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REVENUE REGULATIONS (Rev. Regs.)

Rev. Regs. No. 13-2022 dated October 7, 2022
Prescribes the guidelines for the proper Income Tax treatment of equity-based compensation of any kind.

The equity grants under the applicable equity schemes of the grantor will give rise to a realized benefit on the part of the grantee-employees. The equity grants to be awarded to the employees are for the services being rendered by the said employees. Consequently, the equity grants under the equity plans, once exercised or availed of by the grantee-employees, are considered compensation to be taxed as such under Section 32 of the NIRC of 1997, as amended, and implemented by RR No. 2-98, as amended. This rule will be applied regardless of the employment status of the grantee-employee who could either be rank-and-file or occupying a supervisory or managerial position considering that Section 32 of the NIRC of 1997, as amended and all applicable issuances do not make a distinction for purposes of applying the tax implication on all forms of compensation, including equity-based compensation.

As to the value of the taxable benefit of the employees receiving the equity-based compensation, the fair market value of the thing taken is the payment to be included as compensation subject to withholding. If the services are rendered at a stipulated price, in the absence of evidence to the contrary, such price will be presumed to be the fair market value of the remuneration received. If the corporation transfers to its employees its own stock as remuneration for services rendered by the employee, the amount of such remuneration is the fair market value of the stock at the time the services were rendered.

Revenue Memorandum Circulars (RMC)

RMC No. 136-2022 dated October 6, 2022
Publishing Fiscal Incentives Review Board (FIRB) Resolution No. 026-2022 - Extending the 70:30 Work-From-Home (WFH) Arrangement for Registered Business Enterprises (RBEs) in the Information Technology - Business Process Management (IT-BPM) Sector and Allowing the Transfer of Registration of Existing Business Enterprises in the IT-BPM to the Board of Investments (BOI)

This RMC published FIRB Resolution No. 026-2022 in relation to the extension of the 70-30 WFH set-up for the RBEs in the IT-BPM sector in PEZA. The resolution allowed 30% of the total workforce to adopt WFH arrangements for IT-BPM RBEs within the ecozone or freeport zone, as a temporary measure under Rule 23 of the Corporate Recovery and Tax Incentives for Enterprises Act Implementing Rules and Regulations in view of Presidential Proclamation No. 57, s. 2022, from September 13, 2022 until December 31, 2022.

This FIRB issuance is relevant to the BIR because non-compliance with the conditions prescribed under FIRB Resolution Nos. 19-21 and 23-21, in relation to the WFH set-up that is now extended under FIRB Resolution No. 026-2022, shall be meted with suspension of the income tax incentive on the revenue corresponding to the months of non-compliance.

It was further resolved in the said resolution that the affected RBEs in the IT-BPM sector may be allowed to transfer their registration to the BOI from the Investment Promotion Agency administering an economic zone or freeport zone where their project is located until December 31, 2022 to adopt 100% WFH.

RMC No. 137-2022 dated October 14, 2022
Guidelines on the Availment of VAT Zero Rate (0%) on Health Maintenance Organization (HMO) Plans Acquired by Registered Export Enterprises (REEs) and Prescribing the Uniform Template of Detailed Information Thereof

Cost items that fall under "other expenditures" in RMC No. 4-2022 include those expenses that are necessary or required to be incurred depending on the nature of the registered project or activity of the export enterprise. The list provided in the RMC is not exclusive. The expenditures not listed in the RMC may still be allowed VAT zero-rating, provided the same can be attributed directly to the registered activity of the REEs.

HMO plans acquired by REEs for their employees directly involved in the operations of their registered projects or activities and forming part of their compensation package, for their health maintenance, falls under other expenditure. Health benefits are not only an indispensable tool for building a competitive workforce but also ensures continuous and smooth operation of the registered project or activity. However, the VAT zero-rating shall not extend to HMO plans procured for employees' dependents, as well as HMO plans for employees not directly involved in the operations of the registered projects or activities of the REEs.

All REEs availing of the VAT zero-rating on their acquisition of HMO plans for employees directly involved in their registered project or activity shall provide their suppliers detailed information on the HMO plans acquired to ensure that only HMO expenses for qualified employees are given VAT zero-rating. This shall also be part of the documents to be submitted by the suppliers in filing the application for VAT zero-rating.

Court of Tax Appeals Decisions

A. CTA *En Banc* Cases

Commissioner of Internal Revenue v. Sky Cable Corporation, *C.T.A. EB Case Nos. 2305 & 2309 (C.T.A. Case No. 9069) (Resolution), October 4, 2022*

While Hong Kong is a special administrative region of China, it is still considered as a region independent from China with its own sets of laws. Hence, the Court held that the RP-China Tax Treaty is inapplicable to royalty payments made to a Hong Kong based corporation without sufficient proof that Hong Kong is, in fact, a part of China.

With respect to the requirement of presenting a SEC Certification of Non-Registration, the CTA *En Banc* ruled that the submission of a screenshot from the SEC iView facility of the Philippine SEC website cannot be considered as an official document nor may be even classified as a document since it is a mere web browser.

Petron Corp. v. Commissioner of Internal Revenue, *C.T.A. EB Case No. 2425 (C.T.A. Case Nos. 9565, 9606 & 9645) (Resolution), October 4, 2022*

There is double taxation 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 must be of the same kind or character.

Thus, when Petron Corporation was taxed for 1) excise tax on importation of alkylate; and 2) excise tax on the alleged use of alkylate as a raw material to produce another product, the Court found that there was no double taxation since the two taxes were not imposed on the same subject matter.

The first tax is imposed on the importation of goods; while the second tax is imposed on the manufacturing production of goods in the Philippines for domestic sale.

JTKC Land Inc. v. Commissioner of Internal Revenue, *C.T.A. EB Case No. 2378 (C.T.A. Case No. 9597), October 5, 2022*

With respect to the counting of the 30-day period within which to appeal a "final decision" on a disputed assessment of the CIR to the CTA, it was held in this case that the issuance of a "Preliminary Collection Letter" (PCL) **may** be considered as the final decision of the CIR which, in turn, is the appealable action of the CIR to the CTA. If considered as a final decision, the 30-day period within which to avail of the remedy of appeal begins to run upon receipt of such final decision.

The PCL was characterized by the CTA to be a "final decision" in this particular case considering that it contained a categorical demand for payment coupled with the threat to pursue collection of the alleged tax liabilities if not paid.

Commissioner of Internal Revenue v. Golden Brew Marketing, Inc., C.T.A. EB Case No. 2426 (C.T.A. Case No. 9538), October 6, 2022

The CTA En Banc declared the tax assessments in this case to be void for two reasons.

First, Revenue Officer (RO) Monfort, who conducted the examination of the taxpayer, was not authorized by any Letter of Authority (LOA). The CTA En Banc ruled that this absence of authority cannot be cured by the subsequent review of a group supervisor who is named under the LOA. Likewise, the assessment made by an RO without authority cannot be cured through the issuance of a Memorandum of Assignment which is signed by a person who is not among the persons permitted under relevant laws, rules, and regulations to issue a LOA. The Court enumerated such officials who are authorized to issue an LOA, to wit:

1) The Revenue Regional Director;
2) Deputy Commissioners of Internal Revenue;
3) Assistant Commissioners; and
4) Head Revenue Executive Assistants.

Second, the Formal Letter of Demand in this case failed to contain a fixed and determinate amount of tax liabilities and lacked an indication of due dates within which to pay taxes. Thus, the CTA En Banc ruled to invalidate the assessment pursuant to the ruling in CIR v. Fitness by Design, Inc.

Lepanto Consolidated Mining Company v. Commissioner of Internal Revenue, *C.T.A. EB Case No. 2462 (C.T.A. Case No. 10105), October 6, 2022*

The CTA *En Banc* reiterated the rule that the time within which to appeal to the CTA the decision of the CIR on claims for VAT refund is thirty (30) days from the denial or inaction of the CIR. Further, when there is inaction on the part of the CIR, such inaction shall be deemed a denial of such claim. In such case, the appeal to the CTA must be brought within 30 days of such inaction; otherwise, the appeal to the CTA will be barred.

In this case, the CIR did not act on Lepanto Consolidated Mining Company's (the "Company") VAT refund claim within 120-day (now 90) waiting period. Verily, there was inaction on the part of the CIR. On the other hand, the Company did not appeal this inaction to the CTA within the 30-day period.

Six years later, the CIR issued its denial on the Company's VAT refund claim. While the Company filed its appeal before the CTA within 30 days from the receipt of the denial, the CTA held that such appeal was belatedly filed rendering the appeal dismissible for lack of jurisdiction since it should have filed the appeal within 30 days from the 120-day inaction of the CIR.

Commissioner of Internal Revenue v. Kuwait Airways Corporation, *C.T.A. EB Case No. 2525 (C.T.A. Case No. 9874) (Resolution), October 7, 2022*

The claim for the application of preferential tax rates arising from a tax treaty does not require that the taxpayer show fulfillment of the reciprocity requirement, unlike for claims of income tax exemptions. Thus, the omission of Kuwait Airways Corporation to show that Philippine carriers are enjoying the same preferential tax rates in their home country is inconsequential; it will not impair its right to the entitlement of applying the preferential tax rates on its gross revenues derived from the Philippines.

Commissioner of Internal Revenue v. Fort 1 Global City Center, Inc., *C.T.A. EB Case No. 2233 (C.T.A. Case Nos. 9490 & 9503) (Resolution), October 7, 2022*

Section 3.1.4 of Revenue Regulations No. 12-99 states that service of the Final Assessment Notice (FAN) may be made by registered mail or *via* personal delivery. In turn, under the rules on personal delivery, service of the FAN must only be made to the taxpayer or his duly authorized representative. Service upon any person, other than the taxpayer, will only be valid if it is shown that such other person is empowered to receive the FAN. The subsequent protest to the PAN and FAN will not detract from the fact that there was a violation of the right to due process.

Aliboso v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2136 (C.T.A. Case No. 9087), October 7, 2022

Under Revenue Memorandum Circular (RMC) No. 31-2013, officers and staff of the Asian Development Bank who are not

The CTA En Banc also clarified that relevant treaty and legislative provisions show that the Philippine Government intended to tax the salaries and emoluments received by Filipinos from the ADB. As a rule, under Section 45(b) of the Republic of the Philippines (RP) – ADB Agreement and Article 56(2) of the ADB Charter, taxes may not be imposed on salaries and emoluments earned by ADB employees realized from their employment at said international organization. By way of exception, salaries and emoluments of ADB employees may be taxed when a State-member, through a declaration, retains its authority to tax its citizens. According to the CTA En Banc, insofar as the Philippines is concerned, the said declaration was embodied in Senate Resolution No. 6 dated March 16, 1966. Congress need not enact an enabling statute for the BIR to impose income tax on the income realized by Filipino ADB employees from their employment therein.

Commissioner of Internal Revenue v. Sabre Travel Network (Philippines), Inc., *C.T.A. EB Case No. 2310 (C.T.A. Case No. 9532) (Resolution), October 7, 2022*

The CTA En Banc rejected the claim of the respondent corporation that the two Waivers of the Defense of Prescription ("Waivers") it executed were not valid. The Court took into account the fact that the signatory thereto was no less than the respondent's President who was also the signatory to the corporation's reply to the PAN, protest to the FAN, and the tax returns subject of the assessments.

Further, the Court held that the supposed failure of the Waivers to specify the kind and amount of tax due will not be enough to completely render them invalid. The subject Waivers, which both state that they cover "All Internal Revenue Tax Liabilities for the calendar year ending December 31, 2010," simply followed the form prescribed by RDAO No. 05-01. According to the CTA En Banc, there is no precise requirement in RMO No. 20-90 and RDAO No. 05-01 for the waiver to specify the kind of tax and amount of tax due, as claimed by the respondent corporation.

Commissioner of Internal Revenue v. Morning Star Milling Corp., *C.T.A. EB Case No. 2419 (C.T.A. Case No. 9294) (Resolution), October 10, 2022*

The mere reiteration of the findings stated in an undated Preliminary Assessment Notice (PAN) in the Formal Letter of Demand / Final Assessment Notice (FLD/FAN), without giving any reason for rejecting the refutations and explanations offered by the taxpayer, and without consideration of the taxpayer's request for clarification, amounts to a failure to strictly observe the due process requirement under Section 228 of the Tax Code, as amended, in relation to Revenue Regulations No. 12-99, as amended.

Commissioner of Internal Revenue v. Misamis Oriental Rural Electric Service Cooperative I, Inc., *C.T.A. EB Case No. 2266 (C.T.A. Case No. 9700), October 12, 2022*

A revenue officer must be authorized by the Commissioner of Internal Revenue or by his/her duly authorized representative before the said revenue officer may conduct an examination of any taxpayer. This authority is in the form of a Letter of Authority (LOA) duly issued by the Revenue Regional Director. Further, Revenue Memorandum Order No. 43-90 requires the issuance of a new LOA in cases of reassignment or transfer to another revenue officer.

Because of the foregoing rules, the CTA En Banc held that the Memorandum of Assignment (MOA) assigning the

continuation of the audit of the respondent corporation's records for taxable year 2012 to a revenue officer different from the one named in the original LOA cannot pass for a LOA which vests intrinsic validity to the final assessments issued as a result of the said reassignment. The use of a MOA, Referral Memorandum, or such equivalent document directing the continuation of a tax audit or investigation by another revenue officer vests no authority on such revenue officer.

Commissioner of Internal Revenue v. Marily Development Corp., *C.T.A. EB Case No. 2450 (C.T.A. Case No. 9756) (Resolution), October 12, 2022*

The BIR cannot invoke the presumption of regularity in the performance of official duties, as well as the presumption of correctness of tax assessment, in the absence of proof as to the existence of a valid Letter of Authority (LOA) and the revenue officer's possession of the requisite authority (pursuant to a valid LOA) to conduct an audit of a taxpayer's books of accounts and other accounting records.

Commissioner of Internal Revenue v. IBM Plaza Condominium Association, Inc, C.T.A. EB Case No. 2229 (C.T.A. Case No. 8740), October 14, 2022

A taxpayer is deprived of due process when the BIR failed to issue a Notice of Informal Conference (NIC) as required by Revenue Regulations No. 12-99, in relation to Section 228 of the Tax Code, as amended. The NIC is a part of due process since its issuance gives both the taxpayer and the Commissioner of Internal Revenue the opportunity to settle the case at the earliest instance without the need for the issuance of a Final Assessment Notice. For failure to observe this due process requirement, the assessment in this case was void.

Vestas Services Philippines, Inc. v. Commissioner of Internal Revenue, *C.T.A. EB Case No. 2479 (C.T.A. Case No. 9544), October 14, 2022*

The CTA En Banc held that a Certificate of Endorsement (COE) from the Department of Energy (DOE) is not a requirement for availing VAT zero-rating incentive under Republic Act No. 9513, otherwise known as the Renewable Energy Act, with respect to services purchased or secured by a Renewable Energy (RE) Developer. The CTA En Banc clarified that the COE requirement is applicable only for the incentive of duty-free importation of renewable energy machinery, equipment, and materials. The Court also pointed out that, in the first place, the DOE currently has no mechanism or process for the issuance of COE for VAT zero-rating. Additionally, the CTA En Banc noted the recent issuance of DOE Department Circular No. DC2021-12-0042 which now provides that RE Developers are automatically qualified to avail of incentives provided under the Renewable Energy Act upon securing its Certificate of Registration from the DOE.

Commissioner of Internal Revenue v. AIG Shared Services Corp. (Philippines), *C.T.A. EB Case Nos. 2383 & 2408 (C.T.A. Case No. 9438), October 17, 2022*

The CTA En Banc underscored the requirement that in order for a claim for refund of input VAT to prosper, the taxpayer must be engaged in zero-rated or effectively zero-rated sales. In turn, for zero-rating of services to apply, one of the requirements is that the recipients of its services are non-resident foreign corporations doing business outside of the Philippines. However, in this case, the CTA En Banc noted that there were discrepancies in the names of the clients

indicated in the Certifications of Non-Registration of Company offered by the claimant. Further, the Court disregarded the printed screenshots of the foreign governments' official websites which the claimant offered as proof of registration and incorporation of its client-affiliates, due to its failure to observe the proper authentication of public documents.

Further, the CTA En Banc emphasized that the issue of whether or not the refund claimant performed the subject services in the Philippines, and consequently, qualified for VAT zero-rating, is a question of fact and must be proven by specific evidence. Thus, the Court held that the respondent corporation cannot merely invoke its SEC Certificate of Registration stating that it is an ROHQ in the Philippines, nor its BIR Certificates of Registration indicating its two offices in the Philippines. On the contrary, the service agreements offered by the corporation were either silent as to the place of performance of services, or expressly state that the services may be performed both in the Philippines and abroad.

Nonetheless, the CTA En Banc emphasized that Section 112(A) of the Tax Code does not require that input taxes be directly attributable to the zero-rated or effectively zero-rated sales of the refund claimant, since the said provision only requires that the input taxes be attributable to the zero-rated sales.

B. CTA Division Cases

Banclife Insurance Co. v. Commissioner of Internal Revenue, *C.T.A. Case No. 9939, October 5, 2022*

The jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds; other cases that arise out of the Tax Code and other related laws administered by the BIR also fall under the jurisdiction of the CTA.

Thus, while Warrants of Garnishment are not technically decisions by the CIR on tax assessments, the CTA still has jurisdiction to determine the propriety of the issuance of such warrants.

Furthermore, the tax examination performed by Revenue Officers (RO) who are not named in a Letter of Authority is void. Even if a Memorandum of Assignment (MOA) is issued to name new ROs to perform the tax examination, the resulting assessment is void since an MOA cannot take the place of an LOA. A MOA merely notifies the taxpayer of the transfer of an investigation to another set of ROs; it does not, by itself, grant authority to the new ROs to conduct the tax examination.

Procter & Gamble International Operations SA ROHQ v. Commissioner of Internal Revenue, *C.T.A. Case Nos. 9768 & 9829, October 5, 2022*

The CTA Division ruled in this case that Procter & Gamble International Operations SA ROHQ (the "Company") is not entitled to its claim of refund representing its excess and unutilized input VAT on purchases attributable to zero-rated sales. The CTA denied the claim of the Company in view of its failure to prove that its services to its client-affiliates were actually performed in the Philippines which is a requisite for a claim of VAT refund under Section 112 (A).

For this particular requisite, the Company presented their Service Contracts with its client-affiliates and the testimony of its Comptroller and Compliance Manager who testified that the services in question were performed in the Philippines. The CTA ruled

that there was a failure to prove that the services were, in fact, rendered in the Philippines since the Service Contracts used language to indicate that services *may* be performed both in the Philippines and abroad. The testimony of the Company's Comptroller and Compliance Manager notwithstanding, the CTA found the Company's evidence thereon to be inadequate.

Shang Property Developers, Inc. v. Commissioner of Internal Revenue, *C.T.A. Case No. 9745, October 12, 2022*

A Letter of Authority (LOA) was issued by the Regional Director of Revenue Region (RR) 8, specifying therein the revenue officer and group supervisor authorized to audit and examine the books of the petitioner corporation. Thereafter, a Letter was issued by the Revenue District Officer of Revenue District Office (RDO) No. 47 informing the petitioner corporation that the audit would be assigned to a different revenue officer and group supervisor. A Memorandum of Assignment (MOA) was attached to the said letter, notifying the petitioner corporation of the said transfer. Through the MOA, the newly-named revenue officer and group supervisor were then able to come up with audit findings that resulted in the issuance of assessment notices against the petitioner corporation. Subsequent tax collection efforts have also been initiated by the BIR against the corporation.

In nullifying the assessments and the collection efforts of the BIR, the CTA held that a LOA, as an instrument of due process, should particularly name the revenue officers who are authorized to audit a particular taxpayer. Otherwise, if the new revenue officers assigned to take over the audit are not armed with a LOA specifically indicating their names, any resulting assessment arising from the audit conducted by the new revenue officers is null and void.

The CTA further emphasized that a MOA cannot substitute for a LOA, since a MOA simply notifies a taxpayer of the transfer of an audit/investigation to another set of revenue officers. A MOA does not show that the new set of revenue officers who will pursue the audit are properly authorized to do so. In contrast, a LOA is a special grant of authority to a specific set of revenue officers to examine a taxpayer's books of accounts and other accounting records for purposes of determining the taxes due.