TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

TAX UPDATES FROM MAY 16, 2024 TO JUNE 15, 2024

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DECISION / ISSUANCE	DATE ISSUED	SUBJECT	PAGE NO.
COURT OF TAX APPEALS ("CTA") DECISIONS			
1. Sanyo Seiki Stainless Steel Corporation vs. Commissioner of Internal Revenue, CTA EB No. 2726	20 May 2024	In tax assessment cases, the thirty (30)-day period for filing a Petition for Review before the Court of Tax Appeals (CTA) should not be reckoned from the date of receipt of the Collection Letter; rather, it should be reckoned from the date of receipt of an adverse decision or ruling of the CIR.	**5**
2. Applied Food Ingredients Co., Inc. v. Commissioner of Internal Revenue, CTA Case No. 9952	23 May 2024	The prescriptive period to assess the taxpayer for deficiency value added tax (VAT) is separable into four (4) quarters, inasmuch as the taxpayer is mandated by law to file a VAT return on a quarterly basis. The filing of a response to the Preliminary Assessment Notice (PAN) prior to the issuance of the Final Assessment Notice (FAN) / Formal Letter of Demand (FLD) cannot be a useless exercise. While the Commissioner of Internal Revenue (CIR) is duty-bound to, at least, consider the taxpayer's defenses in resolving the case and provide clear reasons for its decision, citing the applicable factual and legal bases for its conclusion.	**5-6**
3. Plastic Container Packaging Corporation v. Commissioner of Internal Revenue, CTA Case No. 10095	23 May 2024	The kind and amount of tax due must be indicated in the waiver of the defense of prescription under the statute of limitations. The lack thereof would render the waiver void and would not stretch the prescriptive period to assess and collect internal revenue taxes.	**6-7**
4. Japan Airport Consultants Inc. v. Commissioner of Internal Revenue, CTA Case No. 10592	23 May 2024	Tax assumption arrangements pursuant to bilateral agreements entered into by the Philippines with other countries are not novel. These arrangements allow the tax liability generally imposed on the statutory taxpayer to be passed on to a different person, such as the Philippine Government or the implementing agency. This was a concession to foreign suppliers, contractors, or consultants in consideration of the loan extended to Philippines.	**7-8**
5. Commissioner of Internal Revenue v. SCICIndustrial Corp., CTA EB No. 2503	27 May 2024	The general rule is that a petition for review is perfected by timely filing it and paying the requisite docket fees and other lawful fees. All general rules, however, admit of certain exceptions. There are exceptions to the stringent	

		requirement as to call for a relaxation of the application of the rules, such as: to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; good faith of the defaulting party by immediately paying within a reasonable time from the time of the default. Only the Commissioner of Internal Revenue (CIR) and the duly authorized Bureau of Internal Revenue (BIR) officials, i.e., Regional Directors and the Deputy Commissioners, may issue a Letter of Authority (LOA). Unless authorized by the CIR himself or by his duly authorized representative pursuant to Revenue Memorandum Order (RMO) No. 43-90, an examination of a taxpayer's books of accounts cannot be ordinarily undertaken. In the absence of such an authority, the assessment or examination is a nullity.	**8-9**
6. Commissioner of Internal Revenue v. Mckinsey & Co. (Phils), CTA EB No. 2809	28 May 2024	Self-serving statements are those made by a party out of court advocating his own interest. The common objection known as "self-serving" is not correct because all testimonies are self-serving and the proper objection for such statement is that it is "hearsay". While self-serving statements are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage fabrication of testimony, a testimony made in court and under oath, with full opportunity on the part of the opposing party for cross-examination, cannot be objectionable as self-serving or hearsay.	**9-10**
7. Pilipinas Kyoritsu v. Commissioner of Internal Revenue, CTA EB No. 22750	29 May 2024	The 30-day period given to a taxpayer to file a judicial claim for input tax refund or tax credit shall start from whichever starting point comes first. Taxpayers cannot opt to wait for an actual adverse decision by respondent despite the lapse of the 120-day mandatory period given to respondent to act before filing a judicial claim before the Court of Tax Appeals (CTA). Otherwise, such judicial action is belatedly filed, which results in the CTA losing its jurisdiction to try the judicial claim for input tax refund or tax credit. This is known as the mandatory and jurisdictional 120+30-day period.	**11-12**
8. Rebecca D. Duka v. Commissioner of Internal Revenue, CTA Case No. 10393	29 May 2024	The Bureau of Internal Revenue's (BIR) power to collect taxes must yield to the fundamental rule that no person shall be deprived of his or her property without due process of law. The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure. For the BIR's failure to act in accordance with the prescribed procedures before issuing the subject notices, the BIR has violated the due process right of petitioner. Correspondingly, the Notices issued by the BIR are void and cannot be given effect.	**12-13**
9. Neuftech Philippines Inc. v. Commissioner of Internal	29 May 2024	The issuance of a Preliminary Assessment Notice (PAN) is a part of due process, that the issuance thereof gives both the taxpayer and the BIR the	

Revenue, CTA Case No. 10442		opportunity to settle the case at the earliest possible time without the need for issuance of a Final Assessment Notice (FAN) or to reduce the assessment at the earliest opportunity. This purpose is not served in case the Bureau of Internal Revenue (BIR) fails to consider the taxpayer's explanations or arguments before the FAN is issued. The failure of the BIR to give due consideration to the said explanations or arguments is a deplorable transgression of the taxpayer's right to due process, and that the disregard by the BIR of the standards and rules renders the deficiency tax assessment null and void.	**13-14**
10. Friendlycare Foundation Inc. v. Commissioner of Internal Revenue, CTA Case No. 10123	30 May 2024	The 180-day period referred to in Section 228 of the Tax Code, as amended, and in Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, is confined only to the period within which either the Commissioner of Internal Revenue (CIR) or his or her duly authorized representative may act on the initial protest against the FLD / FAN. If the taxpayer opts to appeal to the CIR the final decision of the latter's duly authorized representative, the taxpayer's remaining option (after the 180-day period expires) is to wait for the CIR's decision before elevating its case to the Court of Tax Appeals (CTA). In other words, when a taxpayer opts to file an administrative appeal, the CIR is not given a fresh or separate 180-day period within which to decide the administrative appeal. It is only after the CIR acts on the administrative appeal that the taxpayer could file an appeal before the CTA.	**14-15**
11. PPD Pharmaceutical Development Philippines, Corp. v. Commissioner of Internal Revenue, CTA Case No. 10375	6 June 024	The Court reiterates the importance of complying with the invoicing requirements of the law. In actions for tax refund or credit, like this case, the claim for exemption and the law is not only construed strictly against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is strictly scrutinized and must be duly proven. The burden is on the taxpayer to show that he (or she) has strictly complied with the conditions for the grant of the tax refund or credit.	**15-16**
12. Quadfoods Corporation v. Commissioner of Internal Revenue, CTA Case No. 10419	6 June 2024	A party has thirty (30) days from receipt of the assailed decision within which to file an appeal with the Court. The failure to do so shall result to the failure to perfect an appeal as required by the rules, which shall have the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.	**16-17**
13. Ship to Shore Medical Assist, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10550	6 June 2024	It may be observed that Revenue Regulations (RR) No. 18-2013 removed the express provision requiring that the "designation and authority to act for and on behalf of the taxpayer" be indicated if receipt of the assessment notice is made by a person other than the taxpayer itself. Nonetheless, the importance of establishing the designation and authority of the recipient remains	**17-18**

		true and applicable. While the official receipt issued by the professional courier company containing identifiable details of the transaction constitute sufficient proof of mailing, this remains a disputable presumption subject to controversion. A direct denial of receipt shifts the burden upon the party favored by the presumption to prove that the mailed matter was indeed received by the addressee.	
14. Philippine Airlines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10530	7 June 2024	In an action to recover erroneously paid or illegally collected taxes, the claimant must first file an administrative claim with the BIR before filing a judicial claim with the CTA. Both claims must be filed within two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional. Thus, the CTA cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, the law explicitly provides that it be filed within 2 years from payment of the tax regardless of any supervening cause that may arise after payment.	**18-20**
REVENUE REGULATIONS ("RRs")			
1. Revenue Regulations No. 11-2024	13 June 2024	Amends the transitory provisions of Revenue Regulations (RR) No. 7-2024 relative to the deadlines for compliance with the invoicing requirements.	**20-21**
REVENUE MEMORANDUM CIRCULARS ("RMCs")			
1. Revenue Memorandum Circular No. 62-2024	16 May 2024	Announces the availability of the "Taxpayer Classification Inquiry" functionality in the Online Registration and Update System (ORUS).	**21-22**
2. Revenue Memorandum Circular No. 64-2024	28 May 2024	Clarifies the ante-dating of deeds of sale involving real properties.	**22**
3. Revenue Memorandum Circular No. 65-2024	14 June 2024	Clarifies certain issues relative to the implementation of Section 19 of RA No. 11976 (Ease of Paying Taxes Act), which added Section 110(D) of the National Internal Revenue Code of 1997, as amended (Tax Code), as amended, that introduced the Output VAT Credit on uncollected receivables.	**23-26**
4. Revenue Memorandum Circular No. 66-2024	14 June 2024	Submission of Inventory Report and Notice in Compliance with Transitory Provisions of Revenue Regulations (RR) No. 7-2024.	**26**

A. COURT OF TAX APPEALS DECISIONS

1. In tax assessment cases, the thirty (30)-day period for filing a Petition for Review before the Court of Tax Appeals (CTA) should not be reckoned from the date of receipt of the Collection Letter; rather, it should be reckoned from the date of receipt of an adverse decision or ruling of the CIR.

Sanyo Seiki Stainless Steel Corporation (Sanyo) asserts that the thirty (30)-day period for filing the Petition for Review must be reckoned from the receipt of the Collection Letter on 9 February 2016. On the other hand, the Commissioner of Internal Revenue (CIR) counter-argues that the thirty (30)-day period for filing a Petition for Review before the Court of Tax Appeals (CTA) should not be reckoned from the date of receipt of the Collection Letter; rather, from the date of receipt of an adverse decision or ruling of the CIR.

In this case, the CTA affirmed that the 30 days should be counted from the CIR's decision on the administrative appeal dated 14 January 2016, and received by Sanyo on 19 January 2016. The CIR's decision, signed by then Commissioner Kim S. Jacinto-Henares unequivocally stated at the end "This constitutes the Final Decision of this Office on the matter". The subsequent Collection Letter dated 9 February 2016 merely reiterated that the CIR already rendered the final decision on its appeal, and petitioner was again ordered to pay the deficiency tax. Sanyo's contention that it is also disputing the CIR's collection efforts initiated through the Collection Letter received on 10 February 2016, thus, reckoning the 30-day appeal period therefrom is specious.

Undeniably, Sanyo was a day late in filing the Petition for Review before the CTA Third Division. Sanyo received the assailed decision of the CIR on 19 January 2016; thus, counting 30 days therefrom, Sanyo had until 18 February 2016 to file the appeal before the CTA. The Petition for Review was only filed on 19 February 2016, or one (1) day after the end of the 30-day period. It is noteworthy that Sanyo did not provide any justification for the belated filing of the Petition for Review to warrant the relaxation of the rules.

The instant Petition for Review before the CTA En banc (from the CTA Decision dated 15 July 2021 and Resolution dated 15 December 2022) is denied for lack of merit. *(Sanyo Seiki Stainless Steel Corporation vs. Commissioner of Internal Revenue, CTA EB No. 2726, 20 May 2024)*

2. The prescriptive period to assess the taxpayer for deficiency value added tax (VAT) is separable into four (4) quarters, inasmuch as the taxpayer is mandated by law to file a VAT return on a quarterly basis. Each quarterly VAT return thus filed constitutes a final computation of the taxpayer's VAT payable for that taxable quarter; the filing thereof / statutory deadline shall commence the three (3)-year period for assessment.

Moreover, the filing of a response to the Preliminary Assessment Notice (PAN) prior to the issuance of the Final Assessment Notice (FAN) / Formal Letter of Demand (FLD) cannot be a useless exercise. While the Commissioner of Internal Revenue (CIR) remains to have the sole discretion whether or not to act favorably on the response / protest, it is nonetheless duty-bound to, at least, consider the taxpayer's defenses in resolving the case and provide clear reasons for its decision, citing the applicable factual and legal bases for its conclusion.

Applied Food Ingredients Co., Inc. (AFIC) filed its 2010 quarterly VAT returns prior to the respective statutory deadlines. Thus, the 3-year prescriptive period from the statutory deadline is 25 April 2013, 25 July 2013, 26 October 2013, and 27 January 2014 considering that 25 January 2014 fell on a Saturday. It appears that when the CIR issued the FLD / FAN on 27 January 2014, the right to assess AFIC for deficiency VAT relative to the first, second, and third quarters of calendar year 2010 had already prescribed. It is settled that assessments already barred by prescription are void. The Court of Tax Appeals (CTA) thus struck down the CIR's attempt to still hold AFIC liable for deficiency VAT relative to the first, second, and third quarters of the calendar year 2010.

The prescriptive period to assess the taxpayer for deficiency VAT is separable into 4 quarters, inasmuch as the taxpayer is mandated by law to file a VAT return on a quarterly basis. Each quarterly VAT return thus filed constitutes a final computation of the taxpayer's VAT payable for that taxable quarter; the filing thereof / statutory deadline shall commence the 3-year period for assessment. The 3-year prescriptive period for issuing a VAT assessment shall be counted from the last day of the twenty-five (25)-day period from the close of the taxable quarter within which to file the quarterly VAT return, or the date of actual filing of the quarterly VAT return, whichever comes later.

The FLD / FAN was issued in violation of petitioner's right to due process. The requirement of administrative due process is not met sufficiently by the mere formal act of receiving a taxpayer's defenses submitted in writing. Administrative due process also requires judicious consideration of the matters raised therein, independent evaluation of the case, and due notification to parties of the reasons for judgment. While AFIC responded to the PAN through a letter dated 23 January 2014 to refute the CIR's findings, the FLD / FAN contained a basic tax amount identical to that in the PAN, adjusted only to update the computation of interest. The FLD / FAN made no reference to petitioner's reply to the PAN; the CIR did not mention any of petitioner's arguments, much less give an intelligent discourse in resolving each matter raised. Verily, the CIR attached Details of Discrepancies to the PAN to explain the findings and resulting deficiency tax amounts. However, the FAN / FLD bore the exact same explanation as that already provided in the Details of Discrepancies accompanying the PAN.

The identity in substance between the subject PAN and the subsequent FLD / FAN shows that the CIR completely ignored AFIC's response to the PAN. The filing of a response to the PAN prior to the issuance of the FAN / FLD cannot be a useless exercise. While the CIR remains to have the sole discretion whether or not to act favorably on the response / protest, the CIR is nonetheless duty-bound to, at least, consider the taxpayer's defenses in resolving the case and provide clear reasons for its decision, citing the applicable factual and legal bases for its conclusion. The CTA held that FAN / FLD assessing AFIC for deficiency VAT are cancelled and set aside for being void. *(Applied Food Ingredients Co., Inc. v. Commissioner of Internal Revenue, CTA Case No. 9952, 23 May 2024)*

3. The kind and amount of tax due must be indicated in the waiver of the defense of prescription under the statute of limitations. The lack thereof would render the waiver void and would not stretch the prescriptive period to assess and collect internal revenue taxes.

The Cour of Tax Appeals (CTA) held that the waiver of prescription issued by Plastic Container Packaging Corporation (PCPC) on 21 June 2013 did not produce a valid extension until 31 December 2014 of the prescriptive period to assess internal revenue taxes for the calendar year

2010. The CTA noted that PCPC's waiver states that the subject thereof pertains to the investigation of ALL internal revenue tax liabilities for taxable year 2010, SANS any express mention of: (1) the particular taxes covered by such waiver; and (2) the respective amounts thereof.

In ruling in favor of PCPC, the CTA cited the cases of CIR v. Standard Chartered Bank (SCB), CIR v. Systems Technology Institute, Inc. (STI), and in CIR v. First Philippine Industrial Corporation (FPIC) wherein the respective waiver therein failed to specify the particular kind and amount of taxes to be assessed. SCB, STI, and FPIC found the waivers to be faulty; hence, the waivers did not extend the prescriptive period to assess internal revenue taxes.

This requirement is not without reasons. There can be no agreement between the taxpayer and the Bureau of Internal Revenue (BIR,) if the kind and amount of the taxes to be assessed or collected were not indicated. Hence, specific information in the waiver is necessary for its validity. The indication of the kind and amount of taxes prevents the waiver from becoming applicable to multiple tax audits for the same taxable period. Moreover, statement of the specific kind and amount of tax/es in the waiver is explicitly required by Section 222(b) of the Tax Code, as amended.

Under Section 222(b) of the Tax Code, as amended, in order for the waiver of the defense of prescription to be valid, it must contain the following requirements: (1) the period agreed upon or the date within which the BIR may assess and collect revenue taxes to prevent the waiver from becoming unlimited in time; (2) the kind and amount of tax due to prevent the waiver from becoming applicable to multiple tax audits for the same taxable period; (3) the date of execution and acceptance of the waiver by the Commissioner of Internal Revenue (CIR) to determine whether the waiver was validly executed and accepted before the expiration of the original three-year period; (4) the conformity/ signature of the CIR or his/her authorized representative; (5) the conformity/signature of the taxpayer or their authorized representative; (6) the fact of receipt by the taxpayer of its copy/copies of the waiver; and (7) notarization.

The CTA held that the Final Assessment Notice (FAN) / Formal Letter of Demand (FLD) containing the deficiency income tax (IT), value-added tax (VAT), and expanded withholding tax (EWT) for calendar year 2010 served on 19 December 2014 upon PCPC is barred by prescription. *(Plastic Container Packaging Corporation v. Commissioner of Internal Revenue, CTA Case No. 10095, 23 May 2024)*

4. Tax assumption arrangements pursuant to bilateral agreements entered into by the Philippines with other countries are not novel. These arrangements allow the tax liability generally imposed on the statutory taxpayer to be passed on to a different person, such as the Philippine Government or the implementing agency. This was a concession to foreign suppliers, contractors, or consultants in consideration of the loan extended to Philippines.

Japan Airports Consultants, Inc. (JAC) is a corporation organized and existing under the laws of Japan, and licensed to establish a Representative Office in the Philippines.

On 25 March 2013, the governments of the Philippines and Japan entered into an Exchange of Notes for the purpose of extending a Japan International Cooperation Agency (JICA) Loan to the Philippines, the proceeds of which will be used in the New Bohol Airport Construction and Sustainable Environment Protection Project (Bohol Airport Construction Project). Pursuant to this,

on 27 March 2013, JICA and the Philippines executed Loan Agreement. Paragraph 7 of the said Loan Agreement provides for a tax assumption arrangement wherein the Philippine Government shall, by itself or through its executing agency, assume: all fiscal levies and taxes imposed in the Philippines on the Japanese companies operating as suppliers, contractors and/or consultants with respect to the payment carried out for and the income accruing from the supply of the products and/or services required for the implementation of the Projects.

Thereafter, the Department of Transportation and Communications (or DOTC, now the Department of Transportation or DOTr) and JAC Japan Head Office executed a Contract for Consultants' Services - Time Based relative to the Bohol Airport Construction Project (Project Contract). Between 2014 to 2019, petitioner supplied the DOTr with individual professionals, all Japanese nationals, to perform consultancy services as enumerated under the Project Contract.

Upon the Bureau of Internal Revenue's (BIR) conduct of audit investigation, JAC was assessed for, among others, deficiency valued added tax (VAT) based on a finding that JAC failed to pay 12% output VAT on its supply of consultancy services to DOTr, pursuant to the Project Contract.

As a general rule, supply of services that are performed in the Philippines, is subject to VAT. However, JAC's statutory liability for VAT was modified pursuant to the tax assumption arrangement in the Exchange of Notes between the governments of the Philippines and Japan. In the Exchange of Notes, the Philippine government expressly assumed the tax-related duties and responsibilities that were, in general, imposable upon the JICA Loan and participating Japanese Companies, petitioner effectively passed on its statutory liability for VAT to the RP and/or DOTr.

Tax assumption arrangements like that in the instant case are not novel. In Mitsubishi Corp. – Manila Branch v. Commissioner of Internal Revenue (CIR), the Supreme Court already explained that these arrangements allow the tax liability generally imposed on the statutory taxpayer to be passed on to a different person, such as the Philippine Government or the implementing agency. This was a concession to Japanese suppliers, contractors, or consultants in consideration of the loan extended to Philippines.

In view of the tax assumption arrangement under the Exchange of Notes, the DOTr shouldered the VAT arising from said sales of services. Thus, the assessment of 12% VAT thereon against JAC was incorrect. It violates the concession established in its favor, and if sustained, would only amount to erroneous payment of tax. (*Japan Airport Consultants Inc. v. Commissioner of Internal Revenue, CTA Case No. 10592, 23 May 2024)*

5. **The general rule is that a petition for review is perfected by timely filing it and paying the requisite docket fees and other lawful fees. All general rules, however, admit of certain exceptions. There are exceptions to the stringent requirement as to call for a relaxation of the application of the rules, such as: to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; good faith of the defaulting party by immediately paying within a reasonable time from the time of the default.**

   Only the Commissioner of Internal Revenue (CIR) and the duly authorized Bureau of Internal Revenue (BIR) officials, i.e., Regional Directors and the Deputy Commissioners, may issue a Letter of Authority (LOA). Unless authorized by the CIR himself or by his duly authorized representative pursuant to Revenue Memorandum

Order (RMO) No. 43-90, an examination of a taxpayer's books of accounts cannot be ordinarily undertaken. In the absence of such an authority, the assessment or examination is a nullity.

The case is a Petition for Review filed on 15 July 2021 by the Commissioner of Internal Revenue (CIR) against SCICIndustrial Corp. (SCIC) appealing the Decision dated 27 August 2020 (assailed Decision) and Resolution dated 25 May 2021 (assailed Resolution) rendered by the Second Division of the Court of Tax Appeals (CTA). The CIR alleged that the CTA in Division had no jurisdiction over the original Petition for Review due to, among others, failure of SCIC's failure to perfect the appeal when it paid the docket fees beyond the thirty (30)-day reglementary period under Section 228 of the Tax Code, as amended.

In SCIC's Manifestation dated 14 June 2017, SCIC explained that it attempted to have original Petition assessed for proper docket fees on 7 June 2014 or seven (7) days before the last day to file the appeal (14 June 2017). The Judicial Records Division of the CTA, however, refused to assess the same as the CTA has yet to receive the original Petition, which was filed via registered mail. On 14 June 2017, the last day to file the appeal, SCIC tried to pay the docket fees but to no avail since the original Petition has not yet been received by the CTA. On 16 June 2017, the Judicial Records Division of the CTA notified SCIC of the receipt of the original Petition and was able to pay the proper docket fees on the same day.

The general rule is that a Petition for Review is perfected by timely filing it and paying the requisite docket fees and other lawful fees. All general rules, however, admit of certain exceptions. There are exceptions to the stringent requirement as to call for a relaxation of the application of the rules, such as: to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; and good faith of the defaulting party by immediately paying within a reasonable time from the time of the default. Anyone seeking exemption from the application of the Rule has the burden of proving that exceptionally meritorious instances exist which warrant such departure.

In the instant case, the docket fees were paid two (2) days late. Considering, however, SCIC's explanation on the circumstances surrounding the belated payment of the docket fees coupled with its willingness and earnest efforts to pay the same on time, the CTA found the foregoing to be sufficient justification for the CTA in Division's application of judicial leniency and the relaxation of the rules of procedure.

The CIR likewise claimed that the officers who conducted the examination and audit of SCIC's account were validly clothed with authority to conduct the same and, consequently, to recommend the assessment of the subject deficiency taxes. According to the CIR, Section 6 of the Tax Code, as amended, does not limit the power of the CIR to examine and to determine tax deficiency of any taxpayer only through issuance of a Letter of Authority (LOA). Moreover, revenue district officers are considered duly authorized representatives of the CIR to authorize the examination of a taxpayer for a taxable period. The CIR further argued that the taxpayer's right to due process is not violated when a LOA was issued for the examination of taxpayer's books, but the Revenue Officers (ROs) named therein were eventually transferred to a different revenue district office and new ROs were reassigned to continue the audit investigation through a duly issued Memorandum of Assignment (MOA).

The CTA ruled otherwise. Section 6 of the Tax Code, as amended, provides that the authority to examine the books of account of taxpayers must be granted by the CIR or his duly authorized

representatives. Section D(4) of Revenue Memorandum Order (RMO) No. 43-90 provides that only the CIR and the duly authorized Bureau of Internal Revenue (BIR) officials, i.e., Regional Directors and the Deputy Commissioners may issue an LOA. As elucidated by the Supreme Court in the case of Medicard Philippines, Inc. v. CIR, 48 unless authorized by the CIR himself or by his duly authorized representative pursuant to RMO No. 43-90, an examination of a taxpayer's books of accounts cannot be ordinarily undertaken. In the absence of such an authority, the assessment or examination is a nullity.

Evidently, the RDO is not among the BIR officials authorized to issue an LOA; hence, the MOA issued by RDO Barroga cannot serve to authorize RO Elardo and GS Carsolin to conduct an examination of SCIC's books of accounts. Without the required new LOA issued by the CIR or his duly authorized representative, the MOA issued by the RDO did not give ample authority to RO Elardo and GS Carsolin to continue the audit investigation of SCIC' s books of accounts. The CIR's Petition for Review is denied for lack of merit. *(Commissioner of Internal Revenue v. SCICIndustrial Corp., CTA EB Case No. 2503, 27 May 2024)*

6. **Self-serving statements are those made by a party out of court advocating his own interest. The common objection known as "self-serving" is not correct because all testimonies are self-serving and the proper objection for such statement is that it is "hearsay". While self-serving statements are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage fabrication of testimony, a testimony made in court and under oath, with full opportunity on the part of the opposing party for cross-examination, cannot be objectionable as self-serving or hearsay.**

In its Petition for Review, the Commissioner of Internal Revenue (CIR) alleged that the Court of Tax Appeals' (CTA) First Division erred in giving credence to the testimony of Ms. Elena Cabahug, Mckinsey & Co. (Phils.)'s (Mckinsey) accountant for being self-serving. The CTA's First Division erred in partially granting Mckinsey's claim for refund of its excess and unutilized creditable withholding tax based on, among others, such self-serving testimony.

The CIR specifically opposes the use of Ms. Cabahug's testimony as contained in her judicial affidavit in relation to respondent's 2016 Reconciliation Schedule and 2016 General Ledger Transaction Detail (GLTD) as basis for allowing Mckinsey's claim for refund. According to the CIR, other than the values discussed that were properly represented by documentary evidence, statement in said documents that purport reconciliation of values that were not substantiated by documentary evidence i.e., accrued revenue, forex adjustments should be treated as mere statements made to establish self-serving facts fitting for the said claims. Hence, it could not have shown that amount claimed for refund was declared to form part of the gross income of the respondent for the subject calendar years. Thus, such declaration should not have been relied on since 'a self-serving declaration' is a statement favorable to the interest of the declarant. It is not admissible in evidence as proof of the facts asserted."

The CTA En Banc ruled that the CIR's position is untenable. Self-serving statements are those made by a party out of court advocating his own interest. In People v. Omidin, the Supreme Court (SC) held that the common objection known as "self-serving" is not correct because all testimonies are self-serving and the proper objection for such statement is that it is "hearsay". In Hernandez v. CTA, the SC aptly ruled that: "Self-serving statements are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage

fabrication of testimony. This cannot be said of a party's testimony in court made under oath, with full opportunity on the part of the opposing party for cross-examination."

In light of the foregoing, Ms. Cabahug's testimony as contained in her judicial affidavit in relation to respondent's 2016 Reconciliation Schedule and 2016 GLTD cannot be considered objectionable as self-serving, or hearsay given that it was made in court under oath with the petitioner duly given the full opportunity for cross-examination.

The Court En Banc likewise agrees with the CTA in Division's ruling where it partially granted the Petition for Review as the Court En Banc finds no compelling reason to modify much less reverse the same. It is a settled rule that in the absence of proof of gross error, abuse or improvident exercise of authority, conclusions reached by this Court supported by substantial evidence shall not be disturbed on appeal. The CIR's Petition for Review was denied for lack of merit. *(Commissioner of Internal Revenue v. Mckinsey & Co. (Phils), CTA EB No. 2809, 28 May 2024)*

7. The 30-day period given to a taxpayer to file a judicial claim for input tax refund or tax credit shall start from whichever starting point comes first. Taxpayers cannot opt to wait for an actual adverse decision by respondent despite the lapse of the 120-day mandatory period given to respondent to act before filing a judicial claim before the CTA. Otherwise, such judicial action is belatedly filed, which results in the CTA losing its jurisdiction to try the judicial claim for input tax refund or tax credit. This is known as the mandatory and jurisdictional 120+30-day period.

The case began on 13 December 2013, when Pilipinas Kyohritsu Inc. (PKI) filed its Application for VAT Refund requesting for the refund of its unutilized and/or unused input value added tax (VAT) covering the period of 1 January to 31 December 2012. On 23 March 2017, petitioner received a copy of the Bureau of Internal Revenue's (BIR) letter dated 28 February 28, 2017, denying its application for refund. KPI thus filed a Petition for Review before the Court of Tax Appeals (CTA) on 21 April 2017, to which Respondent filed his Answer on 23 June 2017. The Petition for Review was denied by the CTA's First Division on the ground of prescription.

KPI maintains that the period of one hundred twenty (120) days for its refund claim to be decided only began to run from receipt by the BIR of complete documents. KPI avers that it submitted supporting documents from the time of its application on 31 December 2013 until 9 October 2014. KPI also argued that the thirty (30)-day period for the filing of an appeal with the CTA should be counted from receipt of full denial by the BIR of its refund claim. Having received the full denial of its claim only on 23 March 2017, KPI insists that it timely filed its Petition for Review.

The CTA En Banc upheld the decision and resolution by its First Division that KPI's claim was barred by prescription. Section 112 (C) of the Tax Code, as amended provides that the Commissioner of Internal Revenue (CIR) shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the CIR to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the CTA.

The 30-day period given to a taxpayer to file a judicial claim for input tax refund or tax credit shall start from whichever starting point comes first. Taxpayers cannot opt to wait for an actual adverse

decision by respondent despite the lapse of the 120-day mandatory period given to respondent to act before filing a judicial claim before the CTA. Otherwise, such judicial action is belatedly filed, which results in the CTA losing its jurisdiction to try the judicial claim for input tax refund or tax credit. This is known as the mandatory and jurisdictional 120+30-day period.

Even counting from 10 October 2014, the day after the last day of KPI's submission of documents to the BIR, the last day of the 120-day period is 7 February 2015. Counting 30 days from February 7, KPI only had until 9 March 2015 within which to file its appeal with the CTA. The CTA proceeded to cite the Supreme Court's (SC) decision in the Rohm Apollo Semiconductor Philippines v. CIR, viz: Taxpayers are reminded that that when the 120-day period lapses and there is inaction on the part of the CIR, they must no longer wait for it to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period. *(Pilipinas Kyohritsu Inc. v. Commissioner of Internal Revenue, CTA EB No. 2750, 29 May 2024)*

8. **The Bureau of Internal Revenue's (BIR) power to collect taxes must yield to the fundamental rule that no person shall be deprived of his or her property without due process of law. The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure. For the BIR's failure to act in accordance with the prescribed procedures before issuing the subject notices, the BIR has violated the due process right of petitioner. Correspondingly, the Notices issued by the BIR are void and cannot be given effect.**

On 24 February 2020, the Bureau of Internal Revenue (BIR) issued Revenue Region Special Order (RRSO) No. 38-2020, directing certain Revenue Officers (ROs) to undertake Cash Register Machines/Point-of-Sale (CRM/POS) Post Evaluation and Z-Reading Generation for taxable years 2018 and 2019, within the jurisdiction of Revenue District Office (RDO) No. 68, Sorsogon City, to apprehend the business establishment of Rebecca Duka for violating all internal revenue laws, rules and regulations in the conduct of business and to take proper action thereon.

In the Final Memorandum Report dated 1 April 2020 prepared by the said ROs, the latter recommended the issuance of an electronic Letter of Authority (LOA) and a 48-Hour Notice for the taxable years 2018 and 2019. The 48-Hour Notice alleges that Ms. Rebecca Duka under-declared her sales by more than thirty percent (30%) compared to actual sales. On 3 June 2020, Ms. Duka filed with the BIR the response to the said 48-Hour Notice. On 25 September 2020, Ms. Duka received the 5-Day VCN issued by the BIR demanding from rectification of them alleged violation by reflecting the correct taxable safes/ receipts for the taxable year 2018 and 2019.

Ms. Duka flied her Verified Response/Protest against the said 5-Day Value Added Tax Compliance Notice (VCN) on 29 September 2020. However, the same was denied by the BIR in a letter dated 5 October 2020, which was received by Ms. Duka on 6 October 2020. Petitioner filed with the BIR a Request for Reconsideration of the Denial of Protest on 7 October 2020. On 14 October 2020, Deputy Commissioner for Operations Group issued the Closure Order against Ms. Duka.

In the Petition for Review, Court of Tax Appeals (CTA) disagreed with the contentions of the BIR and ruled that the BIR's 48-Hour Notice and the 5-Day VCN and Closure Order violated Ms. Duka's constitutional right to due process. The BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his or her property without due process of

law. The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.

In this case, however, respondents clearly failed to observe the prescribed procedure in the issuance of the subject 48-Hour Notice, 5-Dqy VCN, and Closure Order. Particularly, respondents did not fully comply with the procedure prescribed under Revenue Memorandum Orde (RMO) No. 3-2009 in the issuance of the said Notices. The respondents' Composite Team did not follow the procedure prescribed under RMO No. 3-2009, particularly, the need to conduct prior surveillance. Thus, for purposes of RMO No. 3-2009, petitioner cannot be considered as a "non-compliant taxpayer", warranting the issuance of the said 48- Hour Notice, 5-Day VCN, and Closure Order against her. In sum, for the failure of respondents or the BIR to act in accordance with the prescribed procedures before issuing the subject notices, respondents have violated the due process right of Ms. Duka. Correspondingly, the said Notices are void, and thus, cannot be given effect. The Notices issued against Ms. Duka are cancelled and set aside. (*Rebecca D. Duka v. Commissioner of Internal Revenue, CTA Case No. 10393, 29 May 2024)*

9. The issuance of a Preliminary Assessment Notice (PAN) is a part of due process, that the issuance thereof gives both the taxpayer and the BIR the opportunity to settle the case at the earliest possible time without the need for issuance of a Final Assessment Notice (FAN) or to reduce the assessment at the earliest opportunity. This purpose is not served in case the Bureau of Internal Revenue (BIR) fails to consider the taxpayer's explanations or arguments before the FAN is issued. The failure of the BIR to give due consideration to the said explanations or arguments is a deplorable transgression of the taxpayer's right to due process, and that the disregard by the BIR of the standards and rules renders the deficiency tax assessment null and void.

Section 228 of the Tax Code, as amended, mandates the Bureau of Internal Revenue (BIR) to inform the taxpayer in writing of the law and the facts on which the tax assessment is made; otherwise, the assessment shall be void. Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, prescribes that the Formal Letter of Demand (FLD) / Final Assessment Notice (FAN) must state, among others, the facts and the law on which the assessment is based as part of due process in the issuance of tax assessments; otherwise, the FLD / FAN shall be void.

In the case of Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc. (Avon), which cited the landmark case of Ang Tibay v. Court of Industrial Relations (Ang Tibay), the Supreme Court (SC) emphasized that the taxpayer must not only be given an opportunity to present its defenses and evidence but also that the Commissioner of Internal Revenue (CIR) and his/her subordinates must give due consideration to these. Failure to do so constitutes a violation of the taxpayer's right to due process. The doctrinal pronouncements in the Avon and Ang Tibay cases affirms that the issuance of a Preliminary Assessment Notice (PAN) is a part of due process, that the issuance thereof gives both the taxpayer and the BIR the opportunity to settle the case at the earliest possible time without the need for issuance of a FAN or to reduce the assessment at the earliest opportunity; that this purpose is not served in case the BIR fails to consider the taxpayer's explanations or arguments before the FAN is issued; that the failure of the BIR to give due consideration to the said explanations or arguments is a deplorable transgression of the taxpayer's right to due process; and that the disregard by the BIR of the standards and rules renders the deficiency tax assessment null and void.

In the instant case the CIR issued the FLD against Neuftech Philippines Inc. (Neuftech), which merely reiterated the deficiency income tax and improperly accumulated earnings tax

assessments in the PAN, except for certain adjustments in the computation of interest, without considering Neuftech's arguments and the documents referred to in the reply to the PAN. Juxtaposing the PAN and FLD / FAN indicates that no reply was considered. Comparison of the FLD / FAN and Final Decision on Disputed Assessment (FDDA) would also suggest that no protest was considered. While the CIR is not obliged to accept the taxpayer's explanation, it is nonetheless imperative that he give the particular facts upon which his conclusion is based, and these facts must appear in the record. The right to be heard, which includes the right to present evidence, is meaningless if the CIR can simply ignore the evidence without reason.

Well-settled is the rule that an assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code, as amended, and implemented by RR No. 12-1999 and RR No. 18-2013, is void and produces no effect. A void assessment bears no valid fruit. (*Neuftech Philippines Inc. v. Commissioner of Internal Revenue, CTA Case No. 10442, 29 May 2024*)

10. The 180-day period referred to in Section 228 of the Tax Code, as amended, and in Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, is confined only to the period within which either the Commissioner of Internal Revenue (CIR) or his or her duly authorized representative may act on the initial protest against the FLD / FAN. If the taxpayer opts to appeal to the CIR the final decision of the latter's duly authorized representative, the taxpayer's remaining option (after the 180-day period expires) is to wait for the CIR's decision before elevating its case to the CTA. In other words, when a taxpayer opts to file an administrative appeal, the CIR is not given a fresh or separate 180-day period within which to decide the administrative appeal. It is only after the CIR acts on the administrative appeal that the taxpayer could file an appeal before the CTA.

Friendlycare Foundation inc. (Friendlycare) is a nonstock, nonprofit corporation and it is primarily engaged in providing a wide range of health services. Friendlycare was assessed by the Bureau of internal Revenue (BIR) with deficiency income tax (IT) and value added tax (VAT). However, before the Court of Tax Appeals (CTA) ruled on the propriety of the Friendlycare's arguments that as a nonstock, nonprofit charitable corporation, it is exempted by law from IT and that its medical services are VAT exempt, the CTA resolved and focused on the issue of whether or not it has jurisdiction over the instant Petition for Review.

After receiving the Formal Letter of Demand (FLD) / Final Assessment Notice (FAN) on 23 October 2021, Friendlycare filed its Protest against the FLD / FAN with a request for reconsideration on 21 November 2017. Thereafter, Friendlycare elevated on 21 December 2018 to the Commissioner of Internal Revenue (CIR) via a Request for Reconsideration the Final Decision on Disputed Assessment (FDDA) it received on 29 November 2018. On 19 July 2019, Friendlycare filed a Petition for Review before the CTA. On the belief that it was granted a fresh 180-day period from 21 December 2018, Friendlycare claimed that such period lapsed on 19 June 2019. Thus, counting 30 days therefrom, Friendlycare alleged that its Petition for Review filed on 19 July 2019 was filed within the reglementary period.

Friendlycare could have already filed its Petition for Review before the CTA within 30 days from the lapse of the 180-day period, or until 19 June 2018; or within 30 days from receipt of the FDDA on 29 November 2018 or until 29 December 2018 (as the FDDA already served as the denial of its protest). Unfortunately, Friendlycare opted to still file an administrative appeal against the

FDDA before respondent CIR. Then, without waiting for any action from respondent CIR, petitioner filed the instant Petition for Review before this Court on 19 July 2019.

The 180-day period referred to in Section 228 of the Tax Code, as amended, and in Section 3.1.4 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, is confined only to the period within which either the CIR or his or her duly authorized representative may act on the initial protest against the FLD / FAN. If the taxpayer opts to appeal to the CIR the final decision of the latter's duly authorized representative, the taxpayer's remaining option (after the 180-day period expires) is to wait for the CIR's decision before elevating its case to the CTA. In other words, when a taxpayer opts to file an administrative appeal, the CIR is not given a fresh or separate 180-day period within which to decide the administrative appeal. It is only after the CIR acts on Friendlycare's administrative appeal that it could file an appeal before the CTA.

In thus losing the authority to review the subject deficiency assessment, the CTA saw no relevant need to further tackle the parties' other issues. Friendlycare's Petition for Review was dismissed for lack of jurisdiction. *(Friendlycare Foundation Inc. v. Commissioner of Internal Revenue, CTA Case No. 10123, 30 May 2024)*

11. The Court reiterates the importance of complying with the invoicing requirements of the law. In actions for tax refund or credit, like this case, the claim for exemption and the law is not only construed strictly against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is strictly scrutinized and must be duly proven. The burden is on the taxpayer to show that he (or she) has strictly complied with the conditions for the grant of the tax refund or credit.

The case is an administrative claim for refund of excess unutilized input valued added tax (VAT) which the Commissioner of Internal Revenue (CIR) objected to due to the petitioner's alleged failure to substantiate its claim at the administrative level and for its failure to comply with the mandatory invoicing requirements.

In denying the claim for refund, the Court of Tax Appeals (CTA) reiterated the requisites for the grant or the refund or issuance of the tax credit, which includes:

a. Timeliness of the filing of the judicial and administrative claims;
b. Taxpayer's registration with the Bureau of Internal Revenue (BIR):
    i. taxpayer is a VAT-registered person;
    ii. taxpayer is engaged in zero-rated or effectively zero-rated sales; and
    iii. for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations
c. Input VAT being refunded, which:
    i. Are not transitional input taxes;
    ii. Are due or paid;
    iii. Are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and
    iv. Have not been applied against output taxes during and in the succeeding quarters.

In addition thereto, applicants must satisfy the substantiation and invoicing requirements under the Tax Code, as amended, and other implementing rules and regulations.

In this case, while the petitioner was able to establish that it was engaged in zero- rated sales or effectively zero-rated sales during the 2nd quarter of calendar year 2018, it is of equal importance to prove that these are supported by VAT zero-rated official receipts in accordance with the pertinent invoicing requirements, containing all the required information under Section 113 (A) and (B) of the Tax Code, as amended. Upon review of the submitted official receipts (ORs), the CTA noted discrepancies between the amounts of zero-rated sales declared by petitioner in its 2nd quarter VAT return and the peso equivalents of the ORs it issued to its non-resident client. The Court likewise notes that petitioner's declared zero-rated sales for the months of April and May 2018 are not fully substantiated with the VAT ORs submitted. On the other hand, the OR for the month of May 2018 exceeded the amount declared by petitioner in its quarterly VAT return. Even so, the Court cannot be certain that the subject OR indeed pertains to the zero-rated sales declared by petitioner in its quarterly VAT return.

The importance of complying with the invoicing requirements of the law is hereby reiterated. In actions for tax refund or credit, like this case, the claim for exemption and the law is not only construed in strictissimi juris against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is strictissimi scrutinized and must be duly proven. The burden is on the taxpayer to show that he (or she) has strictly complied with the conditions for the grant of the tax refund or credit. (*PPD Pharmaceutical Development Philippines, Corp. v. Commissioner of Internal Revenue, CTA Case No. 10375, 6 June 2024*)

12. A party has thirty (30) days from receipt of the assailed decision within which to file an appeal with the Court. The failure to do so shall result to the failure to perfect an appeal as required by the rules, which shall have the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.

In ruling on the deficiency withholding taxes and compromise penalties for the taxable year 2014 against the petitioner, the Court of Tax Appeals (CTA) ruled that it has not acquired jurisdiction over the case due to the late filing of the appeal.

Section 7 (a) (1) of Republic Act (RA) No. 1125, as amended by RA No. 9282 states that the CTA shall have jurisdiction over, “Decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the Tax Code, as amended, or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides for a specific period for action, in which case the inaction shall be deemed a denial.” Section 3 (a) (1), Rule 4 of the Revised Rules of the Court of Tax Appeals confirms that this falls within the jurisdiction of the CTA in Division.

Section 11 of RA 1125 gives a party thirty (30) days from receipt of the assailed decision within which to file an appeal with the Court. The failure to do so shall result to the failure to perfect an appeal as required by the rules, which shall have the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. This is because the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law.

In this case, the Final Decision on Disputed Assessment (FDDA) was received by the Quadfoods Corporation (Quadfoods) on 29 January 2019. Even with the allegation that it was received on 28 January 2019, Quadfoods has until 27 or 28 February 2019 to files the appeal. Unfortunately, the Petition for Review was filed on 9 December 2020. Petitioner further alleges that on 27 February 2019, it filed through registered mail its motion for reconsideration of the FDDA with the CIR.

While Section 3.1.5 of Revenue Regulations (RR) No. 12-99 as amended by RR No. 18-2013, provides for the option to file an administrative appeal to the CIR when the decision on the protest is issued by the CIR's duly authorized representative. This Motion for Reconsideration was merely attached as an Annex of the instant Petition and is found in the BIR Records. It was neither formally offered as evidence nor was it marked or identified at any stage of the proceedings. This therefore cannot be formally admitted and considered as evidence. Hence the ruling that the CTA has not acquired jurisdiction over the case. (*Quadfoods Corporation v. Commissioner of Internal Revenue, CTA Case No. 10419, 6 June 2024*)

13. **It may be observed that Revenue Regulations (RR) No. 18-2013 removed the express provision requiring that the "designation and authority to act for and on behalf of the taxpayer" be indicated if receipt of the assessment notice is made by a person other than the taxpayer itself. Nonetheless, the importance of establishing the designation and authority of the recipient remains true and applicable. While the official receipt issued by the professional courier company containing identifiable details of the transaction constitute sufficient proof of mailing, this remains a disputable presumption subject to controversion. A direct denial of receipt shifts the burden upon the party favored by the presumption to prove that the mailed matter was indeed received by the addressee.**

Ship to Shore Medical Assist, Inc. (Ship to Shore) argues that the 2016 assessment violates its right to due process as it was not duly served with a copy of the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN). On the other hand, the Commissioner of Internal Revenue (CIR) avers that both the FLD and FAN were mailed and were received by Ship to Shore on 17 January 2020, through "SG Carillo," as evidenced by the LBC's Official Receipt and Certification. The CIR maintains that it cannot be faulted in sending its notices to the said address as Ship to Shore failed to notify the Bureau of Internal Revenue (BIR) of its change of address pursuant to Section 236 of the Tax Code, as amended, and Revenue Regulations (RR) No. 12-1985.

RR No. 18-2013 outlines the modes of service of the Preliminary Assessment Notice (PAN), FLD / FAN, and Final Decision on Disputed Assessment (FDDA). While RR No. 12-99 simply directed that the assessment notice "shall be sent to the taxpayer only by registered mail or by personal delivery, the modes of service under RR No. 18-2013 now include substituted service, service by mail through a reputable professional courier service, and service by ordinary mail if a reputable professional courier service is unavailable in the locality of the addressee.

It may be observed that RR No. 18-2013 also removed the express provision requiring that the "designation and authority to act for and on behalf of the taxpayer" be indicated if receipt of the assessment notice is made by a person other than the taxpayer itself. Nonetheless, the importance of establishing the designation and authority of the recipient remains true and applicable. Revenue Memorandum Order (RMO) No. 40-2019 requires the Chief of the Assessment Division or the Head of the Reviewing Office of the BIR to "maintain a record of all assessment notices that were issued with the following details: ... 12.6 Mode of Service; ... 12.8 Name of Taxpayer/Person who received the assessment notice; 12.9 Position/ designation/

relationship to the taxpayer, if not personally served to the taxpayer named in the assessment notice.

In this case, although the records establish that the assessment notices were mailed via LBC and that they were received by a certain "SG Carillo", no evidence was adduced by the CIR to prove that SG Carillo was authorized to receive assessment notices on behalf of Ship to Shore. The CIR's mere presentation of the official receipt issued by LBC with the notation "Released to authorized rep. SG Carillo 1/17/20" does not suffice to show that he satisfied the due process mandate under Section 228 of the Tax Code, as amended, that he shall notify the taxpayer of his findings. The CIR should have authenticated the notation appearing on the official receipt.

This defect in due process cannot be cured by Ship to Shore's alleged failure to notify the BIR of its change of address, pursuant to Section 236 of the Tax Code, as amended, and Section 11 of RR No. 12-85. The rules presuppose that the FLD / FAN was validly served at the taxpayer's former address. In order that such communication be "considered valid and binding for purposes of the period within which to reply", it is not enough that the taxpayer was simply amiss in its duty to give written notice of change of address. Noncompliance with an administrative matter cannot validate a void assessment.

An assessment that fails to strictly comply with the due process requirements set forth in Section 228 of the Tax Code, as amended, and relevant regulations is void and produces no effect. *(Ship to Shore Medical Assist, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10550, 6 June 2024)*

14. In an action to recover erroneously paid or illegally collected taxes, the claimant must first file an administrative claim with the BIR before filing a judicial claim with the CTA. Both claims must be filed within two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional. Thus, the CTA cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, the law explicitly provides that it be filed within 2 years from payment of the tax regardless of any supervening cause that may arise after payment.

Philippine Airlines, Inc (PAL) imported various liquors and wine as part of its in-flight and commissary supplies. The Bureau of Customs (BOC) demanded the payment of excise taxes for its importation of alcohol products. On April 26, 2019, petitioner paid under protest excise taxes on its importation of liquor for commissary catering supplies. On 18 May 2021, PAL filed with the Bureau of Internal Revenue (BIR) a letter of even date requesting for the refund or issuance of a tax credit certificate for allegedly representing excise taxes illegally assessed, levied upon, and paid by PAL under protest on its importation of alcohol products constituting commissary and catering supplies. Aggrieved, PAL filed the present Petition for Review on 24 May 2021. On the other hand, the Commissioner of Internal Revenue (CIR) contends that the Court of Tax Appeals (CTA) has no jurisdiction over the Petition for Review.

The CTA favored the CIR and ruled that the Petition for Review must be dismissed because PAL's administrative claim was filed out of time.

Section 204(C) of the Tax Code, as amended, states that no credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the CIR a claim for credit or refund within two (2) years after the payment of the tax or penalty. Relevantly, Section 229 of the Tax Code, as

amended, provides that no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the CIR. In any case, no such suit or proceeding shall be filed after the expiration of 2 years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment.

In an action to recover erroneously paid or illegally collected taxes, the claimant must first file an administrative claim with the BIR before filing a judicial claim with the CTA. Both claims must be filed within 2-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional. Thus, the CTA cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, the law explicitly provides that it be filed within 2 years from payment of the tax regardless of any supervening cause that may arise after payment.

In this case, PAL paid the excise taxes on 26 April 2019. Counting 2 years from this date, PAL had until 26 April 2021, to file both administrative and judicial claims for refund. As established, PAL's administrative claim was filed with the BIR on 18 May 2021, while its judicial claim was filed with the CTA on 24 May 2021. Clearly, both claims were filed beyond the 2- year prescriptive period.

PAL justifies the belated filing of its administrative and judicial claims by virtue of the Supreme Court's (SC) Administrative Circular (AC) No. 22-2021 dated 14 April 2021, which extended the physical closure of courts in Enhanced Community Quarantine (ECQ) and Modified Enhanced Community Quarantine (MECQ) areas including the National Capital Region, until 30 April 2021, and suspended the time for filing and service of pleadings and motions during this period, which would resume seven (7) calendar days counted from the first day of physical reopening of the relevant court.

Given that PAL had until 26 April 2021 to file its judicial claim through a Petition for Review before the CTA and considering that the period for filing and service of pleadings was suspended due to the declaration of ECQ and MECQ beginning 29 March 2021 and resumed on 24 May 2021, the present Petition for Review filed on 24 May 24, 2021, was timely.

However, this extension does not apply to PAL's administrative claim filed with the BIR. Administrative claims for refunds do not fall under the category of "pleadings, motions, and court submissions" that are to be filed in courts. Thus, this type of claim was not covered by the SC circulars extending the filing periods for pleadings, motions, and other court submissions. Moreover, there is no law or BIR issuance extending the deadline for filing administrative claims for refunds of erroneous tax payments made on 26 April 2019.

Although the Secretary of Finance, upon the CIR's recommendation, issued revenue regulations authorizing the extension of the two-year period for filing refund applications for erroneous tax payments made during specific periods in response to the COVID-19 pandemic, these extensions do not cover petitioner's erroneous payments made on 26 April 2019. Therefore, the inevitable conclusion is that petitioner had only until 26 April 2021, to file its administrative claim with the BIR. Consequently, the filing of PAL's administrative claim on 18 May 2021 was out of time.

PAL's administrative claim was already barred by prescription when it filed its judicial claim on 24 May 2021. Thus, the CTA lacks jurisdiction to take cognizance of the Petition for Review, and its only recourse is to dismiss the case. *(Philippine Airlines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10530, 7 June 2024)*

B. REVENUE REGULATIONS

1. REVENUE REGULATIONS NO. 11-2024 issued on 13 June 2024, amending the transitory provisions of Revenue Regulations (RR) No. 7-2024 relative to the deadlines for compliance with the invoicing requirements.

The Bureau of Internal Revenue (BIR) issued Revenue Regulations (RR) No. 11-2024 to amend the transitory provisions under RR No. 7-2024 and extend the deadlines for compliance with the new invoicing requirements under the Ease of Paying Taxes (EOPT) Act.

The amended transitory provisions provide as follows:

a. Certificate of Registration (COR) – Taxpayers are not required to replace their existing COR that displays the Registration Fee (RF). The COR shall remain valid, and taxpayers are no longer required to pay the annual RF of Php500.

b. Unused manual/loose leaf official receipts (ORs) and billing statements –

   b.1. Unused ORs may be used as supplementary documents until fully consumed, provided that the phrase "THIS DOCUMENT IS NOT VALID FOR CLAIM OF INPUT TAX." is stamped on the face of the document.

   b.2 Taxpayers may convert and use the remaining ORs as invoice and the billing statement/statement of accounts/statement of charges as billing invoice. Taxpayers shall be allowed to strikethrough these words (e.g., Official Receipt, Billing Statement) and stamp "Invoice" or similar on the face of them in order to be issued as primary invoice to buyers/purchasers until fully consumed. Additional invoicing requirements, such as quantity, unit cost and description or nature of service, may also be stamped if not originally indicated in the OR or billing statement/statement of accounts/statement of charges. The stamping by taxpayers does not require approval from any Revenue District Offices (RDO)/Large Taxpayer (LT) Offices/LT Divisions.
   In the meantime, taxpayers should obtain newly printed invoices with an Authority to Print (ATP) before fully consuming the converted ORs and billing statements/statement of accounts/statement of charges.

   b.3 On or before 31 July 2024, taxpayers shall take an inventory of all unused manual and loose leaf ORs/billing statements/statement of accounts/statement of charges to be converted as invoice or billing invoice, with indication of the number of booklets and corresponding serial numbers and submit duplicate copies of the same to the RDO/LT Division where the taxpayer is registered.

c. Cash Register Machines (CRM), Point-of-Sales (POS) Machines and E-receipting or Electronic Invoicing Software

c.1. Minor enhancement – Taxpayers using CRM/POS/E-receipting/E-invoicing may change the word “Official Receipt” to “Invoice” or similar without the need to inform the RDO/LT Office and shall be considered a minor system enhancement.

c.2 Major enhancement – Taxpayers using duly registered Computerized Accounting System (CAS) or Computerized Books of Accounts (CBA) with Accounting Records (AR) need to revisit their system to comply with the provisions of the EOPT Act. Since the adjustments will have a direct impact on the financial aspect, these shall be considered a major system enhancement that will require a taxpayer to update their system registration with the relevant RDO/LT Office and secure a new Acknowledgement Certificate (AC). Note that the previously issued AC or Permit-to-Use (PTU) needs to be surrendered by the taxpayer.

Adjustments shall be undertaken on or before 31 December 2024. Any extension due to the reconfiguration/enhancement of a system must be approved by the concerned Regional Director or Assistance Commissioner of the Large Taxpayers Service, which shall not be longer than six (6) months from 31 December 2024.

c.3. The serial number of the renamed invoice to be issued by CRM/POS machines, e-receipting or electronic invoicing software, CAS or CBA with AR shall start by continuing the last series of the previously approved OR. Taxpayers shall submit notice, with indication of the starting serial number of the converted Invoice, after the completion of reconfiguration/enhancement, in duplicate copies, to the RDO/LT Office where the machines are registered within 30 days from the completion of reconfiguration/enhancement or on 31 December 2024, whichever comes first.

c.4 From 27 April 2024 and until the completion of machine/system reconfiguration/enhancement, documents containing the word “Official Receipt” issued by CRM/POS machines, e-receipting or electronic invoicing software shall be allowed for purposes of input tax claims until 31 December 2024 or until the completion of machine/system reconfiguration/enhancement, whichever comes first. Note that there should be no missing information as required by the new invoicing requirements.

d. The following shall be tantamount to non-issuance of an invoice subject to a penalty of Php1,000 to Php50,000:
   - Issuing manual/loose leaf ORs without converting them to invoices starting 27 April 2024
   - Issuing ORs (with or without strikethrough) for the sale of goods or services after 31 December 2024 or completion of machine/system reconfiguration/enhancement, whichever comes first.

C. REVENUE MEMORANDUM CIRCULARS

1. REVENUE MEMORANDUM CIRCULAR NO. 62-2024 issued on 16 May 2024, announces the availability of the "Taxpayer Classification Inquiry" functionality in the Online Registration and Update System (ORUS).

To view/inquire on the Taxpayer's Classification under the EOPT Act, taxpayer-applicants shall access ORUS through https://orus.bir.gov.ph/home and follow the procedures below.

a. In ORUS Homepage, select the "Verify TIN/Search BIR-Registered Business" from the displayed functionalities.
b. Select "BIR-Registered Business Search and Taxpayer Classification Inquiry" from the dropdown list.

c. Click the "Proceed" button.
d. Taxpayer shall be required to input the following details:
    i. Registered Name or Trade Name (as shown on the Certificate of Registration - BIR Form No. 2303)
    ii. TIN and Branch Code.
e. e. Tick the box for verification (I'm not a robot), then click the "Search" button. Taxpayer's Classification will be displayed as (Micro, Small, Medium, Large). Note your Taxpayer Classification.
    i. Micro Taxpayer - a taxpayer whose gross sales for a taxable year is less than Three Million Pesos (₱ 3,000,000.00) ii.
    ii. Small Taxpayer - a taxpayer whose gross sales for a taxable year is Three Million Pesos (₱ 3,000,000.00) to less than Twenty Million Pesos (₱ 20,000,000.00)
    iii. Medium Taxpayer - a taxpayer whose gross sales for a taxable year is Twenty Million Pesos (₱ 20,000,000.00) to less than One Billion Pesos (₱ 1,000,000,000.00)
    iv. Large Taxpayer - a taxpayer whose gross sales for a taxable year is One Billion Pesos (₱ 1,000,000,000.00) and above.
f. Should there be a disagreement with the initial Taxpayer Classification, the taxpayer should send a letter to the Revenue District Office (RDO) where he or she is registered and inform the said RDO of the correct Taxpayer Classification. Proof of claim for the correct classification [i.e., Taxable Year (TY) 2022 Income Tax Return or TY 2022 Income Statement showing the Gross Sales, etc.] should be attached to the letter.
g. The RDO shall evaluate the documents submitted by the taxpayer and make the necessary correction in the Taxpayer Classification if the taxpayer's claim is correct/valid.
h. The RDO shall inform the taxpayer of the result of the evaluation and the action taken.

2. REVENUE MEMORANDUM CIRCULAR NO. 64-2024 issued on 28 May 2024, clarifies the ante-dating of deeds of sale involving real properties.

In case of delay in the presentation of notarized deeds of sale or other transfer documents, the relevant laws and regulations on the kind of tax, rate of tax, zonal or fair market values, effective at the date of notarization shall be applied, but the corresponding penalties and interest for late filing of return and payment of applicable taxes shall be imposed.

However, in cases where it is found that the deeds of sale or other transfer documents are antedated, the laws and regulations effective at the time of presentation of the deeds of sale or other transfer documents shall be applied. Unless the taxpayer proves otherwise, a deed of sale or transfer document may be considered as ante-dated in the following instances:

1. Documents dated before the effectivity of the Capital Gains Tax law;
2. Documents dated before the effectivity of the regulations imposing the Creditable Withholding Tax on sales or transfers of real property; and
3. Documents dated before the effectivity of the current zonal values as reflected in the latest Revised Schedules of Zonal Values of Real Properties within the jurisdiction of the concerned Revenue District Office.

In order to show that there is no ante-dating of public instruments, a taxpayer may submit supporting documents such as, but are not limited to, cancelled checks, invoices, contracts to sell, or certifications from the appropriate Clerk of Court or Executive Judge, or the National Archives of the Philippines.

3. REVENUE MEMORANDUM CIRCULAR NO.65-2024 issued on 14 June 2024, clarifies certain issues relative to the implementation of Section 19 of Republic Act (RA) No. 11976 (Ease of Paying Taxes Act), which added Section 110(D) of the National Internal Revenue Code of 1997, as amended (Tax Code), that introduced the Output VAT Credit on uncollected receivables.

The rationale of Section 110(D) is that sales are either made in cash or on account. In cash sales, the seller, who has passed-on the VAT to the buyer has no problem in the corresponding VAT due thereon to the BIR since the seller has already collected the agreed selling price, including the corresponding VAT.

In credit sales, the seller, without having received the payment therefor, agreed to part the goods or properties, or lease the properties, or to render service, upon sale, barter or exchange, secured only by a written agreement that the buyer thereof promises to pay the money owed including the VAT at a certain period (credit term). The seller, being the person statutorily liable for the payment of the VAT, pays in advance the VAT passed-on to the buyer to the BIR. In some cases, the receivables are not collected. Under these circumstances, the seller would ordinarily recognize the uncollected receivable including the VAT as a bad debt and claim the same as a deduction from gross income following the provisions set forth under Revenue Regulations (RR) No. 5-99, as amended by RR No. 25-2002.

Founded on the interests of justice, the provision therefore provides an avenue by which a VAT-registered seller of goods or services can recoup the VAT paid in advance which was passed-on to the buyer and made part of the consideration resulting from the sale, barter or exchange on account or on credit, where such trade receivable has not been collected after the agreed period with the buyer. This rule covers credit of VAT shouldered and paid for by the seller.

For purposes of the Circular, the phrase "after the lapse of the agreed upon period to pay" means that the buyer, to whom goods or properties were sold, bartered or exchanged or to whom a property has been leased, or to whom service has been rendered upon written promise to pay the money owed and the passed on VAT at a certain period and where such period or extended date, as the case may be, has lapsed without the buyer having fulfilled the promise.

Only the seller of goods and/or services may deduct output VAT credit which corresponds to the uncollected receivables originating from the sales on account that transpired upon the effectivity of RR No. 3-2024 from the output VAT of the next quarter after the lapse of the agreed upon period to pay.

Before a seller can credit the VAT paid on the uncollected receivables, the following requisites must be present:

a. The sale or exchange has taken place after the effectivity of RR No. 3-2024;
b. The sale is on credit or on account;
c. There is a written agreement on the period to pay the receivable, i.e. credit term is indicated on the invoice or any document showing the credit term;
d. The VAT is separately shown on the invoice;
e. The sale is specifically reported in the Summary List of Sales covering the period when the sale was made and not reported as part of "various" sales;

f. The seller declared in the BIR Form No. 2550Q or the quarterly VAT Return (QVR) the corresponding output VAT indicated in the invoice within the period prescribed under existing rules;
g. The period agreed upon, whether extended or not, has lapsed; and
h. The VAT component of the uncollected receivable was not claimed as a deduction from gross income (i.e., bad debt) pursuant to Section 34(E) of the Tax Code, as amended.

The preceding rules do not amend the conditions on the deductibility of bad debts expense in the income tax returns as provided in RR No. 25-2002. For purposes of claiming output VAT credit on uncollected receivables, mere lapse of the agreed upon period to pay even without any effort on the part of the seller to collect the sales on account shall entitle the seller of output VAT credit subject to the conditions under Q&A No. 4 in the Circular.

The seller is not necessarily required to automatically credit the VAT paid every time there is an uncollected receivable due to the lapse of the agreed upon period especially so if the likelihood of collectability is high. Availing of the benefit under Section 110(D) of the Tax Code, as amended, is merely an option. This will save the hassle on the part of the seller to claim the said VAT credit, only to reverse the same in the eventual collection of the receivable.

The seller claim output VAT credit on uncollected receivables on the next quarter, after the lapse of the agreed upon period to pay as mandated by Section 110(D).

If there is subsequent recovery of uncollected receivables where the output VAT was already claimed as VAT credit, it shall be reported and declared in the taxable quarter in which the recovery or collection is made. In case of failure to declare, the penalties under existing rules and regulations shall apply.

The input tax claimed by a delinquent buyer when the seller availed of the output VAT credit on uncollected receivable shall not be allowed as input VAT credit the moment the seller claims output VAT credit on such uncollected receivable.

To document the particular sales on account where the corresponding output VAT credit was claimed for being uncollected receivable, the seller shall stamp "Claimed Output VAT Credit" on the duplicate/triplicate copy/ies (seller's copy) of the corresponding invoice issued for the uncollected receivable. In case there is a partial payment on the said uncollected receivable, the amount collected therefrom, and the balance of the uncollected receivable shall also be indicated.

The seller is not precluded from issuing supplementary sales document such as credit memo or credit note on top of the stamping of "Claimed Output VAT Credit" on the invoice to serve as proof thereto and/or as a basis in recording the same in the books of accounts of the seller. The seller shall indicate in the supplementary sales document the phrase "Claimed Output VAT Credit" and must indicate the Invoice that is the origin of the transaction that was declared as uncollected.

The seller is required to provide the buyer a copy of the invoice stamped with the phrase "Claimed Output VAT Credit" and credit memo or credit note so the buyer can adjust and deduct the corresponding input VAT claimed accordingly. However, in case the seller failed to provide the buyer such documents, the buyer can voluntarily reverse its claimed input VAT credit in its Quarterly VAT Return (QVR).

If the buyer failed to deduct accordingly in the available input taxes in its QVR the corresponding input VAT from the unpaid account from the seller, they shall be liable for the deficiency VAT due including applicable statutory penalties if it was found out during audit by the BIR or if the buyer decides to amend its QVR to reflect such adjustment.

As a work-around procedure or until such time that a new version of the BIR Form No. 2550Q has been issued, the output VAT credit shall be presented/declared in the QVR of the seller and the buyer as follows:

Filer	Version Used	Seller	Buyer
EFPS	February 2007 (ENCS)	Line 26G "Others"	Line 23E "Others"
eBIR Forms and Manual Filers	January 2023 (ENCS)	Line 19 "Other Credits/Payment and specify as "Output VAT Credit on Uncollected Receivables"	Line 53 "Other Credits/Payments and specify as "Input VAT Claimed from Unpaid Purchases on Account"

For purposes of claiming the output VAT credit on uncollected receivables, the customer/buyer must be properly identified in the Summary List of Sales in the quarter when the sale was made. However, if the seller lumps all sales into one "various" account entry, the lumping shall be considered invalid compliance with the requisites provided for purposes of claiming the output VAT credit on uncollected receivables and the output VAT cannot be used or allowed as VAT Credit should the transaction remain uncollected after the lapse of the agreed period to pay.

The following taxpayers are disqualified to avail output VAT tax credit on uncollected receivables:

a. Those tagged as cannot be located (CBL) taxpayers;
b. Those with duly filed complaints at the DOJ under the Run After Fake Transaction (RAFT) and Run After Tax Evaders (RATE) programs;
c. Other taxpayers that may be identified by the Commissioner.

If the goods were returned during the agreed upon period to pay and the output VAT is not yet paid, the return is treated as a sales return and therefore a deduction from gross sales in the quarter where the goods were returned.

If the goods were returned and accepted by the seller but the claim for output VAT credit has been made, it is treated as sales return but for purposes of VAT, no deduction on sales and output VAT shall be allowed since the claim for output VAT credit has already been made.

In case of partial or full collection of the previously uncollected receivable for which output VAT credit output had been claimed, the output VAT pertaining to that partial collection shall accrue and must be added to the output VAT of the seller during the period of recovery.

The seller is not required to issue an invoice upon the recovery of previously uncollected receivable but shall stamp the phrase "Recovered" in the Invoice that is the origin of the transaction that was previously declared as uncollected and the amount collected, if partial, on the same duplicate/triplicate copy/ies (seller's copy) of the corresponding invoice issued for the

uncollected receivable.

The seller is not precluded from issuing supplementary sales document such as debit memo or debit note to serve as proof thereto. In this instance, the seller shall indicate in the supplementary sales document the phrase "Recovery of Previously Reported Uncollected Receivable" and must indicate the Invoice that is the origin of the transaction that was previously declared as uncollected. Consequently, the seller shall provide a copy of the said documents to the buyer.

As a work-around procedure or until such time that a new version of the BIR Form No. 2550Q has been issued, the seller and the buyer shall reflect the corresponding output VAT of recovered or subsequently collected receivables presented/declared in the VAT Return as follows:

Filer	Version Used	Seller	Buyer
EFPS	February 2007 (ENCS)	Line 23E “Others”	Line 20E “Others”
eBIR Forms and Manual Filers	January 2023 (ENCS)	Line 53 “Others” and indicate “Output VAT on Recovered Previously Claimed Uncollected Receivable"	Line 40 "Others" and indicate "Input VAT on Paid Purchases on Account Previously Unsettled"

The outstanding receivables on sale of goods where the corresponding output VAT has been declared but the period to collect has already lapsed as of the effectivity of RR No. 3-2024 will not qualify for output VAT credit under Section 110(D) of the Tax Code, as amended. The output VAT credit on uncollected receivables shall only apply to sales of goods and/or services on account that transpired upon the effectivity of RR No. 3-2024.

4. REVENUE MEMORANDUM CIRCULAR NO.66-2024 issued on 14 June 2024, discusses the submission of Inventory Report and Notice in Compliance with Transitory Provisions of Revenue Regulations (RR) No. 7-2024.

Taxpayers can convert unused Official Receipt/Billing Statement/Statement of Account/Statement of Charges into Invoices/Billing Invoice. They are also required to submit Inventory Report related to these conversions on or before 31 July 2024; and Notice on the renaming of Official Receipt/Billing Statement/Statement of Account/Statement of Charges within 30 days from the completion of machine/system reconfiguration/enhancement or on 31 December 2024, whichever comes first.

Taxpayers shall have the option to submit their Inventory Report and/or Notice electronically: a) via email through Taxpayer Registration-Related Applications (TTRA) Portal which is accessible in the BIR Website under the eServices section; or b) via direct email of the Inventory Report and Notice to the Compliance Section of the Revenue District Office (RDO).

Taxpayers without email or internet access may still manually submit their Inventory Report and Notice to the Compliance Section of the RDO where the concerned Head Office or Branch is registered.