

## **SUMMARY OF SIGNIFICANT SC TAX DECISIONS (JULY TO SEPTEMBER 2012)**

- 1. For VAT zero-rating of services rendered to non-resident foreign corporation under Section 108(B)(2) of the NIRC, it is not enough that the recipient of services be proven to be a foreign corporation, it must be proven to be a non-resident foreign corporation.**

Taxpayer filed an application for refund of unutilized input taxes allocated to its zero-rated sale of services to foreign clients. In order to prove that its sales are VAT zero-rated, taxpayer presented as evidence the Official Receipts, Billing Statements, Memo Invoices-Receiveable, Memo Invoices-Payable and Bank Statements. Taxpayer argued that these documents show that the zero-rated sales were paid in foreign currency and duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). The Court, however, ruled that for sale of services to be VAT zero-rated under Section 108(B) of the NIRC, the recipient of service must be doing business outside the Philippines. According to the Court, the documents presented by taxpayer merely substantiated the existence of sales, receipt of foreign currency payments and inward remittance of the proceeds of such sales. There is no evidence that the clients were doing business outside the Philippines. Accordingly, the Court denied the claim on the ground that no evidence was presented to prove the fact that the foreign clients to whom the taxpayer rendered services are clients doing business outside the Philippines. (*Accenture, Inc. vs. Commissioner of Internal Revenue, G.R. No. 190102, July 11, 2012*)

- 2. Failure of a taxpayer to print the word “zero-rated” on its invoices or receipts is fatal to its claim for tax refund.**

Taxpayer rendered incoming telecommunication services for non-resident foreign telecommunication companies. For these services to non-resident foreign telecommunication companies, taxpayer generated foreign currency revenues which were inwardly remitted in accordance with the rules and regulations of the BSP. Believing that these are zero-rated sales, taxpayer filed an application for refund for the unutilized input taxes allocated to such sales, for the period January 1 to December 31, 1999. The Court denied the claim on the ground that the taxpayer failed to imprint the word “zero-rated” on the face of its VAT invoices or receipts, in violation of Revenue Regulations No. 7-95. The absence of the word “zero-rated” on the invoices and receipts of a taxpayer will result in the denial of the claim for tax refund.

The claim was also denied on the ground that the taxpayer failed to substantiate its taxable and exempt sales, the verification of which was not included in the examination of the commissioned independent certified public accountant. (*Eastern Telecommunications, Inc. vs. Commissioner of Internal Revenue, G.R. No. 168856, August 29, 2012*)

### **3. Prior payment of taxes is not required for a taxpayer to avail of the 8% transitional input tax credit.**

Fort Bonifacio Development Corporation (FBDC) purchased from the government in 1995 portion of the Fort Bonifacio reservation, now known as the Fort Bonifacio Global City. No VAT on the sale of the land was passed on by the government to FBDC. On January 1, 1996, Republic Act 7716 took effect, amending certain provisions of the NIRC. One of the amendments is the extension of the coverage of the VAT to sale of real properties held primarily for sale to customers or held for lease in the ordinary course of business. In September 1996, FBDC submitted to the BIR an inventory of all its real properties, claiming that it is entitled to the transitional input tax credit on said inventories. FBDC started selling Global City lots in October 2006. For the 1<sup>st</sup> quarter of 1997, FBDC paid output taxes on the sale of lots after deducting input taxes. Realizing that the transitional input taxes were not applied against the output VAT, which would have resulted to no net output VAT liability (the transitional input taxes being higher), FBDC filed a claim for refund for the VAT payment.

The Court of Tax Appeals (CTA) denied the claim on the ground that the benefits of the transitional input tax credit comes with the condition that business taxes should have been paid. Since FBDC acquired the property from the government free of VAT, it cannot avail of the transitional input tax credit. The Court of Appeals (CA) affirmed the decision of the CTA, saying that FBDC is not entitled to the transitional input tax credit since it did not pay any VAT when it purchased the Global City property. The Supreme Court (SC) reversed the decision of the CA and granted the refund. According to the SC, there is nothing in Section 105 of the old NIRC that indicate that prior payment of taxes is necessary for the availment of the transitional input tax credit. All that is required is for the taxpayer to file a beginning inventory with the BIR. ***(Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 173425, September 04, 2012)***

### **4. A proprietary non-profit hospital is subject to 10% tax under Section 27(B) of the 1997 Tax Code.**

St. Luke's Medical Center, Inc. (St. Luke's) was assessed by the BIR for deficiency income tax under Section 27(B) of the 1997 Tax Code, which imposes 10% income tax on the taxable income of proprietary educational institutions and hospitals which are non-profit. The CTA dismissed the assessment on the ground that St. Luke's is not subject to income tax under Section 30(E) and (G) of the Tax Code, which exempts from income tax income received by non-stock corporations organized and operated exclusively for charitable purposes and civic leagues and organizations not organized for profit and promoting social welfare.

Upon appeal to the Supreme Court (SC), the latter ruled that St. Luke's is subject to tax under Section 27(B) of the 1997 Tax Code. In arriving at the conclusion, the SC reconciled the provisions of Sections 27(B) and 30 of the 1997 Tax Code. A charitable institution, while "organized and operated" exclusively" for charitable purposes, is nevertheless allowed to engage in "activities conducted for profit" without losing its tax exempt status. The only consequence is that the "income of whatever kind and character from any of the activities conducted for profit, regardless of the disposition of such income", shall be subject to tax. St. Luke's is a non-stock non-profit corporation. Nonetheless, services to paying patients are activities conducted for profit. Such income is subject to income tax, but not to the 30% income tax but to 10% under Section 27(B) of the 1997 Tax Code. ***(Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc., 195909, September 26, 2012<sup>1</sup>)***

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<sup>1</sup> Read the full decision for the full discussion of the application of Section 27(B) and 30 of the 1997 Tax Code. There are also substantial discussions on what is meant by non-stock, proprietary, non-profit and charitable.