

TAX UPDATES FOR MARCH 2018

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COURT OF TAX APPEALS DECISIONS

RUNNING OF THREE (3)-YEAR PRESCRIPTIVE PERIOD TO ASSESS IS NOT SUSPENDED BY REQUEST FOR REINVESTIGATION OF PRELIMINARY ASSESSMENT (“PAN”). *CIR v. Victorias Foods Corporation, CTA EB No. 1542 dated February 19, 2018*

COURT OF TAX APPEALS (“CTA”) DOES NOT HAVE POWER TO MAKE ASSESSMENT AT FIRST INSTANCE.

It is not incumbent upon the Court *en banc* to first determine whether the taxpayer paid its other revenue taxes before granting a claim for refund. *CIR v. Sutherland Global Services Philippines, Inc., CTA EB No. 1596 dated February 19, 2018*

CTA HAS EXCLUSIVE APPELLATE JURISDICTION OVER DISPUTES BETWEEN GOVERNMENT AGENCIES AND OFFICES PERTAINING TO MATTERS ARISING UNDER THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED (“1997 NIRC”).

In tax disputes between national government offices, the CTA *en banc* ruled that it is not Presidential Decree No. 242, the law authorizing the Secretary of Justice to resolve all disputes, claims, and controversies between national government offices, agencies and instrumentalities, including GOCCs, which should be followed, but Republic Act No. (“RA”) 9282 which vests exclusive appellate jurisdiction on the CTA in cases pertaining to disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC of 1997. *PNOC Development and Management Corporation v. CIR, CTA EB No. 1486 dated February 19, 2018.*

PROPERTY PURCHASED BY MEANS OF COCONUT LEVY FUNDS ARE OWNED BY NATIONAL GOVERNMENT, PLACING IT BEYOND TAXING POWER OF LOCAL GOVERNMENT.

Coconut levy funds are special public funds. Consequently, any property purchased by means of the coconut levy funds should likewise be treated as public funds or public property, subject to burdens and restrictions attached by law to such property. Thus, respondent itself, as well as its dividend and interest income arising from shares belonging to the National Government, are beyond the taxing power of the Local Government. *City of Davao, et al., v. Randy Allied Ventures, Inc. CTA EB No. 1591 dated February 20, 2018*

DEFINITION AND INTERPRETATION OF WHAT CONSTITUTES DIVIDEND INCOME MUST BE DETERMINED BY TAX LAWS OF THE STATE OF WHICH CORPORATION MAKING THE DISTRIBUTION IS A RESIDENT.

Jurisprudence further clarifies that the law did not intend to automatically characterize as taxable dividend every distribution of earnings arising from redemption of stock dividends as the

taxability of said distribution as dividends will still have to be determined on a case to case basis. *CIR v. Keppel Philippines Properties, Inc., CTA EB No. 1540 dated February 20, 2018*

ASSESSMENT MUST BE BASED ON ACTUAL FACTS.

Mere unverified computer generated data will not be given credence by the Court without the proper substantiation. The presumption of correctness of assessments cannot apply since a presumption cannot be made to rest on another presumption. *CIR v. G&W Architects, Engineers, and Project Consultants, co., CTA EB No. 1572 dated February 23, 2018.*

UNDERDECLARATION OF PURCHASES DOES NOT BY ITSELF WARRANT IMPOSITION OF INCOME TAX AND VALUE-ADDED TAX (“VAT”).

Income tax is not imposed when there is an undeclared purchase, but only when there was income, and that such income was received or realized by the taxpayer. Similarly, the imposition of VAT does hold water as the CIR cannot merely presume that the undeclared purchases are part of the taxpayer’s cost which translated to profit or income. *CIR v. G&W Architects, Engineers, and Project Consultants, co., CTA EB No. 1572 dated February 23, 2018.*

SUPREME COURT’S INTERPRETATION OF TAX CODE PROVISIONS FORMS PART OF LAW OF THE LAND AS OF DATE STATUTE HAS BEEN ENACTED.

It is only when a prior ruling of the Supreme Court finds itself later overruled, and a different view is adopted, that the new doctrine may have to be applied prospectively in favor of parties who relied on the old doctrine and have acted in good faith in accordance thereon. BIR Issuances which merely implement the Supreme Court interpretation of the law may be applicable to transactions before its issuance. However, good faith belief and reliance on previous interpretations of government agencies that one is not subject to tax are sufficient justification to delete the imposition of penalties and surcharges. *South Premiere Power Corp. v. CIR, CTA Case No. 9337 dated February 27, 2018.*

DOCUMENTARY STAMP TAX (“DST”) MAY BE IMPOSED EVEN IN ABSENCE OF DEBT INSTRUMENT.

DST is an excise tax on transactions rather than the document. The fact that there is no document or that the document itself does not manifest the loan transaction does not prevent the imposition of the DST. Evidence such as debit/credit memo, advice, drawings by any form of check or withdrawal slip may be used to establish the amount of drawings or availment of facilities, which shall be the basis of the DST. *South Premiere Power Corp. v. CIR, CTA Case No. 9337 dated February 27, 2018.*

SEIZURE OF GOODS BY BUREAU OF CUSTOMS REQUIRES PROBABLE CAUSE, WHICH HAS BEEN HELD SYNONYMOUS WITH “REASONABLE CAUSE” OR LESS THAN EVIDENCE THAT WILL JUSTIFY CONDEMNATION.

For seizure of goods by the Bureau of Customs, it implies a seizure made under circumstances which warrant suspicion. The Certificate of Product Registration being in the name of a product different from that which was imported warrants suspicion for seizure by the BOC. *Unlimited Exchange Global Corp., v. Commissioner of Customs, CTA Case No. 9488 dated February 27, 2018.*

FOR LOCAL GOVERNMENT TAXATION, A CLAIM OF TAX EXEMPTION RAISES QUESTION OF *REASONABLENESS* AND *CORRECTNESS* OF ASSESSMENT, WHICH MUST BE BROUGHT TO THE LOCAL BOARD ASSESSEMENT APPEALS (“LBAA”) AFTER PAYMENT UNDER PROTEST.

In order to contest an assessment of Real Property Tax issued by a local government unit (LGU) through its Municipal or Provincial Assessor, there is a need to distinguish between the reasonableness or correctness of the assessment, and the validity or legality of the assessment itself. Reasonableness or correctness is a question of fact which is cognizable by the LBAA after paying under protest. The legality of the assessment, on the other hand, must be directly raised to the RTC. *National Grid Corporation of the Philippines v. Central Board of Assessment Appeals, et al.*, CTA EB No. 1459 dated February 27, 2018.

CLAIM FOR REFUND SHOULD NOT BE DENIED DUE TO LACK OF SPECIAL POWER OF ATTORNEY (“SPA”) OR BIR FORM NO. 1914.

Clients may ratify the unauthorized appearance of counsels and this confirmation after the fact amounts to a substitute for prior authority. This rule extends to filing administrative claims with the BIR. To deny the judicial claim due to the lack of SPA or even BIR Form No. 1914 is to adhere to formalities over substance when letters representing the administrative claim already disclosed sufficient facts and information about the subject transaction for CIR to process the administrative claim. *CIR v. Co, et al.*, CTA EB No. 1522 dated February 28, 2018.

INCOMPLETE SUBMISSION OF SUPPORTING DOCUMENTS IN ADMINISTRATIVE LEVEL IS NOT FATAL TO JUDICIAL CLAIM OF REFUND AS FILING OF A JUDICIAL CLAIM DOES NOT DIVEST CIR OF AUTHORITY TO PROCESS ADMINISTRATIVE REFUND CLAIM. *CIR v. Co, et al.*, CTA EB No. 1522 dated February 28, 2018.

IN TAX-FREE EXCHANGE UNDER SECTION 40(C)(2) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997 (“1997 NIRC”), CONTROL REQUIREMENT IS SUFFICIENTLY MET WHEN TRANSFERORS (NOT MORE THAN 5 PERSONS) COLLECTIVELY BECOME OWNERS OF 51% OF EQUITY OF TRANSFEREE. IT IS NOT REQUIRED THAT EACH OF TRANSFERORS INDIVIDUALLY GAINS CONTROL OR INDIVIDUALLY INCREASES HIS OR HER INTEREST. *CIR v. Co, et al.*, CTA EB No. 1522 dated February 28, 2018.

CONFIRMATORY RULING UNDER REVENUE REGULATIONS NO. (“RR”) 18-2001 IS NOT CONDITION *SINE QUA NON* FOR AVAILMENT OF TAX EXEMPTION IN A TAX-FREE EXCHANGE.

The BIR ruling required under the aforementioned revenue issuance is for the purpose of monitoring the properties for determining gain or loss in a subsequent sale, not as precondition to avail of the tax refund. *CIR v. Co, et al.*, CTA EB No. 1522 dated February 28, 2018.

ISSUANCE OF PAN, WHEN APPLICABLE, IS MANDATORY AND TAXPAYER MUST ACTUALLY RECEIVE ASSESSMENT IN ORDER TO SATISFY REQUIREMENTS OF DUE PROCESS.

To prove the fact of mailing, it is essential that the Commissioner of Internal Revenue (“CIR”) presents the registry receipt issued by the Bureau of Posts or the registry return card, which would have been signed by the taxpayer or its authorized representative. *CIR v. Intervet Philippines, Inc., CTA EB No. 1507 dated March 1, 2018.*

FILIPINO EMPLOYEES OF ASIAN DEVELOPMENT BANK (“ADB”) ARE NOT EXEMPT FROM INCOME TAX.

A reading of the Agreement between the ADB and the Government of the Republic of the Philippines shows that the employees of ADB are not exempt from income tax. The relevant treaty shows that the Government reserved its right to tax Filipino employees and this right was exercised through the income tax provision of the 1997 NIRC, subjecting resident citizens to tax on income from all sources within and without the Philippines. Also, exemption from withholding tax does not equate to exemption from income tax. *Mercado v. CIR, CTA No. 9330 dated March 5, 2018.*

FIFTEEN (15)-DAY PERIOD TO RESPOND TO PAN IS RECKONED FROM TAXPAYER’S RECEIPT THEREOF. RIGHT TO ISSUE FORMAL ASSESSMENT NOTICE (“FAN”) ONLY ARISES UPON LAPSE OF 15-DAY PERIOD TO RESPOND TO THE PAN. CIR v. Linde Philippines, Inc. CTA EB No. 1515 dated March 7, 2018.

RESORT TO INVENTORY METHOD OF ASSESSMENT IS JUSTIFIED WHEN TAXPAYER HAS NO DEFINITE REASONABLE EXPLANATION FOR EXISTENCE OF ASSETS OR PROPERTIES APPEARING IN NAME OF TAXPAYER.

In cases of tax evasion committed by a corporation, the penalty will be imposed on the officers responsible for filing true and accurate returns as named by the NIRC. *People v. Kingsam Express Incorporation and Samuel Santos, CTA Crim. Case No. O-522 dated March 12, 2018.*

RE-ASSIGNMENT NOTICE IS NOT LETTER OF AUTHORITY (“LOA”) AND CANNOT BE SOURCE OF AUTHORITY TO EXAMINE BOOKS AND ACCOUNTS OF TAXPAYERS.

Unless authorized by the CIR or his duly authorized representative through an LOA, an examination of the taxpayer cannot normally be undertaken by Revenue Officers. In the absence thereof, assessments issued by the Bureau of Internal Revenue (“BIR”) as a result of such examination are void. *Medtecs International v. CIR, CTA EB No. 1560 dated March 13, 2018.*

IN APPLICATIONS FOR REFUND OR TAX CREDIT CERTIFICATE, SUBMISSION OF COMPLETE SUPPORTING DOCUMENTS BY TAXPAYER IS PRESUMED SINCE TAXPAYER HAS BURDEN OF PROOF IN ITS ENTITLEMENT TO REFUND APPLICATION.

Even without this presumption, the BIR ought to know the tax records of the taxpayer and cannot validly claim that the office cannot act on the administrative claim without supporting documents. *CIR v. ABB, Inc., CTA EB No. 1501 dated March 13, 2018.*

ONE HUNDRED TWENTY (120)-DAY PERIOD FOR CIR TO ACT ON ADMINISTRATIVE CLAIM FOR REFUND BEGINS ONLY UPON SUBMISSION OF

COMPLETE SUPPORTING DOCUMENTS FROM TAXPAYER, WHICH MUST BE COMPLETED BEFORE TWO (2)-YEAR PRESCRIPTIVE PERIOD.

From the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements, upon notice from the tax collection authority, sufficient to support his claim, unless given further extension by the CIR. It is only upon complete submission of documents in support of his application that it can be said that the application was “officially received” as provided under RMC No. 49-2003. The submission must be completed before the 2-year prescriptive period under Section 112(A) of the NIRC. *Chevron Holdings, Inc. v. CIR, CTA Case No. 8946 dated March 14, 2018.*

BIR RULINGS AND ISSUANCES

CIR ISSUES IMPLEMENTING RULES OF REPUBLIC ACT NO. 10963 (TRAIN LAW) ON INCOME TAX. *Revenue Regulations No. 8-2018 dated February 20, 2018.*

CIR PRESCRIBES RULES AND REGULATIONS IMPLEMENTING INCREASE IN STOCK TRANSFER TAX UNDER TRAIN LAW.

The percentage tax on the sale, barter, or exchange of shares of stock listed and traded through the local stock exchange has been increased from ½ of 1 percent to 6/10 of 1 percent of the gross selling price or gross value in money of the shares sold, bartered or disposed. *Revenue Regulations No. 9-2018 dated February 26, 2018.*

CIR AMENDS SECTION 10 OF RR 10-2010 ON EXCHANGE OF INFORMATION REGULATIONS.

Section 10. Notice to Taxpayers – A taxpayer shall be duly notified in writing by the Commissioner that a foreign tax authority is requesting for exchange of information held by financial institutions pursuant to an international convention or agreement on tax matters within sixty (60) days following his transmittal of the information requested from, and provided for by, the concerned financial institution to the requesting treaty partner. *Revenue Regulations No. 10-2018 dated March 8, 2018.*

CIR IMPLEMENTS CERTAIN AMENDMENTS TO PROVISIONS OF RR 2-98 PURSUANT TO TRAIN LAW RELATIVE TO WITHHOLDING OF INCOME TAX. *Revenue Regulations No. 11-2018 dated March 15, 2018.*

CIR CONSOLIDATES REVENUE REGULATIONS ON ESTATE TAX AND DONOR'S TAX INCORPORATING AMENDMENTS UNDER TRAIN LAW. *Revenue Regulations No. 12-2018 dated March 15, 2018.*

CIR PRESCRIBES REGULATIONS IMPLEMENTING VAT PROVISIONS UNDER TRAIN LAW, WHICH FURTHER AMENDS RR 16-2005 (CONSOLIDATED VAT REGULATIONS OF 2005), AS AMENDED. *Revenue Regulations No. 13-2018 March 15, 2018.*

CIR UPDATES CLASSIFICATION OF REVENUE DISTRICT OFFICES. *Revenue Memorandum Order No. 13-2018 dated March 6, 2018.*

CIR ISSUES POLICIES, GUIDELINES AND PROCEDURES ON IMPLEMENTATION OF POST EVALUATION OF CASH REGISTER MACHINES (CRM), POINT-OF-SALE (POS) MACHINES AND OTHER SALES RECEIPTING SYSTEM SOFTWARE INCLUDING THE EXTRACTION OF DATA FROM ELECTRONIC SALES (ESALES) JOURNAL AND Z-READING. *Revenue Memorandum Order No. 15-2018 dated March 14, 2018.*

POWER OF CIR TO OBTAIN INFORMATION UNDER SECTION 5 OF 1997 NIRC, AS AMENDED, IS EXCEPTION TO ATTORNEY-CLIENT AND ACCOUNTANT-CLIENT PRIVILEGE. *Revenue Memorandum Circular No. 12-2018 dated February 22, 2018.*

POWER TO SIGN CERTIFICATES OF ZONAL VALUES OF REAL PROPERTIES RESTS WITH ASSISTANT DISTRICT REVENUE OFFICER, NOT WITH REVENUE DISTRICT OFFICER. *Revenue Memorandum Circular No. 13-2018 dated March 1, 2018.*

CIR AMENDS CERTAIN PROVISIONS OF REVENUE MEMORANDUM CIRCULAR NO. ("RMC") 89-2017 AND 54-2014 ON PROCESSING OF CLAIMS FOR ISSUANCE OF TAX REFUND/TAX CREDIT CERTIFICATE IN RELATION TO AMENDMENTS TO 1997 NIRC, AS AMENDED BY TRAIN LAW. *Revenue Memorandum Circular No. 17-2018 dated March 8, 2018.*

CIR CIRCULARIZES DEPARTMENT ORDER NO. 11-2018 REVERTING AUTHORITY TO ACCREDIT OR REGISTER CUSTOMS BROKERS TO BUREAU OF CUSTOMS.

The Bureau of Customs. is mandated to submit the list of approved/accredited Brokers to BIR on a quarterly basis for post-accreditation validation of tax compliance. *Revenue Memorandum Circular No.18-2018 dated March 9, 2018.*