Tax Updates from July 16, 2020 to August 15, 2020

COURT OF TAX APPEALS EN BANC DECISIONS

Failure to revalidate a Letter of Authority does not affect the validity of the assessment issued

TEKTITE INSURANCE BROKERS V. COMMISSIONER OF INTERNAL REVENUE, CTA EB NO. 1923 INC. (CTA Case No. 8903) DATED JULY 23, 2O2O

The applicable rule for the revalidation of an LOA issued from 3 July 2007 up to 31 May 2010 was provided by Revenue Memorandum Order (RMO) No. 12-2017 dated July 3, 2017 which stated that failure of the revenue officer (RO) to request for revalidation upon the expiration of the "revalidation period" does not nullify the LOA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued. Hence, failure of the revenue officer to revalidate the LOA did not render the same void and, correspondingly, did not affect the validity of the assessment issued thereunder. At most, the consequence of violating this revalidation rule is to expose the revenue officer to disciplinary action.

The Court also ruled on the validity of the Waiver signed by the president of the taxpayer (a corporate entity). Failure of the taxpayer to submit any board resolution authorizing the president as the authorized signatory, did not make the Waiver defective on this ground alone. As held in the *Stanley Works* case, the authority of the signatory must be confirmed in a board resolution only when the signatory is a representative other than a “responsible officer” of the corporation. The president of a corporation is presumed to have the authority to act within the domain of the general objectives of the taxpayer’s business and within the scope of his or her usual duties.

Nonetheless, the Court noted that the subject Waiver did not strictly comply with the form of waiver required under RDAO No. 05-01, to wit: (i) the type of taxes subject thereof was not indicated in the Waiver, and (ii) since the proof of identity presented by the signatory to the notary public was the Community Tax Certificate (which was not considered a competent evidence of identity), the Waiver was not considered duly notarized. However, these defects were caused by the parties (BIR and the taxpayer), which made them in *pari delicto* or in equal fault, thereby necessitating the application of the exception to the *Next Mobile* case, to wit: as a general rule, a waiver which

does not comply with the requisites of RDAO No. 05-01 will be invalid and ineffective to extend the prescriptive period to assess taxes; however, as an exception to this general rule, where the parties are in *pari delicto*, the Court may interfere and grant relief at the suit of one of them where public policy requires its intervention. Public policy dictates that a taxpayer will not be allowed to benefit from the flaws in its own waiver and successfully insist on its invalidity in order to evade its responsibility to pay taxes. Therefore, the Court ruled that the Waiver in this case was declared valid and validly extended the prescriptive period to assess taxes.

Refundable input taxes mean those taxes that bear a direct or indirect connection with, and not limited to only those which are "directly attributable" to, a taxpayer's zero-rated or effectively zero-rated sales

COMMISSIONER OF INTERNAL REVENUE V. TOLEDO POWER COMPANY, CTA EB NO. 1990 (CTA CASE NOS. 7233 & 7294); TOLEDO POWER COMPANY V. COMMISSIONER OF INTERNAL REVENUE, CTA EB NO. 2000 (CTA Case Nos. 7233 & 7294) DATED JULY 23, 2020

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended ("Tax Code"), merely states that the creditable input VAT should be attributable to the zero-rated or effectively zero-rated sales. The use of the phrase "directly attributable" in the second proviso relates to a situation where the creditable input VAT cannot be directly attributed to any transaction, but this proviso does not qualify the preceding sentences of Section 112(A) of the Tax Code, in such a way as to make the refundable input VAT only those which are directly attributable to zero-rated or effectively zero-rated sales. Input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law. *Ubi lex non distinguit nec nos distinguere debemos*. It is a well-recognized rule that where the law does not distinguish, courts should not distinguish.

[The CTA *en banc* made the same ruling in CTA EB NO. 2082 DATED JULY 21, 2020 entitled COMMISSIONER OF INTERNAL REVENUE V. DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.]

Section 112(C) of the Tax Code does not provide alternative remedies to the taxpayer; the 120+30 day period is mandatory and jurisdictional

LAPANDAY FOODS CORPORATION (formerly merged with MALALAG VENTURES PLANTATION, INC.) V. COMMISSIONER OF INTERNAL REVENUE, CTA EB NO. 2181 (CTA Case No. 9976) DATED JULY 21, 2020

While Section 112(C) of the Tax Code provides two (2) starting points within which the thirty (30) day period to file a judicial claim will be counted, namely: (a) upon expiration of the one hundred twenty (120)-day mandatory period for taxpayer to act on a request for input tax refund/TCC, and (b) upon receipt of the adverse decision of the Commissioner of Internal Revenue ("CIR"), the same are not alternative in nature. The thirty (30) day period given to a taxpayer to file a judicial claim for input tax refund/TCC shall start from whichever starting point comes first. Taxpayers cannot opt to wait for an actual adverse decision by respondent despite the lapse of the one hundred twenty (120)-day mandatory period given to the taxpayer to act before filing a judicial claim before the Court. Otherwise, such judicial action is belatedly filed, which results in the Court losing its jurisdiction to try the judicial claim for input tax refund/TCC. This is known as the mandatory and jurisdictional one hundred twenty plus thirty (120+30)- day period as enunciated in *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue and Philex Mining Corporation v. Commissioner of Internal Revenue* (G.R. No. 187485, G.R. No. 196113 and G.R. No. 197156,12 February 2013).

The word "may" in Section 112(C) of the Tax Code does not make the 120+30 day period optional

LAPANDAY FOODS CORPORATION V. COMMISSIONER OF INTERNAL REVENUE, CTA EB NO. 2032 (CTA CASE NO. 9885) DATED JULY 22, 2020

When Section 112(C) of the Tax Code states that "*the taxpayer affected may, within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals*", the law does not make the 120+30 day periods optional just because the law uses the word "may". The word "may" simply means that the taxpayer may or may not appeal the decision of the CIR within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period.

The decision of the CIR that is appealable to the Court is the one issued within the 120-day period. The absence of any decision of the CIR within the 120-day period is the taxpayer's cue to deem the Commissioner's inaction as denial of its claim, which results to the ripening of the taxpayer's right to file judicial claim before the court. Accordingly, there is no alternative option to wait for the CIR's decision beyond the 120-day period.

The 120-day period under Section 112(C) of the Tax Code begins to run from the date of submission of complete documents supporting the administrative claim for refund

COMMISSIONER OF INTERNAL REVENUE V. VESTAS SERVICES PHILIPPINES, INC., CTA EB No. 2007 (CTA Case No. 8888) DATED JULY 20, 2020

For purposes of determining whether "complete" documents have already been submitted, which is the reckoning date when the 120-day period under Section 112(C) of the Tax Code commences to run, reference is made to the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* (21 G.R. No. 207112, December 8, 2015) which summarized the applicable rules: (1) A taxpayer is given thirty (30) days from the date of filing of its administrative claim for tax credit or refund, within which to submit all required supporting documents; (2) If in the course of the investigation, additional documents are required, the Bureau of Internal Revenue ("BIR") is tasked to give notice to the taxpayer, by way of a request to produce the complete documents. Thereafter, the taxpayer shall submit such documents within thirty (30) days from request of the investigating/processing office; and (3) All documents, filings, and submissions, must be completed within the two-year period under Section 112 (A) of the Tax Code.

The foregoing summation of the rules should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014.

Non-submission of the complete documents enumerated under RMO No. 53-98 at the administrative level is not fatal to a claim for refund at the judicial level

COMMISSIONER OF INTERNAL REVENUE V. COLT COMMERCIAL, INC., CTA EB NO. 2086 (CTA Case No. 9539) DATED JULY 21, 2020

(A) Nowhere is it stated in RMO No. 53-98 dated June 1, 1998 (*Checklist of Documents to be submitted by a taxpayer upon audit of his tax liabilities as well as of the Mandatory Reporting Requirements to be prepared by a*

Revenue Officer, all of which comprise a complete tax docket) that the non-submission of the documents enumerated therein would *ipso facto* result to the denial of a tax refund/credit claim. Based on the *Pilipinas Total Gas* case (G.R. No. 207112,8 December 2015), RMO No. 53-98 is merely a guide to revenue officers as to what documents they may require taxpayers to present upon audit of their tax liabilities. The said issuance was not intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax refund/credit. More importantly, once the tax refund/credit claim reaches the court, the discretion to determine the sufficiency of evidence submitted by the parties lies solely with the court. Hence, the CIR cannot invoke the alleged non-compliance with RMO No. 53-98 as legal basis to deny a taxpayer's tax refund/credit claim.

(B) A Confirmation Letter issued by the PEZA Deputy Director General for Operations, validating the issuance of VAT zero-rating certifications to various clients of the taxpayer, is sufficient proof of a taxpayer's clients entitlement for VAT zero-rating, considering that such Confirmation Letter is issued by the same entity which issues the PEZA certificate of registration. The Confirmation Letter may be submitted by the taxpayer as proof that its sales to said clients qualify as zero-rated sales, in lieu of submitting individual PEZA certificates of registration of said clients.

(C) In order to prove that the input VAT claimed by the taxpayer has not been applied (or remained unutilized) against any output VAT, it is sufficient that the said amounts be deducted as "VAT Refund/TCC claimed" in its Amended Quarterly VAT Returns for the 3rd and 4th quarters of TY 2014. This means that the subject claim no longer formed part of the excess input VAT as of the end of the fourth quarter of TY 2014 that was to be carried over/applied to the succeeding quarters. As such, this eliminated the possibility that the input VAT being claimed will still be applied to future output VAT liability.

The difference between the fair market value and book value of shares of stock declared as property dividend is not subject to donor's tax; distribution of property dividend to stockholders is not "disposition/exchange/transaction" covered by RR 6-2008 as amended

Based on the FDDA in this case, the amount of P430,202,455.83 subject to donor's tax represented the difference between (i) the fair market value per share of the stock declared as property dividend (based on adjusted net asset value in accordance with RR No. 6-2008, as amended by RR No. 6-2013) and (ii) the book value/par value per share of the said share(s) of stock declared as property dividend. The CIR presumed that the taxpayer (the company declaring the property dividend) realized a gain from the declaration and distribution of the shares of stock of its subsidiary (as property dividend) to its shareholders. The CIR also assumed that the declaration and distribution of the said stocks were tantamount to disposal of shares of stock not traded through a local stock exchange or otherwise within the ambit of the term "other disposition of shares of stock" that would result to recognition of gain or loss from such disposal, as contemplated under Section 7 (c.1.4) of RR No. 6-2008, as amended by RR No. 6-2013. The Court en banc ruled as follows:

(A) Property dividend declaration and donation are two different transactions. A donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it. It is an "act by which the owner of the thing voluntarily transfers the title and possession of the same from himself to another person without consideration." On the other hand, the term "dividend" is that part or portion of the profits of the enterprise which the corporation, by its governing agents, sets apart for ratable division among the holders of the capital stock. Clearly, in property dividend distribution, the taxpayer or distributing corporation does not receive any consideration in exchange for the dividends. Property dividends are unilateral distributions taken from the company's unrestricted retained earnings. Accordingly, the taxpayer (or distributing company's) act of declaration and distribution of property dividend consisting of shares of stock of its subsidiary is not contemplated by the term "*other disposition of shares of stock*" subject to donor's tax under RR 6-2008, as amended by RR 6-2013.

(B) Since the taxpayer in distributing dividend to its shareholders does not receive any consideration from its shareholders, Section 100 of the NIRC clearly does not apply. The property dividend distribution by the respondent is not a donation and is not made out of its liberality. Dividends are returns

or income from the invested capital of its stockholders. Accordingly, the distribution of property dividends is a realization of income on the part of the respondent's stockholders, by virtue of their capital investment in the corporation. Since dividends are distributions from unrestricted earnings arising from the capital invested in the corporation, they cannot be considered donations made out of the liberality of the corporation.

Section 113 (D) of the Tax Code does not allow the CIR to impose the 12% VAT on the same transaction twice

COMMISSIONER OF INTERNAL REVENUE V. PROCESS MACHINERY CO. INC., CTA EB NO. 1999 (CTA Case No. 9217) DATED JULY 17, 2020

Nowhere in Section 113(D) of the Tax Code can it be found that a person found violating the VAT invoicing rules will be penalized by having the 12% VAT imposed twice. Hence, even assuming that the taxpayer issued erroneous VATable documents for its sales transactions (i.e., solely VAT official receipts for sales of goods), it cannot be penalized by imposing another 12% VAT on its sales transactions when said 12% VAT have already been paid. To sanction otherwise would lead to unjust enrichment in favor of the government, which is against Philippine laws and public policy.

In addition, Section 113 (D) of the NIRC applies to (i) non-VAT registered persons using the word "VAT' in either its invoices or receipts, or (ii) VAT-registered persons who use a VAT-invoice or receipt for a VAT-exempt transaction. The taxpayer in this case does not fall under either classification as it is a VAT-registered person which issued VAT invoices and receipts for a VATable transaction. Hence, there is no factual and legal basis for the deficiency VAT assessment against the taxpayer due to alleged undeclared sales.

The gross receipts of a freight forwarder cannot be subjected to local business tax pursuant to the Local Government Code

CITY OF PARANAQUE AND DR. ANTHONY I. PULMANO, IN HIS CAPACITY AS CITY TREASURER OF PARANAQUE V. KUEHNE + NAGEL, INC., CTA EB NO. 2130 (CTA AC No. 189) (Civil Case No. 07-0370) DATED JULY 17, 2020

(As a jurisdictional issue, the Court *en banc* passed upon the issue of whether the City Treasurer has authority to file and prosecute suits on behalf of the petitioner City of Paranaque. The Court noted that the City of Paranaque failed to present a resolution by its Sangguniang Panglungsod

authorizing the City Treasurer to file and prosecute the petition, and on this ground it will appear that the City Treasurer has no authority to file a case on behalf of the City of Paranaque. Nonetheless, the Court ruled on the question whether the gross receipts of the respondent taxpayer may be subjected to local business tax [LBT]).

The taxpayer is engaged in the business of international freight and/or cargo consolidation and forwarding by means of air and sea transportation. Thus, there is no question that the taxpayer is a common carrier. Following this factual finding, the Court held that the taxpayer's gross receipts are not subject to local business tax in view of the limitation provided in Section 133(j) of the Local Government Code which states that "the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of, (among others), (j) *Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code*." Consequently, the Court en banc held that the City of Paranaque's local business tax assessment on taxpayer's gross receipts was void and lacked merit.

A licensee of PAGCOR is exempt from income tax on its gaming operations

COMMISSIONER OF INTERNAL REVENUE V. TRAVELLERS INTERNATIONAL HOTEL GROUP, INC., CTA EB NO. 2047 (CTA Case No. 9168) DATED JULY 17, 2020
Respond

(A) The issue raised by taxpayer was already settled by the Supreme Court in the case of *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue* (G.R. No. 212530, 10 August 2016). In that case, the Supreme Court held as follows: "As the PAGCOR Charter states in unequivocal terms that exemptions granted to earnings derived from the operations conducted under the PAGCOR franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that *all contractees and licensees of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.* xxx Plainly, too, upon

payment of the 5% franchise tax, petitioner's (Bloomberry's) income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax." Win light of the *Bloombery* case, it can no longer be denied that PAGCOR's licensees and contractees such as the taxpayer in this case (Travellers International Hotel Group), are exempt from income tax on their gaming revenues.

(B) An assessment issued against a taxpayer is void and must be cancelled on the ground that no new Letter of Authority was issued after the audit of the taxpayer was reassigned to another revenue officer.

The authority of a revenue officer to conduct the audit and assessment of the taxpayer should be pursuant to an LOA. For new officers not named in the original LOA to continue the audit, a new LOA must be issued in their name. However, a document such as a Memorandum of Agreement (MOA) may be construed as an equivalent of a new LOA from which the authority of a newly designated revenue officer may emanate, provided that it contains all the elements necessary to establish a contract of agency between the CIR or his duly authorized representative and the new revenue officer. Included in these elements is the authority of the person issuing the MOA. In the instant case, the person who signed the MOA is neither the CIR, Revenue Regional Director, nor an Assistant Commissioner/Head Revenue Executive Assistant. Hence, the new revenue officers assigned to conduct audit on the taxpayer had no authority to continue the audit, and consequently any assessment issued from the audit is considered void.

COURT OF TAX APPEALS DECISIONS

Continued submission of documents in the old revenue office of the taxpayer will not constitute estoppel where taxpayer satisfied all the compliance requirements in notifying the BIR of its change of address

COSTNER TRADING CORPORATION V. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 9428 DATED JULY 21, 2020

At the time the PAN and the FAN were issued, the taxpayer duly informed the BIR of its change of address from Makati to Manila and was in fact issued a new Certificate of Registration (COR) indicating its new address. The fact that taxpayer continued to submit the documents to its old revenue office (Makati) may be attributed to taxpayer's prudent efforts to comply with the order of the old revenue office, since the FAN originated from said office. Estoppel will not apply to the taxpayer. The principle of estoppel relied upon by the CIR finds no application in a case where the taxpayer duly satisfied all the compliance requirements in notifying the BIR of its change of address and even securing a new COR from the latter which serves as an official notice of the change of taxing jurisdiction. The doctrine of estoppel is based on public policy, fair dealing, good faith and justice and its purpose is to forbid a party to speak against its own act or omission, representation or commitment to the injury of another to whom the act, omission, representation or commitment was directed and who reasonably relied thereon, which does not apply to this case.

In protesting an assessment (by way of request for reconsideration), granting the taxpayer the right to submit additional documents within the 60-day period is part of due process

MAXICARE HEALTHCARE CORPORATION V. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 9246 DATED JULY 21, 2020

The taxpayer filed a letter protest explicitly requesting for reinvestigation of its tax case, hence it had 60 days from the filing of such letter protest to submit relevant supporting documents. However, the CIR issued the assailed Final Decision on Disputed Assessment (FDDA) without allowing the 60-day period to lapse, thereby preventing taxpayer from submitting relevant supporting documents for purposes of reinvestigation of its tax case in clear violation of its right to due process.

The BIR is mandated to perform its assessment functions in accordance with law and strict adherence to its own rules of procedure, and always with regard to the basic tenets of due process. Failure of the BIR to observe due process rendered the deficiency tax assessment void and of no force and effect.

While the FDDA was defective for failure to indicate the due date for payment, the CIR's subsequent explanation as to the imposition of subject deficiency taxes is substantial compliance with Section 228 of the Tax Code

WESTERN GUARANTY CORPORATION V. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 9338 DATED JULY 24, 2020

Providing the taxpayer with the factual and legal bases for the tax assessment in compliance with Section 228 of the Tax Code is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.

Although the FAN and demand letter issued to the taxpayer were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against it, records show that the CIR responded to the taxpayer's letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest. Considering the foregoing exchange of correspondence and documents between the parties, the Court finds that the requirement of Section 228 of the Tax Code was substantially complied with. The CIR had fully informed the taxpayer in writing of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an "effective" protest, hence taxpayer's right to due process was not violated.

An undated FDDA and an FLD stating that the amount of tax liabilities is "still subject to modification" do not constitute a valid tax assessment

MERIDIEN BUSINESS LEADER, INC. V. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 9316 DATED JULY 29, 2020

The FLD in this case reveals that while the same provided for the computation of the taxpayer's tax liabilities, the amounts thereof remain indefinite, since the amount due is still "subject to modification". Specifically, the FLD states, "*Please take note that the interest and total amount due will have to be adjusted if paid beyond June 30. 2014*." The statements of the same tenor were also found in the undated FDDA issued by the CIR against the taxpayer.

Clearly, the undated FDDA and the FLD cannot be deemed a valid tax assessment since both the FDDA and FL failed to contain a definite and fixed amount of tax liability which must be paid by the taxpayer within a date certain. In the absence of these requisites, the subject tax assessments were declared void.

An assessment covered by an FLD which failed to provide a definite amount demanded of taxpayer is void

ZENITH FOODS CORPORATION V. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 9165 DATED JULY 29, 2020

The FLD/FAN in this case shows that the amount being demanded from the taxpayer is not definite. The computation of interest as shown in the Assessment Notices covered only the period from 10 January 2005 up to 10 July 2008, while the deadline for payment indicated in the said notices was 08 August 2008. Evidently, no interest was computed from 11 July 2008 up to the deadline on 08 August 2008. Although there was a *caveat* in the FLD that "*the interest and the total amount due will have to be adjusted if paid beyond due date*", there is still a gap period of twenty-eight (28) days wherein no interest will be due. Such gap will result in an absurd situation wherein the taxpayer who wishes to pay within the prescribed period would still need to have the total amount due adjusted, lest the payment of the amount reflected on the FLD will result in deficiency. It is rather illogical for the CIR to set a deadline within which to settle the deficiency taxes due but the amount remained variable. At the very least, the CIR should have computed the interest up to the deadline for payment, with *caveat* for adjustment of interest if paid beyond the deadline.

The "strictissimi juris" principle is applicable only where the claim for refund is based on a statute granting tax exemption but not in a claim for tax refund predicated on "erroneous" or "excess" payment of tax which necessitates only preponderance of evidence

AEON CREDIT SERVICE (PHILIPPINES), INC. V. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 9770 DATED JULY 15, 2020

There is difference in treatment between tax refunds which are in the nature of exemptions and tax refunds resulting from "illegally collected or erroneously paid" taxes. A claim for tax refund may be based on a statute granting tax exemption or the result of legislative grace. In such case, the

claim is to be construed *strictissimi juris* against the taxpayer, meaning that the claim cannot be made to rest on vague inference. Where the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, the claimant must show that he clearly falls under the exempting statute.

On the other hand, a tax refund may be predicated on tprovisions allowing a refund of “erroneous or excess payment” of tax. The refund of what was erroneously paid is founded on the principle of *solutio indebiti*, a basic postulate that no one should unjustly enrich himself at the expense of another. The *caveat* against unjust enrichment covers the government. As decisional law teaches, a claim for tax refund proper necessitates only the preponderance of evidence threshold like in any ordinary civil case. This reiterates the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation* (G.R. No. 172129, 12 September 2008).

Surveillance by certain officers is necessary before the BIR can issue a 48-Hour Notice, 5-day VAT Compliance Notice and Closure Order to a “non-compliant taxpayer” under RMO No. 3-2009

PAYMENTWALL, INC. V. COMMISSIONER OF INTERNAL REVENUE AND THE REGIONAL DIRECTOR OF REVENUE REGION NO. 8, MAKATI CITY GLEN A. GERALDINO, CTA CASE NO. 9727 DATED JULY 28, 2020

For a taxpayer to be considered "non-compliant" for purposes of RMO No. 3-2009 (*Amendment and Consolidation of the Guidelines in the Conduct of Surveillance and Stock-Taking Activities, and the Implementation of the Administrative Sanction of Suspension and Temporary Closure of Business*) the issuance of the *48-Hour Notice*, *5-day VAT Compliance Notice*, and *Closure Order* must have resulted from "surveillance/stocktaking activities" by the BIR. In other words, before the issuance of the said notices against a particular taxpayer, the BIR must have initially conducted a surveillance or stocktaking against the latter, and the surveillance, in turn, must be covered by or authorized through a Mission Order duly issued under RMO No. 3-2009. Otherwise, said taxpayer may not be categorized as a "non-compliant taxpayer" warranting the issuance of the said notices. In the absence of any surveillance conducted against the taxpayer (as there was no Mission Order issued against it), the CIR violated taxpayer’s right to due process.

BIR ISSUANCES

RR No. 20-2020 issued on August 3, 2020

This RMC amends Section 7 of RR No. 6-2008 as amended, entitled "Consolidated Regulations Prescribing Rules on the Taxation of Sale, Barter, Exchange or other Disposition of Shares of Stock Held as Capital Assets".

In the case of shares of stock not listed and traded through the stock exchange, the term "fair market value" shall mean:

(1) For common shares of stock, the book value of the shares based on the latest available financial statements duly certified by an independent public accountant prior to the date of sale, but not earlier than the immediately preceding taxable year, shall be considered as the *prima facie* fair market value;

(2) For preferred shares of stock, the liquidation value, which is equal to the redemption price of the preferred shares as of balance sheet date nearest the transaction date, including any premium and cumulative preferred dividends in arrears, shall be considered as the fair market value;

(3) In case there are both common and preferred shares of stock, the book value per common shares is computed by deducting the liquidation value of the preferred shares from the total equity of the corporation and dividing the result by the number of outstanding common shares as of balance sheet date nearest the transaction date.

For this purpose, the book value of the common shares or the liquidation value of the preferred shares of stock, need not be adjusted to include any appraisal surplus from any property of the corporation not reflected or included in the latest audited financial statements, in order to determine the fair market value of the shares of stock. The latest audited financial statements shall be sufficient in determining the fair market value of the shares of stock subject of the sale, barter, exchange or other disposition.

Revenue Memorandum Circular (RMC) No. 71-2020 issued on July 17, 2020

This RMC circularizes Advisory No. 01, Series of 2020 of the Anti-Red Tape Authority (ARTA) for the adoption of fast-track measures in all government agencies during the COVID-19 state of calamity.

For purposes of simplifying and streamlining their respective procedures and documentary requirements to speed up the delivery of government services, all government agencies may be guided by the following measures:

a. **Emergency Extensions**. This pertains to extension of the validity of permits, licenses, certifications and other similar authorizations that are expiring within the period of State of National Emergency, particularly licenses whose application for renewal or extension may not be filed, processed, or are pending approval due to the Enhanced Community Quarantine.

b. **Electronic Submissions and Approvals**. Agencies previously operating through manual procedures may consider accepting applications or reports through email and other online platforms, including submissions of digital copies of supporting documents. Approvals may likewise be issued via email or other online platforms, provided adequate security measures are in place. Further, it is suggested that these transactions be subjected to post-audits when able.

c. **Suspension of Notarization Requirement for Documents to be Submitted, Unless Required by Law**. Agencies may consider accepting signed and unnotarized copies of documents, which are converted into public documents once accepted and stored in public records since submission of a falsified document, whether notarized or not, is already punishable by the Revised Penal Code.

d. **Reduction of Signatories and Requirements**. In accepting applications, renewals or requests, government agencies may process incomplete applications, subject to completion after a designated period or when conditions normalize. Electronic signatures or pre-signed license, clearance, permit, certification or authorization with adequate security and control

mechanism may be used. In case the authorized signatory is on official business or official leave, an alternate shall be designated as signatory.

e. **Whole-of-Government Approach**. Government agencies shall take an integrated approach to public service delivery, characterized by seamless government transactions, integrated policy design and implementation across several agencies, inter-operability of government processes, horizontal coordination, and strengthened linkages among government units.

f. **Payments of Processing Fees**. Government agencies, whenever practicable, may employ an online payment scheme or outsourced payment collection centers for the transacting public for payment of prescribed processing fees. If payment online is not possible, they may consider waiver or deferment of payments.

g. **Submission of Regulations to University of the Philippines – Office of National Administrative Register (UP-ONAR)**. To give legal effect to regulations, it is requested that government agencies electronically forward copies of their regulations/issuances, including those which were previously issued, to the UP-ONAR at *onar_law.upd@up.edu.ph*.

Revenue Memorandum Circular (RMC) No. 74-2020 issued on July 22, 2020

This RMC amends and/or clarifies certain provisions of Revenue Memorandum Circular No. 34-2020 relative to the suspension of the running of the Statute of Limitations.

The penultimate paragraph of the RMC 34-2020 is amended to read as follows:

"The cited provisions and stated circumstances therefore warrant the suspension of the running of the Statute of Limitations under Section 203 and 222 of the NIRC of 1997, as amended, for a period starting on March 16, 2020 ***until the lifting of the extreme community quarantine (ECQ)*** and for sixty (60) days thereafter. The suspension of the running of the Statute of Limitations shall likewise apply with respect to the issuance and service of assessment notices, warrants and enforcement and/or collection

of deficiency taxes. This Circular shall apply nationwide on areas placed under ECQ."

Revenue Memorandum Circular No. 75-2020 issued on July 29, 2020

This RMC extends the deadline for business registration and/or updates with no penalty imposition of those engaged in digital transactions under Revenue Memorandum Circular No. 60-2020, from July 31, 2020 to August 31, 2020.

Those who shall voluntarily declare their past transactions subject to pertinent taxes and pay the taxes due thereon shall not be subject to the corresponding penalty for late filing and payment when declared and paid on or before the said extended date.

All those who will be found later doing business without complying with the registration/update requirements and those who failed to declare past due taxes/unpaid taxes shall be subject to applicable penalties under the law and existing revenue rules and regulations.

Revenue Memorandum Circular No. 76-2020 issued on July 29, 2020

This RMC seeks to address frequently asked questions regarding the submission of BIR Form No. 1709, or the Related Party Transaction (RPT) Form and its attachments pursuant to Revenue Regulations (RR) No. 19-2020.