxed only once, that is, upon their importation in relation to Sections 129, 131 and 148(e) of the NIRC as amended. The subject matter of the tax imposed herein is the importation of alkylate; on the other hand, the subject matter of the *excise tax on the alleged use of an alkylate as a blending component or raw material* to produce another product is a different subject matter. When imported goods go through reprocessing, the imposition of tax may happen twice. The

first imposition is upon importation of goods, and second, upon removal or reprocessed goods from the production site.

Capital gains derived by residents of other Contracting States from the disposition of shares of stock or interests in a Philippine corporation are taxable in the Philippines only if the assets of the corporation consist principally of real property interest located in the Philippines.

Commissioner of Internal Revenue v. GE Consumer Finance, Inc., CTA EB Case No. 1775, July 5, 2019

Under the RP-US Tax Treaty, capital gains from sale of shares of stock shall be taxable in the contracting state where the alienator is a resident. However, the Reservation Clause of the treaty provides that if the interest being disposed of are shares of stock in a corporation whose assets consist principally of real property interest located in a contracting state, the sale may be taxed by such contracting state.

In the instant case, it was proven that seller/taxpayer is a US company (a non-resident foreign corporation under the NIRC), and the shares transferred were shares of stock of a Philippine corporation/domestic corporation. As computed, the real property interest of the Philippine corporation does not exceed 50% of its total assets, thus it cannot be said to have assets consisting principally of real property interest in the Philippines. Therefore, the taxpayer's capital gains derived from transfer of its shares of stock in the Philippine corporation shall be exempt from CGT in the Philippines, pursuant to the RP-US Tax Treaty.

In the absence of a valid Letter of Authority, tax assessments issued by the BIR against a taxpayer shall be void

Commissioner of Internal Revenue v. Royal Class Trading and Transport Corporation, CTA EB Case No. 1832, July 29, 2019

In this case no new Letter of Authority (LOA) specifically naming the revenue officer (RO), to whom the case was reassigned, was issued by the BIR. Accordingly, there was no valid authority for said RO to continue the investigation/audit. Consequently, the subject tax assessments, which came about as a result of his examination of the books of accounts and accounting records of the taxpayer for taxable year 2007, are void.

The CTA en banc noted that there may be instances where an RO, previously authorized through a Letter of Authority, may not be able to complete the examination of the concerned taxpayer by reason of retirement, reassignment, illness, or death of the said RO. The Court noted that the proposition that the issuance of a new LOA will be excused in light of such instances, finds no basis in law and jurisprudence.

Absent any compelling reason, the CTA en banc will not modify nor reverse the findings of the Court in Division.

Commissioner of Internal Revenue v. Sony Mobile Communications International AB, CTA EB Case No. 1785, July 25, 2019

The CIR did not present any evidence to support the allegations that the input VAT carried over were utilized in 2013, or that the said input VAT were not attributable to effectively zero-rated sales. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. Thus, absent any proof to the contrary, the findings of the Court in Division will not be disturbed.

In a claim for refund/issuance of tax credit certificate (TCC) for excess and unutilized creditable withholding taxes (CWTs), the burden of proving actual remittance of the taxes rests not with the income payee, but with the income payors/withholding agents

Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines, Inc.), CTA EB Case No. 1789, July 5, 2019

The taxpayer, being the income earner and payee of the income subject to CWT, is neither decreed by law nor by pertinent rules and regulations to compulsorily demonstrate by evidence that the CWTs subject of the refund claim were remitted to the BIR. The taxpayer (income payee) only needs to prove the fact of withholding, but not the actual remittance to the BIR of the taxes withheld. The duty of proving actual remittance to the BIR of the taxes withheld is fittingly attributable to the income payors-withholding agents of the CWT.

Under Presidential Decree (PD) No. 242, disputes and claims solely between the BIR and another government entity, which in this case, is Duty Free Philippines Corporation (DFPC), shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved

Duty Free Philippines Corporation (DFPC) v. Bureau of Internal Revenue, represented by Kim S. Jacinto-Henares, and/or Nestor S. Valeroso, OIC-Assistant Commissioner, Large Taxpayers Service, CTA EB Case No. 1911, July 5, 2019

The CTA en banc reiterated the decision of the Supreme Court in the PSALM Case *(Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue)* that in disputes and claims solely between government agencies and offices, including GOCCs, the administrative procedure in Sections 2 and 3 of PD 242 should be followed. In the instant case, the petitioner DFPC is an agency attached to the Department of Tourism and a national government agency, while the respondent is the Bureau of Internal Revenue, which is another government agency. Clearly, the petition involves a dispute solely between a government corporation and another government agency and as such, the CTA is bereft of jurisdiction to take cognizance of the case.

Transfer of the two parcels of land pursuant to Sections 61 and 62 of the Corporation Code as pre-incorporation subscription is not disposition or exchange of properties "in the course of trade or business" and is therefore not subject to VAT

Secretary of Finance v. Century Peak Property Development, Inc. and Kingsville International Resources, Inc., CTA EB Case No. 1776, 05 July 2019

Under Section 106 of the NIRC, transfer of goods or properties held for sale/lease and/or goods or properties originally intended for sale in the course of business is subject to 12% VAT. Any sale, barter or exchange of goods or services not in the course of trade or business is not subject to VAT.

In the instant case, the CIR merely presumed that the two (2) parcels of land owned by respondent taxpayer were held for sale or use in the course of its business. While the taxpayer is a corporation primarily engaged in the real

estate business, there is no proof or even a hint from which it could be deduced that the two parcels of land subject of the Deed of Assignment were properties held for sale or originally intended for sale or for use in the course of taxpayer's business.

A scrutiny of the Deed of Assignment reveals that it is a pre-incorporation subscription contract pursuant to Sections 61 and 62 of the Corporation Code of the Philippines. The CTA ruled that the transfer of the two parcels of land pursuant to Sections 61 and 62 of the Corporation Code as pre-incorporation subscription is not a disposition or exchange of properties "in the course of trade or business" and is therefore not subject to VAT.

If the claimant taxpayer is only engaged in zero-rated sales and does not generate output taxes against which to offset the input taxes incurred outside of its zero-rated sales, then the provisions of Section 112 of the 1997 NIRC will not apply and refund is not an option while the business exists

Commissioner of Internal Revenue v. Coral Bay Nickel Corporation and Coral Bay Nickel Corporation v. Commissioner of Internal Revenue, CTA EB Case Nos. 1735 and 1737, July 18, 2019

A basic requisite for the claim for refund of any excess or unutilized input VAT under Section 112 (A) of the NIRC is that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales.

Coral Bay exports nickel cobalt and mixed sulfide to Sumitomo Metal Mining Co., Ltd. located in Japan. The CTA en banc found that Coral Bay failed to comply with the above basic requisite because the input taxes that were incurred were not at all related to its zero-rated sales. Coral Bay has categorically stated that its purchases of goods and services were consumed outside of the Rio Tuba Export Processing Zone and were used to construct row houses, dormitories and foreman's duplexes for the use of its workers, which the Court finds to be unrelated to its export sales.

(However, because the required affirmative votes of five (5) members of the Court en banc was not obtained in the instant case, pursuant to Section 2 of Republic Act No. 1125, as amended by Republic Act No. 9503 in relation to Section 3 of Rule 2 of the RRCTA, the Decision and Resolution of the Court in Division were deemed affirmed. The CIR was directed in this case to refund in favor of Coral Bay Nickel Corporation the reduced amount of

P122,250.00, representing its unutilized input VAT related to its VAT zero-rated sales for the 1st quarter of 2013).

PAGCOR and its contractees and licensees remain exempted from the payment of corporate income tax and other taxes on their gaming operations.

Premiumleisure and Amusement, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9572, July 16, 2019

By virtue of the Provisional License granted by PAGCOR and the subsequent Amended Certificate of Affiliation and Provisional License, the petitioner taxpayer and the members of its Consortium were considered as co-licensees and holders of the Provisional License issued on December 12, 2008 by PAGCOR. Hence, the tax exemption privileges of PAGCOR extend to them pursuant to the PAGCOR Charter (Presidential Decree No. 1869) as amended by Republic Act No. 9487.

The privilege granted to PAGCOR inures to the benefit of the following entities: (a) PAGCOR, as the franchise holder; (b) other entities with whom PAGCOR or an operator has any contractual relationship in connection with the operations of the casino authorized to be conducted under PAGCOR's franchise; and (c) the contractors or suppliers of essential facilities and technical services to PAGCOR or an operator.

A deficiency assessment based on mere presumption that the alleged differences in data matching were indeed taxable income received by the taxpayer, absent any empirical evidence, is an assessment of "doubtful validity" which may be the subject of a valid compromise agreement

ABS-CBN Film Productions Inc. (Surviving Entity of the Merger Between Roadrunner Network, Inc. and ABS-CBN Film Productions, Inc.) v. CIR, CTA Case No. 9284, July 31, 2019

In this case the application for compromise settlement was grounded on doubtful validity of the CIR's assessment which arose from matching or comparing the importation per books of accounts of the taxpayer with the importation in the BIR's data, or the amount per books of local purchases of the taxpayer with BIR's data, or the difference between the summary list of sales and the summary alphalist of withholding tax at source. BIR failed to

show that the taxpayer indeed received a taxable income from any property, activity, or service equivalent to such alleged deficiency taxes. Absent any empirical evidence that the alleged differences in the data matching were indeed taxable income received by the taxpayer, said deficiency assessments were mere presumptions. The *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious, or where BIR has come out with a "naked assessment."

In order to settle the case, the taxpayer has offered and the BIR has accepted an amount equivalent to forty percent (40%) of the Basic Income Tax and Basic Value Added Tax assessed in the FAN, as well as the amount equivalent to one hundred percent (100%) of the Basic Expanded Withholding Tax, Basic Withholding Tax on Compensation, and Basic Documentary Stamp Tax in the total compromise amount of over P16 million. Further, there was unanimous approval of the compromise offer by all of the members of the NEB which is more than the required majority vote under Section 204(A) of the 1997 NIRC as implemented by RR No. 30-2002.

This case reiterated the requisites for a valid compromise agreement, to wit: (1) the application for compromise is based on either doubtful validity of the assessment or taxpayer's financial incapacity to pay such assessment; (2) the minimum payment of compromise settlement is met (i.e., 40% of the basic assessed tax where compromise offer is based on doubtful validity, or 10% of the basic assessed tax where compromise offer is based on financial incapacity); and (3) approval by the National Evaluation Board (NEB) of the compromise offer if the subject assessment exceeds One Million pesos (P1,000.000) or where the settlement amount offered is less than the prescribed minimum amount.

Beginning January 1, 2018, interest to be imposed on any unpaid amount of tax must be 12% p.a. and there will no longer be simultaneous imposition of deficiency and delinquency interests

Cagayan De Oro Doctors, Inc. (Madonna and Child Hospital) v. CIR, CTA Case No. 9260, August 5, 2019

The Court finds that the deficiency VAT and EWT assessments have not been satisfactorily rebutted by the taxpayer and must therefore be upheld.

Republic Act No. 10963, or the TRAIN Law, took effect on January 1, 2018, amending pertinent provisions of the NIRC of 1997, including Section 249 on interest on unpaid amount of tax, deficiency interest and delinquency interest. The Court noted that following amendments are introduced by the TRAIN Law, to wit:

1. The interest rate is reduced to double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas. Currently, the legal interest rate is 6% per annum, hence the interest rate to be applied on any unpaid amount of tax shall be 12% per annum, which is lower than the twenty (20%) p.a. interest rate imposed under the NIRC of 1997 prior to the amendment.

2. In no case shall the deficiency interest and delinquency interest be imposed simultaneously. As such, the overlapping of interest penalties under the NIRC of 1997, has been effectively eliminated.

3. The period for the application of deficiency interest is modified in that it shall still begin from the date prescribed for its payment, and shall end either until the full payment thereof, or upon issuance of a notice and demand by the CIR, *whichever comes earlier*. Hence, under the TRAIN Law, the running of the period for the computation of the deficiency interest may be interrupted by the issuance of a notice and demand by the CIR.

Unverified third-party matching information sources in computing for taxpayer's sales and tax liabilities may not be used as basis in estimating taxpayer's liability

First Global BYO Corporation v. CIR, CTA Case Nos. 9172, 9212 and 9242, August 6, 2019

The rule is that in the absence of the accounting records of a taxpayer, his tax liability may be determined by estimation. The CIR is not required to compute such tax liabilities with mathematical exactness. Approximation in the calculation of the taxes due is justified. However, the rule does not apply where the estimation is arrived at arbitrarily and capriciously. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment, being a mere presumption, cannot be made to rest on another presumption.

CIR chose to resort to presumptions by relying on the results of the unverified third-party matching in estimating taxpayer's sales and tax liabilities. Since the assessments were based on presumptions, respondent failed to prove by clear and convincing evidence that petitioner committed fraud. Fraud is never imputed and the courts will not sustain findings of fraud upon circumstances which at most create only suspicion. Mere understatement of tax is not itself proof of fraud for the purpose of tax evasion. While it is true that such under-declaration constitutes *prima facie* evidence of a false or fraudulent return pursuant to the provisions of Section 248(B) of the NIRC of 1997, as amended, such is only a presumption and the allegation of fraud must be duly proven.

Failure to seek relief initially at the administrative level would result in dismissal of the judicial claim for refund once it is elevated to the CTA

Philippine Airlines, Inc. v. CIR, CTA Case No. 9435, August 8, 2019

Section 13 of PD No. 1590 provides for exemption of the taxpayer (PAL) from the payment of all taxes, duties and other fees and charges of any kind or nature on all importations of commissary and catering supplies, among others. Thereafter, RA No. 9337 took effect, expressly and specifically amending PAL's franchise, and subjecting it to value-added tax (VAT). The taxpayer's exemption from all other taxes was retained.

On August 22, 2014, PAL paid under protest (on the basis of its exemption from certain taxes) excise taxes on imported cigarette and alcohol products constituting its commissary and catering supplies for use in its international flights which arrived in NAIA on various dates in 2012. Thereafter, on August 22, 2016, PAL filed before the CIR a claim for refund. Likewise, on the same date, PAL filed a judicial claim for refund. Counting 2 years when PAL made the alleged payments on August 22, 2014, the petition should have been filed on August 11, 2016. Since the petition was filed only on August 22, 2016, it is clear that the claim for refund was filed out of time.

Further, a claimant for refund must first file an administrative claim for refund before the CIR, prior to filing a judicial claim before the CTA pursuant to Section 229 of the NIRC. There is non-compliance with this provision considering that both the administrative claim and the judicial claim for refund was simultaneously filed on August 22, 2016. Failure to seek relief

initially at the administrative level would result in dismissal of the judicial claim for refund once it is elevated to the CTA.

There must be a "disputed assessment" that is seasonably elevated to the CTA for review before the CTA can exercise appellate jurisdiction

Jovita G. Panopio v. CIR, CTA Case No. 9464, August 6, 2019

While the taxpayer admitted that she received the assessment notices on December 2, 2015, records show that it was only on June 13, 2016, or after the lapse of 194 days, and being unaware of the legal remedies available to her, when she submitted a personal appeal letter to the BIR asking for reconsideration of the assessments. Such letter was evidently filed out of time even if this Court were to consider the same as petitioner's protest against the subject assessments. Further, said letter to the BIR cannot even be considered as a valid protest because it failed to state the facts, the applicable law, rules and regulations, and/or jurisprudence on which the protest is based as expressly required by RR No. 12-99. Petitioner merely grounded her request for reconsideration in the above letter on her purported non-receipt of the assessment notices. Tax laws mandate that there must be a "disputed assessment" that is seasonably elevated to the CTA for review. An assessment is disputed when a taxpayer has filed its protest to the assessment in the administrative level. Here, the assessments did not become "disputed assessment" that may be subject of the CTA's appellate jurisdiction.

Taxpayer, being a BOI-registered entity, cannot seek refund of its unutilized input taxes since its local purchases of goods and services are subject to VAT at zero percent rate

Rio Tuba Nickel Mining Corporation v. CIR, CTA Case No. 9127, August 08, 2019

The CTA affirmed the disallowance of the input VAT amortization on taxpayer's domestic purchases of capital goods on the ground that the input taxes pertained to domestic purchases from which the taxpayer cannot claim any input tax pursuant to the *Coral Bay* ruling. The principle in *Coral Bay* case may, by analogy, be applied insofar as the taxpayer, being a BOI-registered entity, cannot seek refund from the BIR of its unutilized input taxes since its local purchases of goods and services are subject to VAT at zero percent rate. Being a BOI-registered entity, no output VAT shall be

shifted to or passed on to it, and conversely, no input VAT shall be paid by it from said purchases. Where the taxpayer paid the input VAT, notwithstanding that under the law it is VAT zero-rated, the said input VAT cannot be offset against its output VAT. Taxpayer's recourse is to seek reimbursement from the supplier who shifted to it the output VAT.

In addition, the Court ruled that acknowledgment receipts do not qualify as valid support of zero-rated sales. Section 113(A)(2) of the NIRC of 1997, as amended, is clear that a VAT official receipt (O.R.) is to be issued for every lease of goods or properties, and for every sale, barter or exchange of services. Bank passbooks and BIR registered acknowledgment receipts, submitted as alternative supporting documents to prove inward remittances arising from purported zero-rates sales, are self-serving and have no weight.

Where the BIR already made an initial assessment for deficiency taxes in a given taxable year, and the taxpayer paid the deficiency tax assessed, the BIR has no valid authority to issue, after the three (3)-year prescriptive period had expired, a second or third assessment for the same taxable year

The Professional Services, Inc., v. CIR, CTA Case No. 9502, August 13, 2019

Petitioner taxpayer sold a parcel of land in May 2007. The CGT and DST were paid. Before the sale, the lot was leased to another entity starting December 7, 2005 with a term of two (2) years. Company disclosures classified the lot as part of its "Investment Property." The first Letter of Authority (LOA) was issued on August 8, 2008 covering the taxable year 2007. The same was approved and deficiency taxes were collected. However, BIR claims that its first LOA did not cover the Income Tax and VAT issues on the sale of the investment property. An anonymous memorandum dated June 22, 2012 involving the said property was submitted/prepared prompting further investigation which led to the issuance of the second LOA.

Where the BIR had already made an initial assessment for deficiency taxes in a given taxable year, and the taxpayer paid the deficiency tax so assessed, the BIR has no valid authority to issue, after the three (3)-year prescriptive period had expired, a second or third assessment for the same taxable year. The first LOA specifically mentioned that the scope of the examination of taxpayer's books of accounts and other accounting records

was for "*all internal revenue taxes for period from January 1, 2007 to December 31, 2007*." This led to the issuance of a report assessing taxpayer of deficiency income tax, withholding tax on compensation, final withholding tax and VAT for taxable year 2007, all of which have been settled and paid by the taxpayer.

Further, there is no sufficient evidence to prove fraud or intentional falsity of tax return to merit the application of the 10-year prescriptive period under Section 222(a) of the NIRC. There was no concealment by the taxpayer of any details of the lease and subsequent sale of the investment property. Considering that BIR failed to demonstrate clearly that taxpayer had filed a false or fraudulent return to warrant the application of the 10-year prescriptive period, the applicable regular period of 3 years for assessment had, therefore, already prescribed.

By choosing the option of filing an appeal in case of inaction by the CIR, taxpayer is barred from availing of the other option of waiting for the final decision of the CIR

Nueva Ecija I Electric Cooperative, Inc. v. Commissioner of Internal Revenue, CTA Case Nos. 9563, July 23, 2019

In case there is inaction on the part of the CIR on an administrative appeal by way of a motion for reconsideration within the 180-day period, RR 18-2013 provides for options for the taxpayer to either: (1) await the decision of the CIR and then file an appeal with the CTA within thirty (30) days from receipt of the decision, or (2) appeal to the CTA within thirty (30) days from the expiration of the 180-day period. These options are mutually exclusive and resort to one bars the application of the other. By having chosen the option of filing an appeal in case of inaction on the part of the CIR, the taxpayer is barred from availing of the other option of waiting for the final decision of the CIR.

Likewise, when the law provides for the remedy to appeal the inaction of the CIR, it did not intend to limit it to a single remedy of filing an appeal to the CTA after the lapse of the 180-day prescribed period. A taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment.

Zero-rated sales reported by petitioner in its quarterly VAT return may be disallowed for VAT refund purposes if not properly substantiated

Carmen Copper Corporation v. Commissioner of Internal Revenue (CIR), CTA Case No. 9457, July 23, 2019

Pursuant to the provisions of Section 106(A) (2)(a)(1) of the NIRC of 1997, as amended, in relation to Sections 113(A)(1), (B)(1), (2)(c), and (3) of the same Code and Sections 4.113-1(A)(1), B(1), and (2)(c) of RR No. 16-05, as amended, any VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: a) the sales invoice as proof of sale of goods; b) bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and c) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

Further, the sales invoices supporting the export sales must be registered with the BIR and contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

Sending of PAN to taxpayer is part of the due process requirement in the issuance of a deficiency tax assessment

Clark Water Corporation v. Commissioner of Internal Revenue, CTA Case No. 8648, July 19, 2019

It is settled in our jurisprudence that if the assessment notice is served by registered mail, and the original was not returned to the BIR, the presumption is that the taxpayer received said assessment notice in the regular course of mail, pursuant to Section 3 (v), Rule 131 of the Rules of Court. However, in the case at bar, taxpayer denied receiving the PAN and FLD/FAN. It follows that the burden of proof has shifted to the BIR to show by contrary evidence that taxpayer indeed received the assessment notices in the due course of mail. The failure of the BIR to prove that taxpayer or its authorized representative received the assessment stating the facts and the law on which the assessment was made as required by Sec. 228 of RA No. 8424, shall render the assessment made by the BIR, void.

The absence of a Letter of Authority (LOA) and a Preliminary Assessment Notice (PAN) prior to the issuance of the Audit Results/Assessment Notice (RPS), makes the assessment void

Del Monte Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9766, July 15, 2019

Considering that none of the conditions under Section 228 of the NIRC of 1997, as amended, relating to the exemption from pre-assessment notice exists, respondent is not justified in outrightly issuing the Audit Results/Assessment Notice (RPS), without any PAN. This wanton disregard of taxpayer's right to due process rendered the Audit Results/Assessment Notice (RPS) void, fruitless and without any legal significance.

For a compromise settlement falling within the jurisdiction of the National Evaluation Board (NEB) to be valid, the same must be approved by majority of all the members of the NEB and the offered amount must be fully paid

Sarimanok News Network, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9285, July 8, 2019

As a rule on compromise settlement, Section 204(A) of the National Internal Revenue Code (NIRC) of 1997 provides that for cases other than financial incapacity, the minimum compromise rate is forty percent (40%) of the basic assessed tax, and in case the basic tax exceeds P1,000,000.00 or where the settlement offered is less than the said prescribed minimum rates, the compromise must be approved by the National Evaluation Board (NEB), which is composed of the CIR and the four (4) Deputy Commissioners of the BIR.

In this case, the Court finds that the taxpayer has fully settled the legally required minimum amount for compromise settlement, as shown in the BIR Payment Forms, eFPS Payment Details and other documents representing payments for deficiency income tax, VAT, expanded withholding tax, withholding tax on compensation and DST. Furthermore, the Court notes the submission of the Certificate of Availment (Compromise Settlement) dated December 18, 2018 together with the Certified True Copy of the signature page evidencing approval by the NEB of the Compromise Settlement as sufficient compliance with the legal requirements.

If the taxpayer denies receipt of the assessment notices from the BIR, the latter has the burden of proving by competent evidence that the required notices were actually received by the taxpayer

Trorev Realty Co., as represented by its President, Roberto R. Ignacio v. Commissioner of Internal Revenue, CTA Case No. 9251, July 18, 2019

In the present case, the taxpayer categorically denies having received the PAN and submits that it only received the FLD/FAN on October 27, 2015. Correspondingly, the CIR has the burden to prove otherwise.

As regards the PAN, the CIR expressly admitted that the same was issued and served to taxpayer by registered mail under Registry Receipt No. 913607 on January 5, 2015 but was "returned to sender" for failure of taxpayer to claim the same despite three notices. With this admission, it is quite obvious that such PAN cannot be deemed to have been received by the taxpayer in the due course of mail. On the other hand, there is also no indication whatsoever that the CIR validly resorted to other recognized modes of service of the PAN under Section 3.1.6 of RR No. 12-99 as amended, considering that the attempt to validly serve the PAN by registered mail proved to be unsuccessful. Thus, for failure of the CIR to inform the taxpayer of the facts and the law on which the assessment was made through the valid service of PAN as strictly required by Section 228 of the NIRC, the Court holds that the subject assessment is void and of no legal effect. Given this finding, there is no need to discuss the other issues raised in the Petition because it is settled that a void assessment bears no fruit.

BIR ISSUANCES

RMO No. 35-2019 issued on July 18, 2019

This RMO revises certain policies in the enforcement of civil remedies for the collection of Accounts Receivable/Delinquent Accounts (AR/DAs).

To protect the interest of the government, civil remedies provided under Section 205 of the National Internal Revenue Code (NIRC), as amended, shall immediately be pursued as soon as the “Form 40-Collectible” reports relative to the List of Unpaid Revenues and List of Unpaid Tax Assessments have been received by the offices responsible in the enforcement of

collection remedies. With the foregoing, Preliminary Collection Letter (PCL) and Final Notice Before Seizure (FNBS) shall no longer be sent to the delinquent taxpayers. Once the aforesaid reports as well the dockets of the cases are received by the concerned office for collection enforcement, such office shall validate if all the applicable fields in the said "Form 40-Collectible" reports are completely filled-out. If so, the Warrant of Distraint and/or Levy (WDL) shall immediately be issued using the current format. All other collection procedures to implement the WDL and other collection remedies, as written in the Collection Manual, which are still relevant shall continue to apply.

RMO No. 37-2019 issued on July 23, 2019

This RMO amends the policies, guidelines and procedures on the registration of employees earning purely compensation income, transfer of registration of employees, update of registration information and issuance of Taxpayer Identification Number (TIN) card.

New employees without TIN shall be registered at the Revenue District Office (RDO) having jurisdiction over the place of business where the employer's Head Office or Branch is physically located. The employees shall accomplish BIR Form No. 1902 (Application for Registration for Individuals Earning Purely Compensation Income) and submit the same to their employer who shall secure the TIN of its new employees using the eRegistration (eREG) System within ten (10) days from the date of employment.

An employee earning purely compensation income who will change or will have a new employer or will transfer from Head Office to another branch office (or vice versa) of the same employer or company shall have his/her TIN/registration records be transferred to the RDO having jurisdiction over the place of his/her residence and not to the RDO of his/her new employer. The said employee shall submit the duly accomplished and signed BIR Form No. 1905 to the old/previous RDO where the employee is registered and the RDO shall execute the transfer of registration of employee within twenty-four (24) hours from receipt of BIR Form No. 1905.

This RMO also prescribes policies in case the employer (Head Office or Branch) is transferring to a new different RDO.

Application for any change in the registration information (BIR Form No. 1905) of an employee shall be submitted by the employee to the RDO where the employee's TIN is registered. Application for TIN card issuance shall be made by the registered employees at their respective RDO or local (regular) RDO where the taxpayer is registered.

RMO No. 38-2019 issued on July 24, 2019

This RMO clarifies the nature, character and tax treatment of organizations and corporations enumerated under Section 30 of the National Internal Revenue Code (NIRC) which shall not be taxed under Title II (Tax on Income) in respect of income received by them as such. The Order also devolves to the Revenue Regions the issuance of Certificate of Tax Exemptions (CTEs) to said corporations (excluding the processing of CTEs of non-stock, non-profit educational institutions which is covered by RMO No. 44-2016).

A corporation claiming tax exemption must be able to show clearly that it is organized and operated for the purposes under Section 30 of the NIRC, and that its income is derived pursuant thereto. The following shall be the basis in determining the entitlement to exemption of an organization:

i. Organizational Test: This requires that the corporation or association's constitutive documents (SEC Registration, Articles of Incorporation and By-Laws) must show that its primary purpose/s of incorporation fall under Section 30 of the NIRC.

ii. Operational Test: This requires that the regular activities of the corporation or association shall be exclusively devoted to the accomplishment of the purposes specified in Section 30 of the NIRC. A corporation or association fails to meet this test if the corporation has no activities conducted in furtherance of the purpose for which it was organized, or if a substantial part of its operations constitutes "activities conducted for profit".

In order for an entity to qualify as a non-profit corporation exempt from Income Tax, it must demonstrate that its earnings or assets do not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. It must not be organized or operated for the benefit of private interests such as specific individuals, incorporators or his family, shareholders of the organization, or persons controlled directly or indirectly

by such private interests. The activities that are considered "inurements" of such nature are the following:

(i) The payment of compensation, salaries, or honorarium to its trustees or organizers;

(ii) The payment of exorbitant or unreasonable compensation to its employees;

(iii) The provision of welfare aid and financial assistance to its members. An organization is not exempt from Income Tax if its principal activity is to receive and manage funds associated with savings or investment programs, including pension or retirement programs. This does not cover a society, order, association, or nonstock corporation under Section 30(C) of the NIRC providing for the payment of life, sickness, accident and other benefits exclusively to its members or their dependents;

(iv) Donation to any person or entity (except donations made to other entities formed for the purpose/purposes similar to its own);

(v) The purchase of goods or services for amounts in excess of the fair market value of such goods or value of such services from an entity in which one or more of its trustees, officers or fiduciaries have an interest; and

(vi) When upon dissolution and satisfaction of all liabilities, its remaining assets are distributed to its trustees, organizers, officers or members. Its assets must be dedicated to its exempt purpose. Accordingly, its constitutive documents must expressly provide that in the event of dissolution, its assets shall be distributed to one or more entities formed for the purpose/purposes similar to its own, or to the Philippine government for public purpose.

The Income Tax exemption of organizations and corporations under Section 30 of the NIRC of 1997, as amended, covers only the income derived by the corporation in furtherance of the purposes for which it was organized. Said corporations are still subject to the corresponding internal revenue taxes imposed on income derived from any of their properties, real or personal, or any activity conducted for profit regardless of the disposition thereof (i.e. interest income from bank deposits, gains from investments, rental income

from real or personal properties), which income should be reported for taxation purposes.

The interest income from currency bank deposits and yield or any other monetary benefit from deposit substitute instruments and from trust funds and similar arrangement, and royalties derived from sources within the Philippines or organizations under Section 30 are subject to 20% Final Withholding Tax.

Moreover, the interest income derived by them from a depository bank under the expanded foreign currency deposit system shall be subject to 15% Final Withholding Tax pursuant to Section 27(D)(1) in relation to Section 57(A), both of the NIRC of 1997, as amended.

The tax exemption granted under Section 30 of the NIRC of 1997 does not cover Withholding Taxes on compensation income of the employees of the corporation, or the Withholding Tax on income payments to persons subject to tax pursuant to Section 57 of the NIRC of 1997. The corporation or association is therefore constituted as a withholding agent for the government if it acts as an employer and any of its employees receives compensation income subject to Withholding Tax or if it makes income payments to individuals or corporations subject to the Withholding Tax.

Purchase of goods or properties or services and importation of goods by a corporation organized and operated as a Section 30 corporation shall be subject to the 12% Value-Added Tax (VAT). The VAT, being an indirect tax, can be shifted or passed on the buyer/purchaser, transferee or lessee of the goods, properties or services. A corporation cannot invoke its tax exemption privilege under Section 30 of the NIRC of 1997 to avoid the passing on or shifting of the VAT.

Section 105 of the NIRC of 1997 also provides that any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the VAT imposed under Sections 106 to 108 of the same code. The phrase “in the course of trade or business” means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells its good

exclusively to members or its guests), or government entity. Hence, if the corporation is engaged in the sale of goods or services in the course of a business pursuit, including transactions incidental thereto, its revenues derived therefrom shall be subject to the 12% VAT, in case the gross receipts from such sales exceed Three Million Pesos (₱3,000,000.00), or to the 3% Percentage Tax, if gross receipts do not exceed ₱3,000,000.00.

The guidelines in the processing and issuance of Certificate of Tax Exemptions (CTE), which have been devolved to the Revenue Regions, are prescribed in the RMO. A CTE issued under the RMO shall be valid for a period of three (3) years from the date of effectivity specified in the CTE Ruling, unless sooner revoked or cancelled. The CTE may be revalidated for another period of three (3) years under the same procedure set forth herein. The Tax Exemption Ruling shall be deemed revoked if there are material changes in the character, purpose, or method of operation of the corporation or association which are inconsistent with the basis for its income tax exemption. The revocation takes effect as of the date of the material change.

All applications for CTEs under Section 30 of the NIRC, as amended, filed with the Law and Legislative Division after the effectivity of this Order shall be transmitted to the concerned Revenue District Office, for their appropriate processing.

RMO No. 40-2019 issued on July 30, 2019

This RMO prescribes the procedures for the proper service of Assessment Notices in accordance with the provisions of Section 3.1.6 of Revenue Regulations No. 18-2013. The Assessment Notice shall be served to the taxpayer through personal delivery at his/her registered or known address or wherever he/she may be found. In case personal service is not possible, the Assessment Notice shall be served either by substituted service or by mail.

The substituted service, which can only be resorted to when the party is not present at the registered or known address, shall be done as follows:

(i) The Assessment Notice may be left at the party's registered address, with his clerk or with a person having charge thereof.

(ii) If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.

(iii) If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.

(iv) If no person is found in the party's registered or known address, the Revenue Officers (ROs) concerned shall bring a Barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The Assessment Notice shall be given to said Barangay official. Such facts shall be contained in the bottom portion of the Assessment Notice as well as the names, official positions and signatures of the witnesses.

(v) Should the party be found at his/her registered or known address or any other place but refuses to receive the Assessment Notice, the ROs concerned shall bring a Barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The Assessment Notice shall be given to said Barangay official. Such facts shall be contained in the bottom portion of the Assessment Notice as well as the names, official positions and signatures of the witnesses.

"*Disinterested witnesses*" refer to persons of legal age other than employees of the Bureau of Internal Revenue".

Personal or substituted service of Assessment Notice shall be effected by the Revenue Officer assigned to the case. However, such service may also be made by any BIR employee duly authorized for the purpose. ***Personal service*** shall be completed upon actual delivery of the Assessment Notice to the taxpayer or his representative.

Service by registered mail is complete upon actual receipt by the taxpayer or after five (5) days from the date of receipt of the first notice of the postmaster, whichever date is earlier.

Service by ordinary mail is complete upon the expiration of ten (10) days after mailing. Service to the tax agent/practitioner, who is appointed or authorized by the taxpayer in accordance with existing revenue issuances, shall be deemed service to the taxpayer.

The duties of concerned offices in relation to the service of Assessment Notices and the standard format of the report to be prepared by the server of the notice are also specified in the RMO.