

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

REVENUE MEMORANDUM CIRCULAR NO. 15-2011

SUBJECT : Revocation of **BIR Ruling DA-563-2006** dated September 19, 2006 pursuant to CTA E.B. Case No. 287 dated January 14, 2008

TO : All Internal Revenue Officers and Others Concerned

This refers to the request of the Assistant Commissioner, Assessment Service for revocation of BIR Ruling No. **DA-563-2006** dated September 19, 2006 issued to the Interadent Zahntechnik Phils., Incorporated (IZPI), in connection with the decision of the Court of Tax Appeals (CTA) in CTA E.B. Case No. 287 entitled "CS Garments, Inc. vs. Commissioner of Internal Revenue."

Whereas, in the aforesaid BIR Ruling, it was held that IZPI's sale of its company car is exempt from VAT inasmuch as its regular line of business is the manufacturing and export of custom-made dental products, it follows that it may only be subjected to 12% VAT on sales related to this kind of business activity; and that there is nothing to indicate that IZPI's sale of its company cars is made on a regular basis or even incidental to the manufacturing and/or export of dental products.

Whereas in the CTA case, one of the issues was whether or not the sale of motor vehicle by CS Garments to its General Manager is a transaction incidental to the pursuit of a commercial and economic activity and, thus, subject to VAT contemplated under Sec. 105 of the Tax Code, as amended, the CTA categorically held that though the primary business of CS Garments is the manufacturing of garments for sale abroad, the sale of motor vehicle (Mercedes Benz) to its General Manager is a transaction incidental to such business and, thus, subject to VAT. The sale of motor vehicle is an incidental transaction because the said vehicle was purchased and used in furtherance of CS Garments' business.

The pertinent portion of the aforementioned Decision provides, to wit:

As to the third assigned error, petitioner-CS Garments pointed out that the sale of its motor vehicle, a Mercedes Benz, to its General Manager, Mr. Claus Sudhoff amounting to P1,600,000.00, is not subject to VAT since it was not made in the ordinary course of its trade or business. Petitioner alleged that before a particular transaction may be subject to VAT, it is important to determine the taxpayer's role or link in the production chain of that particular product or service. Where the sale, barter or exchange of that particular product or service is not made in the course of trade or business, such transaction may not be made subject to VAT. It further alleged that since its primary business is to engage in the manufacture of garments for sale abroad, the sale of its used company car does not have a direct relevance to petitioner's primary business of manufacturing of garments.

The argument is without merit.

Section 105 of the NIRC of 1997, as amended, states that:

"SEC. 105. Persons Liable. — Any person who, in the course of trade or business, sells, barter, exchanges, leases goods

or properties, renders services, and any person who imports goods shall be subject to value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

xxx

xxx

xxx

"The phrase 'in the ordinary course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

Based on the foregoing, the VAT is imposed on a sale or transaction entered into by a person in the course of any trade or business. A transaction will be characterized as having been entered into by a person in the course of trade or business if it is: (1) regularly conducted; and (2) undertaken in pursuit of a commercial or economic activity. Likewise, transactions that are made incidental to the pursuit of a commercial or economic activity are considered as entered into in the course of trade or business. "Incidental" means something else as primary; something necessary, appertaining to, or depending upon another, which is termed the principal. Hence, an isolated transaction is not necessarily disqualified from being made incidentally in the course of trade or business.

Here, petitioner's primary business is the manufacturing of garments for sale abroad. In carrying-out its business, petitioner acquired and eventually sold a Mercedes Benz to its General Manager Mr. Sudhoff. Prior to the sale, the motor vehicle formed part of petitioner's capital assets, specifically under the account, "Property, Plant and Equipment". The Rules on International Accounting Standards (IAS) defines Property, Plant and Equipment as follows:

"6. Definitions

Property, plant and equipment are tangible assets that:

- (a) are held by an enterprise for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and*
- (b) are expected to be used during more than one period."*

Therefore, the sale of the motor vehicle is an incidental transaction because the said vehicle was purchased and used in furtherance of petitioner's business.

Once an activity has been identified as a business, any supply [sale] made while carrying it on is likely to be made in the course or furtherance of business. No distinction is made between capital and revenue items. Thus, a supply [sale] in the course or furtherance of business includes: (1) the disposition of the assets and liabilities of a business, (2) the disposition of a business as going concern; and (3) anything done in connection with the termination or intended termination of a business."

Accordingly, applying Section 105 of the 1997 Tax Code, as amended, and the ruling in the case of CS Garments, the sale of company cars of IZPI to its officers should be subject to VAT, it being a transaction incident to the pursuit of its commercial or economic activity.

In view of the foregoing, this Office hereby revokes BIR Ruling DA-563-2006 dated September 19, 2006.

All other existing rulings inconsistent herewith are likewise considered **REVOKED**.

All concerned are hereby enjoined to be guided accordingly and give this circular as wide as publicity as possible.

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue