TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

TAX UPDATES FROM NOVEMBER 16, 2023 TO DECEMBER 15, 2023

Prepared by:
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8. Commissioner of Internal Revenue v. Digos Market Vendors Multi-Purpose Cooperative (DIMAVEMC), represented by its Chairman of the Board of Directors, Constantino L. Rabaya, Jr. CTA Case No. EB 2518	November 30, 2023	Deficiency tax assessments cannot be deemed to be final, executory, and demandable if the assessments are not valid. Under Section 228 of the NIRC, a taxpayer must be given a prescribed period to respond to the PAN as part of the due process requirement. If a taxpayer receives a FLD prior to the expiration of the period for the taxpayer to respond to a PAN, the assessment is void for violation of the taxpayer's right to due process.	19
9. Petron Corporation v. Commissioner of Internal Revenue CTA Case No. 9993	December 05, 2023	In the context of petitioner's manufacture of petroleum products sold to various entities, the tax liability or the fiscal responsibility for the payment of excise tax remains with the petitioner, notwithstanding its capacity to transfer the economic weight or the tax burden, to its consumers. Pertaining to Section 135 of the Tax Code, in instances where petroleum products are vended to tax-exempt entities, it is imperative that the benefit of such exemption aligns with the party actually bearing the tax liability. Consequently, the exemption should appropriately correspond to	20

		petitioner, the entity shouldering the fiscal responsibility to settle the tax.	
10. Petron Corporation v. Commissioner of Internal Revenue CTA Case No. 10015	December 05, 2023	Petroleum manufacturers and importers are liable to pay excise taxes when they take out the fuel from their refineries or from the customs house, as the case may be. However, this liability is qualified by Section 135 of the NIRC, such that the tax-paid petroleum products become exempt from excise taxes when established that these are sold subsequently to international carriers, exempt entities by treaty, or tax-exempt entities by law.	21
11. Encore Receivable Management, Inc. v. Commissioner of Internal Revenue CTA Case No. 10062	December 06, 2023	It is the FLD/FAN that must be administratively protested or disputed within thirty (30) days from the receipt thereof. For collection letter received from the BIR, the appropriate remedy is to file an appeal with the CTA within thirty (30) days from the receipt thereof.	21
12. Avaloq Philippines Operating Headquarters v. Commissioner of Internal Revenue CTA Case No. 10397	December 07, 2023	Failure to prove that the sales of services to NRFCs doing business outside the Philippines are paid for in acceptable foreign currency, in accordance with BSP rules and regulations, would disqualify the sales of services for VAT zero-rating under Section 108 (B) (2) of the NIRC.	22
13. John Paul V. Medina, Owner and Proprietor of JPM Medical Trading v. Commissioner of Customs CTA Case No. 10277	December 11, 2023	Section 14.1.3 of Customs Administrative Order No. 10-2020 provides that a denial of a motion to quash or recall of a Warrant of Seizure and Detention shall be considered an interlocutory order. However, such denial may be subject of an appeal if the assailed ruling or decision reveals that there is a final determination by the Commissioner of Customs for the seizure and forfeiture of the goods unless payment of the taxes and duties on the goods have been paid.	23

14. Ayala Corporation v. Commissioner of Internal Revenue CTA Case No. 10056	December 11, 2023	Proof of actual remittance is not a condition to claim for refund of unutilized tax credits. The CWT certificate is competent proof to establish the fact that taxes are withheld. It is not necessary to present the person who executed and prepared the CWT certificate to testify personally to prove the authenticity of the certificates.	24
15. CBK Power Company Limited, v. Commissioner of Internal Revenue CTA Case No. 10157	December 12, 2023	Generally, no evidentiary value can indeed be given to any piece of evidence unless it is formally offered in court. However, although not offered, any evidence may be admitted provided that the following requirements are present: (1) the same must have been duly identified by testimony duly recorded; and (2) the same must have been incorporated in the records of the case. With respect to the first requirement, it must be emphasized that the requirement of authentication only pertains to private documents and does not apply to public documents which are *prima facie* evidence of the facts stated therein.	25
16. Green Cross, Inc. v. Commissioner of Internal Revenue CTA Case No. 10401	December 12, 2023	The following requirements that must be complied with in order to prove a claim for refund of taxes erroneously paid or illegally collected under Sections 204 and 229 of the NIRC of l997, as amended: 1. That the taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty, non-compliance with which the latter is precluded from exercising his authority thereon; 2. That, if denied or not acted upon within said period, the petition for refund be filed with the CTA within 30 days from receipt of the denial AND within said 2-year period	27

		from the date of payment of the tax or penalty regardless of any supervening cause, otherwise, the claim for refund shall have prescribed; and 3. The claim for refund must be a categorical demand for reimbursement.	
17. Royal Cargo Inc. v. City Treasurer of Parañaque CTA Case No. AC-270	December 13, 2023	Section 196 of the Local Government Code may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from him. The applicability of Section 196 does not depend upon the existence of an assessment notice from the local treasurer. By consequence, a taxpayer may proceed to the remedy of refund of taxes even without a prior protest against an assessment.	28
18. Sitel Philippines Corporation v. Commissioner of Internal Revenue CTA Case EB No. 2678	December 13, 2023	In order for the sales of "other services" to be considered VAT zero-rated under Section 108(8)(2) of the NIRC of1997, as amended, the taxpayer claimant must prove, among others, that the services are rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed. It is not enough that the recipient of the services be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation.	29

DISCUSSION

A. REVENUE REGULATIONS ("RR")

1. **RR NO. 15-2023** (December 13, 2023), Implementing the Grant of Donor's Tax Exemption on the Donation of Imported Capital Equipment, Raw Materials, Spare Parts, or Accessories Directly and Exclusively Used by Registered Business Enterprises Under Section 295 (C)(2)(e) of the National Internal Revenue Code of 1997, as amended.

   The donation of capital equipment, raw materials, spare parts, or accessories, which were granted tax and customs duty exemption, to the Technical Education and Skills Development Authority (TESDA), State Universities and Colleges (SUCs), or Department of Education (DepEd) and Commission on Higher Education (CHED)-accredited schools shall be exempt from donor's tax, provided that:

   a) If made within the first five (5) years from the date of importation, the registered business enterprise secures a Certificate of Approval issued by the concerned Investment Promotion Agency;

   b) If made after five (5) years from the date of importation, the registered business enterprise has provided prior notice to the concerned investment promotion agency; and

   c) The deed of Donation shall indicate in detail the items donated, their quantity/number, and the amount/value of the donation for post-audit/verification by the Bureau of Internal Revenue.

   The amount/value of donation shall be deductible from the gross income of the donor subject to limitations, conditions and rules set forth in Section 34 (H) of the Tax Code, as amended. The deduction shall be availed of in the taxable year in which the donation was made. Moreover, the donor can substantiate the deduction with sufficient evidence such as sales invoice/s, deed of donation, delivery receipt and other adequate records indicating the following:

   a) the amount of donation being claimed as deduction; and

   b) proof of acknowledgment of receipt of the donated capital equipment, raw materials, spare parts, or accessories by TESDA, SUCs or DepEd and CHED-accredited schools.

   The donation shall not be treated as a transaction deemed sale subject to VAT under Section 106(B)(l) of the Tax Code, as amended.

   The amount of donation shall be based on the net book value of the capital equipment, raw materials, spare parts, or accessories donated.

B. REVENUE MEMORANDUM CIRCULARS ("RMC")

1. **RMC No. 120-2023** (29 November 2023), Circularizing the Availability, Use and Acceptance of Digital TIN ID.

   The Digital Taxpayer Identification Number (TIN) ID is now available for all individual taxpayers. Instead of visiting and falling in line in the Revenue District Offices to secure a physical TIN Card, taxpayers are advised to secure the Digital TIN ID online. Account enrolment in ORUS (https://orus.bir.gov.ph), however, is required in order to avail of the Digital TIN ID.

   The Digital TIN ID shall serve as reference for the TIN of the taxpayer. It shall be honored and accepted as a valid government-issued identification document of the taxpayers for their transaction in government agencies and institutions, local government units, employers, banks, financial institutions and other relying parties, subject to authentication and verification.

   The Digital TIN ID is not at temporary TIN ID. Both the physical TIN Card and Digital TIN ID are valid and can be presented as proof of TIN ownership, subject to authentication and verification online. Taxpayers with Digital TIN ID are not required to secure a physical TIN Card.

   In case of any updates on the name, address or change of Revenue District Office, the taxpayer may re-generate or update his/her Digital TIN ID through ORUS after thirty (30) days from the first or last Digital TIN ID generation, whichever is applicable.

   The Digital TIN ID is free.

2. **RMC No. 121-2023** (29 November 2023), Announcing the Updated Features and Functionalities of the Online Registration and Update System (ORUS).

   The following additional features and functionalities of ORUS (https://orus.bir.gov.ph) are now available online:

   1. Taxpayer Identification Number (TIN) Inquiry;
   2. Access to Digital TIN ID; and
   3. Availability of MyEG as one of the online payment facilities in ORUS.

   Taxpayers with existing ORUS account may access and avail the online registration updates and other functionalities. Taxpayers who do not have an ORUS account and opted to use the said online registration-related facilities are required to enroll or create an account in ORUS.

   The summary of the features and functionalities available in ORUS is as follows:

Features	Application Details
Primary Registration	- Registration of business and issuance of electronic Certificate of Registration (COR) and Authority to Print (ATP) with e-Payment of Registration Fee and Loose Documentary Stamp Tax (DST) - Issuance of TIN for foreign individuals

	- Issuance of TIN for Taxpayers under Executive Order 98 (E.O. 98) and One-Time Transaction Taxpayers - Registration of Non-Resident Foreign Corporation (NRFC) - Conversion of Non-Business Taxpayers (e.g., Employee, E.O. 98) with existing TIN to Business Taxpayers - Registration of New Branch - Registration of New Facility - Employer Account Enrollment to facilitate the TIN issuance of employees Update/Change in Registered Address or Transfer of Registration
Secondary Registration	- Application for ATP - Registration of Books of Accounts - Registration of Permit to Use (PTU) Loose-leaf - System Registration of Computerized Accounting System (CAS)
Registration Information Update	- Availment of 8% Income Tax Return Option - Submission of Application for Change in Accounting Period - Registration/Addition of Tax Incentive - Change/Update of Contact Type - Change/Update of Contact Person/Authorized Representative - Change/Update of Stockholders/Members/Partners - Addition of Tax Type - Registration of Additional Business/Trade Name - Registration of Additional Line of Business - Change in Registered Name of Non-Individual taxpayers - Update/Change in Registered Address or Transfer of Registration

	- Update/Change of Civil Status
Other Online Facility	- Submission of Application for Closure or De-registration of Business - Submission of Application for TIN Cancellation - Application for Cancellation of PTU Loose-leaf and Acknowledgement Certificate (AC) of CAS - Online Verification of TIN - BIR Registered Business Search Facility - Digital TIN ID - TIN Inquiry

3. **RMC No. 122-2023** (01 December 2023), Availability of the Offline Electronic Bureau of Internal Revenue Forms (eBIRForms) Package Version7.9.4.1.

   The offline eBIRForms Package Version 7.9.4.1 can be downloaded from the following websites:

   1. www.bir.gov.ph
   2. www.knowyourtaxes.ph/ebirforms

   It contains the following modifications:

   1. Additional Alphanumeric Tax Codes (ATCs) in *BIR Form No. 1702-RTv2018C*, to wit: (i) *IC 101* for Regional Operating Headquarters; (ii) *IC 190* for Offshore Banking Units; and (iii) *IC 191* for Foreign Currency Deposit Units; and
   2. Updated income tax rates in BIR Forms *1700v2018, 1701v2018, and 1701A.*

4. **RMC No. 123-2023** (14 December 2023), Circularizes the Code of Professional Responsibility and Accountability and Supreme Court of the Philippines EN BANC Resolution A.M. No. 22-09-01-SC dated April 11, 2023

   This circulates the Code of Professional Responsibility and Accountability (CPRA) as approved by the Supreme Court through *En Banc* Resolution A.M. No. 22-09-01-SC dated April 11, 2023. The CPRA establishes the norm of conduct and ethical standards in the legal profession.

5. **RMC No. 124-2023** (12 December 2023), Circularizes Memorandum Circular No. 37, titled "Directing the Urgent Implementation of the National Anti-Money Laundering, Counter-Terrorism Financing and Counter-Proliferation Financing Strategy 2023-2027, and Enjoining All Concerned Agencies to Fully Support and Actively Participate in the Conduct of Money Laundering/Terrorism Financing National Risk Assessment"

This circulates the Office of the President's Memorandum Circular No. 37 directing the urgent implementation of the National AML/CTF/CPF[1] Strategy (NACS) 2023-2027. NACS 2023-2027 was adopted for the purpose of enabling the Philippines to improve its AML/CTF/CPF regime.

C. SEC MEMORANDUM CIRCULARS ("SEC MC")

1. **SEC MC No. 21, Series of 2023** (November 14, 2023), amends the Guidelines on Asset Valuations under SEC MC No. 2, Series of 2014 ("SEC MC No. 02-2014"), which specify the requirements and procedure for the valuation and appraisal of assets of registered corporations vested with public interest.

    - The Circular amends SEC MC No. 02-2014 in order to update the foreign ownership requirement and the submission date of the annual report.
    - The applicant shall comply with the requirements under the prevailing Foreign Investment Negative List to qualify as an SEC-accredited appraisal company. The appraisal companies and Professional Services Organization shall also be compliant with the ownership requirement under the prevailing Foreign Investment Negative List during operation.
    - The Circular gives a longer period of one hundred thirty-five (135) days (from hundred five (105) days) from the end of fiscal year to submit the annual report under SEC Form AC-AR.

2. **SEC MC No. 22, Series of 2023** (November 28, 2023), provides guidelines on the amount and period of payment of applicable Filing and Annual Fees for Real Estate Investment Trusts ("REIT") Fund Managers and REIT Fund Manager's Compliance Officers.

D. COURT OF TAX APPEALS ("CTA") DECISIONS

1. **Mactan Electric Company Inc. v. The Municipality of Cordova, The Municipal Assessor of Cordova, The Province of Cebu, and The Provincial Treasurer of Cebu**
   CTA Case No. AC-258, November 17, 2023

    In this case, petitioner Mactan Electric Company, Inc. ("MECO") alleges that the Notice of Assessment and Tax Declarations issued by respondent Municipality of Cordova were null and void for (a) failure to comply with Sections 224 and 225 of the Local Government Code ("LGC") and (b) for violating MECO's right to due process. It also alleges that during the pendency of its case with the court a quo, the Supreme Court promulgated the case of *Manila Electric Company v. The City Assessor and City Treasurer of Lucena City* ("Meralco case") where it ruled that MERALCO's transformers, electric posts/poles, transmission lines, and insulators are subject to real property taxes given the enactment of the LGC; however, the tax declarations should be nullified for failure to comply with Sections 224 and 225 of the LGC which state that every machinery must be individually appraised and assessed depending on its acquisition cost, remaining economic life, estimated economic life, replacement or reproduction cost, and depreciation. Petitioner claims that the Tax Declarations nullified in Meralco case are similar to the subject Tax Declarations; that respondent Municipal Assessor failed to comply with the procedure in Sections

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224 and 225; that such failure violated its right to due process and right to proper notice; and that the Notice of Assessment and Tax Declarations issued based thereon must be nullified.

However, the CTA found that petitioner received a Notice of Assessment with the subject Tax Declarations in 2008 and a letter from respondent Provincial Treasurer of Cebu informing it of the unpaid taxes of P2,842,430.35 from 1992 to 2011 on October 13, 2011. However, despite receipt of the said Notice of Assessment, Tax Declarations, and the letter, petitioner did not question or protest the assessment before the local treasurer under Section 252 and elevate the matter on appeal before the LBAA and CBAA under Sections 226 and 229. Instead, on April 30, 2012, which is three (3) years after petitioner's receipt of the Notice of Assessment, petitioner filed a Complaint with the RTC seeking (a) the issuance of a Writ of Preliminary Injunction, (b) the nullification of the Notice of Assessment and the subject Tax Declarations, and (c) the issuance of final injunction.

The CTA stressed that in the Meralco case relied upon by petitioner, the Supreme Court emphasized that Section 252 of the LGC mandates that "no protest shall be entertained unless the taxpayer first pays the tax." Payment under protest is a condition sine qua non before an appeal may be entertained. Moreover, even when the assessment of the real property is appealed, the real property tax due should be paid to and/ or collected by the local government unit concerned. For petitioner's failure to first pay the tax and exhaust the administrative remedies available to it, the subject assessment has already attained finality.

2. Pilipinas Kyohritsu Inc. v. Commissioner of Internal Revenue
CTA Case EB No. 2659, November 17, 2023

Pilipinas Kyohritsu Inc. ("PKI") filed with the BIR an application for tax credit or refund for its unutilized input VAT. The BIR denied the VAT refund on the basis that PKI failed to establish that the goods it sold as export sales to PEZA-registered entities were destined for consumption within the Special Economic Zone. The court held that PKI is entitled to a partial VAT refund as it satisfied the two conditions to confer 0% VAT on sale of goods pursuant to Section 106(A)(2)(a)(5) of the NIRC. *First*, the sale was made by a VAT registered person. *Second*, the sale of goods must be to an entity entitled to incentives under Omnibus Investment Code of 1987 and other special laws such R.A. No. 7916.

In relation to the second condition, the following documents must be presented: *one*, VAT zero-rated sales invoice, in accordance with invoicing requirements under Sections 113(A) and (B), and 237 of the NIRC, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005; and *two*, proof of buyer's entitlement to zero-rating under EO No. 226 or special laws (i.e., Certificates of Registration with the PEZA pursuant to RA No. 7916 for the pertinent period involved). PKI satisfied both conditions as it presented compliant VAT zero-rated sales invoices and related delivery receipts as well as presenting the PEZA Certification stating that the entities where goods were sold to are duly registered with PEZA and are qualified for the purpose of VAT zero-rating of its transactions with its local suppliers for the year 2016.

The court did not grant a portion of the VAT refund applied for by PKI as it failed to substantiate the adjustments of its export sales of goods for offsetting of receivables and payables and deductions for importation of raw materials from the PEZA-registered entities. PKI also failed to

provide any support document for each of the additions for "other receivables credited" and the deductions for "importation of raw materials" and "other charges debited".

3. Manulife Data Services, Inc. v. Commissioner of Internal Revenue
CTA Case No. 9881, November 23, 2023

Petitioner Manulife Data Services, Inc. is a foreign corporation duly registered with and authorized by the Securities and Exchange Commission ("SEC") to operate as a Regional Operating Headquarters ("ROHQ") in the Philippines. On March 28, 2018, petitioner filed with respondent its administrative application for refund / tax credit of its excess and unutilized input VAT for the whole period of calendar year 2016, together with its supporting documents in accordance with Annex A.1 of RMC No. 17-2018. Subsequently, on June 27, 2018, petitioner received the letter from the BIR dated May 30, 2018, wherein its claim for refund was denied on the sole ground that it failed to comply with "the submission of Certificate of Incorporation from the foreign country as certified by an authorized official of the Non-Resident Foreign Corporation ("NRFC") pursuant to RMC No. 17-2018."

However, upon review of Annex A.1 *(Revised Checklist of Mandatory Requirements for Claims for VAT Refund, Pursuant to Section 112 (A) of the Tax Code, as amended by RA. No. 10963)* of RMC No. 17-2018, the CTA ruled that while the submission of certificate of incorporation from the foreign country certified by an authorized official of the NRFC is required, a reading of the said issuance shows that it does not aim to restrict or confine the supporting documents only to those specifically mentioned as the abbreviation "e.g." was, in fact, intentionally placed at the beginning of the provision. It is thus apparent that the amendment to item 3.4 of Annex A.1 did not contemplate any restriction on the documentary requirements that may be submitted by the taxpayer to prove that its NRFC clients are not doing business in the Philippines. Thus, the CTA found petitioner's contention meritorious that the submission of consularized charter documents of its clients, sans certification of the authorized officials of the respective NRFCs, should have been considered substantial compliance.

Anent the petitioner's entitlement to the claim for refund or tax credit, the CTA laid down the following requisites for claiming refund or tax credit of unutilized or excess input VAT attributable to zero-rated or effectively zero-rated sales:

<u>As to timeliness of the filing of the administrative and judicial claims:</u>

1. The claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;

2. In case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of ninety (90) days, the judicial claim shall be filed with this Court within thirty (30) days from receipt of the decision or after the expiration of the said 90- day period;

<u>Concerning the taxpayer's registration with the BIR:</u>

3. The taxpayer is a VAT-registered person;

<u>In relation to the taxpayer's output VAT:</u>

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;

5. For zero-rated sales under Sections 106 (A)(2)(1) and (2); 106 (B); and 108 (B)(1) and (2) of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas ("BSP") rules and regulations;

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional input taxes;

7. The input taxes are due or paid;

8. The input taxes claimed 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

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.

The CTA found the petitioner substantially complied with the aforementioned requisites.

With respect to the fifth requisite, the CTA ruled that certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%) under Section 108(B)(2) of the NIRC of 1997, as amended: (a) The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed; (b) The services fall under any of the categories under Section 108(B)(2) or simply, the services rendered should be other than "processing, manufacturing or repacking goods"; (c) The services must be performed in the Philippines by a VAT -registered person; and, (d) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.

Given the foregoing, the CTA held that only clients of the petitioner for which the petitioner was able to submit both the (1) SEC Certificate of Non-Registration of Corporation/Partnership; and (2) Proof of Certificate/ Articles of Foreign Incorporation/ Association showing the state/province/ country where the entity was organized, may be recognized as NRFC. On the other hand, the CTA disallowed those sales of services which had no proof of payment in acceptable foreign currency accounted for in accordance with rules and regulations of the BSP.

As to the eight requisite, the CTA found that petitioner reported zero-rated sales and taxable sale subject to 12% VAT. Thus, since petitioner's input VAT cannot be directly or entirely attributed to any of the sales transactions, the valid input VAT shall be allocated proportionately on the basis of the volume of its total sales.

Having substantially complied with the aforementioned requisites for refund or issuance of a tax credit certificate for excess and unutilized input VAT attributable to its zero-rated sales, the petitioner's claim was partially granted.

4. **Midtown Printing Co., Inc. v. Hon. Carlos G. Domiguez, in his capacity as Secretary of the Department of Finance, and Hon. Caesar R. Dulay, in his capacity as Incumbent Commissioner of Internal Revenue**
CTA Case No. 10055, November 23, 2023

Petitioner Midtown Printing Co., Inc. received on May 16, 2014 an adverse ruling from the CIR in the form of BIR Ruling No. 421-2013 dated November 14, 2013. On April 25, 2016, after almost two years, petitioner send a Request for Review, by way of Petition for Review, to the Secretary of Finance, requesting for the review of BIR Ruling No. 421-2013 pursuant to Department Order (DO) Nos. 23-01 and 07-02, and praying for the reversal of said ruling denying petitioner's request for confirmation. In the Letter-Resolution dated September 11, 2018, the Secretary of Finance dismissed petitioner's Petition for Review, without delving into the substantive issues in view of its belated filing. Hence, petitioner filed a Petition for Review before the CTA on March 13, 2019. The CIR, in its Answer, argued that the CTA has no jurisdiction over the case.

The CTA first ruled that it has jurisdiction over the case. The CTA, citing the case of *The Philippine American Life and General Insurance Company v. The Secretary of Finance and The Commissioner of Internal Revenue* (G.R. No. 210987, November 24, 2014), ruled that the rulings of the Secretary of Finance issued in accordance with Section 4 of the 1997 NIRC are appealable to the CTA under Section 7(a)(1) of Republic Act No. 1125, as amended, as these cases may be property classified as "other matters" arising under the 1997 NIRC or other laws administered by the BIR.

Next, the CTA held that the Secretary of Finance properly dismissed petitioner's Request for Review of BIR Ruling No. 421-2013. The CTA ruled that Section 3 of the DOF DO No. 007-02 dated May 7, 2002, which provides that "a taxpayer who received an adverse ruling from the CIR may, within thirty (30) days from date of receipt of such ruling, seek its review by the Secretary of Finance.", is clear. Petitioner's Request for Review is evidently time-barred. While petitioner alleged circumstances which, according to it, warrant the relaxation of the procedural rules and the resolution of the case on the merits, it failed to present evidence to prove the same. Basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence.

5. **PMAC Business Operations, Inc. v. Commissioner of Internal Revenue**
CTA Case No. 10391, November 24, 2023

In this case, the CTA found unacceptable neglect of petitioner PMAC's right to due process on the part of the BIR, rendering the assessments against petitioner void.

In resolving the case, the CTA noted that in the petition, petitioner focused the issues and its corresponding arguments to the propriety of the assessment items in the notices and FDDA issued by the BIR. No contentions were raised related to matters of due process - on how it was observed by the administrative authorities or any violations thereto. However, the CTA deemed it proper to first determine any due process issues before delving into specific items in the assessment. Citing Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals, the CTA held that it is not limited by the issued raised by the parties but may also rule upon related issues necessary to achieve the orderly disposition of the case.

The CTA then proceeded to determine whether there was proper issuance of the PAN, FAN, and FLD.

The CTA held that the failure to serve the PAN prior to the issuance of the FAN constitutes a violation of the petitioner's right to due process, thereby invalidating the assessment against the petitioner. The CTA explained that pursuant to Section 228 of the Tax Code and Section 3 of Revenue Regulations No. 12-99, as amended, a taxpayer shall be issued with a PAN upon determination of deficiency taxes. Thereafter, it has fifteen (15) days from the receipt of the PAN within which to submit its response. Only after receiving the taxpayer's reply or the lapse of the 15-day period to file the same shall the BIR issue the FLD/FAN. In this case, petitioner did not deny the receipt of the PAN but claimed that the same was received simultaneously with the FLD/FAN. Nevertheless, the CTA maintained that petitioner's right to due process was not faithfully observed by the BIR, consistent with the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Yumex Philippines Corporation (G.R. No.222476, 5 May 2021)*, wherein the PAN was likewise served together with the FLD/FAN.

The CTA also ruled that the FLD/FAN was invalid due to its failure to indicate the due date for payment. The FLD, dated 9 January 2017, indicates that petitioner is "requested to pay x x x within the time shown in the enclosed assessment notice." Yet, upon checking of the FAN, the notice failed to indicate the date within which payment must be made as the space for due date was left blank. On the other hand, the FLD indicates "FEB 09 2017" as the "Due Date" in the upper righthand corner. The CTA, however, noted that such due date is couched in general terms and that it did not specify that it is the due date for payment. Moreover, the date is too equivocal, in that it may even refer to the due date when the FLD/FAN must be served to the taxpayer. The CTA, citing the Supreme Court's pronouncement in the case of *Commissioner of Internal Revenue (CIR) v. Pascor Realty and Development Corp. (G.R. No. G.R. No. 128315, 29 June 1999)*, explained that an assessment shall contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period.

Finally, the CTA ruled that the FDDA was void as it failed to provide reasons for the rejection of the explanations and defenses of the taxpayer. The CTA clarified that the CIR's duty does not extend to merely apprising the taxpayer of the legal and factual bases of the assessments issued against it. The CIR also has the duty to consider the explanations and defenses raised by the taxpayer and must communicate to the latter the reason for the rejection. In this case, the CTA noted that the FDDA, dated 22 September 2020, with the attached Details of Discrepancies, the BIR merely reiterated the assessment items in the FLD, with the exception of an increased interest calculated until 1 October 2020. Further, in the Details of Discrepancies, the BIR stated that "(d)uring reinvestigation, (petitioner) failed to submit documents/evidence to support (the) protest;" hence, the disallowance of the expenses, the deficiency EWT and deficiency WTC were reiterated. The CTA explained that, the records revealed that the petitioner was able to submit documents intended to support the defenses raised in its protest. Evidently, the BIR failed to recognize such submissions. The FDDA did not only lack the reasons for the rejection of the defenses raised by the petitioner in its protest. It also categorically reflects a total disregard of the submissions made by the petitioner on 20 April2017.

Accordingly, due to the violation of the taxpayer's right to due process, the assessments were declared void.

6. **Bukidnon Second Electric Cooperative, Inc. (BUSECO) v. Commissioner of Internal Revenue (Consolidated with CTA Case No. 9819)**
CTA Case No. 9761, November 28, 2023

This case is a consolidation of CTA Case Nos. 9761 and 9819. In CTA Case No. 9761, petitioner Bukidnon Second Electric Cooperative, Inc. received a Letter Notice from the Revenue District Office of Malaybalay City, which was signed by the Revenue Officer ("RO"). In the Letter Notice, the petitioner was informed of its VAT discrepancies and that a report of investigation was submitted for appropriate action. In CTA Case No. 9819, petitioner received a Letter of Authority ("LOA") issued by the Regional Director authorizing Revenue Officers to examine the petitioner's books of accounts and other accounting records for all internal revenue taxes. Pursuant to the LOA, a Preliminary Assessment Notice ("PAN") and, subsequently, a Formal Letter of Demand/Final Assessment Notice ("FLD/FAN") was issued to the petitioner. The petitioner then filed its Protest Letter with a request for reconsideration to the FLD/FAN. The CIR then issued a letter reply stating that its "request for reconsideration cannot be granted unless a 'Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code' is executed."

In CTA Case No. 9761, the CTA ruled that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. The authorized representatives include the Deputy Commissioners, the Revenue Regional Directors, and such other officials as may be authorized by the CIR. As such, there must be a grant of authority, in form of a LOA, before any revenue officer can conduct an examination or assessment of a taxpayer. In the absence of such an authority, the assessment or examination is a nullity. The CTA ruled that the issuance of an LOA prior to examination and assessment is a requirement of due process. The mere issuance of an Letter Notice to a taxpayer is not sufficient if no corresponding or subsequent LOA was issued. In this case, only an undated Letter Notice issued by the RO preceded the subject PAN and FLD/FAN, and there is no indication that the said Letter Notice was converted into a LOA. Therefore, the tax assessments issued against the petitioner are void for lack of authority on the part of RO to examine the petitioner's books and to resolve petitioner's request for reinvestigation.

In CTA Case No. 9819, the CTA ruled that its exclusive appellate jurisdiction to review by appeal under Section 7(a)(l) of Republic Act (RA) No. 1125, as amended, covers "decisions of the Commissioner of Internal Revenue in cases involving disputed assessments." The word "decision" in the above quoted provision refers to decisions of the CIR on the protest of the taxpayer against the assessments. Further, the CIR must indicate to the taxpayer in clear and categorical language what constitutes his or her final determination of the disputed assessment. In this case, the CIR's letter reply merely informed petitioner of the legal basis of the taxability of its income from its electric service operations and other sources, and required petitioner to submit a Waiver of the Defense of Prescription in order for the BIR to act on its request for reconsideration. The letter does not state in clear and unequivocal language that it already constitutes respondent's final determination of the disputed assessment. Thus, it was an error for petitioner to appeal the said letter reply as it does not constitute as a decision of the CIR that is appealable to the CTA.

7. **People of the Philippines v. Rizaldy Goloran Chua (Purok Gumamela, Sta. Cruz, Rosario, Agusan Del Sur) [Consolidated with O-793]**
CTA Case No. O-792, November 30, 2023

Accused Rizaldy Goloran Chua was charged for violation of Section 255 of the National Internal Revenue Code ("NIRC") of 1997, as amended, for willful failure to supply correct and accurate information in his income tax return for taxable years 2009 and 2010. Among the allegations were his willful failure to supply correct and accurate information in his income tax return ("ITR") for the years 2009 and 2010 by under declaring his gross income for the sale of gold to the Bangko Sentral ng Pilipinas ("BSP") during the said years by 46,039% and 3,879%, respectively. For his defense, the accused argued that he was informed by BSP that they will not withhold tax in the gold transactions because they were tax exempt. As such, the gold trading transactions with the BSP were not reflected in Chua's books because his bookkeeper told him that there is no need to do so in view of the tax exemption.

The CTA ruled for the acquittal of the accused. Preliminarily, the CTA held that before accused can be held liable under Section 255 of the NIRC of 1997, as amended, the following elements must be proven beyond reasonable doubt:

1. The accused is the person required under the Tax Code or by rules and regulations to file a return, to supply correct and accurate information;
2. The accused failed to supply correct and accurate information at the time required by law; and
3. Such failure to supply correct and accurate information was willful.

The CTA held that the plaintiff BIR failed to prove the third element beyond reasonable doubt. act or omission is willfully done, if it was done voluntarily and intentionally and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done. In this case, the accused was adamant during his direct testimony, cross examination, re-direct, re-cross examination and clarificatory questions from the Court that the BSP in Davao City told him that his sale of gold was tax exempt, although he cannot remember the name of the person who told him so. As such, the accused did not see the need to declare the proceeds of the gold sales in his 2009 and 2010 Annual ITRs. This fact created reasonable doubt as to his guilt. The third elements of the crime not having been proven beyond reasonable doubt, the CTA ruled for the acquittal of the accused.

8. **Commissioner of Internal Revenue v. Digos Market Vendors Multi-Purpose Cooperative (DIMAVEMC), represented by its Chairman of the Board of Directors, Constantino L. Rabaya, Jr.**
CTA Case No. EB 2518, November 30, 2023

The CIR argued that the CTA does not have jurisdiction to try and hear a case where the deficiency tax assessment against a taxpayer has already become final, executory, and demandable for failure to file a protest to the PAN and FLD. The CTA held that deficiency tax assessments cannot be deemed to be final, executory, and demandable if the assessments are not valid. In this case, the BIR failed to comply with due process requirements in issuing the subject assessments as the court

found that the FLD/FAN was issued the day after the issuance of the PAN to the taxpayer and that both the said PAN and FLD/FAN was received by the taxpayer on the same day.

Under Section 228 of the NIRC, a taxpayer must be given a prescribed period to respond to the PAN as part of the due process requirement. The said provision is implemented by Section 3 of RR No. 12-99 which provides that a taxpayer shall be given fifteen (15) days from receipt date of the PAN to respond. Only after the BIR's receipt of the taxpayer's response or in case of taxpayer's default can the BIR issue the FLD/FAN. In this case, both the PAN and FLD were received by the taxpayer on the same day, effectively foreclosing the taxpayer's opportunity to respond to the PAN. Consequently, for violation of the taxpayer's right to due process, the assessments are void.

9. Petron Corporation v. Commissioner of Internal Revenue
CTA Case No. 9993, December 05, 2023

In this case, the CTA was tasked to ascertain petitioner Petron Corporation's entitlement to a refund or credit of alleged erroneously / illegally paid excise taxes on locally-produced and imported fuel it sold subsequently to international carriers and tax-exempt entities.

In granting the petitioner's claim, the CTA first ruled that petitioner is the proper party to request for a refund of the excise taxes paid on its petroleum products sold to international carriers. The CTA, citing the case of *Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue (G.R. No. 211303, June 15, 2021),* ruled that in the context of petitioner's manufacture of petroleum products sold to various entities, the tax liability or the fiscal responsibility for the payment of excise tax remains with the petitioner, notwithstanding its capacity to transfer the economic weight or the tax burden, to its consumers. Pertaining to Section 135 of the Tax Code, in instances where petroleum products are vended to tax-exempt entities, it is imperative that the benefit of such exemption aligns with the party actually bearing the tax liability. Consequently, the exemption should appropriately correspond to petitioner, the entity shouldering the fiscal responsibility to settle the tax.

Next, the CTA held that excise taxes paid on petroleum products sold to international carriers and tax-exempt entities are subject to refund. The CTA explained that while petroleum manufacturers/importers are liable to pay excise taxes when they take out the fuel from their refineries or from the customs house, as the case may be, this liability is qualified by Section 135 of the Tax Code, such that the tax-paid petroleum products become exempt from excise taxes when established that these are sold subsequently to any one of the following: (1) international carriers of Philippine or foreign registry on their use or consumption outside the Philippines (international carriers); (2) exempt entities or agencies covered by tax treaties, conventions and other international agreements for their use or consumption (tax- exempt entities by treaty); or (3) entities which are by law exempt from direct and indirect taxes (tax-exempt entities by law).

When it is shown that the tax-paid petroleum products have become tax-exempt within the context of Section 135 of the Tax Code, the excise taxes which were previously paid thereon shall then be regarded as "erroneously or illegally collected," and, thus, subject to refund pursuant to Section 229 of the Tax Code.

In light of the foregoing, the CTA granted the petitioner's claim of refund or credit based on Sections 229 and 135 of the Tax Code after the petitioner successfully proved the following: first,

the excise taxes sought to be refunded were paid upon removal/ release of the petroleum products from the refinery or customs house, as the case may be; and second, the petroleum products have become tax-exempt, e.g., these have been sold subsequently to any of the above-enumerated groups.

10. Petron Corporation v. Commissioner of Internal Revenue
CTA Case No. 10015, December 05, 2023

In this case, Petron sought a refund representing excise taxes paid relative to locally produced and imported Jet A-1 fuel which were sold and delivered to various international carriers and tax-exempt entities. The CTA stated that petroleum manufacturers and importers are liable to pay excise taxes when they take out the fuel from their refineries or from the customs house, as the case may be. However, this liability is qualified by Section 135 of the NIRC, such that the tax-paid petroleum products become exempt from excise taxes when established that these are sold subsequently to international carriers, exempt entities by treaty, or tax-exempt entities by law.

When it is shown that the tax-paid petroleum products have become tax-exempt by Section 135 of the NIRC, the excise taxes previously paid shall be regarded as "erroneously or illegally collected" which makes it subject to refund pursuant to Section 229 of the Tax Code. In this case, Petron was able to present the required proof that the excise taxes sought to be refunded were paid upon release of the petroleum products from the refinery or customs house, as the case may be, and that the petroleum was sold to the above-enumerated groups.

11. Encore Receivable Management, Inc. v. Commissioner of Internal Revenue
CTA Case No. 10062, December 06, 2023

Petitioner Encore Receivable Management Inc. was assessed withholding tax on compensation, expanded withholding tax, and final withholding tax collectively amounting to P49,610,805.84. The corresponding Letter of Authority, Preliminary Assessment Notice, and Formal Letter of Demand/Final Assessment Notice ("FLD/FAN") were validly issued by the respondent Commissioner of Internal Revenue. However, the petitioner did not receive the FLD/FAN. Thereafter, the petitioner received the Preliminary Collection Letter ("PCL") on 11 June 2018, and, subsequently, the Final Notice Before Seizure ("FNBS") on 18 June 2018. On 10 September 2018, the petitioner filed its administrative protest or request for reinvestigation with supporting documents in relation to the PCL. As there was no action on the protest, the petitioner filed a Petition for Review with the Court of Tax Appeals ("CTA") on 9 March 2019, or thirty (30) days from the end of the one hundred eighty (180) days for the CIR to take action on its administrative protest.

The petitioner argues that its non-receipt of the FLD/FAN violated its right to due process. Thus, the PCL and PNBS shall be rendered void. The CIR counters that the CTA has no jurisdiction over the petition since the petitioner failed to timely file its appeal within thirty (30) days from the receipt of the PCL.

The CTA dismissed the petition for lack of jurisdiction. Specifically, it ruled that it is the FLD/FAN that must be administratively protested or disputed within thirty (30) days from the receipt thereof, and not the PCL. In this case, the petitioner's administrative protests before the BIR were not

directed against the FLD/FAN. Specifically, what was being assailed by the petitioner were the PCL and FNBS, anchored on its supposed non-receipt of the FLD/FAN. The CTA ruled that the correct remedy that should have been availed of by the petitioner is to file an appeal with the CTA within thirty (30) days from the receipt of the PCL and FNBS. The petitioner having failed to file its appeal within the reglementary period, the CTA then became devoid of jurisdiction over the petition. As such, the CTA dismissed the petition.

12. Avaloq Philippines Operating Headquarters v. Commissioner of Internal Revenue
CTA Case No. 10397, December 07, 2023

In this case, the CTA was tasked to determine petitioner Avaloq's entitlement to the claim for refund of its alleged excess and/or unutilized input VAT.

The CTA laid down the following requisites that must be complied with by the taxpayer-applicant to successfully obtain a tax refund/credit of unutilized or excess input VAT attributable to zero-rated or effectively zero-rated sales:

<u>As to timeliness of the filing of the administrative and judicial claims:</u>

1. The claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;
2. In case of full or partial denial of the refund claim, or the failure on the part of the CIR to act on the said claim within a period of ninety (90) days, the judicial claim shall be filed with the CTA within thirty (30) days from receipt of the decision or after the expiration of the said 90- day period;

<u>With reference to the taxpayer's registration with the BIR:</u>

3. The taxpayer is a VAT-registered person;

<u>In relation to the taxpayer's output VAT:</u>

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;
5. For zero-rated sales under Sections 106 (A)(2)(1) and (2), 106 (B) and 108 (B)(1) and (2) of the NIRC, as amended, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations;

<u>As regards the taxpayer's input VAT being refunded:</u>

6. The input taxes are not transitional input taxes;
7. The input taxes are due or paid;
8. The input taxes claimed 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

9. The input taxes have not been applied against output taxes during and in the succeeding quarters.

The CTA found that the petitioner failed to comply with all of the above requisites.

The CTA held that petitioner failed to prove that it is engaged in zero-rated or effectively zero-rated sales. The CTA explained that for a sale of service to qualify for VAT zero-rating under Section 108 (B) (2) of the NIRC, as amended, it must be proven that: a) the services rendered were other than processing, manufacturing or repacking of goods; b) the services were rendered to Non-Resident Foreign Corporations (NRFCs) doing business outside the Philippines; and c) the services were paid for in acceptable foreign currency accounted for in accordance with BSP rules and regulations.

The CTA ruled that, although petitioner rendered services other than processing, manufacturing or repacking of goods to NRFCs doing business outside of the Philippines, petitioner failed to prove that it was paid in foreign currency for the services it rendered to its NRFC clients. Petitioner alleged that its zero-rated sales of services were paid for in acceptable foreign currency exchange through intercompany offsetting agreements. The CTA recognized that pursuant to BIR Ruling No. [DA-(VAT-009) 075-08], which cited BSP Circular No. 1353, Series of 1992, intercompany offsetting arrangement is considered acceptable foreign currency payment in accordance with BSP rules and regulations, for VAT zero-rating purposes. However, the CTA held that petitioner thus failed to prove that there exists a valid offsetting arrangement that may serve as an alternative to actual inward remittance of foreign currency in consideration for the services it rendered to NRFCs not doing business in the Philippines. Consequently, petitioner failed to prove that is engaged in zero-rated sales of services under Section 108 (B) (2) of the NIRC.

For failing to prove that its sales of services to NRFCs doing business outside the Philippines were paid for in acceptable foreign currency in accordance with BSP rules and regulations, the petitioner's sales of services do not qualify for VAT zero-rating under Section 108 (B) (2) of the NIRC. Thus, the CTA denied the petitioner's VAT refund claim.

13. John Paul V. Medina, Owner and Proprietor of JPM Medical Trading v. Commissioner of Customs
CTA Case No. 10277, December 11, 2023

The Commissioner of Customs issued Letters of Authority directing a Bureau of Customs composite team to implement mission orders pursuant to the Commissioner's visitorial power. The composite team proceeded to the petitioner's office and storage areas wherein the District Collector of the Port of Manila ("POM") issued a Warrant of Seizure and Detention covering the goods stored at the said place. The petitioner was able to present supporting documents and affidavits of his local suppliers and copies of invoices to prove that the goods were locally purchased. Thereafter, the POM District Collector recalled the Warrant of Seizure and Detention through an Order dated 03 January 2020. On 23 March 2020, the Commissioner of Customs issued the assailed Order which reversed the recall of the warrant and ordered the POM District Collector for the continuation of the proceedings against petitioner.

The petitioner elevated on appeal to the CTA the Order dated 23 March 2020 via a Petition for Review. The Commissioner argued that the assailed Order is an interlocutory order which cannot be subject of an appeal as it did not dispose with finality the seizure and forfeiture case against petitioner. The CTA ruled that the appeal is proper. A reading of the assailed Order revealed that while the order to remand the case for further proceedings appears to be interlocutory, in reality it is an order to effect forfeiture of the subject seized goods. The CTA noted, *first*, that while the Commissioner faulted the petitioner in only presenting photocopies of its supporting documents, the assailed Order did not remand the case for further reception of evidence for the presentation of the originals or certified true copies of documents to prove the goods were locally purchased. *Second*, the CTA noted that the assailed Order cited Section 9 of Customs Memorandum Order No. 10-2006 which allows the recall of the Warrant of Seizure and Detention through the settlement of the case upon payment of duties and taxes which indicated that petitioner had no other remedy in this case but to pay the assessed duties and taxes for the release of the subject seized goods, otherwise the same will be forfeited in favor of the government.

The demand for payment coupled with a threat to forfeit the goods shows that the Commissioner had already decided to forfeit the goods unless payment of the duties and taxes have been made. The tenor of the assailed 23 March 2020 Order unmistakably indicated the final nature of the determination made by the Commissioner on petitioner's case which is to forfeit the subject goods. Petitioner cannot be faulted or prejudiced for immediately filing an appeal to the CTA within thirty (30) days from receipt of the assailed Order. The appeal is correct notwithstanding Section 14.1.3 of Customs Administrative Order No. 10-2020 which provides that a denial of a motion to quash or recall of a Warrant of Seizure and Detention shall be considered an interlocutory order. The issue whether a particular ruling or decision of the Commissioner of Customs is appealable to the CTA cannot be simply brushed aside through an administrative issuance since the same may be resolved only depending on the tenor of said ruling or decision, as shown in this case.

14. Ayala Corporation v. Commissioner of Internal Revenue
CTA Case No. 10056, December 11, 2023

The CTA ruled that, as laid down by jurisprudence, a taxpayer who seeks a refund or excess and unutilized creditable withholding taxes must (1) file the claim with the CIR within the two-year period from the date of payment of the tax and the date of filing of the annual ITR, (2) establish the fact of withholding by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld, and (3) show on the return that the income received was declared as part of the gross income.

In this case, Ayala Corporation filed its 2016 and 2017 Annual ITRs on 06 April 2017 and 10 April 2018 respectively. For both years, Ayala Corp. filed its administrative claim for the issuance of a tax credit certificate on 28 March 2019 and filed its judicial claim on 03 April 2019. The CIR argued that Ayala Corp. violated the doctrine of exhaustion of administrative remedies when it did not give the CIR ample time to ascertain the veracity and validity of its claim, having given the CIR only six (6) days from filing of the administrative claim on 28 March 2019, or until 03 April 2019 to act on it.

The CTA rejected the argument of the CIR. The Supreme Court already rejected the same argument in the case of *CIR v. Carrier Air Conditioning Philippines, Inc. (G.R. No. 226592, 27 July 2021)*.

The plain language of Section 229 of the NIRC allows the filing of a judicial claim as long as the administrative claim and judicial claim were filed within the two (2) years prescriptive period, regardless of how far apart the administrative and judicial claims were filed or whether the CIR was actually able to rule on the administrative claim. In this case, if Ayala Corp awaited the action of the BIR on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover its excess and unutilized CWTs erroneously paid to the government. While Ayala Corp. could have waited for the BIR to act on the refund claim for the year 2017 that was set to prescribe in 2020, the CTA stated that it cannot, on that basis alone, deny a legitimate claim timely filed in accordance with Section 229 of the NIRC. To give the CIR a period to decide the administrative claim for refund would go beyond the clear language of Section 229.

CIR also argued that Ayala Corp. must prove the actual remittance withheld. The CTA held, citing the Supreme Court case of *CIR v. PNB (G.R. No. 180290, 29 September 2014)* that proof of actual remittance is not a condition to claim for refund of unutilized tax credits. The certificate tax withheld at source (CWT certificate) is the competent proof to establish the fact that taxes are withheld. It is not necessary to present the person who executed and prepared the CWT certificate to testify personally to prove the authenticity of the certificates.

15. CBK Power Company Limited, v. Commissioner of Internal Revenue
CTA Case No. 10157, December 12, 2023

Petitioner CBK Power Company Limited filed a motion for reconsideration ("MR") of the CTA's decision which denied its request for refund or issuance of tax credit certificate ("TCC") of the excess and unutilized input VAT on its domestic purchases of goods and services attributable to zero-rated sales for the period of 01 April 2017 to 31 December 2017. In denying the VAT refund or issuance of a TCC, the CTA ruled that the petitioner did not proffer in evidence the Certificate of Compliance ("COC") that would have been relevant to its period of claim. Thus, without any proof that it validly sold electricity to the National Power Corporation ("NPC"), the CTA deemed that the petitioner failed to establish that it is engaged in zero-rated or effectively zero-rated sales.

The CTA partially granted the motion for reconsideration.

As to the submission of the COC, the CTA noted the petitioner has attached to its MR the COCs that are certified machine copies of the documents and are part of the BIR records. An examination of the said COCs show that these were certified copies issued by the Energy Regulatory Commission ("ERC") and the validity period appears to be from 14 July 2014 until 20 July 2019, which covers the subject claim for the period. Indubitably, the subject COCs were issued by a public officer in the performance of official duties, hence, they come within the purview of what are deemed to be public documents, and are *prima facie* evidence of the facts stated therein. Thus, in the absence of strong, complete and conclusive proof of its falsity or nullity, the CTA sustained the evidentiary nature of the COCs.

The CTA then laid down the following requisites to determine the petitioner's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales:

1. The taxpayer must be VAT-registered;

2. The taxpayer must be engaged in sales which are zero-rated or effectively zero-rated;
3. The claim must be filed within two years after the close of the taxable quarter when such sales were made; and
4. The creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

In the assailed Decision, the CTA has already ruled that the petitioner complied with the first and the third requisites. As to the second requisite, the CTA held that when a VAT-taxpayer claims to have zero-rated sales of services, such as the instant case, it must substantiate the same through valid VAT official receipts ("ORs") which must indicate the following information in compliance with the pertinent invoicing requirements:

1. A statement that the seller is a VAT -registered person, followed by its Tax Identification Number ("TIN");
2. The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT. If the sale is subject to zero percent (o%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;
3. In the case of sales in the amount of one thousand pesos (Php1,000) or more, where the sale or transfer is made to a VAT registered person, the name, business style, if any, address and TIN of the purchaser, customer or client;
4. Date of transaction; and,
5. Quantity, unit cost and description of merchandise or nature of service.

In this case, the petitioner has declared its zero-rated sales/receipts on accrual basis and not based on gross receipts. Consequently, there were receipts that were not supported by VAT zero-rated ORs dated within the period of claim. Further, there were receipts that were properly substantiated with VAT zero-rated ORs but were not reported in petitioner's VAT returns. Thus, the CTA ruled that only the following amounts shall be qualified for VAT zero-rating: (1) declared zero-rated receipts per VAT returns with supporting BIR-registered VAT ORs; and (2) receipts not reported in the VAT returns but with supporting BIR-registered VAT ORs.

As for the fourth requisite, the CTA held that a taxpayer must comply with the following conditions:

1. The input taxes are due or paid;
2. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales and 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 sale;
3. The input taxes are not transitional input taxes; and
4. The input taxes have not been applied against output taxes during and in the succeeding quarters.

As to the first condition, the CTA ruled that it is of crucial importance that petitioner provides supporting documents to prove that the input VAT claimed during the subject period is actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides that the input tax shall be creditable against the output tax only if evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the said law. In this case, the CTA

disallowed a portion of the input VAT claim because the supporting VAT invoices were not issued in accordance with the applicable invoicing requirements.

With respect to the second condition, the CTA held that 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 valid input taxes shall be proportionately allocated on the basis of sales volume. In this case, the petitioner partially applied its input VAT attributable to zero-rated sales against its reported output VAT liability. Hence, only the excess amount was applied for and will be granted for refund or issuance of TCC.

16. Green Cross, Inc. v. Commissioner of Internal Revenue
CTA Case No. 10401, December 12, 2023

In this case, the CTA ruled that there has been no erroneous or illegal collection of excise taxes and VAT on excise taxes that can be refunded to the petitioner.

In this case, petitioner Green Cross argued that its "Lewis and Pearl" products should not be subjected to excise taxes because these are not considered as "toilet waters" under Section 150(b) of the NIRC of 1997, as amended.

However, the CTA ruled that it is well-settled our jurisprudence that the following requirements must be complied with in order to prove a claim for refund of taxes erroneously paid or illegally collected under Sections 204 and 229 of the NIRC ofl997, as amended:

1. That the taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty, non-compliance with which the latter is precluded from exercising his authority thereon;

2. That, if denied or not acted upon within said period, the petition for refund be filed with the CTA within 30 days from receipt of the denial AND within said 2-year period from the date of payment of the tax or penalty regardless of any supervening cause, otherwise, the claim for refund shall have prescribed; and,

3. The claim for refund must be a categorical demand for reimbursement.

The CTA held that the third requisite was not complied with. The CTA explained that, anent the third and last requirement, a claimant must first file a written claim for refund, categorically demanding recovery of erroneously or illegally paid taxes with the CIR. The claimant must show indubitably the specific provision of law from which his or her right arises. It cannot be allowed to exist upon a mere vague implication or inference nor can it be extended beyond the ordinary and reasonable intendment of the language actually used by the legislature in granting the refund.

According to the petitioner, the essential oil content of each variant of the "Lewis & Pearl" product line is less than 3% by weight. For this reason, and pursuant to RR No. o8-84, it maintains that its splash cologne products are not "toilet waters" and, therefore, are not subject to excise tax under Section 150(b) of the NIRC of 1997, as amended. It further points out that splash colognes are basic or common commodities as they are inexpensive products used by ordinary Filipinos in their daily lives. Hence, it contends that the splash colognes do not qualify as "non-essential goods" under Section 150(b) of the NIRC of 1997, as amended.

However, the CTA ruled that a careful reading of Section 150, as introduced by EO No. 273 and as retained in the NIRC of 1997, as amended, reveals that the legislature changed the nature of the tax being imposed in relation to "toilet waters", i.e., from being a sales tax or percentage tax under Section 194(b) of the NIRC of 1977/Section 163 of PD 1994 to an excise tax or ad valorem tax under the said Section 150. Such change is evident in the words employed. Specifically, the amendment, inter alia, deleted the sales tax particularly imposed on every original sale, barter, exchange, etc. of "toilet waters", and made a tax imposition on the wholesale price or the value of importation, net of excise tax and VAT, of "toilet waters". Simply put, the law totally changed the imposition from a sales tax to an excise tax.

Since Section 194 of the NIRC of 1977 was substantially changed and renumbered to Section 150 by EO No. 273, which reclassified the tax imposed on "toilet waters" from sales tax or percentage tax to excise tax, then, RR No. o8-84 (which was promulgated to implement Section 194 of the NIRC of1977) may not be used to implement Section 150(b) of the NIRC of 1997, as amended, which pertains to the imposition of excise tax.

Although the term "toilets waters" remains unchanged, the modification in the nature of the tax from sales tax or percentage tax to excise tax, pursuant to EO No. 273, is an effective repeal of Section 194 of the NIRC of 1977. Therefore, RR No. o8-84, which implements the same, cannot be made to apply to the current provision on excise tax, i.e., Section 150(b) of the NIRC of1997, as amended.

With the above, the CTA found that there has been no erroneous or illegal collection of excise taxes and VAT on excise taxes that can be refunded to petitioner.

17. Royal Cargo Inc. v. City Treasurer of Parañaque
CTA Case No. AC-270, December 13, 2023

Upon petitioner Royal Cargo Inc.'s application for renewal of its business permit for calendar year 2022, respondent City Treasurer of Parañaque City issued a Statement of Account ("SOA") indicating the local business tax ("LBT"), among others, to be paid by the petitioner. Petitioner paid the assessed LBT so as not to delay the renewal of its business permit. However, petitioner subsequently filed a written claim for a refund with respondent allegedly representing its excess LBT paid.

The court *a quo* treated the SOA dated January 18, 2020 as an assessment and declared that the questioned tax assessment is considered final for petitioner's failure to file a written protest thereto within 60 days from receipt under Section 195 of the Local Government Code ("LGC").

The CTA reversed the lower court and ruled that the latter erred in applying Section 195, instead of Section 196 of the LGC. The CTA distinguished between the taxpayer's remedies under Section 195 and 196 of the LGC. The CTA ruled that Section 195 is triggered by an assessment stating the nature of the tax, fee, or charge, the amount of deficiency, and the surcharges, interests, and penalties issued by the local treasurer, while Section 196 is initiated by the taxpayer by way of a written claim for refund or credit filed with the local treasurer. Thus, Section 195 provides the procedure for contesting an assessment issued by the local treasurer, while Section 196 provides the procedure for recovering an erroneously paid or illegally collected tax, fee, or charge through a

refund or credit. Both sections require that the taxpayer should first exhaust the administrative remedies referred to therein before bringing the appropriate action in court, such as a written protest with the local treasurer, in case of Section 195, and a written claim for refund or credit with the same office, in case of Section 196.

In this case, the CTA held that the subject SOA cannot be considered the "notice of assessment" required under Section 195 of the LGC since it did not contain any amount of deficiency, surcharges, interests, and penalties due from petitioner. Thus, the petitioner correctly availed of the remedy under Section 196 of the LGC, which does not require a prior notice of assessment for a claim for refund to prosper.

Having settled that Section 196 of the LGC is the proper remedy in this case, the CTA determined that petitioner's administrative and judicial claims for refund have not yet prescribed.

18. Sitel Philippines Corporation v. Commissioner of Internal Revenue
CTA Case EB No. 2678, December 13, 2023

Petitioner Sitel Philippines Corporation filed an administrative claim seeking the refund of unutilized input VAT arising from its domestic purchases of goods other than capital goods, services, and capital goods exceeding P1,000,000.00, attributable to alleged zero-rated transactions for the fourth quarter of taxable year 2016 in the aggregate amount of P13,878,079.64. Specifically, it alleged that it was engaged in the zero-rated sale of services to nonresident affiliates not engaged in business in the Philippines which were outside the Philippines when the services were performed. It also maintained that was paid for its services in acceptable foreign currency and accounted for in accordance with Bangko Sentral ng Pilipinas ("BSP") rules.

The petitioner's claim was denied by the Bureau of Internal Revenue ("BIR"). The case was elevated to the Court of tax Appeal First Division ("CTA Division") which likewise denied the petition for review as it opined that the petitioner failed to establish that it was a VAT-registered entity and that it was engaged in zero-rated or effectively zero-rated sales. The CTA Division further ruled that in line with its finding that the petitioner generated sales in its Palawan site, the said side should have been registered with BIR as a Branch. Further, it noted that the Palawan site was only registered as a Facility in 2017.

The petitioner argued that its Palawan site as a Facility since it is merely a "cost center" that incurs production costs but does not actually generate any sales. Thus, it need not be registered as a Branch as required by BIR Revenue Regulation No. 7-2012.

The CTA En Banc denied the petition for review. It reiterated the ruling in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd*, which held that in order for a taxpayer to claim a refund or tax credit, he must comply with the following requirements:

1. The taxpayer must be VAT-registered;
2. The taxpayer must be engaged in sales which are zero-rated or effectively zero-rated;
3. The claim must be filed within two years after the close of the taxable quarter when such sales were made; and

4. The creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

For the first requirement, the petitioner failed to establish that it is a VAT registered taxpayer for having failed to register as a Branch during the period pertinent to the refund claim, or for the fourth quarter of taxable year 2016.

For the second requirement, in order for the sales of "other services" to be considered VAT zero-rated under Section 108(8)(2) of the NIRC of1997, as amended, the taxpayer claimant must prove the following conditions:

1. The seller is VAT-registered;
2. The services are rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed;
3. Services are paid for in acceptable foreign currency and accounted in accordance with BSP rules and regulations; and
4. The "other services" must be performed in the Philippines.

The petitioner failed to comply with the first and second conditions. Pertinently, for the second condition, there must be sufficient proof of both components: 1) that petitioner's clients are foreign corporations which can be proven by the SEC Certifications of Non-Registration; and 2) that they are not doing business in the Philippines–the prima facie proof of which is the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries. outside the Philippines. The CTA En Banc emphasized that it is not enough that the recipient of the services be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation. In this case, there is no clear and competent proof that petitioner's clients are not engaged in trade or business within the Philippines.

For the third requirement, the petitioner timely filed its administrative and judicial claims. The administrative claim for refund of excess input tax must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. As to the judicial claim, a thirty (30)-day period to is counted from the taxpayer's receipt of an adverse decision rendered within the ninety (90)-day period for the BIR to decide the claim, or within 30 days after the lapse of such ninety 90-day period, whichever comes earlier.

In view of the foregoing, the CTA En Banc found it unnecessary to determine whether the petitioner complied with the fourth requisite. Therefore, it denied the petition for review for lack of merit.

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