TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

TAX UPDATES FROM MARCH 16, 2023 TO APRIL 15, 2023

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DECISION / ISSUANCE	DATE ISSUED	SUBJECT	PAGE NO.
SUPREME COURT ("SC") DECISIONS			
1. Secretary of Finance v. Hon. Renato D. Munez, G.R. No. 212687	July 20, 2022 [Date uploaded: March 23, 2023]	Revenue Regulations No. ("*RR*") 8-2015 restored the value added tax ("*VAT*") exempt status of raw sugar previously withdrawn under the subject RR 13-2013. This development is a supervening event which renders the main action for declaratory relief against the constitutionality of the old RR 13-2013 academic.	8
COURT OF TAX APPEALS ("CTA") DECISIONS			
1. CIR v. GMA Network Films, Inc., CTA EB Case No. 2441	March 16, 2023	The filing of a motion for reconsideration does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state legal grounds for its denial.	9
2. Amadeus Marketing Philippines, Inc. v. CIR, CTA EB Case No. 2496	March 16, 2023	For the sale of services to be subject to a 0% VAT rating under Section 108(B)(2) of the NIRC, the taxpayer must not only show that the entity to whom it rendered services is a foreign corporation, but also that such entity is not engaged in business in the Philippines. While the presentation of both such documents will ordinarily prove that an entity is a foreign corporation not doing business in the Philippines, and exception to such rule is when there is clear and convincing evidence that will prove otherwise.	9-10
3. Hotel Specialist (Tagaytay) Inc., v. CIR, CTA EB Case No. 2084	March 16, 2023	A ruling of the court finding the assessment valid case involves a monetary award since it also includes an order for the taxpayer to pay the Commissioner of Internal Revenue ("*CIR*") the correct amount of deficiency taxes as well as an order authorizing the distraint/levy of personal and real properties. And as long as there is a court-approved compromise agreement despite the fact that it did not originate from an action involving monetary claim, the Office of the Solicitor General ("*OSG*") will be entitled to 5% of the amount involved in the compromise agreement.	10-11
4. Pet Plans, Inc v. CIR, CTA Case No. 10002	March 23, 2023	While it is true that a substantial under declaration of sales, receipts, or income results in a presumption of falsity or fraud, such presumption	11-12

		is not conclusive and can be overcome by evidence to the contrary. Moreover, Expanded Withholding Tax ("***EWT***") and Withholding Tax on Comensation ("***WTC***") are within the purview of Section 203 of the NIRC, and therefore, are subject to the period of prescription for assessment of deficiency taxes.	
5. Metro Rail Transit Corporation v. CIR, CTA Case No. 9651	March 23, 2023	In cases filed before the CTA, the inquiry of the Court is not limited to determining whether the findings of the BIR are consistent with law considering the supporting documents submitted at the administrative level. Rather, the CTA may consider and evaluate anew evidence submitted before it and make its own factual determination of the case.	12
6. Fernandez v. Dulay, CTA Case No. 9908	March 24, 2023	The matter of the denial of the compromise agreement is within the CTA's jurisdiction because it relates to the power of the CIR to enter into a compromise under Section 204(A) of the NIRC of 1997, as amended. The BIR is mandated to inform the taxpayer of the law and facts on which the assessment is made. Otherwise, the assessment is void and can never attain finality. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property because no effective protest can be made.	12-13
7. Restored Energy Development Corporation v. CIR, CTA Case No. 9958 & 9975	March 24, 2023	When a VAT-taxpayer claims to have zero-rated sales of services, it must substantiate the same through valid VAT official receipts, and not any other document such as a sales invoice, which properly pertains to a sale of goods or properties.	13
8. Deutsche Knowledge Services PTE., LTD., v. CIR, CTA Case No. 9154	March 24, 2023	The CTA enumerated the following requisites in order to successfully obtain a credit/refund of input VAT: 1. The claim is filed with the BIR within two 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 120 days, the judicial claim must be filed within 30 days from receipt of the decision or after the expiration of the said 120-day period; 3. The taxpayer is VAT-registered; 4. The taxpayer is engaged in zero-rated or effectively zero-rated sales; 5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; 6. The input taxes are not transitional input taxes; 7. The input taxes are due or paid;	13-16

		8. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated 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 the sales volume; and 9. The input taxes have not been applied against the output taxes during and in the succeeding quarters.	
9. CIR v. IBM Plaza Condominium Association, Inc., CTA EB Case No. 2229	March 27, 2023	A Notice of Informal Conference or Notice of Discrepancy is a substantive requirement without which the assessment is void for violating the taxpayer's right to due process. A Post Reporting Notice does not suffice.	16
10. CIR v. AIG Shared Services Corporation (Philippines), CTA EB No. 2545	March 27, 2023	A claim for refund for tax credit under Section 112 of the NIRC, as amended, is not a claim for refund under Section 229. Thus, the correctness of the VAT return is not an issue and thus there is no need for the Court to determine whether the taxpayer is liable for deficiency VAT.	17
11. Kuwait Airways Corporation v. CIR, CTA Case No. 10107	March 28, 2023	Under Sections 204 and 209 of the NIRC, the claimant must first file an administrative claim with respondent, within two years from the date of payment of tax before filing its judicial claim with the courts of law. In case of an amendment in the Income Tax Return ("*ITR*"), the two-year period is reckoned from the date of filing of the said amended ITR.	17-18
12. BSM Crew Service Centre Philippines, Inc. v. CIR, CTA Case No. 10135	March 29, 2023	When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer must convince the CTA that the CIR had no reason to deny its claim. It is crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. To do this, the taxpayer must show to that the documents it submitted to the appellate court were the very same documents submitted to the BIR. Otherwise, the Court will not have basis to conclude that the administrative claim should have been granted in the first place. An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.	18-19
13. People v. Armel Plastic Co., Inc. (Resolution), CTA Crim Case Nos. O-725 & O-727	March 29, 2023	In the absence of proof showing that the taxpayer protested the assessments, such assessments will become final, executory, and demandable. Thus, despite acquittal, the accused may still be held civilly liable for deficiency taxes for failure to contest the assessments against him.	19
14. CIR v. First Philippine Industrial Corporation, CTA EB Case No. 2376	March 30, 2023	The CTA may rule on a related issue which the parties did not raise in their respective pleadings or during trial which is necessary for the orderly disposition of the case.	19-20

		Compliance with the requirements of Revenue Memorandum Order ("*RMO*") No. 20-90 on the requisites of a valid waiver is mandatory such that failure to comply will not extend the period of assessment under the NIRC. Merely reiterating the same findings as stated in the Preliminary Assessment Notice ("*PAN*"), without considering or explaining the grounds for rejecting the refutations and explanations made by the taxpayer without giving any particular facts upon which the Formal Letter of Demand ("*FLD*") is based, violates the due process requirement in administrative proceedings and renders the assessment void.	
15. Pag-Asa Steel Works, Inc. v. BIR, CTA EB Case Nos. 2410 & 2412	March 30, 2023	It is improper for the CIR to disallow excess input taxes merely on the ground that the said amount was carried over to succeeding returns after the period of audit. Any tax benefit derived by the taxpayer from the carry-over of excess input tax redounds to that succeeding period and not to the period covered by the subject VAT assessment. Thus, the assessment should be made in that succeeding period. In order for the taxpayer to be credited with the input VAT from its purchase of services, it must present the VAT official receipt issued by its supplier containing all the information required under Section 113 (B) of the 1997 NIRC and Section 4.113-1 (B) of RR No. 16-05.	20-22
16. CIR v. Manulife Date Services Inc., CTA EB Case No. 2183	March 31, 2023	To be considered as a nonresident foreign corporation ("*NRFC*") not doing business in the Philippines for purposes of VAT zero-rating under Section 108(B)(2) of the NIRC, each entity must be supported, at the very least, by both Securities and Exchange Commission ("*SEC*") Certificate of Non-Registration and proof of incorporation, association, or registration in a foreign country. The latter proof alone is not sufficient to establish NRFC status as it merely determines the citizenship of an entity. A letter of authority to close Philippine business and withdraw its relevant license is insufficient proof that it is not engaged in business in the Philippines.	22
17. Halliburton Worldwide Limited – Philippine Branch v. CIR, CTA EB Case No. 2476	April 04, 2023	To successfully apply for a refund of excess and unutilized input VAT over sales to Renewable Energy ("*RE*") Developers, presentment of the clients' Board of Investment Certificate of Registration ("*BOI-COR*") is required while the clients' Department of Energy Certificates of Endorsement ("*DOE-COE*") are not.	23
18. St. Gerard Construction Gen. Contractor and Dev't Corp. v. BIR, CTA Case No. 10427	April 05, 2023	To avail for tax amnesty pertaining to withholding taxes, there must be a showing that the taxpayer withheld taxes and failed to remit the same. Absent evidence of "unremitted" withholding taxes, a taxpayer cannot avail of the tax amnesty.	23
19. CIR v. Four Seas Trading Corp., CTA EB Case No. 2507	April 05, 2023	A taxpayer, who, after receiving a collection letter from the BIR referring to a final assessment, subsequently receives such assessment, must	22-23

		file an administrative protest on said assessment before the BIR. Recourse to the CTA without such administrative protest is considered premature.	
20. Carmen Copper Corp. v. CIR, CTA EB Case No. 2428	April 05, 2023	Zero-rated export sales under Section 106(A)(2)(a)(5) of the NIRC is subject to the same condition under Section 106(A)(2)(a)(1) that such export sale be paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the BSP.	24
REVENUE REGULATIONS ("RRs")			
1. RR No. 2-2023	April 13, 2023	This RR prescribes the use of constructive affixture of documentary stamp as proof of payment of documentary stamp tax for certificates issued by government agencies or instrumentalities. The government agencies or instrumentalities, constituted as agents of the CIR, are mandated to collect the corresponding amount of DST due on such certificates. The receipt issued by the government agencies or instrumentalities shall be attached to the taxable certificates to serve as proof of payment of DST. In addition, the government agencies or instrumentalities are required to stamp "DOCUMENTARY STAMP TAX PAID" clearly, legibly, and conspicuously on the face of the taxable certificate, including the serial number and date of the government official receipt.	25
REVENUE MEMORANDUM CIRCULARS ("RMCs")			
1. RMC No. 31-2023	March 16, 2023	This Circular further clarifies imported goods that will no longer require the issuance of "Authority to Release Imported Goods" by the Bureau of Internal Revenue ("*BIR*") prior to release by the Bureau of Customs ("*BOC*") of imported ingredients necessary for the manufacture of fertilizers and finished feeds. The certificate secured from the Bureau of Animal Industry (BAI) or from other concerned regulatory government agency, which is competent to certify that the ingredients being imported are "not fit for human consumption or the goods being imported cannot be used for the production of food for human consumption", shall be directly presented to the BOC to effect the release of the imported goods.	25-26
2. RMC No. 32-2023	March 16, 2023	This Circular prescribes the guidelines in the filing of Annual Income Tax Returns for Calendar Year 2022 as well as payment of taxes due thereon until April 17, 2023.	26-27
3. RMC No. 33-2023	March 17, 2023	This Circular clarifies that the guidelines and procedures set forth in RMO No. 10-2013[1], as amended, concerning the requirement for the issuance and enforcement of Subpoena Duces Tecum ("*SDT*") shall also apply in the monitoring and verification of taxpayers' compliance with relevant tax laws.	27-28

[1] Revised Guidelines and Procedures in the Issuance and Enforcement of Subpoenas Duces Tecum and the Prosecution of Cases for Non-Compliance Therewith.

		This Circular clarifies that the issuance and enforcement of SDT does not only apply to taxpayers under audit or investigation who failed to comply with the written notice for information or relevant records.	
4. RMC No. 34-2023	March 17, 2023	This Circular publishes the full text of the Data Sharing Agreement ("*DSA*") between the BIR and the SEC pursuant to Republic Act No. 10173 and the National Privacy Commission (NPC) Circular No. 16-02. Under the DSA, the SEC shall share with the BIR its data on corporations and other registered/licensed entities, including beneficial ownership information. On the other hand, the SEC may request from the BIR intelligence information necessary for the performance of its function, provided that the request for information does not violate any applicable laws, rules, and regulations. The DSA likewise mandates the parties to comply with the Data Privacy Act of 2012.	28-29
5. RMC No. 35-2023	March 20, 2023	This Circular clarifies the application of the Eighteen (18)-Month Transitory Period in RA No. 11900[2], as reiterated in its Implementing Rules and Regulations and RR No. 14-2022. The said transitory period applies only to the requirements of Product Standards and Product Registration. The rest of the executory provisions of the law, or the other requirements, are effective immediately.	29-31
6. RMC No. 36-2023	March 20, 2023	This Circular announces the availability of other registration-related online transactions, functions and features in the BIR Online Registration and Update System ("*ORUS*"). The ORUS is a web-based system that gives taxpayers a convenient and alternative facility for end-to-end processing of their registration with the BIR	31
7. RMC No. 37-2023	March 21, 2023	This Circular circularizes CSC Memorandum Circular No. 1, s. 2023 on the 2023 Search for Outstanding Government Workers.	31
8. RMC No. 38-2023	March 23, 2023	This Circular circularizes CY 2023 BIR Priority Programs and Projects.	31-32
9. RMC No. 39-2023	March 23, 2023	This Circular notifies the loss of one (1) set of unused/unissued BIR Form No. 2524 — Revenue Official Receipt.	32
10. RMC No. 40-2023	March 24, 2023	This Circular announces the availability of the Offline electronic Bureau of Internal Revenue Forms (eBIRForms) Package Version7.9.4, which is downloadable from the BIR website.	32-33

[2] Vaporized Nicotine and Non-Nicotine Products Regulation Act. R.A. No. 11900 regulates the importation, assembly, manufacture, sale, packaging distribution, use, advertisement, promotion, and sponsorship of vaporized nicotine and non-nicotine products, and their devices, and novel tobacco products. It lapsed into law on July 25, 2022.

11. RMC No. 41-2023	March 24, 2023	This Circular announces the availability of information materials in relation to filing and payment of tax returns and step-by-step guide in filing BIR Forms 1701, 1701A, and 1702-RT.	33
12. RMC No. 42-2023	April 4, 2023	This Circular publishes the full text of the Letter from the Food and Drug Administration ("*FDA*") of the Department of Health ("*DOH*") endorsing updates to the list of VAT-exempt products under the TRAIN Law and CREATE Act.	33-34

DISCUSSION

A. SUPREME COURT DECISIONS

1. RR 8-2015 restored the VAT exempt status of raw sugar previously withdrawn under the subject RR 13-2013. This development is a supervening event which renders the main action for declaratory relief against the constitutionality of the old RR 13-2013 academic.

On September 19, 2008, the BIR issued RR 13-2008, prescribing the updated and consolidated policies and procedures for the advance payment of VAT on the sale of refined sugar pursuant to RA No. 9337. On September 20, 2013, then Department of Finance secretary Cesar Antonio V. Purisima issued RR 13-2013, amending the definition of raw sugar to sugar produced by simple process of conversion of sugar cane without a need of any of mechanical or similar device. Since the centrifugal process of producing sugar is not a simple process, it follows that under the new definition, any type of sugar produced therefrom is not exempt from VAT.

The respondents filed a petition for declaratory relief to declare RR 13-2013 unconstitutional. They also applied for a Writ of Preliminary Injunction. The Regional Trial court ("*RTC*") issued the Writ of Preliminary Injunction and enjoined the implementation of RR 13-2013. The petitioners, through the OSG, filed a petition for Certiorari under Rule 65, charging the trial court with grave abuse of discretion amounting to lack or excess of jurisdiction for issuing the writ of preliminary injunction because Section 218 of the NIRC, as amended, explicitly prohibits the issuance of a writ of injunction against the collection of taxes. In their comment, the respondents countered that the "no injunction rule" only applies against the collection of taxes. Here, what is being restrained is the imposition, and not the collection, of taxes.

In the meantime, respondents filed a Manifestation dated June 8, 2015, informing the Court that on May 22, 2015, DoF Sec. Purisima, upon the recommendation of CIR Henares, issued RR 8-2015, amending RR 13-2008 insofar as the definition of raw sugar is concerned. The amendment had the effect of restoring the VAT exempt status of raw sugar.

The Supreme Court dismissed the petition on the ground of mootness. RR 8-2015 restored the VAT exempt status of raw sugar previously withdrawn under the subject RR 13-2013. This development is a supervening event which renders the main action for declaratory relief against the constitutionality of the old RR 13-2013 academic. For petitioners to insist on the resolution of how the "no injunction rule" was supposedly violated when the trial court issued the assailed writ of injunction is actually asking the Court to render an advisory opinion, resolve a hypothetical or feigned problem, or a mere academic answer, which is beyond the Court's power of review. Besides, the injunctive writ, together with petitioners' opposition, and petition for certiorari relative thereto are a mere adjunct to the main case for declaratory relief. Since the main case has already become academic, the ancillary relief and all incidents related thereto necessarily have become academic, as well. For the spring cannot rise above its source. *(Secretary of Finance v. Hon. Renato D. Munez, G.R. No. 2121687, July 20, 2022)*

B. COURT OF TAX APPEALS DECISIONS

1. **The filing of a motion for reconsideration does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state legal grounds for its denial.**

The CTA *en banc* sustained the ruling of the CTA Third Division in nullifying the deficiency tax assessments against GMA Network Films for the following reasons: (1) the said tax assessments are barred by the 3-year prescriptive period under Section 203 of the NIRC, as the waiver executed by the parties resulted in no valid extension of prescriptive period to assess taxes, for lack of specific kind and amount of taxes due as required by Section 222 (b) and jurisprudence; and (2) the deficiency tax assessments do not contain a definite amount of tax liability. Thus, this Motion for Reconsideration.

The Court denied the Motion for Consideration because the arguments advanced therein have already been weighed and found wanting in the impugned Decision of the Division. Citing *Social Justice Society (SJS) v. Lim,*[3] the Court said: The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc. (*CIR v. GMA Network Films, Inc., CTA EB Case No. 2441, March 16, 2023)*

2. **For the sale of services to be subject to a 0% VAT rating under Section 108(B)(2), the taxpayer must not only show that the entity to whom it rendered services is a foreign corporation, but also that such entity is not engaged in business in the Philippines. While the presentation of both such documents will ordinarily prove that an entity is a foreign corporation not doing business in the Philippines, and exception to such rule is when there is clear and convincing evidence that will prove otherwise.**

Petitioner Amadeus Marketing Philippines, Inc ("*Amadeus*") rendered services to Amadeus IT Group S.A. (AGSA). Amadeus argues that since AGSA is a non-resident not doing business in the Philippines, the services that the former rendered to the latter are subject to zero rating under Section 108(B)(2)[4] of the NIRC. Thus, Amadeus filed with the BIR an administrative claim for

[3] G.R. No. 187836, March 10, 2015 (Resolution on Motion for Reconsideration).

[4] SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. — xxx xxx xxx (B) Transactions Subject to Zero Percent (0%) Rate . — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate. (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas

refund of unutilized input VAT, but the BIR denied the same. The CTA Division likewise denied the petitioner's Petition for Review and Motion for Reconsideration. Thus, the petitioner filed a Petition for Review before the CTA En Banc.

The CTA En Banc denied the present petition. It ruled that for the zero-rating of services under Section 108 (B)(2) of the NIRC, to apply, the following preconditions must concur:

a. The services rendered must be other than processing, manufacturing, or repacking of goods;
b. The recipient of such services must be a foreign corporation doing business outside the Philippines; and
c. The consideration for such services is paid in foreign currency and duly accounted for pursuant to existing BSP rules and regulations

In the present case, the second requisite is not met even though Amadeus presented AGSA's Foreign Articles/Certificate of Association and SEC Certificate of Non-Registration. While the presentation of both such documents will ordinarily prove that an entity is a foreign corporation not doing business in the Philippines, and exception to such rule is when there is clear and convincing evidence that will prove otherwise. Here, AGSA was doing business in the Philippines because it rendered services to Amadeus in the Philippines as shown in the Travel Agency Management Agreement Systems ("*TAMS*") Distribution Agreement. In the said Agreement, Petitioner Amadeus acts as the representative of AGSA, thereby appointing the former as the latter's agent in the Philippines. By entering into the TAMS Distribution Agreement, AGSA clearly intended to establish a continuous business in the Philippines. And because AGSA is doing business in the Philippines, the services that Amadeus rendered to AGSA cannot be classified as zero-rated under Section 108(B)(2) of the NIRC. *(Amadeus Marketing Philippines, Inc. v. CIR, CTA EB Case No. 2496, March 16, 2023)*

3. A ruling of the court finding the assessment valid case involves a monetary award since it also includes an order for the taxpayer to pay the CIR the correct amount of deficiency taxes as well as an order authorizing the distraint/levy of personal and real properties. And as long as there is a court-approved compromise agreement despite the fact that it did not originate from an action involving monetary claim, the OSG will be entitled to 5% of the amount involved in the compromise agreement.

Petitioner CIR filed an Amended Motion for Reconsideration ("*Amended MR*") seeking the reversal of the CTA En Banc's Resolution dated October 12, 2022, which directed the BIR to remit to the OSG 5% of the total compromise amount paid by Hotel Specialist (Tagaytay), Inc. CIR argued that the OSG should be entitled to the 5% success fee only when it actively participated in the litigation of the case and was able to successfully secure a monetary award in favor of its clients. The CIR further contended that it was not the OSG that negotiated the compromise agreement herein, therefore, it would be the height of injustice to give the OSG 5% of the compromise amount. Moreover, even granting for the sake of argument that the OSG actively participated in the case, it is still not entitled to the claim because there was no monetary award given to the CIR's favor in the first place.

(BSP); (2) Services other than those mentioned in the preceding paragraph, 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, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); (Boldfacing supplied)

The Court denied the Amended MR. *First*, the disputed assessment case involves a monetary award since the ruling of the court finding the assessment valid includes an order for the taxpayer to pay the CIR the correct amount of deficiency taxes as well as the increments thereto. Moreover, Section 13 of RA No. 9282[5] additionally provides that a ruling favorable to the government shall include an order authorizing the distraint/levy of personal and real properties, respectively. *Second*, under Section 11(i) of RA No. 9417[6] as interpreted in the case of Kepco Philippines Corporation v. Commissioner of Internal Revenue[7] as long as there is a court-approved compromise agreement despite the fact that it did not originate from an action involving monetary claim, the OSG will be entitled to 5% of the amount involved in the compromise agreement. *(Hotel Specialist (Tagaytay) Inc., v. CIR, CTA EB Case No. 2084, March 16, 2023)*

4. While it is true that a substantial under declaration of sales, receipts, or income results in a presumption of falsity or fraud, such presumption is not conclusive and can be overcome by evidence to the contrary. Moreover, EWT and WTC are within the purview of Section 203 of the NIRC, and therefore, are subject to the period of prescription for assessment of deficiency taxes.

On June 23, 2009, the BIR assessed petitioner Pet Plans for deficiency VAT, EWT, and WTC for the taxable year January 1, 2005 to December 31, 2005.

The period of assessment has prescribed. The BIR relied on the 10-year prescriptive period to assess deficiency taxes because there appeared to be a 121% under declaration of petitioner's tax receipts. While it is true that a substantial under declaration of sales, receipts, or income results in a presumption of falsity or fraud, such presumption can be overcome by evidence to the contrary. Here, petitioner was able to refute the same. The discrepancy in the taxable receipts arose from the Trust Fund contributions received by Petitioner, which are exempt from VAT and which must be deducted from the gross receipts subject to VAT pursuant to Section 108 of the NIRC. Thus, the period to assess deficiency VAT has prescribed.

EWT and WTC are not imprescriptible. The BIR argued that the EWT and WTC assessments against the petitioner are imprescriptible. In Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc., the Supreme Court already declared that withholding tax assessments are subject to prescription. The collection of withholding taxes falls squarely within the purview of Section 203 of the NIRC, thus, the 3-year prescriptive period applies to withholding tax assessments. Thus, the period to assess deficiency EWT and CWT has prescribed. *(Pet Plans, Inc v. Commissioner of Internal Revenue, CTA Case No. 10002, March 23, 2023)*

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[5] Sec. 13. Distraint of Personal Property and/or Levy on Real Property. — Upon the issuance of any ruling, order or decision by the CTA favorable to the national government, the CTA shall issue an order authorizing the Bureau of Internal Revenue, through the Commissioner to seize and distraint any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property and/or levy the real property of such persons in sufficient quantity to satisfy the tax or charge together with any increment thereto incident to delinquency. This remedy shall
not be exclusive and shall not preclude the Court from availing of other means under the Rules of Court. xxx

[6] SEC. 11. Funding. — The funds required for the implementation of this Act, including those for health care services, implementation of this Act, including those for health care services, insurance premiums, professional, educational, registration fees, contracted transportation benefits, and other benefits above, shall be taken from: xxx (i) five percent (5%) of monetary awards given by the Courts to client departments, agencies and instrumentalities of the Government, including those under court-approved compromise agreements. xxx

[7] G.R. Nos. 225750-51, July 28, 2020.

5. In cases filed before the CTA, the inquiry of the Court is not limited to determining whether the findings of the BIR are consistent with law considering the supporting documents submitted at the administrative level. Rather, the CTA may consider and evaluate anew evidence submitted before it and make its own factual determination of the case.

Respondent BIR assessed Petitioner MRTC for deficiency income tax, improperly accumulated earnings tax ("*IAET*"), EWT, WTC, and documentary stamp tax ("*DST*"). The petitioner then filed the instant Petition for Review praying for the cancellation of the Final Decision on Disputed Assessment ("*FDDA*").

Cases filed in the CTA are litigated *de novo.* The CTA did not give credence to the contention of the BIR that petitioner cannot attack the validity of the assessment for the first time on appeal to the CTA. This is because settled is the rule that cases filed before the CTA are litigated de novo. As such, parties are expected to litigate and prove every minute aspect of their case anew by presenting, formally offering, and submitting to the CTA all evidence required for the successful prosecution of its claim. The Court may consider and evaluate anew evidence submitted before it and make its own factual determination of the case. Hence, in this case, the assessment is void for lack of authority of the tax agents who conducted the audit examination and performed assessments functions. An examination of a taxpayer's books and accounting records, to be valid, must be based on a valid LOA, and that the absence of such LOA violates the taxpayer's right to due process thereby rendering the entire assessment void. Being a void assessment, no valid fruit can be derived therefrom. *(Metro Rail Transit Corporation v. CIR, CTA Case No. 9651, March 23, 2023)*

6. The matter of the denial of the compromise agreement is within the CTA's jurisdiction because it relates to the power of the CIR to enter into a compromise under Section 204 (A) of the NIRC of 1997, as amended.

The BIR is mandated to inform the taxpayer of the law and facts on which the assessment is made. Otherwise, the assessment is void and can never attain finality. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property because no effective protest can be made.

Respondent BIR issued against petitioner Fernandez a Formal Letter of Demand demanding payment for the latter's alleged deficiency tax liabilities for the year 2006. The BIR then issued Warrants of Garnishment. The petitioner a letter manifesting the availment of the compromise settlement scheme but the Regional Evaluation Board ("*REB*") denied the same. Aggrieved, the petitioner filed the instant Petition for Review with Motion for the Suspension of Collection.

The matter of the denial of the compromise agreement is within the CTA's jurisdiction. Pursuant to Section 7(a)(1) of Republic Act No. 1125, aside from the decisions of the CIR pertaining to assessments or refunds, decisions of the CIR relating to "other matters" maybe taken cognizance of by the CTA, if such "other matters" arose from the NIRC or other laws administered by the BIR. In this case, the assailed Letter-Decision which denied petitioner's Request for Reconsideration of its offer of compromise for lack of merit, is a matter which arose from the provisions of the NIRC of 1997, as amended. To be specific, it relates to the power of the CIR to enter into a compromise under Section 204 (A) of the NIRC of 1997, as amended.

BIR failed to prove that the assessment notices were actually received by the petitioner, hence, the assessment is void. Under Section 228 of the NIRC and Section 3 of RR No. 12-99, the BIR is mandated to inform the taxpayer of the law and facts on which the assessment is made. Otherwise, the assessment is void. This is an essential requirement of due process and it applies to the Preliminary Assessment Notice ("*PAN*"), FLD with the Final Assessment Notices, and the FDDA. The law imposes a substantive, not merely a formal requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principal in administrative investigations, that taxpayers should be able to present their case and adduce supporting evidence. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property because no effective protest can be made. Here, the petitioner failed to prove proper service to petitioner of the (1) PAN, (2) Letter of Authority, and (3) FLD. Consequently, the subject deficiency tax assessment did not attain finality. *(Fernandez v. Dulay, CTA Case No. 9908, March 24, 2023)*

7. When a VAT-taxpayer claims to have zero-rated sales of services, it must substantiate the same through valid VAT official receipts, and not any other document such as a sales invoice, which properly pertains to a sale of goods or properties.

Petitioner Restored Energy Development corporation filed this present Motion for Reconsideration, praying for the reconsideration of the Court's Decision dated November 18, 2022, praying for the CTA to order the BIR to refund the amount pertaining to the former's alleged zero-rated sales for the second, third, and fourth quarters of the taxable year 2016.

Zero-rated sales must be substantiated with VAT official receipts. Among the requisites for a claim for refund is the substantiation requirements to be used by the party-claimant in its zero-rated sales. Pursuant to Section 113(A)(2) of the NIRC, as amended, a VAT-registered entity doing business in a sale, barter, or exchange of services shall use a VAT official receipt. The records of the case reveal that petitioner was using VAT sales invoices in its zero-rated sales of renewable energy and not the required VAT official receipts. Thus, the usage of such VAT sales invoices instead of the required VAT official receipts for sale of services is fatal to petitioner's claim for refund. Therefore, the CTA denied the claim. *(Restored Energy Development Corporation v. CIR, CTA Case No. 9958 & 9975, March 24, 2023)*

8. In order to successfully obtain a credit/refund of input VAT, the following requisites must concur:

1. **The claim is filed with the BIR within 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 120 days, the judicial claim must be filed within 30 days from receipt of the decision or after the expiration of the said 120-day period;**
3. **The taxpayer is VAT-registered;**
4. **The taxpayer is engaged in zero-rated or effectively zero-rated sales;**
5. **for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;**
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 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 the sales volume; and

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

The CTA En Banc remanded the instant case to the CTA Third Division for the computation of the refundable amount due to petitioner Deutsche Knowledge Services PTE., Ltd. (Deutsche) representing the latter's excess and unutilized input VAT attributable to its zero-rated sales for the 3rd quarter of calendar year 2013.

The CTA enumerated the following requisites in order to successfully obtain a credit/refund of input VAT:

1. The claim is filed with the BIR within 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 120 days, the judicial claim must be filed within 30 days from receipt of the decision or after the expiration of the said 120-day period;
3. The taxpayer is VAT-registered;
4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;
5. for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;
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 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 the sales volume; and
9. The input taxes have not been applied against the output taxes during and in the succeeding quarters.

The court only discussed the fourth to ninth requisites since the compliance of petitioner with the first three requisites have already been discussed in its original decision.

Fourth and fifth. A sale of supply or services will be subject zero-rating VAT under Section 108 (B)(2) of the NIRC of 1997, as amended, if the following requisites concur:

a. The recipient of the services is a foreign corporation doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;
b. The services rendered must be other than processing, manufacturing, or repacking of 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.

To prove the first element, the taxpayer must submit both (1) the Certificate of Non-Registration of Corporation issued by the SEC; and (2) proof of foreign incorporation showing the state/province/country where the entity was organized. In this case, only 28 out of the 62 service recipients were found by the Court to be compliant with the documentary requirements. Hence, services rendered to entities whose identity as a non-resident foreign corporation were denied

zero rating. Compliance with the second and third essential elements above has been proved by the petitioner's witness and corroborated by its Certificate of Registration and License issued by the SEC, authorizing it to act as an ROHQ. And with respect to the fourth element, the petitioner presented Bank Certificate of Inward remittances. However, the court said that such remittances must be supported as well by VAT zero-rated official receipts. Since there were items which did not comply with the substantiation and invoicing requirements, the amount of sales shall be denied VAT zero-rating to that extent.

Sixth. The input taxes being claimed do not appear to be transitional input taxes under Section 111[8] of the NIRC.

Seventh. Anent the seventh requisite, the input VAT must be duly substantiated by supporting documents such as VAT invoices or official receipts as well as the Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld (BIR Form No. 1600). Here, the Court disallowed input VAT to the extent that it pertains to purchases which failed to meet the substantiation and invoicing requirements: (1) the invoices/receipts bore a date not within the quarter of claim,; (2) the receipts showed an input VAT amount less than the schedule; (3) the receipts had alterations without countersign or with countersign but without indication of petitioner's tin; (4) the receipts had alteration on the name of the petitioner without countersign; (5) petitioner's TIN was not indicated or wrong TIN was indicated; (6) the VAT amount was not shown separately; (6) the receipts indicated "not valid source of input VAT"; (7) the nature of services purchased was not indicated; and (8) the purchase was supported by documents other than VAT official receipt.

Eighth. In view of the existence of both zero-rated or effectively zero-rated sales and taxable sales, the valid input VAT (net of the amounts disallowed pursuant to the discussion above) shall be proportionately allocated on the basis of sales volume.

Ninth. The subject input taxes have not been applied against output taxes during and in the succeeding quarters. Here, the records show that

Citing *Chevron Holdings, Inc. v. Commissioner of Internal Revenue,*[9] the Court said that in computing the refundable amount due, the taxpayer-claimant has two options when the input tax is attributable to zero-rated sales: (1) be charged from the regular 12% VATable sales, and any unutilized or excess input tax may be claimed for refund or tax credit; or (2) be issued for refund or tax credit of the input tax attributable to zero-rated sales in its entirety. Here, the records show that petitioner elected the first option.

Therefore, as recomputed by the Court, the refundable amount is the excess input VAT attributed to the valid zero-rated sales net of the amount applied against the petitioner's output VAT. *(Deutsche Knowledge Services PTE., LTD., v. CIR, CTA Case No. 9154, March 24, 2023)*

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[8] **SEC. 111.** *Transitional/Presumptive Input Tax Credits*. – **(A) Transitional Input Tax Credits**. - A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to rules and regulations prescribed by the Secretary of finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax. xxx

[9] G.R. No. 215159, July 5, 2022.

9. A Notice of Informal Conference or Notice of Discrepancy is a substantive requirement without which the assessment is void for violating the taxpayer's right to due process. A Post Reporting Notice does not suffice.

Petitioner CIR contends that there was not violation of due process in the issuance of the subject deficiency tax assessments because prior to the issuance of a PAN, a Notice of Informal Conference ("*NIC*") as evidenced by a Post Reporting Notice ("*PRN*") was issued and that the NIC and PRN served the same purpose of informing the taxpayer of the BIR's findings to give the latter the opportunity to refute the same.

When the National Internal Revenue Code of 1977 was amended in 1997, the implementing regulation, RR No. 12-1999[10] retained the requirement of issuing a NIC. However, at present, the NIC is already called a Notice of Discrepancy ("*NOD*") under Section 3.1.1 of RR No. 22-20.[11] A NIC, or NOD as it is being currently called, is a written notice issued by the BIR which serves two (2) purposes — one, it informs the taxpayer of the preliminary findings or discrepancies found during the investigation, and second, it contains an invitation to schedule a conference/discussion with the Revenue Officer assigned to give opportunity to the taxpayer to present his or her side of the case.

In the case at bar, the then prevailing regulation regarding the due process requirement in the issuance of a deficiency tax assessment is RR No. 12-1999. Pursuant to RR No. 12-1999, the issuance of a NIC is required. However, there is no indication that the BIR issued a NIC to Respondent IBM Plaza. Thus, there is no reason to overturn the assailed Decision. *(CIR v. IBM Plaza Condominium Association, Inc., CTA EB Case No. 2229, March 27, 2023)*

10. A claim for refund for tax credit under Section 112 of the NIRC, as amended, is not a claim for refund under Section 229. Thus, the correctness of the VAT return is not an issue and thus there is no need for the Court to determine whether the taxpayer is liable for deficiency VAT.

The CTA Division rendered a Decision ordering the petitioner CIR to refund or to issue a tax credit certificate in favor of respondent AIG Shared Services Corporation ("*AIG*"). The Division likewise denied the petitioner's Motion for Partial Reconsideration. The CIR, thus, elevated the case to the CTA En Banc via Petition for Review. The CIR argues that AIG is not entitled to a refund because

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[10] Section 3.1.1. Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, **the taxpayer shall be informed, in writing**, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) **of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of 'Informal Conference,' in order to afford the taxpayer with an opportunity to present his side of the case.** xxx (emphasis supplied)

[11] Section 3.1.1 Notice of Discrepancy. — If a taxpayer is found to be liable for deficiency tax or taxes in the course of an investigation conducted by a Revenue Officer, the taxpayer shall be informed through a Notice of Discrepancy (Annex A). The Notice of Discrepancy aims to fully afford the taxpayer with an opportunity to present and explain his side on the discrepancies found. The Revenue officer who audited the taxpayer's records shall, among others, state in the initial report of investigation his findings of discrepancies. Based on the said Officer's submitted initial report of investigation, **the taxpayer shall be informed**, in writing, by the Revenue District Office or by the Assessment Division/Regional Investigation Division, as the case may be (in the case of Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) **of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of the "Discussion of Discrepancy".** (emphasis supplied)

the amount that the CTA Division considered as disqualified from VAT zero-rating should be subjected to 12% VAT and that such output tax should form part of the output tax liability of AIG.

Citing *Commissioner of Internal Revenue v. Toledo Power Company,*[12] the CTA ruled that there is no need to determine deficiency tax liability. Since a claim for refund for tax credit under Section 112 of the NIRC, as amended, is not a claim for refund under Section 229, the correctness of the VAT return is not an issue and thus there is no need for the Court to determine whether the taxpayer is liable for deficiency VAT. Thus, the CTA En Banc denied the present petition. *(CIR v. AIG Shared Services Corporation (Philippines), CTA EB No. 2545, March 27, 2023)*

11. Under Sections 204 and 209 of the NIRC, the claimant must first file an administrative claim with respondent, within 2 years from the date of payment of tax before filing its judicial claim with the courts of law. In case of an amendment in the ITR, the 2-year period is reckoned from the date of filing of the said amended ITR.

Petitioner filed its Annual ITR for the fiscal year ended March 31, 2017 on July 14, 2017, and paid the corresponding income tax on the basis of the special tax rate of 2.5% of its gross Philippine billings ("*GPBs*"). After receipt by petitioner of BIR Ruling No. ITAD 034-17 dated November 6, 2017, confirming its entitlement to the preferential tax rate of 1.5% of its GPB, it filed an Amended Annual ITR on March 21, 2018 to reflect the application of the said preferential tax rate, thereby showing an "overpayment" of income tax. Petitioner filed an application for Tax Credits/Refunds, but due to BIR's inaction, the former filed the present Petition for Review on July 10, 2019. In its answer, BIR contended that petitioner did not submit complete documents to substantiate its administrative claim for refund.

The petition for review was timely filed; In case of amendment, the 2-year period is reckoned from the date of filing the amended ITR. Under Sections 204 and 209 of the NIRC, the claimant must first file an administrative claim with respondent, within 2 years from the date of payment of tax before filing its judicial claim with the courts of law. Both claims must be filed within a 2-year reglementary period. In this case, considering that it is only in petitioner's Amended Annual ITR, which was filed on March 21, 2018, that an overpayment of income tax was shown, the logical conclusion is that the 2-year prescriptive period should be reckoned from the said date. Thus, petitioner had until March 21, 2020, within which to file its administrative and judicial claims. Since petitioner filed its administrative claim on May 16, 2018, and the judicial claim on July 10, 2019, the same were both filed within the two-year prescriptive period.

The petitioner is entitled to refund, but only to the extent proved. Petitioner is entitled to the preferential rate of 1.5% of its GPB pursuant to Article 8 of the Philippines-Kuwait Tax Treaty and BIR Ruling No. ITAD 034-17 issued in favor of petitioner. To prove its creditable taxes withheld (CWT), petitioner presented its Certificate of Creditable Taxes Withheld at Source (BIR Forms No. 2307) and Summary Alphalist of Withholding taxes for fiscal year 2017. However, the amount of refund was reduced because upon verification of the said documents, the following amounts were disallowed by the Court: (1) CWT Certificates dated outside the period of claim; (2) CWT Certificates issued not in petitioner's name as payee; (3) CWT Certificates with incorrect or without the TIN of petitioner indicated therein; and (4) CWT Certificates lacking the signature of the authorized signatory of the issuer. *(Kuwait Airways Corporation v. CIR, CTA Case No. 10107, March 28, 2023)*

[12] G.R. Nos. 196415 & 196451, December 2, 2015.

12. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer must convince the CTA that the CIR had no reason to deny its claim. It is crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. To do this, the taxpayer must show to that the documents it submitted to the appellate court were the very same documents submitted to the BIR. Otherwise, the Court will not have basis to conclude that the administrative claim should have been granted in the first place.

An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.

Petitioner BSM Crew Service Centre filed an Application for Tax Credits/Refunds (BIR Form No. 1914) for excess unutilized VAT allegedly paid, but BIR denied the same.

When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirement for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place.

Petitioner failed to prove entitlement to refund/credit. Determining whether administrative claim for refund should have been granted in the first place entails a review of the very same documents which were submitted to the BIR in support of the said administrative claim, especially when the denial of the administrative claim was clearly based thereof. Here, there is no indication that petitioner presented before the CTA the very same documents that it submitted to the BIR in support of its administrative claim. This failure is fatal to the petitioner's case because the Court will not be able to review or determine with certainty whether respondent has indeed the factual bases in denying petitioner's administrative claim. The Court cannot simply assume that the documents submitted before it were the very same documents submitted to the BIR. Without the said documents the Court cannot determine whether the said administrative claim should have been granted in the first place.

Petitioner failed to comply with all documentary and evidentiary requirements. Nonetheless, even granting that the BIR should have granted its administrative claim, the petitioner failed to prove that it is entitled to the claim for refund or tax credit under the substantive law. While the administrative and judicial claims were timely filed, petitioner failed (1) to prove that it was a VAT-registered entity and (2) to establish that it was engaged in zero-rated or effectively zero-rated sales for calendar year 2017. *(BSM Crew Service Centre Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10135, March 29, 2023)*

13. In the absence of proof showing that the taxpayer protested the assessments, such assessments will become final, executory, and demandable. Thus, despite acquittal, the accused may still be held civilly liable for deficiency taxes for failure to contest the assessments against him.

The CTA First Division rendered a Decision acquitting the accused Armel Plastic Co., Inc. of the violation of Section 255 in relation to Sections 253 and 256 of the NIRC, as amended.

Nonetheless, the CTA ordered the latter to pay the civil liability as computed in the Assessment Notices. Armel Plastic Co. filed a Motion for Partial Reconsideration of the Decision of the CTA and argued that the civil liability because the Assessment Notices were denied admission by the Court.

The Court denied the motion. While the sub-markings were disallowed, the documents, *i.e.,* Exhibits "P-9" and "P-10" were admitted and may be considered by the Court. Moreover, the following documents show the existence of the assessment and the collection efforts by the BIR: (1) PAN. (2) Formal Assessment Notice ("*FAN*"), (3) Assessment Notices with details of discrepancy; (4) Letter from Armel Plastic Co. to the BIR, asking for a conference meeting to clarify the findings and asking for more time to sort their files and supporting documents; and (5) the BIR Letter for basic deficiency VAT with stamp received. However, the accused did not present any evidence to refute the said assessments. Accused also did not object to or refute the Letter acknowledging the assessment notices and requesting for more time to sort their files and supporting documents. There is also nothing in the records which show that accused protested the assessments. Based on the foregoing, the assessments have already become final, executory, and demandable. Thus, despite the acquittal, the accused is still civilly liable for the deficiency taxes. *(People v. Armel Plastic Co., Inc. (Resolution), CTA Crim Case Nos. O-725 & O-727, March 29, 2023)*

14. The CTA may rule on a related issue which the parties did not raise in their respective pleadings or during trial which is necessary for the orderly disposition of the case.

Compliance with the requirements of RMO No. 20-90 on the requisites of a valid waiver is mandatory such that failure to comply will not extend the period of assessment under the NIRC.

Merely reiterating the same findings as stated in the PAN, without considering or explaining the grounds for rejecting the refutations and explanations made by the taxpayer without giving any particular facts upon which the FLD is based, violates the due process requirement in administrative proceedings and renders the assessment void.

Petitioner CIR issued a FLD against respondent First Philippine Industrial Corporation for the collection of deficiency taxes. However, the CTA En Banc, enjoined the CIR from proceeding with the collection due to prescription and infirmities in the FLD. Hence, the present Motion for Reconsideration.

The CTA can resolve an issue not raised by the parties. Citing, *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.,*[13] the Court ruled that the CTA may rule on a related issue which the parties did not raise in their respective pleadings or during trial which is necessary for the orderly disposition of the case. Thus, it was proper for the CTA En Banc in this case to consider the validity of the FLD, despite not being raised by the parties in their respective pleadings or during trial, in order to achieve an orderly disposition of the case.

The CIR's right to assess and collect taxes has prescribed due to the invalidity of the waivers. Citing *La Flor dela Isabela, Inc. v. Commissioner of Internal Revenue*,[14] the Court said

[13] G.R. No. 183408, July 12, 2017.
[14] G.R. No. 202105, April 28, 2021.

that compliance with RMO No. 20-90[15] is mandatory and failure to comply will not extend the prescriptive period for assessment. Here, the subject Waivers are void as the same failed to indicate the specific type of the taxes to be assessed or collected, and therefore did not effectively extend the prescriptive period under Section 203 of the NIRC of 1997, as amended.

Respondent's right to due process was violated, thus, rendering the subject FLD and Assessment Notices void. Section 228 of the NIRC of 1997, as amended, mandates that taxpayers shall be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void. In this case, petitioner failed to observe the above-mentioned due process requirements in the issuance of FLD. Petitioner merely reiterated the same findings as stated in the PAN, without considering or explaining the grounds for rejecting the refutations and explanations made by respondent. By failing to address the same, and without giving any particular facts upon which the FLD is based, the same is not compliant with the due process requirement in administrative proceedings.

In sum, petitioner's failure to observe the foregoing due process requirements effectively renders the subject tax assessment void. Thus, the present Motion for Reconsideration was denied. *(CIR v. First Philippine Industrial Corporation, CTA EB Case No. 2376, March 30, 2023)*

15. It is improper for the CIR to disallow excess input taxes merely on the ground that the said amount was carried over to succeeding returns after the period of audit. Any tax benefit derived by the taxpayer from the carry-over of excess input tax redounds to that succeeding period and not to the period covered by the subject VAT assessment. Thus, the assessment should be made in that succeeding period.

In order for the taxpayer to be credited with the input VAT from its purchase of services, it must present the VAT official receipt issued by its supplier containing all the information required under Section 113 (B) of the 1997 NIRC and Section 4.113-1 (B) of RR No. 16-05.

The CTA En Banc promulgated a Decision affirming the judgment of the CTA First Division. The CIR filed a Motion for Partial Reconsideration, arguing that the CTA Division erred in holding that it was improper for BIR to disallow Petition Pag-Asa Steel Works, Inc.'s ("***PSWI's***") input tax as of June 30, 2014. On the other hand, PSWI filed a Motion for Partial Reconsideration, arguing that the CTA Division erred in upholding the VAT assessments on the accounts of MSK Group Work, inc., Jelaina's Trading & Construction and M Lav Industrial Gas because the documentary evidence as well as the findings of the Court-appointed independent Certified Public Accountant were disregarded. The Court denied both Motions.

[15] RMO No. 20-90 and RDAO No. 05-01 provides the following invalid waivers: (a) failure to state the specific date within which the BIR may assess and collect revenue taxes; (b) failure to sign by the CIR as mandated by law or by his duly authorized representative; (c) failure to indicate the date of acceptance to determine whether the waiver was validly accepted before the expiration of the original three-year period; (d) failure to furnish the taxpayer of a copy of the waiver; (e) failure to indicate on the original copies of the waivers the date of receipt by the taxpayer of their file copy; (f) execution of the waivers without the written authority of the taxpayer's representative to sign the waiver on their behalf; (g) absence of any proof that the taxpayer was furnished a copy of the waiver; (h) a waiver signed by the Assistant Commissioner-Large Taxpayers Service and not by the CIR; (i) failure to specify the kind and amount of tax due; and (j) a waiver which refers to a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case."

The Court En Banc maintained its position that it is improper for the CIR to disallow PSWI's excess input tax as of June 30, 2014 merely on the ground that the said amount was carried over to succeeding returns after the period of audit. Having found that PSWI has total allowable input tax per return amounting to P726,205,217.28, the Court in Division correctly credited the said amount against PSWI's deficiency VAT liability. To be sure, any tax benefit derived by PSWI from the carry-over of excess input tax redounds to that succeeding period and not to the period covered by the subject VAT assessment. Logically, the assessment should be made in that succeeding period.

The Court En Banc likewise stood by its ruling that the Court in Division correctly subjected to VAT some of its rebar sales to MSK Group Work, Inc. ("*MSK*") and SB Construction and Water Treatment Corporation ("SB") because petitioner failed to present sufficient evidence proving that some of the rebars it sold to MSK and SB were actually delivered to an ecozone area, the Court in Division did not err in partially upholding the assessment. In the same vein, the Court En Banc maintains its position that in order for petitioner to be credited with the input VAT from its purchase of services, it must present the VAT official receipt issued by its supplier containing all the information required under Section 113 (B)[16] of the 1997 NIRC and Section 4.113-1 (B) of RR No. 16-05[17]. The fact that Jelaina's Trading and Construction is both a supplier of construction

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[16] SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. – xxx (B) Information Contained in the VAT Invoice or VAT Official Receipt. - The following information shall be indicated in the VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN); and
(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. Provided, That:
(a) The amount of the tax shall be known as a separate item in the invoice or receipt;
(b) If the sale is exempt from value-added tax, the term VAT-exempt sale: shall be written or printed prominently on the invoice or receipt;
(c) If the sale is subject to zero percent (0%) value-added tax, the term “zero-rated sale” shall be written or printed prominently on the invoice or receipt.
(d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or Vat exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the invoice or receipt: Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

[17] SECTION 4.113-1. Invoicing Requirements.— xxx (B) Information contained in VAT invoice or VAT official receipt.— The following information shall be indicated in VAT invoice or VAT official receipt:
(1) A statement that the seller is a VAT-registered person, followed by his 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; Provided, That:
(a) The amount of tax shall be shown as a separate item in the invoice or receipt;
(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
(c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;
(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

materials and a contractor providing construction services is simply irrelevant. What matters in this case is that the transactions between petitioner and Jelaina's Trading and Construction are in the nature of sale of services which, under the law, shall be duly substantiated by VAT official receipts. *(Pag-Asa Steel Works, Inc. v. BIR, CTA EB Case Nos. 2410 & 2412, March 30, 2023)*

16. To be considered as a nonresident foreign corporation (NRFC) not doing business in the Philippines for purposes of VAT zero-rating under Section 108(B)(2)[18] of the NIRC, each entity must be supported, at the very least, by both SEC Certificate of Non-Registration and proof of incorporation, association, or registration in a foreign country. The latter proof alone is not sufficient to establish NRFC status as it merely determines the citizenship of an entity. A letter of authority to close Philippine business and withdraw its relevant license is insufficient proof that it is not engaged in business in the Philippines.

Petitioner filed for refund of its unutilized input VAT from zero-rated sales of services to what it purported to be a NRFC not doing business in the Philippines. Upon inaction by the BIR, petitioner filed a Petition for Review with the CTA, which ruled for the BIR over the fact that petitioner failed to present a SEC Certificate of Non-Registration in relation to its vendee. Petitioner averred that it sufficiently proved said status by presenting the entity's Letter of Amalgamation issued by Canadian authorities and a letter of authority to close Philippine business and withdraw its license.

The CTA EB found the above evidence wanting in order to prove the status of NRFC not doing business in the Philippines. It held for a VAT refund application for Section 108(B)(2) of the NIRC, petitioner must be able to adduce sufficient proof of the aforesaid status.

In this case, petitioner cannot solely rely on its vendee's Letter of Amalgamation issued by Canadian authorities as this only identifies the citizenship of said vendee. Neither does the letter of authority to close Philippine business and withdraw its license constitute sufficient proof. While it shows the inention of the vendee to close a specific business in the Philippines, it cannot be presumed that the intention is realized or that the vendee has no other business in the Philippines.

For failure of the petitioner to adduce the necessary proof for a tax refund, the application must be denied. *(CIR v. Manulife Date Services Inc., CTA EB Case No. 2183, March 31, 2023)*

17. To successfully apply for a refund of excess and unutilized input VAT over sales to Renewable Energy (RE) Developers, presentment of the clients' Board of Investment Certificate of Registration (BOI-COR) is required while the clients' Department of Energy Certificates of Endorsement (DOE-COE) are not.

Petitioner applied for a refund of excess and unutilized input VAT over sales to RE Developers. The CIR denied the claim that petitioner failed to file its clients' BOI-COR and DOE-COE.

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(3) In the case of sales in the amount of one thousand pesos (P1,000.00) 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, shall be indicated in addition to the information required in (1) and (2) of this Section.

[18] Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules

The CTA En Banc agreed with the petitioner that presentment of the clients' DOE-COE is not required to avail of the benefits of VAT zero-rating. Nothing in the Renewable Energy Act of 2008 requires such DOE-COE to claim VAT zero-rating on sales to RE Developers. The DOE cannot enforce regulations that expand the requirements provided by the enacting law. Thus, presentment of the DOE-COE is not required for VAT zero-rating is not necessary.

However, the abovementioned law is clear that to avail of the incentives set forth therein, the RE Developers must be duly certified by the DOE in consultation with the BOI. Thus, failure of a taxpayer to present any BOI disqualifies it from availing of VAT zero-rating under the said law. *(Halliburton Worldwide Limited – Philippine Branch v. CIR, CTA EB Case No. 2476, April 4, 2023)*

18. To avail for tax amnesty pertaining to withholding taxes, there must be a showing that the taxpayer withheld taxes and failed to remit the same. Absent evidence of "unremitted" withholding taxes, a taxpayer cannot avail of the tax amnesty.

Upon receiving a Letter of Authority from the CIR, petitioner requested for a penalty assessment for the taxable year covered. The CIR denied the request due to the ongoing tax audit of the petitioner. Subsequently, the CIR sent a Supplemental Letter to the petitioner allowing it to pay deficiency withholding tax on compensation. Petitioner applied for tax amnesty, but could not complete the application absent any Certificate of Tax Delinquencies ("*CTD*") and Acceptance Payment Form ("*APF*") from the CIR. The petitioner filed a Petition for Review with the CTA, which the CTA treated as a Petition for Mandamus.

The CTA denied the Petition on the ground that there is no delinquent account for petitioner to qualify for tax amnesty. A "delinquent account" is defined as a tax due from a taxpayer arising from the audit of the BIR which had been issued Assessment Notices that have become final and executory. When the petitioner, made such applied for said amnesty, the petitioner was still undergoing tax investigation by virtue of LOA. Thus, there could not have been any assessment, much less one that has become final and executory, for which the petitioner may apply for a tax amnesty or demand that a CTD or APF be issued. *(St. Gerard Construction Gen. Contractor and Dev't Corp. v. BIR, CTA Case No. 10427, April 5, 2023)*

19. A taxpayer, who, after receiving a collection letter from the BIR referring to a final assessment, subsequently receives such assessment, must file an administrative protest on said assessment before the BIR. Recourse to the CTA without such administrative protest is considered premature.

Respondent received a Final Notice Before Seizure (FNBS) on July 31, 2018. Respondent requested for and received copies of the PAN, FAN, and PCL on August 1, 2018. Respondent filed a Petition for Review with the CTA assailing the FNBS on August 30, 2018.

The CTA En Banc held that failure of the respondent to file an administrative protest rendered it without jurisdiction to try the case. The jurisdiction of the CTA En Banc requires the existence of a disputed assessment. Under the NIRC, dispute is properly lodged upon a request for reconsideration or reinvestigation within 30 days from receipt of the assessment. Without such a request, there is no disputed assessment to speak of.

The CTA En Banc found no merit in the respondent's contention that the case falls under "other matters arising under the [NIRC] or other laws administered by the [BIR]." In so ruling, it considered the following circumstances:

b. respondent's aim in filing the petition for review with the Court in Division was to prevent the FAN from attaining finality;
c. the period to appeal with the Court in Division was reckoned from receipt of said FAN on August 1, 2018;
d. the nature of the case in the assailed Decision prays for the cancellation and withdrawal of the FAN issued by the BIR;
e. the issues jointly raised by petitioner and respondent for resolution of the Court in Division all pertain to the validity of the FAN; and
f. the specific prayer in respondent's Petition for Review seeks to invalidate the FAN. *(CIR v. Four Seas Trading Corp., CTA EB Case No. 2507, April 5, 2023)*

20. Zero-rated export sales under Section 106(A)(2)(a)(5) of the NIRC is subject to the same condition under Section 106(A)(2)(a)(1) that such export sale be paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the BSP.

Petitioner filed with the BIR an application for the VAT refund of its zero-rated export sales by a BOI-registered enterprise pursuant to Section 106(A)(2)(a)(5)[19] of the NIRC. Upon the denial of the application, petitioner appealed the decision to the CTA for violation of its due process rights. The CTA Division, as affirmed later by the CTA En Banc, ruled for the petitioner, but disallowed items for failure of the petitioner to substantiate the zero-rated sales. In so ruling, the CTA En Banc agreed with the petitioner that for VAT refund claims under Section 106(A)(2)(a)(5), the taxpayer need only prove actual exportation of goods.

Upon motion for reconsideration by both parties, the CTA En Banc reversed its ruling that only actual exportation of goods needs to be proved for a VAT refund claim under Section 106(A)(2)(a)(5). It held that a BOI-registered export enterprise must also prove compliance with the condition set forth in Section 106(A)(2)(a)(1)[20] that such export sale be paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the BSP.

For petitioner's failure to strictly comply with the conditions for the grant of the tax refund, the application must be denied. *(Carmen Copper Corp. v. CIR, CTA EB Case No. 2428, April 5, 2023)*

2. REVENUE REGULATIONS

1. REVENUE REGULATIONS NO. 2-2023 [April 13, 2023] – Prescribing the Use of Constructive Affixture of Documentary Stamp as Proof of Payment of Documentary Stamp Tax for Certificates Issued by Government Agencies or Instrumentalities

The RR mandated all government agencies or instrumentalities to collect, upon every issuance of a taxable certificate, the corresponding amount of DST due thereon. For the purpose, the said

[19] Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws x x x.
[20] The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) x x x.

government agencies or instrumentalities are constituted as agents of the CIR for the collection and remittance of such DST to the BIR.

The payment of the DST must be reflected as an item in the government official receipt, which must be attached to the taxable certificate. This is deemed as the constructive affixture of documentary stamp as proof of DST payment. One government official receipt may cover multiple taxable certificates, provided:

a. A serial or control number shall be printed and consecutively assigned for every issuance of certificate and the same shall be conspicuously located on the face thereof.
b. The serial or control numbers of the certificates and the total amount of DST due, among others, shall be clearly indicated in the government official receipt.

In addition, government agencies or instrumentalities must stamp or print in a clear and readable manner on the face of the taxable certificate the phrase “DOCUMENTARY STAMP TAX PAID,” including the serial number and date of the government official receipt.

The government agencies or instrumentalities must then remit the collected DST by filing the proper return through the available payment facilities of the BIR.

The government agencies or instrumentalities are also mandated to maintain a record of government official receipts for purposes of inspection and verification by the authorized representatives of the BIR.

3. REVENUE MEMORANDUM CIRCULARS

1. **REVENUE MEMORANDUM CIRCULAR NO. 31-2023** [March 16, 2023] – Clarifies imported goods that will no longer require the issuance of "Authority to Release Imported Goods" by the Bureau of Internal Revenue prior to release by the Bureau of Customs.[21]

This Circular further clarifies imported goods that will no longer require the issuance of Authority to Release Imported Goods (ATRIG) by the BIR prior to release by the BOC.

The ATRIG shall no longer be secured from the BIR for the release of imported ingredients necessary for the manufacture of fertilizers and finished feeds. The certificate secured from the Bureau of Animal Industry (BAI) or from other concerned regulatory government agency, which is competent to certify that the ingredients being imported are "not fit for human consumption or the goods being imported cannot be used for the production of food for human consumption", shall be directly presented to the BOC to effect the release of the imported goods. It shall be the responsibility of the certifying government agencies to conduct their own validation of the declared goods to be released from the BOC and to submit to the BIR the list of importers that secured the said certification for tax audit purposes.

2. **REVENUE MEMORANDUM CIRCULAR NO. 32-2023** [March 16, 2023] – Prescribes the guidelines in the filing of Annual Income Tax Returns for Calendar Year 2022 as well as payment of taxes due thereon until April 17, 2023.[22]

[21] This digest was reproduced from the BIR website.
[22] Digests have been reproduced from the BIR website.

Taxpayers may file the AITR for CY 2022 and pay the taxes due to any Authorized Agent Banks (AABs) and Revenue Collection Officers (RCOs), notwithstanding the Revenue District Office (RDO) jurisdiction, without imposition of penalties for wrong venue filing.

The taxpayers mandated to use the Electronic Filing and Payment System (eFPS) shall file the AITR electronically and pay the taxes due through the eFPS-AABs where they are enrolled. Likewise, the said taxpayers shall use the eBIRForms in the filing of AITR in cases that filing cannot be made through the eFPS due to the following reasons:

a. Enrollment to BIR-eFPS and eFPS-AAB is still in process;
b. The enhanced forms are not yet available in eFPS;
c. Unavailability of BIR-eFPS covered by duly released advisory; or
d. Unavailability of eFPS-AAB system as informed by the AAB.

The tax returns filed through the eBIRForms shall no longer be required to be filed thru the eFPS.

For electronically filed returns through the eBIRForms, payment of the taxes due may be made through any AABs or to any RCOs of the RDO or through the following Electronic Payment (ePayment) gateways:

a. Development Bank of the Philippines' (DBP) Pay Tax Online (for holders of Visa/Mastercard Credit Card and/or BancNet ATM/Debit Card);
b. Land Bank of the Philippines' (LBP) Link.Biz Portal (for taxpayers who have ATM account with LBP and/or holders of BancNet ATM/Debit/Prepaid Card and taxpayers utilizing Philippine Clearing House Corporation (PCHC) PayGate or PESONet facility for depositors of Rizal Commercial Banking Corporation (RCBC), Robinsons Bank, Union Bank, BPI, PSBank and Asia United Bank);
c. Union Bank's Online/The Portal Payment Facility (for taxpayers who have an account with Union Bank of the Philippines) and InstaPay via UPAY (for individual Non-Union Bank account holders);
d. Tax Software Provider/Taxpayer Agent - GCash/Maya/MyEG.

Taxpayers who will manually file AITR and pay taxes due thereon through RCOs of the RDO may pay in cash up to Twenty Thousand Pesos (₱ 20,000.00) only or in check regardless of the amount. Provided that, the check shall be made payable to "Bureau of Internal Revenue".

"No Payment AITRs" shall be filed electronically through the eBIRForms. However, the following taxpayers may manually file their "No Payment AITRs" with the RDO in three (3) copies using the electronic or computer-generated returns or photocopied returns in its original format and in legal/folio size bond paper:

a. Senior Citizen (SC) or Persons with Disabilities (PWDs) filing for their own returns;
b. Employees deriving purely compensation income from two or more employers, concurrently or successively at any time during the taxable year, or from a single employer, although the income of which has been correctly subjected to Withholding Tax, but whose spouse is not entitled to substituted filing; and
c. Employees qualified for substituted filing under Sec, 2.83.4 of Revenue Regulations No. 2-98, as amended, but opted to file for an ITR and are filing for purposes of promotion, loans, scholarships, foreign travel requirements, etc.

For electronically filed AITRs without any attachment required, printed copy of the efiled tax returns need not be submitted to the office under the Large Taxpayers Service (LTS)/RDO. The generated Filing Reference Number from eFPS or the email confirmation from eBlRForms will serve as the proof of filing of returns. Likewise, for electronically filed AITRs, taxpayers may submit

its attachments to the BIR's Electronic Audited Financial Statement (eAFS) System or to the LTS/RDO where the taxpayer is registered within fifteen (15) days from the date of the tax filing deadline. Only the attachments will be stamped received by the LTS/RDO, the printed copy of AITR need not be stamped "Received".

3. REVENUE MEMORANDUM CIRCULAR NO. 33-2023 [March 17, 2023] – Clarifies the issuance and enforcement of Subpoena Duces Tecum.[23]

The issuance and enforcement of Subpoena Duces Tecum (SDT) shall also apply in the monitoring and verification of taxpayers' compliance with relevant tax laws, as authorized under Section 5 of the Tax Code.

The guidelines and procedures set forth in Revenue Memorandum Order (RMO) No. 10-2013[24], as amended, shall also apply in the examination of any book, paper, record, or other data which may be relevant or material in evaluating tax compliance of taxpayers who is liable for tax or required to file a tax return. The guidelines and procedures do not only apply to taxpayers under audit or investigation who failed to comply with the written notice for information on relevant records.

The following guidelines may be utilized by the Head of the Revenue District Office/Large Taxpayers Audit Division/Large Taxpayers District Office/ National Investigation Division/Regional Investigation Division concerned or any other officer duly delegated by the Commissioner to aid in the monitoring and verifying the tax compliance of taxpayers:

A. For registered taxpayers, their tax compliance may be evaluated through the examination of the following documents, to wit:
    1. Payment of Annual Registration Fee (ARF)
    2. Issuance of sales invoices or official receipts
    3. Keeping of books of accounts
    4. Timely filing of requisite tax returns and payment of taxes due thereon
    5. Withholding of tax on income payments subject to withholding and the timely remittance of tax withheld
    6. Filing of required information returns, such as the summary list of sales/purchases (SLSP), annual alpha list of payees, etc. on or before the due dates prescribed by law or existing revenue issuances, whenever applicable
    7. Other data which may be relevant or material in making such inquiry
B. For unregistered taxpayers, the concerned office shall notify them to register and pay voluntarily any unpaid taxes due on past transactions. In case of failure to register and/or pay the tax obligations, the concerned office shall endorse the case to the Regional Investigation Division or National Investigation Division for the conduct of preliminary investigation in preparation for the filing of a Run After Tax Evaders case and/or for other tax enforcement actions, as may be warranted.

The procedures for the issuance and enforcement of SDTs, as prescribed under RMO No. 10-2013, as amended, must still be strictly observed by all concerned in compelling taxpayers to submit or otherwise present the required books, records and documents.

[23] Digests have been reproduced from the BIR website.
[24] Revised Guidelines and Procedures in the Issuance and Enforcement of Subpoenas Duces Tecum and the Prosecution of Cases for Non-Compliance Therewith.

4. **REVENUE MEMORANDUM CIRCULAR NO. 34-2023** [March 17, 2023] – Publishes the full text of the Data Sharing Agreement between the BIR and the Securities and Exchange Commission pursuant to Republic Act No. 10173 and the National Privacy Commission (NPC) Circular No. 16-02.[25]

Under the Data Sharing Agreement (DSA), the SEC shall share with the BIR its data on corporations and other registered/licensed entities, including beneficial ownership information. These data may contain Personal Information and Sensitive Personal Information, such as but not limited to the complete name, specific residential address, date of birth, nationality, tax identification number; and percentage of ownership, if applicable, of the incorporators, stockholders, directors, trustees, members, officers, and beneficial owners of registered corporations, partners in a partnership and other persons licensed by the SEC. On the other hand, the SEC may request from the BIR intelligence information necessary for the performance of its function, provided that the request for information does not violate any applicable laws, rules, and regulations.

The BIR shall treat the personal data shared by the SEC with the utmost confidentiality and solely for the furtherance of its lawful mandate. Unless otherwise exempted from the coverage of the Data Privacy Act, the BIR shall also inform the SEC of the following information one (1) week upon the signing of the Agreement:

a. Any personal information processor that will have access to or process the personal data, including the types of processing it shall be allowed to perform;
b. How the party may use or process the personal data, including, but not limited to, online access;
c. The remedies available to a data subject, in case the processing of personal data violates his or her rights, and how these may be exercised;
d. The names and designations of personnel who will be involved in the handling of personal data, upon request OR the designated Data Protection Officer.

The DSA shall remain valid and binding for five (5) years from the date of signing, unless pre-terminated by either party for reasonable ground, without prejudice to entering into a new data-sharing agreement before or upon the expiration thereof. Pre-termination shall be in writing upon the agreement by both parties. Upon the termination of the DSA, the personal data shall remain with the BIR unless otherwise instructed and agreed upon by the agencies involved in the DSA. The confidentiality obligations contained in the DSA shall remain in force even after the termination of the Agreement.

The parties shall establish reasonable and appropriate safeguards and security measures to ensure the confidentiality, integrity, and security of the Personal Information, Sensitive Personal Information, and other classified information shared or disclosed by either party to the other party pursuant to the Agreement. The parties shall be responsible for preventing the unauthorized access and use of such Personal Information, Sensitive Personal Information, and other classified Information in their respective custody. Unless otherwise exempted under existing law, the parties are likewise prohibited from further sharing or disclosing such Personal Information, Sensitive Personal Information and other classified information to any unauthorized party without the prior written consent of the originating party or the Data Subjects, as appropriate.

[25] Digests have been reproduced from the BIR website.

Unless applicable laws or regulations allow or require a longer period for retention, the Personal Information, Sensitive Personal Information and other classified information subject of the Agreement shall be kept and retained by the parties so long as may be necessary for the pursuit of their lawful mandate.

Upon termination of the Agreement, the parties shall, upon instruction of the other party, destroy, delete or return to the latter all Personal Information, Sensitive Personal Information, and other classified information that the former received from the latter within thirty (30) days from the effective date of termination, unless the former is mandated or permitted by the applicable law to maintain a copy thereof for a longer period and subject to the internal policy of the BIR on destruction and deletion.

Personal Information, Sensitive Personal Information, and other classified information in the custody of a Party that requires disposal shall be disposed of and/or discarded by such Party in a secure manner that would prevent further processing, unauthorized access, or disclosure to any other person or entity.

Each Party shall comply with the Data Privacy Act of 2012 and all other applicable data protection laws and issuances. The Personal data subject whose right is violated and/or affected may exercise his/her rights provided for by the Data Privacy Act, its Implementing Rules and Regulations (IRR), and other NPC issuances. A copy of the Agreement may be obtained by a Personal data subject from the Office of the DPO of the Parties subject to processes and policies by the Parties governing such request, and prior information to the party. The Parties may redact or prevent the disclosure of any detail or information that could endanger its computer network or system, or expose to harm the integrity, availability, or confidentiality of personal data under its control or custody. Such information may include the program, web services, and encryption method in use.

5. **REVENUE MEMORANDUM CIRCULAR NO. 35-2023** [March 20, 2023] – Clarifies the application of the Eighteen (18)-Month Transitory Period in RA No. 11900, as reiterated in its Implementing Rules and Regulations and RR No. 14-2022.

Section 27 of RA No. 11900[26] provides that the manufacturers, distributors, importers and retailers of vaporized nicotine and non-nicotine products or their devices, and novel tobacco products shall be given an eighteen (18)-month transitory period from the issuance of the implementing rules and regulations to comply with its requirements.

On October 24, 2022, Revenue Regulations (RR) No. 14-2022[27] was issued to implement the provisions of RA No. 11900. It provided, among others, the (i) tax rate and base of excise tax on Novel Tobacco Products' (ii) registration of the business as manufacturer or importer of vaporized nicotine and non-nicotine products and novel tobacco products, including registration of online sellers or distributors; and (iii) registration of brand and variants of vaporized nicotine and non-nicotine products and novel tobacco products.

[26] Vaporized Nicotine and Non-Nicotine Products Regulation Act. R.A. No. 11900 regulates the importation, assembly, manufacture, sale, packaging distribution, use, advertisement, promotion, and sponsorship of vaporized nicotine and non-nicotine products, and their devices, and novel tobacco products. It lapsed into law on July 25, 2022.

[27] RR No. 14-2022, Rules and Regulations Implementing the Provisions of Republic Act No. 11900, Relative to the Importation, Manufacture, Sale, Packaging, Distribution, Use, and Communication of Vaporized Nicotine and Non-Nicotine Products, and Novel Tobacco Products, October24, 2022.

On December 5, 2022, the DTI issued the IRR of RA No. 11900. It was published in the newspapers of general circulation on December 13, 2022. It provides for the requirements pursuant to RA No. 11900 to be followed and observed by the manufacturers, distributors, importers, and retailers of vaporized nicotine and non-nicotine products or their devices, and novel tobacco products.

The BIR has been receiving reports that some taxpayers are using the transitory period in the law to delay compliance with the requirements set for in RA No. 11900, as reiterated in its IRR and RR No. 14-2022. This Circular clarifies that the (18)-month transitory period applies only to the requirements of Product Standards and Product Registration. The rest of the executory provisions of the law, or the other requirements, are effective immediately.

The Product Standard Requirements found in Rule X of the IRR requires that vapor products with nicotine content shall not exceed sixty-five milligrams per milliliter (65mg/ml). On the other hand, the Product Registration Requirement found in Rule XI of the IRR requires all manufacturers and importers of vaporized nicotine and non-nicotine products or their devices, and novel tobacco products to apply for product registration and certification with the Bureau of Philippine Standards (BPS) by submitting information demonstrating conformity with the technical regulations set by the office. Only BPS registered and non-nicotine products, their devices and novel tobacco products with the applicable graphic health warning may be sold to the general public.

Thus, the requirements in RA No. 11900, its IRR and RR No. 14-2022 other than Products Standards and Product Registration shall be effective immediately. Among those important requirements are:

1. Registration with the BIR of the business as manufacturer or importer of vaporized nicotine and non-nicotine products and novel tobacco products, including registration of online sellers or distributors (RR No. 14-2022);
2. Registration with the BIR of brand and variants of vaporized nicotine and non-nicotine products and novel tobacco products (RR No. 14-2022);
3. E-market places, e-commerce platforms, selling facilities embedded in social media websites/applications, and/or other similar platforms shall only allow DTI and BIR duly registered distributors, merchants, or retailers of vaporized nicotine and non-nicotine products, their devices, and novel tobacco products to sell in their website or platform (IRR);
4. For duly registered distributors, merchants, and retailers of vaporized nicotine and non-nicotine products, their devices, and novel tobacco products selling on their own websites and/or selling platforms, the required government certificates and approval shall be posted conspicuously at the landing page of their websites and/or selling platforms (IRR); and
5. Duly registered distributors, merchants, and retailers of vaporized nicotine and non-nicotine products, their devices, and novel tobacco products shall conspicuously post in their brick-and-mortar stores the required government certificates and approvals of the product (IRR).

Non-compliance with the aforesaid requirements and the rest of the requirements in RA No. 11900, its IRR and RR No. 14-2022 shall warrant the imposition of corresponding penalties prescribed therein.

6. **REVENUE MEMORANDUM CIRCULAR NO. 36-2023** [March 20, 2023] – Announces the availability of other registration-related online transactions, functions and features in the BIR Online Registration and Update System (ORUS).

This Circular is issued to announce the availability and implementation of the following registration-related online transactions, functions, and features in the BIR Online Registration and Update System (ORUS) starting March 17, 2023:

1. Online Payment (e-payment) of Annual Registration Fee (RF) for New Business Registrants
2. Online Inquiry of RF Payment for BIR Internal Users
3. Application for Cancellation of Permit to Use (PTU) Loose-leaf and Acknowledgment Certificate (AC) of Computerized Accounting System (CAS)
4. Online Verification of Taxpayer Identification Number (TIN)
5. BIR Registered Business Search Facility.

Taxpayers who already have an existing ORUS account may avail the additional online transactions, functions, and features by logging-in to the system by accessing it through the BIR website (www.bir.gov.ph) under the eServices icon or thru URL https://orus.bir.gov.ph. Those taxpayers who do not have an ORUS account and opted to use the said online registration facility of the BIR are required to enroll or create an account in ORUS following the guidelines prescribed under Revenue Memorandum Circular (RMC) No. 122-2022.

7. **REVENUE MEMORANDUM CIRCULAR NO. 37-2023** [March 21, 2023] – Circularizes CSC Memorandum Circular No. 1, s. 2023 on the 2023 Search for Outstanding Government Workers.

The Civil Service Commission issued CSC Memorandum Circular No. 1, s. 2023 announcing the start of the 2023 Search for Outstanding Government Workers. The Search covers three (3) award categories, namely: the Presidential *Lingkod Bayan* Award, the Outstanding Public Officials and Employees Award (*Dangal ng Bayan*) Awards, and the CSC *Pagasa* Award. Heads of government agencies are enjoined to participate in the Search and nominate the awardees of their Program of Rewards, Awards, and Incentives for Service Excellence (PRAISE) via electronic submission of documentary requirements, to the CSC Regional and/or Field Offices not later than March 31, 2023. The said Circular likewise encourages all officials and employees to support the official CSC social media pages which feature various regular promotional releases relative to the Search.

8. **REVENUE MEMORANDUM CIRCULAR NO. 38-2023** [March 21, 2023] – Circularizes CY 2023 BIR Priority Programs and Projects.

These Priority Programs and Projects for CY 2023, which intend to ensure efficiency and organization of the BIR's effort to improve tax administration and generate revenues, are clustered into the following focus areas:

1. Taxpayer Service Program;
2. Audit and Enforcement Program;
3. Administration and Support Services Program;
4. Transparency and Integrity Program; and
5. BIR Digital Transformation (DX) Program.

As such, all Bureau offices are enjoined to align their operational plans and activities with the said Priority Programs and Projects.

9. REVENUE MEMORANDUM CIRCULAR NO. 39-2023 [March 23, 2023] – Notifies the loss of one (1) set of unused/unissued BIR Form No. 2524 — Revenue Official Receipt.

BIR Form No. 2524—Revenue Official Receipt, with serial number ROR201402010813 was reported lost by Mr. Michael James P. Pantaleon, Revenue Officer I (C), Revenue District Office No. 63, Revenue Region No. 9A, CaBaMiRo, and has consequently been cancelled. All official transactions involving the use of said form are, therefore, considered invalid.

All Internal Revenue officials, employees, and others concerned are requested to notify the BIR in the event that the said form is found, and to take the necessary measures to prevent improper or fraudulent disposition or the use of the same.

10. REVENUE MEMORANDUM CIRCULAR NO. 40-2023 [March 24, 2023] – Announces the availability of the Offline electronic Bureau of Internal Revenue Forms (eBIRForms) Package Version7.9.4.

The new Offline eBIRForms Package now includes the April 2021 version of the following forms:

BIR Form No	Description	Deadline of Filing and Payment
1707	Capital Gains Tax Return (For Onerous Transfer of Shares of Stock Not Traded Through the Local Stock Exchange)	Within thirty (30) days after each cash sale, barter, exchange, or other disposition of shares of stock not traded through the local stock exchange
1707-A	Annual Capital Gains Tax Return (For Onerous Transfer of Shares of Stock Not Traded Through the Local Stock Exchange)	Individual - on or before April 15 of each year covering all stock transactions of the preceding taxable year. Corporation - on or before the fifteenth (15th) day of the fourth (4th) month following the close of the taxpayer's taxable year covering all stock transactions of the preceding taxable year.

The forms above can be downloaded from the following websites:

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

In addition, payment of taxes due thereon, if any, can be made either through:

a. Manual Payment
    1. In any Authorized Agent Bank (AAB) located within the territorial jurisdiction of the Revenue District Office (RDO) where the seller or transferor is required to register.
    2. In places where there are no AABs, the tax return shall be filed and the tax due shall be paid through the concerned Revenue Collection Officer (RCO) under the jurisdiction of the RDO.
b. Online Payment

1. Landbank of the Philippines (LBP) Link.BizPortal - for taxpayers who have LANDBANK/OFBank ATM Card and taxpayer utilizing PCHC PayGate or PESONet facility (depositors of RCBC, Robinsons Bank, Union Bank, BPI, PSBank and Asia United Bank); or
2. Development Bank of the Philippines' (DBP PayTax Online) - for holders of VISA/MasterCard Credit Card and/or BancNet ATM/Debit Card; or
3. Union Bank of the Philippines (UBP) Online/The Portal - for taxpayers who have an account with UBP or Instapay using UPAY Facility for individual non-account holder of Union Bank.

11. REVENUE MEMORANDUM CIRCULAR NO. 41-2023 [March 24, 2023] – Announces the availability of information materials in relation to filing and payment of tax returns and step-by-step guide in filing BIR Forms 1701, 1701A, and 1702-RT.

The revenue memorandum circular provided unique QR Codes as URLs through which information materials on filing and payment of tax returns and the step-bystep guide in filing BIR Form Nos. 1701, 1701A and 1702-RT can be accessed:

1. **Taxpayer's Guide - Filing and Payment of Tax Returns Made Easy** https://www.bir.gov.ph/images/bir_files/downloadables/birfiles/TAXPAPYERS%20GUIDE%20- %20Filing%20Tax%20Returns%20and%20Payment%20of%20Taxes.pdf
2. **Step-by-step Guide in Filing 1701 using eBIRForms** https://www.bir.gov.ph/images/bir_files/downloadables/bir-files/1701.mp4
3. **Step-by-step Guide in Filing 1701A using eBIRForms** https://www.bir.gov.ph/images/bir_files/downloadables/bir-files/1701A.mp4
4. **Step-by-step Guide in Filing 1702-RT using eBIRForms** https://www.bir.gov.ph/images/bir_files/downloadables/bir-files/1702RT.mp4

The said materials are also accessible in the BIR website (https://www.bir.gov.ph).

12. REVENUE MEMORANDUM CIRCULAR NO. 42-2023 [April 4, 2023] – Publishes the full text of the Letter from the Food and Drug Administration (FDA) of the Department of Health (DOH) endorsing updates to the list of VAT-exempt products under Republic Act (R.A) No. 10963 (TRAIN Law) and R.A. No. 11534 (CREATE Act).

This Circular updates the list of VAT-Exempt drugs for the following:

1. Cancer;
2. Diabetes;
3. Kidney diseases;
4. Mental Illness;
5. Tuberculosis;
6. High cholesterol; and
7. Hypertension.