BDB Law
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**SUMMARY OF SIGNIFICANT SC DECISIONS (October 2010)**

***By: Atty. Bryan Joseph L. Mallillin***

**1. While the CIR has the authority to prescribe real property values and divide the Philippines into zones, the same has to be done upon consultation with competent appraisers both from the public and private sectors.**

It is undisputed that at the time of the sale of the subject properties, the same were classified as "RR," or residential, based on the 1995 Revised Zonal Value of Real Properties. Petitioner CIR, thus, cannot unilaterally change the zonal valuation of such properties to "commercial" without first conducting a re-evaluation of the zonal values as mandated under Section 6(E) of the NIRC. Petitioner failed to prove that it had complied with Revenue Memorandum No. 58-69 and that a revision of the 1995 Revised Zonal Values of Real Properties was made prior to the sale of the subject properties. ***Republic of the Philippines v. Aquafresh Seafoods, Inc.,*** *G.R. No. 170389, October 20, 2010*

**2. Once the carry-over option is taken, actually or constructively, it becomes irrevocable.**

Under Section 76 of the NIRC, the exercise of an option is irrevocable and a decision to carry-over and apply tax overpayment continues until the overpayment has been fully applied to tax liabilities. As respondent McGeorge opted to carry-over and credit its overpayment in 1997 to its tax liability in 1998, Section 76 makes respondent's exercise of such option irrevocable, barring it from later switching options to "[apply] for cash refund." Instead, respondent's overpayment in 1997 will be carried over to the succeeding taxable years until it has been fully applied to respondent's tax liabilities. ***Commissioner of Internal Revenue v. McGeorge Food Industries, Inc.,*** *G.R. No. 174157, October 20, 2010*

**3. As the revenue officers were not given the opportunity to examine the taxpayer's documents, they are authorized under Section 5 of the NIRC to gather information from third parties.**

In the absence of accounting records and other documents necessary for the proper determination of tax liabilities, the revenue officers resorted to the "Best Evidence Obtainable" [Section 6(B) of the NIRC; RMC No. 23-2000 (November 27, 2000)]. The lack of consent of the taxpayer under investigation does not imply that the BIR obtained the information from third parties illegally or that the information received is false or malicious. Nor does the lack of consent preclude the BIR from assessing deficiency taxes on the taxpayer based on the documents. In addition, respondents cannot be allowed to escape criminal prosecution under Sections 254 and 255 of the NIRC by mere imputation of a "fictitious" or disqualified informant under Section 282 simply because other than disclosure of the official registry number of the third party "informer," the Bureau insisted on maintaining the confidentiality of the identity and personal circumstances of said "informer."

***Commissioner of Internal Revenue v. Hon. Raul M. Gonzales, et al.,*** *G.R. No. 177279. October 13, 2010*

**4. Failure to print the word "zero-rated" in the invoices/receipts is fatal to a claim for credit/refund of input value-added tax (VAT) on zero-rated sales.**

The question of whether the absence of the word "zero-rated" on the invoices/receipts is fatal to a claim for credit/refund of input VAT is not novel. Section 4.108-1 of RR 7-95, otherwise known as the Consolidated Value-Added Tax Regulations, which the Secretary of Finance issued on December 9, 1995 and [which] took effect on January 1, 1996, required the printing of the word "zero-rated" on the invoices covering zero-rated sales. The said provision proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1977 NIRC (Presidential Decree 1158). When R.A. 9337 amended the 1997 NIRC on November 1, 2005, it made this particular revenue regulation a part of the tax code. This conversion from regulation to law did not diminish the binding force of such regulation with respect to acts committed prior to the enactment of that law. ***JRA Philippines, Inc. v. Commissioner of Internal Revenue,*** *G.R. No. 177127, October 11, 2010*

* Doctrine reiterated in the case of ***Hitachi Global Storage Technologies Philippines, Corp, etc. v. Commissioner of Internal Revenue,*** *G.R. No. 174212, October 20, 2010.*

**5. Non-compliance with the 120-day period for VAT refunds makes appeal to the CTA premature.**

Section 112(D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days. In this case, the administrative and the judicial claims were simultaneously filed. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature. ***Commissioner Internal Revenue v. Aichi Forging Company of Asia, Inc.,*** *G.R. No. 184823, October 6, 2010*