

[BIR REVENUE MEMORANDUM CIRCULAR NO. 15-2011, March 15, 2011]

REVOCATION OF BIR RULING DA-563-2006 DATED SEPTEMBER 19, 2006 PURSUANT TO CTA E.B. CASE NO. 287 DATED JANUARY 14, 2008

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 custommade 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 its 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.