



TMAP TAX UPDATES

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COURT OF TAX APPEALS DECISIONS

MANDAMUS FILED WITH REGIONAL TRIAL COURT IS NOT PROPER REMEDY TO CLAIM EXEMPTION FROM REAL PROPERTY TAX. TAXPAYER MUST AVAIL OF ADMINISTRATIVE REMEDIES UNDER LOCAL GOVERNMENT CODE.

Jetti Petroleum, Inc. v. Ms. Emerlinda S. Talento, in her capacity as Provincial Treasurer of the Province of Bataan, Engr. Ricardo C. Herrera, in his capacity as Provincial Assessor of the Province of Bataan, and Atty. Efren C. Lizardo, in his capacity as Provincial Legal Officer of the Province of Bataan, CTA AC No. 211 dated February 18, 2019.

CERTIFICATIONS ISSUED BY PHILIPPINE POSTAL CORPORATION MERELY SHOWING THAT REGISTERED LETTERS WERE RESPECTIVELY DISPATCHED DO NOT SUFFICE AS PROOF OF SERVICE. *People v. Generosa P. Ortega, Lalaine P. Ortega, La Chilo Chinese Cuisine, Inc., CTA Crim. Case No. O-606 dated February 20, 2019.*

FOREIGN CURRENCY REMITTANCES REFERRED TO UNDER SECTION 108(B)(2) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, (“NIRC”) MUST BE SUPPORTED BY VAT ZERO-RATED OFFICIAL RECEIPTS. *MSCI Hong Kong Limited v. Commissioner of Internal Revenue, CTA Case No. 9392 dated February 20, 2019.*

AS COURT OF RECORD, COURT OF TAX APPEALS (“CTA”) CAN CONSIDER ALL PIECES OF EVIDENCE FORMALLY OFFERED AND ADMITTED, NOTWITHSTANDING NON-PRESENTMENT TO BUREAU OF INTERNAL REVENUE (“BIR”). *Trinity Franchising and Management Corporation v. Commissioner of Internal Revenue, CTA Case No. 9177 dated February 20, 2019.*

TO BE EXEMPT FROM IMPROPERLY ACCUMULATED EARNINGS TAX (“IAET”), APPROPRIATION MADE BY CORPORATION MUST BE FOR IMMEDIATE NEEDS OF BUSINESS AND THERE MUST BE DEFINITENESS OF PLANS COUPLED WITH ACTIONS TAKEN TOWARDS ITS CONSUMMATION.

Although there are no strict rules on how to prove the reasonable needs of a business for retained earnings to be exempted from IAET, the taxpayer could present clear proof to substantiate its claim, such as a copy of minutes of the meeting of its Board of Directors, the Board Resolution itself, or a memorandum recommending the appropriation of such retained earnings for its definite planned expansion. A mere Secretary's Certificate without mentioning a definite planned expansion, as well as self-serving testimonies without supporting evidence of the definite planned expansion linked to the accumulation of retained earnings will not suffice. As stated in Section 7 of Revenue Regulations No. 02-01, implementing Section 29 of the NIRC, “[a] speculative and indefinite purpose will not suffice. The mere recognition of a future problem or the discussion of

possible and alternative solutions is not sufficient.” *IMaple Sales, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 1662 dated February 21, 2019 .

FOR VALIDITY OF ASSESSMENT, BIR HAS BURDEN TO PROVE THAT TAXPAYER ACTUALLY RECEIVED ASSESSMENT NOTICES IN CASE OF LATTER'S DENIAL. *Commissioner of Internal Revenue v. Clark Water Corporation*, CTA EB No. 1693 dated February 21, 2019.

PROSPECTIVE APPLICATION OF DECISIONS APPLIES ONLY IN CASES WHERE OLD DOCTRINE OF SUPREME COURT IS OVERRULED BY SUBSEQUENT DECISION WHICH ADOPTS A NEW DOCTRINE. *First Philippine Utilities Corporation v. Commissioner of Internal Revenue*, CTA Case No. 8993 dated February 26, 2019.

IN TAX EVASION CASES, PROSECUTION MUST IDENTIFY LIKELY SOURCE OF UNREPORTED INCOME OF ACCUSED AND PROVE VALIDITY OF ASSESSMENT.

In the prosecution of the crime of tax evasion, it is essential to identify the likely source of the unreported or undeclared income of the accused to sustain a conviction. As the BIR failed to identify the taxpayer's likely source of income, his innocence was upheld by the CTA. As regards the civil aspect of the case, no liability was due in light of the BIR's void assessment for failing to wait for the expiration of fifteen (15) days from the date of receipt of the Preliminary Assessment Notice (“PAN”) before issuing the Formal letter of Demand (“FLD”). In this case, the BIR only waited for three (3) days from the receipt of the PAN before the FLD was issued. *People v. William R. Villarica*, CTA Crim. Case No. O-212 dated February 26, 2019.

FILIPINO ADB OFFICIALS AND EMPLOYEES ARE LIABLE TO INCOME TAX UNDER SECTIONS 23 AND 24 OF NIRC.

The NIRC, a subsequent legislation that took effect on January 1, 1998, is the law that illuminates the clear intention of the reservation clauses found in Senate Resolution No. 6 and Section 45(b) of the ADB Headquarters Agreement. Specifically, said law leaves no room for doubt that resident citizens are subject to tax on income derived from all sources within and without the Philippines under its Sections 23(A) and 24(A)(1)(a) as amended. Assuming that there was a failure in the past by the respondent to take a categorical position on the taxation of Filipino ADB employees, such deficit does not operate to estop the government from correcting the same. Prolonged practice of non-collection of certain taxes, if proven to be erroneous, does not ripen into validity as the Supreme Court En Banc held in the consolidated cases of *La Suerte Cigar and Cigarette Factory v. Court of Appeal*. *Anthony Ortille Tuason v. Commissioner of Internal Revenue*, CTA EB No. 9041 dated February 28, 2019.

IN TAX REFUND CLAIM, TAXPAYER HAS LIBERALITY TO PRESENT ANY EVIDENCE SUFFICIENT TO PROVE ITS CLAIM.

The definition of the phrase "relevant supporting documents" is already well-settled. In the case of *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*, the Supreme Court ruled that *relevant supporting documents* are those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may

require the production of documents that a taxpayer cannot submit. While the present case does not involve tax assessment, the above-ruling of the Supreme Court is applicable in this case, such that the BIR cannot determine what type of document the Petitioner needs to produce to prove its claim for tax refund. *SM Investments Corporation v. Commissioner of Internal Revenue, CTA Case No. 9322 dated March 4, 2019.*

FAILURE TO RECEIVE PRELIMINARY ASSESSMENT NOTICE, FINAL ASSESSMENT NOTICE, AND FORMAL LETTER OF DEMAND SENT USING DIFFERENT WRONG ADDRESSES RENDERS ASSESSMENT VOID. *Bostik Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9019 dated March 5, 2019.*

WHEN LOCAL SUPPLIERS ERRONEOUSLY SHIFT OUTPUT TAX TO BOI-REGISTERED PURCHASER, REFUND WITH THE GOVERNMENT IS NOT PROPER REMEDY; RECOURSE IS THROUGH REFUND FROM SAID SUPPLIERS. *Hinatuan Mining Corporation v. Commissioner of Internal Revenue, CTA Case No. 9287 dated March 6, 2019.*

THOUGH REMEDY OF PETITION FOR RELIEF FROM JUDGMENT IS NOT PROVIDED BY REVISED RULES OF CTA, SUCH PETITION MAY BE CONSIDERED AUXILIARY OR INCIDENTAL TO CASE, OVER WHICH CTA HAS JURISDICTION. *Kilusang Magkaibigan Multi-purpose Cooperative v. Commissioner of Internal Revenue, CTA Case No 8751 dated March 7, 2019.*

IN PETITION FOR REVIEW WITH CTA, ABSENCE OF PROOF THAT SIGNATORY OF CERTIFICATION AGAINST FORUM SHOPPING IS AUTHORIZED TO FILE PETITION ON BEHALF OF CORPORATION IS GROUND FOR DISMISSAL.

The Rules of Court, in general, suppletorily apply to the Revised Rules of the Court of Tax Appeals, and the provisions of Rule 42, 43, 44 and 46 thereof, specifically apply to original and in appealed cases to the CTA, whether in Division or En Banc. A reading of the said provisions reveal that the failure to accompany a petition for review with sworn certification against forum shopping is a ground for the dismissal thereof. Furthermore, as provided in *Shipside Incorporated vs. Court of Appeals, et al.*, in case such certification is not accompanied by proof that the signatory thereof is authorized to file the petition on behalf of the corporation, the same is considered as a ground for the dismissal of the petition. Thus said, because the City Treasurer of Makati was not authorized by any ordinance to file the Petition for Review, it was dismissed by the CTA. *Makati City Treasurer and City of Makati, as represented by the City Mayor v. Mermac, Inc., CTA AC No. 193 dated March 7, 2019.*

REGISTRY RETURN RECEIPT ALONE, WITHOUT AFFIDAVIT OF PERSON MAILING IT, IS INSUFFICIENT TO PROVE SERVICE OF MAIL MATTER.

While a mailed letter is deemed received by the addressee in the ordinary course of mail, this remains merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. In the instant case, the CTA ruled that the presentation of the registry return receipt with an unauthenticated signature was not sufficient to prove that a letter sent through registered mail was actually received by the addressee. Moreover, pursuant to Section

13, Rule 13 of the 1997 Rules on Civil Procedure, it is the registry receipt issued by the mailing office and the affidavit of the person who mailed the letter that proves service made through registered mail. *People v. Matanguihan, CTA Crim. No. A-5, dated March 7, 2019.*

CTA HAS NO JURISDICTION OVER A CASE BETWEEN GOVERNMENT-OWNED AND CONTROLLED CORPORATION AND BIR INVOLVING ALLEGED DEFICIENCY INCOME TAX; JURISDICTION LIES WITH SECRETARY OF JUSTICE. *Philippine Pharma Procurement, Inc. v. Bureau of Internal Revenue, represented by Commissioner Caesar R. Dulay, CTA Case No. 9734 dated March 7, 2019.*

IN DEFICIENCY ASSESSMENTS A MEMORANDUM OF ASSIGNMENT IS NOT SUBSTITUTE FOR VALID LETTER OF AUTHORITY AND FORMAL LETTER OF DEMAND WITHOUT DEFINITE TAX LIABILITY AND PERIOD FOR PAYMENT CANNOT BE CONSIDERED AS VALID FINAL ASSESSMENT NOTICE.

In making deficiency assessments, the BIR must grant the revenue officer conducting the examination or assessment the necessary authority to do so. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity. In this case, the authority to conduct the audit investigation was derived merely from the Memorandum of Assignment and a 1st Indorsement. On the basis of this ground alone, the CTA held that the cancellation of the deficiency assessments was warranted. As regards the subject Formal Letter of Demand, a careful scrutiny of the document revealed that it was not a valid final assessment as it lacked the definite amount of tax liability for which the Petitioner was accountable, and a date certain for payment of the alleged tax liability. *Hon. Kim Henares in her capacity as Commissioner of Internal Revenue and Esmeralda Tabule, in her capacity as Revenue Regional Director of Revenue Region No. 10, Legazpi City v. LKY Property Holdings Inc., represented by Mr. Wilbert T. Lee, CTA EB No. 1852 dated March 8, 2019.*

FAILURE OF TAXPAYER TO FORMALLY OFFER CERTIFICATION OF NON-REGISTRATION, DESPITE ITS PRESENCE AMONG EXHIBITS MARKED BY THE ICPA, IS FATAL TO CLAIMING TAX CREDIT CERTIFICATE ("TCC").

In denying the Petitioner's claim for the issuance of a TCC, the CTA held that the failure of the taxpayer-applicant to formally offer its supplier's Certificate of Non-Registration results in the absence of the third requisite for a zero-rated sale transaction provided in Section 108(8)(3) of the NIRC of 1997, that is, "the recipient of such services is doing business outside the Philippines". As held by the CTA *En Banc* in *Deutsche Knowledge Services, Pte Ltd. v. Commissioner of Internal Revenue*, to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both a certificate of nonregistration of corporation/partnership issued by the Philippine Securities and Exchange Commission (SEC) and certificate/articles of foreign incorporation/association, and that there is no other indication that the recipient of the services is doing business in the Philippines. While the soft copy of the exhibits marked by the ICPA contained a document entitled "Certification of Non-Registration of Company", the same was not admitted by the CTA as it was not included in the exhibits formally offered. *Maxima Machineries, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9358 dated March 11, 2019.*

UNVERIFIED THIRD-PARTY INFORMATION AND USE OF BENCHMARK FORMULA IN COMPUTING FOR VAT CANNOT BE USED AS BASIS FOR VAT DEFICIENCY. *Northern Mindanao Sales Corporation v. Commissioner of Internal Revenue, CTA Case No. 8959 dated March 11, 2019.*

IN VAT REFUND CASES, WHEN 120-DAY PERIOD LAPSES AND THERE IS INACTION ON PART OF COMMISSIONER OF INTERNAL REVENUE (“CIR”), TAXPAYER MUST FILE JUDICIAL CLAIM WITHIN 30 DAYS FROM LAPSE OF 120-DAY PERIOD.

The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period. Since the Petitioner waited for the decision of the CIR beyond the 120-day period, its judicial claim was dismissed for lack of jurisdiction. The CTA distinguished this rule from cases on disputed assessments wherein the law allows the taxpayer to wait for the decision of the CIR despite the lapse of the 180-day period. *Hedcor Sibulan, Inc. v. Commissioner of Internal Revenue, CTA EB No. 1689 dated March 13, 2019.*

IN CASES INVOLVING REFUND OF UNUTILIZED INPUT VAT, THE 30-DAY PERIOD TO SUBMIT COMPLETE SUPPORTING DOCUMENTS MAY BE EXTENDED IF THE BIR CONTINUES TO MAKE REQUESTS FOR DOCUMENTS AFTER THE LAPSE OF SAID 30-DAY PERIOD.

While it is well-settled that it is the taxpayer who should determine when the documents (in support of the claim) are already complete, there are instances where the respondent, in the course of studying the sufficiency of the claim, will continue to request for more documents from the taxpayer even after the two-year period. In such instances, the taxpayer should not be faulted for complying with these continuous requests from the respondent, whether verbal or written, in the hope of settling the claim in the administrative level, thereby avoiding a long protracted and expensive process if it appeals its claim to the courts. In the instant case, the Petitioner's submission of documents to the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance ("OSS-DOF") and not with the BIR subsequent to the filing of an application for refund covered by the two-year period, led the CTA to count the 120-day period from the filing of the claims for refund and not from its submission of said documents to the OSS-DOF. It must be emphasized that the allowable extended period of submission of documents and the consequent extension of the 120-day period applies only if the BIR continues to make requests for documents (whether verbal or written) within the 120-day period. *Dohle Shipmanagement Phils. Corp. v. Commissioner Of Internal Revenue, CTA EB No. 1715 dated March 14, 2019*

GENERATION AND TRANSMISSION CHARGES, INCLUDING VAT THEREON, ALTHOUGH BILLED TO END-USER BY DISTRIBUTION COMPANIES AND ELECTRIC COOPERATIVES, ARE NOT PART OF THEIR GROSS RECEIPTS; NEITHER CAN THEY CLAIM INPUT TAX ON SUCH CHARGES; RATHER, SUCH AMOUNT COLLECTED FOR THESE CHARGES SHALL FORM PART OF GROSS RECEIPTS AND OUTPUT VAT OF GENERATION COMPANIES. *Toledo Power Company v. Commissioner of Internal Revenue, CTA Case Nos. 8450, 8512, 8547 & 8596 dated March 15, 2019.*

BIR RULINGS AND ISSUANCES

BIR PRESCRIBES USE OF BIR-PRINTED RECEIPT/INVOICE FOR NEW BUSINESS OWNERS TO ALLOW NEW BUSINESS TAXPAYERS TO IMMEDIATELY START BUSINESS OPERATIONS WHILE WAITING FOR PRINTING OR DELIVERY OF RECEIPTS/INVOICES BY THE BIR-ACCREDITED PRINTERS.

New business registrants are required to secure Authority to Print (ATP) principal receipts/invoices upon registration with the BIR. However, in order for them to immediately commence business operations after registration, they shall be allowed to secure BPR/BPI at the time of registration from the New Business Registrant Counter in the meantime that their receipts are being printed. They shall be allowed to use the said BPR/BPI for a period of fifteen (15) days from the date of registration, hence, the number of booklets to be issued shall be limited to the estimated number of transactions for such period. However, new business registrants may opt not to avail of the BPR/BPI and make use of their own receipts/invoices covered by the ATP issued during registration. Only the BIR is allowed to print and issue the BPR/BPI. *Revenue Memorandum Circular No. 28-2019 dated February 26, 2019.*

BIR PRESCRIBES REVISED POLICIES AND GUIDELINES IN KEEPING, MAINTAINING AND REGISTERING BOOKS OF ACCOUNTS PURSUANT TO NIRC, IN RELATION TO R.A. NO. 11032 (EASE OF DOING BUSINESS AND EFFICIENT GOVERNMENT SERVICE DELIVERY ACT OF 2018). *Revenue Memorandum Circular No. 29-2019 dated February 26, 2019.*

BIR CLARIFIES SECTION 100 OF NIRC IN RELATION TO SALE OF SHARES OF STOCK NOT TRADED OR LISTED.

Starting January 1, 2018, when shares of stock not traded in stock exchange are sold for less than its fair market value ("FMV"), the excess of the FMV over the selling price shall be treated as gift subject to Donor's Tax imposed by Section 100 of the NIRC, as amended, except when it is sold at arm's length, free from any donative intent (in the ordinary course of business).

The determination of whether the sale of shares of stock not listed and traded is at arm's length is a question of fact and not of law. Since an arm's length transaction is a question of fact, it therefore behooves upon the party seeking to apply the exception to prove that indeed the sale involves no irregularity between unrelated and independent parties. This would require presentation and reception of reasonable evidence sufficient enough to convince that the sale of the shares of stock for less than its FMV is without intent to evade tax and defraud the government (of the tax due therein). The evidence that should be presented should be viewed in accordance with its relation and relevance to the transaction on a case to case basis. *Revenue Memorandum Circular No. 30-2019 dated February 28, 2019.*

BIR CLARIFIES TREATMENT AND REPORTING REQUIREMENTS OF INPUT TAX PERTAINING TO DRUGS AND MEDICINES PRESCRIBED FOR DIABETES, HIGH-CHOLESTEROL AND HYPERTENSION PURCHASED ON OR BEFORE DECEMBER 31, 2018 BY MANUFACTURERS, DISTRIBUTORS, WHOLESALERS AND RETAILERS WHICH REMAINED UNSOLD AS OF DECEMBER 31, 2018. *Revenue Memorandum Circular No. 34-2019 dated March 13, 2019.*

BIR REITERATES DEFINITION OF ACCOUNTS RECEIVABLE/ DELINQUENT ACCOUNTS (AR/DAS) FOR PURPOSES OF ISSUANCE OF DELINQUENCY VERIFICATION CERTIFICATES (DVC) AND TAX CLEARANCE FOR CERTAIN/SPECIFIC PURPOSE.

As provided in Revenue Memorandum Order No. 11-2014, “open stop-filer cases” and deficiency tax assessments which are timely protested, subject of reconsideration/ re- investigation, or pending appeal with the Appellate Division or Court of Tax Appeals/Supreme Court shall not be considered as AR/DA and, therefore, existence of which shall not be a ground for the non-issuance of a clear DVC or Tax Clearance, as the case may be. *Revenue Memorandum Circular No. 35-2019 dated March 14, 2019*

COOPERATIVE DEVELOPMENT AUTHORITY (“CDA”) IS LIABLE FOR CAPITAL GAINS TAX/CREDITABLE WITHHOLDING TAX/VALUE ADDED TAX, AS CASE MAY BE AND DOCUMENTARY STAMP TAX ON NON-REDEMPTION OF FORECLOSED PROPERTY MORTGAGED IN ITS FAVOR.

There is no provision in RA No. 6939 (the “CDA Charter”) that exempts CDA from payment of taxes. Thus, the CIR ruled that CDA was liable for taxes on account of the non-redemption of a foreclosed property mortgaged in its favor as provided in Revenue Regulations No. 9-2012. *BIR Ruling No. 205-19 dated March 6, 2019.*

SERVICE FEES PAID TO NON-RESIDENT FOREIGN CORPORATION FOR SERVICES PERFORMED ENTIRELY IN JAPAN ARE EXEMPT FROM PHILIPPINE INCOME TAX, WITHHOLDING TAX AND VALUE-ADDED TAX. *BIR Ruling No. 203-19 dated March 6, 2019.*