TAX UPDATES FOR DECEMBER 2016 AND JANUARY 2017

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SUPREME COURT DECISIONS

REVENUE REGULATIONS NO. 2-2012 IS INVALID AND UNCONSTITUTIONAL. Republic Act No. (RA) 7227, as amended, grants tax exemptions on goods brought into the Freeport and Economic Zones (FEZs) by enterprises located therein. On February 17, 2012, Secretary of Finance Cesar V. Purisima, upon the recommendation of the Commissioner of Internal Revenue (CIR), signed Revenue Regulations (RR) No. 2-2012 requiring payment of value-added tax (VAT) and excise tax on the importation of all petroleum and petroleum products coming directly from abroad and brought into the Philippines, including FEZs. The Supreme Court struck down RR No. 2-2012 for being invalid and unconstitutional on the ground that it illegally imposes taxes upon FEZ enterprises, which, by law, are exempt from tax. The Court ratiocinated that FEZs are foreign territories for tax purposes and, therefore, goods brought into the FEZs are beyond the reach of national revenue taxes and customs duties for as long as they remain within the FEZ. Thus, the conditions set forth in RR No. 2-2012, notwithstanding the refund mechanism contemplated therein, effectively amends RA 7227 and encroaches upon the power of the legislature upon whom the power to amend laws is vested. ***Secretary of Finance Cesar B. Purisima and Commissioner of Internal Revenue Kim S. Jacinto-Henares v. Representative Carmelo F. Lazatin and Ecozone Plastic Enterprises Corporation, G.R. No. 210588 dated November 29, 2016.***

A JUDICIAL CLAIM FOR REFUND OF INPUT VAT MUST BE FILED WITHIN 30 DAYS FROM RECEIPT OF THE DECISION OF THE CIR OR THE LAPSE OF THE 120-DAY PERIOD, IN CASE OF INACTION; EXCEPTION. The general rule enunciated in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (G.R. No. 184823 dated October 6, 2010)* requires taxpayers to observe the 120+30-day period when filing a judicial claim for refund or issuance of tax credit certificate (TCC) of excess input tax. In Section 112 of the National Internal Revenue Code (NIRC), the CIR has 120 days from the submission of complete documents within which to grant or deny the claim. The provision envisions two situations: *first,* a decision may be rendered on or before the lapse of the 120-day period or *second,* the CIR may not act on the claim and, in which case, it is "deemed denied". The taxpayer has thirty (30) days from receipt of the decision of the CIR or from the lapse of the 120-day period (in case of inaction) within which to file a judicial claim with the CTA. However, the Supreme Court recognized an exception to the rule requiring compliance with the 120+30-day period, citing BIR Ruling No. DA-489-03 dated December 10, 2003 as its basis. With this issuance, the Supreme Court held that the filing of a judicial claim before the lapse of the 120-day period is proper, if the same is filed after the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 but before the adoption of the *Aichi* doctrine on October 6, 2010. ***Deutsche Knowledge Services Pte Ltd. v. Commissioner of Internal Revenue, G.R. No. 197980 dated December 1, 2016.***

NON-BANK FINANCIAL INTERMEDIARIES, DEFINED. Anglo Ventures Corporation (AVC)[1] is a corporation engaged in the business of "direct[ing] the operations of other corporations through the ownership of stock therein." Alleging that it is not a non-bank financial intermediary subject to local business tax, it sought the refund or credit of erroneously paid local business taxes for the first and second quarters of 2011. The Court of Tax Appeals (CTA) ruled in favor of AVC, which it classified as a holding company exempt from the local business tax imposed on non-bank financial intermediaries. In contrast to a holding company, non-bank financial intermediaries are "persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others." The CTA further emphasized that the person or entity must perform these functions on a regular and recurring, and not on an isolated, basis. ***Anglo Ventures Corporation v. City of Davao, CTA AC No. 155 dated November 16, 2016;[2] San Miguel Officers Corps, Inc. v. City of Davao, CTA AC No. 136 dated November 22, 2016.***

BASIC REQUIREMENTS FOR A PERSON OR ENTITY TO BE CONSIDERED A NON-BANK FINANCIAL INTERMEDIARY. The basic requirements for a person or entity to be considered a "non-bank financial intermediary" are as follows: a) the person or entity is authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities; b) the principal functions of the said person or entity include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others; c) the person or entity must perform the functions enumerated in the case on a regular and recurring, not on an isolated, basis. ***ARC Investors, Inc. v. City of Davao, CTA AC No. 130 dated December 20, 2016; First Meridian Development, Inc. v. City of Davao, CTA AC No. 132 dated December 20, 2016.***

A COMPANY CONTINUOUSLY RECEIVING DIVIDENDS AND INTEREST INCOME ON MONEY MARKET PLACEMENTS AND EQUITY SECURITIES IS A NON-BANK FINANCIAL INTERMEDIARY; INCOME SUBJECT TO LOCAL BUSINESS TAX. The CTA noted that the company is not engaged in any business activity other than its receipt of dividends and interest from its shares of stock in San Miguel Corporation. The receipt is deemed a continuing and regular transaction, which affirms the conclusion that the company is a non-bank financial intermediary whose income is, therefore, subject to business tax under Section 143(f) of the Local Government Code of 1991, as amended. ***Soriano Shares, Inc. v. City of Davao, CTA AC No. 141 dated November***

[1] Quoted in verbatim from the case: "As a holding company, petitioner AVC, and the other holding companies funded by the coconut levy fund, were created to hold San Miguel Corporation shares of stock, and not to engage in the business of lending or investing money or securities acquired by them or through them, on a regular basis."

[2] The decision must be read in connection with other cases (e.g., *Rock Steel Resources, Inc. v. City of Davao, CTA AC No. 139, dated November 28, 2016)* decided by the CTA. In those cases, the CTA held that a corporation engaged in the business of stock investment and money market placements in San Miguel Corporation, regardless of what is stated in its Articles of Incorporation, ***is a non-bank financial intermediary*** subject to local business tax. To quote the CTA, "Since petitioner's business consists solely of owning a substantial number of preferred shares of stocks of SMC, from which it regularly receives dividends and which dividends are in turn deposited in a trust account and earn interest from money market placements, petitioner is clearly deemed to be engaged in the business of investing or placement of funds or evidences of indebtedness which falls within the purview of a financial institution."

7, 2016; Rock Steel Resources, Inc. v. City of Davao, CTA AC No. 139 dated November 28, 2016; First Meridian Development, Inc. v. City of Davao, CTA AC No. 159 dated November 29, 2016; ASC Investors, Inc. v. City of Davao, CTA AC No. 134 dated December 1, 2016.

THE AMENDED ANNUAL INCOME TAX RETURN IS CONSIDERED THE FINAL ADJUSTMENT RETURN IN ACCORDANCE WITH SECTION 76 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED (NIRC). The two-year prescriptive period for filing a claim for refund of excess income tax withheld or issuance of TCC commences from the filing of the final adjustment return. In case the taxpayer amends the return, the period is reckoned from the date of filing of the amended return, which is considered as the final adjustment return. ***PPI Prime Venture, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8795 dated November 16, 2016.***

ASSET-BACKED SECURITIES ISSUED BY A SPECIAL PURPOSE ENTITY ARE NOT DEPOSIT SUBSTITUTES AS THE TERM IS DEFINED IN THE NIRC. Asset-backed securities are "certificates, whether written or electronic in character, issued by an SPE, the repayment of which shall be derived from the cash flow of assets in accordance with the plan, duly approved by the [Securities and Exchange Commission] and/or the BSP." As expressly provided in RA 9267, ABS issued by a special purpose entity pursuant to an SEC-approved securitization plan are excluded from the term "deposit substitutes" as it is defined in the NIRC. ***Bahay Bonds 2 Special Purpose Trust v. Commissioner of Internal Revenue, CTA Case No. 8944 dated November 25, 2016.***

A VOID FDDA DOES NOT AFFECT THE VALIDITY OF THE ASSESSMENT. A Final Decision on Disputed Assessment (FDDA) issued by the BIR is void if it fails to state the facts, applicable law, rules and regulations or jurisprudence on which the decision is based. Under the applicable rules and regulations issued by the BIR, the consequence is that the "decision" rendered by the CIR is null and void. However, this does not automatically mean that the assessment, as embodied in the Formal Letter of Demand and Final Assessment Notice (FLD/FAN), is likewise invalid. The Court emphasized that a "decision" differs from an "assessment" and the invalidity of the former does not affect the latter, provided all the requirements for the issuance of a valid assessment are met. ***Medtecs International Corporation Limited v. Commissioner of Internal Revenue, CTA Case No. 8538 dated November 15, 2016.***

ASSESSMENT IS DEEMED MADE WHEN NOTICE TO THIS EFFECT IS RELEASED, MAILED OR SENT TO THE TAXPAYER. The taxpayer's receipt of the FLD/FAN is material in determining whether the assessment is made within the prescriptive period set forth in the NIRC. The Court emphasized that the assessment is deemed made when notice to this effect is released, mailed or sent to the taxpayer. ***Clark Water Corporation, CTA Case No. 8865 dated November 23, 2016.***

AN ASSESSMENT THAT IS WITHOUT FOUNDATION, ARBITRARY AND CAPRICIOUS IS INVALID. In the absence of accounting records or other documents necessary for the proper determination of the taxpayer's internal revenue tax liability, Section 6(B) of the NIRC requires the BIR to rely on the best evidence obtainable to assess the potential tax liabilities of a taxpayer. Any evidence that falls short of the requirements of Section 6(B) of the NIRC cannot be made the basis of a valid assessment. ***Commissioner***

of Internal Revenue v. Farcon Marketing Corporation, CTA EB No. 1306 dated November 21, 2016.

AN ASSESSMENT MUST CONTAIN A DEFINITIVE STATEMENT DEMANDING PAYMENT WITHIN A PRESCRIBED PERIOD. An assessment is characterized as "a written notice and demand by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed. [It] contains not only a computation of tax liabilities, but also a demand for payment within the prescribed period." ***Commissioner of Internal Revenue v. 3M Philippines, Inc., CTA EB No. 1330 dated November 21, 2016.***

THE BIR IS DUTY BOUND TO WAIT FOR THE EXPIRATION OF FIFTEEN (15) DAYS FROM THE TAXPAYER'S RECEIPT OF THE PRELIMINARY ASSESSMENT NOTICE (PAN) BEFORE THE TAXPAYER IS CONSIDERED IN DEFAULT. In assessments, due process entails allowing the taxpayer a period of fifteen (15) days from receipt of the PAN to submit a reply explaining or contesting the BIR's findings. It is only after the lapse of the fifteen-day period that the taxpayer is considered in default and, accordingly, justifies the issuance of an FLD/FAN. Failure by the CIR to comply with the requirements is tantamount to a denial of the taxpayer's right to due process, which renders the assessment void and without effect. ***Commissioner of Internal Revenue v. Next Mobile, Inc., CTA EB No. 1419 dated November 21, 2016.***

A TAXPAYER IS ALLOWED TO PRESENT ADDITIONAL EVIDENCE BEFORE THE CTA TO SUPPORT ITS APPLICATION FOR ISSUANCE OF TCC OR REFUND OF INPUT TAX, IF THE PETITION FOR REVIEW IS AN APPEAL OF THE CIR'S INACTION. A taxpayer appealing the CIR's inaction on its application for issuance of TCC or refund is allowed to submit additional evidence, including those that may not have been submitted to the CIR. Essentially, the case is being decided in the first instance because there is no decision to be reviewed on appeal. In contradistinction, an appeal of the CIR's decision denying the taxpayer's claim grounded upon the failure of the taxpayer to submit complete documents will also be denied, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. In such cases, the taxpayer must discharge the burden of proving his entitlement under substantive law and the satisfaction of all the documentary and evidentiary requirements for an administrative claim. ***CE Casecnan Water and Energy Company, Inc. v. Commissioner of Internal Revenue, CTA Case No. 7891 dated December 13, 2016.***

THE MERE ALLEGATION THAT THE TAXPAYER HAS UNDECLARED PURCHASES DOES NOT WARRANT THE CONCLUSION THAT THE TAXPAYER HAS UNDECLARED INCOME. The BIR, in making its assessment, alleged that the taxpayer is liable for deficiency income tax arising from its undeclared purchases. The BIR proceeds from the assumption that these undeclared purchases are costs incurred to produce goods or render services from which additional income is derived. However, the CTA struck down this argument and emphasized the long-standing rule that assessments must be based on actual facts, in order to stand the test of judicial scrutiny. The presumption of correctness of assessment, being a mere presumption, cannot be made to rest on another presumption. ***G&W Architects, Engineers and Project Consultants Co. v. Commissioner of Internal Revenue, CTA Case No. 8604 dated December 2, 2016; Mt. Blanc Motors, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8588 dated January 4, 2017.***

THE FINAL NOTICE BEFORE SEIZURE, AND NOT THE WARRANT OF DISTRAINT AND LEVY, CONSTITUTES THE FINAL DECISION ON DISPUTED ASSESSMENT. ***Mindanao Sanitarium and Hospital, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8700 dated December 16, 2016.***

ZERO-RATED SALES UNDER SECTION 108(B)(2), REQUISITES. The requisites in order for sale of services to be considered VAT zero-rated under Section 108(B)(2) of the NIRC are: a) the services by a VAT-registered person must be other than processing, manufacturing or repacking of goods; b) the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and c) the recipient of such services is doing business outside the Philippines. ***Döhle Shipmanagement Phils. Corp. v. Commissioner of Internal Revenue and the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance, CTA Case No. 8721 dated December 15, 2016.***

ACCUMULATED PROFITS MUST BE USED WITHIN A REASONABLE TIME TO AVOID THE IMPOSITION OF IMPROPERLY ACCUMULATED EARNINGS TAX (IAET). Citing *Manila Wine Merchants, Inc. v. Commissioner of Internal Revenue* (G.R. No. L-26145 dated February 20, 1984), the CTA discussed the application of the immediacy test in determining whether a corporation's accumulation of earnings is justified. The immediacy test states that the reasonable needs of the business must refer to those business needs proven by the corporation to be immediate. A business that does not satisfy the immediacy test is subject to IAET. ***1Maple Sales, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8925 dated December 16, 2016.***

CLAIM FOR TAX CREDIT CERTIFICATE OR REFUND OF EXCESS INPUT VAT, REQUISITES. To be entitled to the issuance of TCC or refund of excess input VAT attributable to zero-rated or effectively zero-rated sales, the taxpayer must comply with the following requisites: a) that the taxpayer is VAT-registered; b) that the claim for refund was filed within the two-year prescriptive period; c) there must be zero-rated or effectively zero-rated sales; d) that input taxes were incurred or paid; e) that such input taxes are attributable to zero-rated or effectively zero-rated sales; and f) that the input taxes were not applied against any output VAT liability. ***General Motors Automobiles Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8976 dated December 2, 2016; Döhle Shipmanagement Phils. Corp. v. Commissioner of Internal Revenue, CTA Case No. 8960 dated December 16, 2016.***

THE FILING OF A TAX TREATY RELIEF APPLICATION (TTRA) IS NOT NECESSARY BEFORE A TAXPAYER CAN AVAIL OF THE PREFERENTIAL TAX TREATMENT UNDER A TAX TREATY. A TTRA filed with the BIR merely serves as a request for confirmation of the taxpayer's entitlement to the relief granted under the tax treaties. The filing thereof is not a prerequisite to, and should not affect, the taxpayer's right to avail of the preferential tax treatment granted pursuant to the tax treaty. The Court reminded the BIR that tax treaties are binding obligations of the State and the imposition of additional conditions for the availment of the benefits therein is unconstitutional. ***Egis Road Operation S.A. v. Secretary of Finance and Commissioner of Internal Revenue, CTA Case No. 8414 dated December 15, 2016; Coral Bay Nickel Corporation v. Commissioner of Internal Revenue, CTA Case No. 8756 dated January 13, 2017.***

CLAIM FOR REFUND OR CREDIT OF LOCAL TAXES, REQUISITES. In the case of *Metro Manila Shopping Mecca Corp. v. Toledo* (G.R. No. 190818 dated June 5, 2013), the Supreme Court stated the following as requisites for a valid claim of refund or credit of local taxes: a) the taxpayer concerned must file a written claim for refund/credit with the local treasurer; and b) the case or proceeding for refund has to be filed within two (2) years from the date of payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit. ***City Treasurer of Manila v. Philippine Beverage Partners, Inc., CTA EB No. 1342 dated December 22, 2016.***

PROOF OF ACTUAL REMITTANCE IS NOT A CONDITION *SINE QUA NON* FOR CLAIMING A REFUND OF UNUTILIZED TAX CREDIT. In Sections 57 and 58 of the NIRC, the duty to withhold and remit income taxes is vested with the payor-withholding agent. The failure of the withholding agent to remit the taxes so withheld should not prejudice the payee. In such cases, the Certificates of Creditable Tax Withheld at Source issued by the withholding agent to the payee are prima facie proof of actual payment to the government and is sufficient to support the taxpayer's claim for refund. ***McKinsey & Co. (Phils.) v. Commissioner of Internal Revenue, CTA Case No. 8805 dated January 13, 2017.***

COMELEC IS NOT EXEMPT FROM ITS DUTY TO WITHHOLD TAXES ON ITS INCOME PAYMENTS. The CTA held that although the Commission on Elections (COMELEC) is exempt from payment of income tax, its exemption does not relieve it from its statutory duty to withhold taxes on its income payments to third persons who are subject to tax. In this case, the personal liability for payment of accrued interest, deficiency interest and/or delinquency interest on the deficiency tax imposed is placed upon the COMELEC employee responsible for the withholding and remittance of tax (Section 247(b) of the NIRC of 1997). ***Commission on Elections v. Commissioner of Internal Revenue, CTA Case No. 8929 dated January 3, 2017.***

SERVICE OF NOTICE FOR INFORMAL CONFERENCE, PAN, AND FAN TO UNAUTHORIZED PERSONS RENDERS THE ASSESSMENT VOID. The PAN, FAN, and other notices from the BIR must be served upon the taxpayer or his duly authorized representative. Service to unauthorized persons is improper and renders the entire assessment void for being violative of the due process requirements. ***Mannasoft Corporation v. Commissioner of Internal Revenue, CTA Case No. 8745 dated January 13, 2017.***

THE ISSUANCE BY THE CITY TREASURER OF AN ASSESSMENT IS NOT A QUASI-JUDICIAL FUNCTION. The term "quasi-judicial function" refers to the action and discretion of public administrative officers or bodies required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as basis for their official action and to exercise discretion of a judicial nature. The issuance of an assessment does not fall within any of these and is, therefore, not a quasi-judicial function. Thus, the filing of a Petition for Prohibition under Rule 65 of the Rules of Court is not the proper remedy against an assessment. ***Benguet Electric Cooperative v. Municipality of La Trinidad, Benguet, CTA EB No. 1091 dated January 4, 2017.***

RULES AND REGULATIONS IMPLEMENTING THE TAX INCENTIVES AVAILABLE TO TOURISM ENTERPRISES DULY REGISTERED WITH THE TOURISM INFRASTRUCTURE AND ENTERPRISE ZONE AUTHORITY UNDER REPUBLIC ACT NO. 9593, OTHERWISE KNOWN AS THE TOURISM ACT OF 2009. ***Revenue Regulations No. 7-2016 dated November 18, 2016.***

AMENDING CERTAIN PROVISIONS OF REVENUE REGULATIONS NO. 1-2016 ON THE ISSUANCE OF TAX CLEARANCE. Additional criteria to be issued Tax Clearance with a validity of one (1) year include: (a) not tagged as "Cannot Be Located" taxpayer; (b) no pending criminal information has been filed in any court of competent jurisdiction arising from any tax or tax related cases; and (c) no delinquent account. ***Revenue Regulations No. 8-2016 dated December 6, 2016.***

AMENDMENTS TO THE COVERAGE OF TAXPAYERS REQUIRED TO FILE RETURNS THROUGH ELECTRONIC BUREAU OF INTERNAL REVENUE FORMS (eBIRForms). Amendment as to coverage applies to "One Time Transaction (ONETT) taxpayers who are classified as real estate dealers/developers; those who are considered as habitually engaged in the sale of real property and regular taxpayers already covered by eBIRForms. Thus, taxpayers who are filing BIR Form No. 1706, 1707, 1800, 1801 and 2000-OT (for BIR Form No. 1706 only) are excluded in the mandatory coverage from using the eBIRForms." ***Revenue Regulations No. 9-2016 dated December 8, 2016.***

AMENDING SECTION 10.C OF REVENUE REGULATIONS NO. 17-2011 IMPLEMENTING THE EARLY WITHDRAWAL PENALTY OF REPUBLIC ACT NO. 9505, OTHERWISE KNOWN AS THE PERSONAL EQUITY AND RETIREMENT ACCOUNT (PERA) ACT OF 2008. ***Revenue Regulations No. 10-2016 dated December 27, 2016.***

PROCESSING OF REQUESTS FOR TAX EXEMPTION OF SEPARATION BENEFITS RECEIVED BY AN OFFICIAL OR EMPLOYEE AS A CONSEQUENCE OF SEPARATION FROM EMPLOYMENT DUE TO CAUSES BEYOND THE EMPLOYEE'S CONTROL IS DEVOLVED TO THE REVENUE DISTRICT OFFICE OR APPROPRIATE LARGE TAXPAYERS OFFICE. ***Revenue Memorandum Order No. 66-2016 dated December 6, 2016.***

GUIDELINES AND PROCEDURE FOR THE ISSUANCE OF CERTIFICATE OF TAX EXEMPTION AND CERTIFICATE AUTHORIZING REGISTRATION OF TRANSFER OF RAW LANDS INTENDED FOR SOCIALIZED HOUSING PROJECTS TO THE NATIONAL HOUSING AUTHORITY. ***Revenue Memorandum Order No. 65-2016 dated December 6, 2016.***

CLARIFICATION ON THE WITHHOLDING TAXES IMPOSED ON INCOME PAYMENTS BY DEPARTMENTS AND AGENCIES OF THE GOVERNMENT, INCLUDING GOVERNMENT OWNED AND/OR –CONTROLLED CORPORATIONS AND GOVERNMENT FINANCIAL INSTITUTIONS TO INDIVIDUALS WHOSE SERVICES ARE ENGAGED UNDER A CONTRACT OF SERVICE OR JOB ORDER ARRANGEMENT. ***Revenue Memorandum Circular No. 130-2016 dated December 8, 2016.***

THE INITIAL PUBLIC OFFERING TAX IS NOT APPLICABLE TO A MULTI-TIERED CORPORATION. The tax imposed in Section 127(B) is applicable only to initial public offerings made by closely held corporations, as it is defined in Section 127(B) of the NIRC. In the case of a multi-tiered corporation, the stock attribution rule must be allowed to run continuously along the chain of ownership until it finally reaches the individual stockholders and the number of individuals at the end of the chain will be used as basis for determining whether the corporation is closely held or not. ***BIR Ruling No. 406-16 dated November 22, 2016.***

EXEMPTION OF NHA FROM DOCUMENTARY STAMP TAX IN CONNECTION WITH ITS SOCIALIZED HOUSING PROJECTS EXTENDS TO THE OTHER PARTY TO THE TRANSACTION. The National Housing Authority (NHA) is exempt from payment of documentary stamp tax (DST) on sales transactions executed by and in favor of the NHA in connection with its socialized housing projects. The exemption from DST extends to the other party (either seller or buyer) that deals or transacts with the NHA. ***BIR Ruling No. 395-16 dated November 21, 2016; BIR Ruling No. 397-16 dated November 21, 2016; BIR Ruling No. 396-16 dated November 21, 2016; BIR Ruling No. 408-16 dated November 24, 2016; BIR Ruling No. 410-16 dated November 24, 2016; BIR Ruling No. 411-16 dated November 24, 2016; BIR Ruling No. 414-16 dated December 1, 2016; BIR Ruling No. 440-16 dated December 19, 2016; BIR Ruling No. 441-16 dated December 19, 2016.***

PURCHASES BY A PROJECT CONTRACTOR OF GOODS/ARTICLES FOR USE IN A SOCIALIZED HOUSING PROJECT IS SUBJECT TO VAT. The following income derived by the project contractor from land development and housing construction is exempt from tax under RA 7279: a) Project-related income taxes, b) Capital Gains Tax on raw lands used for the project, and c) Value-added tax for the project contractor concerned. The BIR noted that the contractor's purchases of goods/articles for its use in its socialized housing project remains subject to VAT. The rationale behind such ruling is that VAT, being an indirect tax, can be passed on by the seller of the goods/services to the purchaser. ***BIR Ruling No. 398-16 dated November 21, 2016; BIR Ruling No. 399-16 dated November 21, 2016; BIR Ruling No. 400-16 dated November 21, 2016; BIR Ruling No. 403-16 dated November 22, 2016; BIR Ruling No. 404-16 dated November 22, 2016; BIR Ruling No. 428-16 dated December 14, 2016; BIR Ruling No. 430-16 dated December 15, 2016; BIR Ruling No. 431-16 dated December 16, 2016; BIR Ruling No. 432-16 dated December 16. 2016; BIR Ruling No. 433-16 dated December 16, 2016; BIR Ruling No. 434-16 dated December 16, 2016; BIR Ruling No. 437-16 dated December 16, 2016; BIR Ruling No. 439-16 dated December 19, 2016; BIR Ruling No. 444-16 dated December 19, 2016.***

SALE OF SOCIALIZED HOUSING UNITS IS EXEMPT FROM INCOME TAX ONLY IF MADE TO QUALIFIED BENEFICIARIES. The privilege of exemption from income tax on the sale of socialized housing unit may be availed of only if the unit is sold to qualified beneficiaries. To prove such qualification, the seller shall require the buyer of a socialized housing unit to execute a sworn statement that he is eligible as a beneficiary under Section 5(A) of RR No. 11-97. ***BIR Ruling No. 394-16 dated November 21, 2016.***

IN CERTAIN INSTANCES, AN ALIEN MAY BE CONSIDERED A RESIDENT OF THE PHILIPPINES FOR INCOME TAX PURPOSES. Following Section 5 of Revenue Regulations No. 2, an alien, or one who is not a citizen of the Philippines, may be considered a resident of the Philippines for income tax purposes if: a) he or she is not a

mere transient or sojourner, b) he or she has no definite intention as to his stay, or c) his or her purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his or her home temporarily in the Philippines. ***BIR Ruling No. 401-16 dated November 21, 2016.***

PROOF OF ACTUAL OPERATION FOR AT LEAST THREE YEARS IS NECESSARY TO PROVE THAT A CORPORATION/ASSOCIATION IS EXEMPT FROM INCOME TAX UNDER SECTION 30(H) OF THE TAX CODE OF 1997. ***BIR Ruling No. 001-17 dated January 5, 2017***.

INCOME DERIVED FROM ASSOCIATION DUES AND RENTALS OF FACILITIES IS EXEMPT FROM INCOME TAX, VALUE-ADDED TAX OR PERCENTAGE TAX, WHICHEVER IS APPLICABLE. Pursuant to Section 18 of RA 9904, association dues and income derived from rentals of facilities received by homeowners' association are exempt from income tax, VAT or percentage tax, whichever is applicable. To prove its entitlement to the tax exemption, the homeowners' association must present a certification from the local government unit and other evidence showing the delivery of basic community services, as defined under Section 3(d) of RA 9903. The exemption is granted in recognition of the efforts exerted by homeowners' associations in assisting local government units in the delivery of basic services. ***BIR Ruling No. 391-16 dated November 18, 2016***.

RECONVEYANCE OF PROPERTY PURSUANT TO A COURT-APPROVED COMPROMISE AGREEMENT IS SUBJECT TO CAPITAL GAINS TAX. The transfer of a real property in accordance with a court-approved compromise agreement is subject to final tax at the rate of six percent (6%). According to the BIR, the transfer is covered by the phrase "other disposition of real property" under Section 24(D)(1) of the NIRC of 1997; hence, subject to the capital gains tax stated therein. ***BIR Ruling No. 423-16 dated December 7, 2016***.

TRANSFER OF REAL PROPERTY BY WAY OF DISTURBANCE COMPENSATION IS EXEMPT FROM CAPITAL GAINS TAX AND DOCUMENTARY STAMP TAX. A disturbance compensation is a form of recompense given to agricultural tenants when the tenancy relationship is extinguished under the conditions set forth in RA 3844. If the tenant receives real property as part of the disturbance compensation, such transfer of property is exempt from capital gains and documentary stamp tax pursuant to Section 66 of RA 6657. ***BIR Ruling No. 393-16 dated November 21, 2016.***

DONATION OF REAL PROPERTY BY A VAT-REGISTERED DONOR ENGAGED IN REAL ESTATE DEVELOPMENT IS SUBJECT TO VAT. The property donated by a VAT-registered real estate developer is an ordinary asset and the transfer of such property by way of donation is classified as a deemed sale transaction under Section 4.106-7 of RR No. 16-05, as amended. ***BIR Ruling No. 426-16 dated December 13, 2016***.

THERE IS NO INCOME TAX, CAPITAL GAINS TAX, AND WITHHOLDING TAX IMPOSED ON THE TRANSFER FROM TRUSTOR TO TRUSTEE OF PROPERTY HELD IN TRUST. The BIR confirmed that the termination, liquidation and reversion of the property (real and personal) back to the trustor, which is covered by a Trust Agreement, is not subject to income tax, capital gains tax, and withholding tax. According

to the BIR, there is no sale or transfer of property involved in the transaction. The transfer that occurred is merely a continuation and confirmation of title in favor of the ultimate and real beneficiary of the subject property. ***BIR Ruling No. 445-16 dated December 19, 2016***.