Significant Supreme Court Decision
August 2019

The sale of the power plants by Power Sector Assets and Liabilities Management Corporation (PSALM) is not in pursuit of a commercial or economic activity but a governmental function mandated by law to privatize National Power Corporation (NPC) generation asset. Hence, the sale is not subject to value-added tax (VAT).

The BIR assessed the taxpayer for deficiency VAT in relation to the sale of power plants for the purpose of privatizing power generation assets in accordance with the EPIRA Law. On appeal, the Court of Tax Appeals (CTA) upheld the assessment and held that the taxpayer is subject to VAT for its sale of generating assets, among others.

The case was elevated to the Supreme Court wherein it was held that the issue of whether or not the sale of power plants by the taxpayer is subject to VAT have been passed upon in the case of *PSALM vs. Commissioner of Internal Revenue (G.R. No. 198146, August 8, 2017)*. The Court held that the sale of the power plants by PSALM is not in pursuit of a commercial or economic activity but a governmental function mandated by law to privatize National Power Corporation (NPC) generation asset. The sale of the power plants is clearly not the same as the sale of electricity by generation companies, transmission, and distribution companies, which is subject to VAT under Section 108 of the NIRC. *(PSALM vs. Commissioner of Internal Revenue, G.R. No. 226556, July 3, 2019)*

Membership fees, assessment dues, and fees of similar nature collected by clubs which are organized and operated exclusively for pleasure, recreation, and other non-profit purposes do not constitute as (a) the income of recreational clubs from whatever source that are subject to income tax; and (b) part of gross receipts of recreational clubs that are subject to value-added tax.

The BIR issued RMC No. 35-2012 which: (a) subjects non-profit recreational clubs to income tax; and imposes VAT on gross receipts of recreational clubs including but not limited to membership fees and assessment dues. The association assailed the circular alleging that the CIR acted beyond its rule-making authority in interpreting that payments of membership fees, assessment dues, and service fees are considered as income subject to income tax, as well as a sale of service that is subject to VAT.

The Court held that the membership fees, assessment dues, and other fees of similar nature only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities offered by recreational clubs to their exclusive members. They represent funds “held in trust” by these clubs to defray their operating and general costs and hence, only constitute infusion of capital which are not subject to income tax.

Likewise, before a transaction is imposed VAT, a sale, barter or exchange of goods or properties, or sale of service is required. When the dues are paid, the members are not buying services from the club; hence, there is no economic or commercial activity to speak of as these dues are devoted for the operations/maintenance of the facilities of the organization. Thus, there is no “sale, barter or exchange of goods or properties, or sale of service” to speak of, which would then be subject

to VAT. *(Association of Non-Profit Clubs, Inc. (ANPC), herein represented by its authorized representative, Ms. Felicidad M. Del Rosario, vs. Bureau of Internal Revenue, herein represented by Hon. Commissioner Kim S. Jacinto-Henares, G.R. No. 228539, June 26, 2019)*