TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

TAX UPDATES FROM May 16, 2023 TO June 15, 2023

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DECISION / ISSUANCE	DATE ISSUED	SUBJECT	PAGE NO.
SUPREME COURT ("SC") DECISIONS			
1. None	None	None	
COURT OF TAX APPEALS ("CTA") DECISIONS			
1. Commissioner of Internal Revenue v. CBK Power Company Limited; CTA EB Case no. 2600	June 14, 2023	The CTA En banc applied the Supreme Court decision on the Chevron case, i.e., with respect to input taxes attributable to zero-rated sales, it is the taxpayer (and not the Court) who is given the option to either: 1. Charge a portion of its input taxes attributable to zero-rated sales to the output taxes, and refund the balance, if any; or 2. Refund all the input taxes attributable to zero-rated sales.	**5**
2. Croma Medic, Inc. v. CIR; CTA EB No. 2213	June 13, 2023	The CTA in Division denied the petition for review, which dismissed the claim for refund of overpaid final withholding tax on dividend income, invoking the Philippines-Germany treaty. The Court en banc denied the petition for review and affirmed the decision of the Court in division on the ground that the petitioner failed to establish its qualification as a tax resident of Germany under the Philippines- Germany treaty.	**6**
3. Dole Philippines, Inc. v. Commissioner of Internal Revenue; Case 10212	June 13, 2023	An applicant for a tax refund or tax credit must not only prove entitlement to the claim but also comply with all the documentary and evidentiary requirements, such as VAT invoicing requirements provided by tax laws and regulations.	**7**
4. Commissioner of Internal Revenue v. Axelum Resources Corporation; Case EB 2561	June 13, 2023	The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part adopt such findings and conclusions subject to verification.	**8**
5. Aecom Philippines, Inc. v. CIR; CTA EB No. 2653	June 7, 2023	Tax refunds or credits, just like tax exemptions, are strictly construed against the claimant, the latter has the burden to prove strict compliance with the conditions for the grant of the tax refund or credit. The claimant should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to Court. Among other requirements, the claimant should be able to prove that the income upon which the alleged excess and unutilized CWTs were withheld were included as part of its gross income.	**9**
6. CIR v. Maersk Global Services Centres (Philippines) Ltd.;	June 7, 2023	Notwithstanding a finding by the CTA En Banc that the CTA Division did not acquire jurisdiction over the claim for VAT refund, the	**9**

	CTA EB Case Nos. 2534 and 2554		decision of the CTA Division partially granting the claim for VAT refund was nonetheless confirmed considering that the required affirmative votes of at least five (5) members of the Court En Banc to reverse a decision of a Division, pursuant to Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals, was not met.	
7.	Commissioner of Internal Revenue v. Petron Corporation; Case EB 2593.	Jun 06,2023	Alkalyte is not of the same class or kind as gasoline and naphtha and cannot be contemplated by the words “other similar products of distillation” under Section 148 (e) of the NIRC of 1997, as amended. What is being taxed under Section 148 (e) of the NIRC are “naphtha, gasoline and other similar products of distillation” and not the ingredients or raw materials to produce them.	**10**
8.	EDC Burgos Wind Power Corporation v. CIR; CTA EB No. 2548.	June 2, 2023	To avail of the incentive of VAT zero-rating on the sale of fuel or power generated from renewable sources of energy, including biomass, all certifications must be obtained by the concerned RE Developer from the DOE, through its Renewable Energy Management Bureau. Moreover, it is likewise clear that the issuance of the certification issued by the DOE in favor of any RE developer is still "without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned."	**11**
9.	Commissioner on Elections v. Commissioner of Internal Revenue; CTA EB Case No. 10245.	Jun 2, 2023	The right of a taxpayer to answer the PAN carries with it the correlative duty on the part of the BIR to consider the response to it; and, the issuance of the FAN without even hearing the side of the taxpayer is considered a violation of due process.	**11**
10.	Commissioner of Internal Revenue vs. Flour Daniel, Inc.; CTA EB Case No. 2567	Jun 1, 2023	a. The CTA, as an appellate court, it is undoubtedly clothed with ample authority to review rulings even if they are not assigned as errors in the appeal. b. The invalidity of the FDDA does not affect the validity of the final assessment since what is appealable to the CTA is the "decision" of the CIR on disputed assessment and not the assessment itself.	**13**
11.	North Luzon Renewable Energy Corp. v. Commissioner of Internal Revenue; Case EB 2574.	June 1, 2023	A Certificate of Endorsement (COE) issued by the Department of Energy (DOE) is not necessary in a claim for refund of excess input tax arising from zero-rated sales under Section 15 (g) of RA No. 9513 or the RE Developer’s incentive on VAT zero-rating. Moreover, the requirement of the EPIRA to secure a Certificate of Compliance (COC) from the Energy Regulatory Commission (ERC) does not apply when a VAT refund claim is anchored on Section 15 (g) of RA 9513, in relation to Section 108 (B) (7) of the NIRC of 1997, as amended, and not on the EPIRA.	**14**
12.	Oceanagold (Philippines), Inc. v. Commissioner of Internal Revenue; Case 10183	June 1, 2023	Sections 204 and 229 of the NIRC of 1997, as amended, are clear that within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with the CIR before filing its judicial claim with the CTA. Both claims must be filed within the two (2)-	**15**

		year reglementary period. Thus, cases which sprang from the inaction of the CIR to the claim of refund are within the CTA's jurisdiction.	
13. Philippine Airlines, Inc. v. Commissioner of Internal Revenue; Case 103101	May 30,2023	For claims of tax refund, it is clear that within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Moreover, the recovery of taxes under shall only be due to erroneously or illegally collected taxes. In other words, what can be refunded or credited is a tax that is erroneously, illegally, excessively or in any manner wrongfully collected. There must be a wrongful payment because what is paid, or part of it, is not legally due.	**16**
14. Bloomberry Resorts Corporation V Commissioner of Internal Revenue; CTA CASE NO. 10193	May 29, 2023	All loan agreements, whether made or signed in the Philippines or abroad, when the obligation or right arises from Philippine sources or the property or object of the contract is located in the Philippines, shall be subject to the payment of DST.	**17**
REVENUE REGULATIONS ("RRs")			
1. RR No. 6-2023	June 13, 2023	Amends certain provisions of RR No. 13-2010 regarding Late/Out-of-District filing of Tax Returns.	**17**
REVENUE MEMORANDUM CIRCULARS ("RMCs")			
1. RMC No. 68-2023	June 13, 2023	Further clarifies imported goods that will no longer require the issuance of "Authority to Release Imported Goods" by the BIR prior to the release by the Bureau of Customs.	**18**
2. RMC No. 66-2023	June 9, 2023	Circularizes the criminal penalties for violation of provisions of Republic Act (RA) No. 10173 (Data Privacy Act of 2012) and administrative penalties for violation of Information and Communication Technology (ICT) Security Infrastructure System under Revenue Memorandum Order (RMO) No. 67-2010.	**19**
3. RMC No. 65-2023	June 08, 2023	Further amends Item VIII of the RMC No. 19-2022 dated February 4, 2022 regarding the venue for the issuance of Certificate Authorizing Registration (CAR) pursuant to the tax-free reorganization/exchange of properties under Sec. 40(C)(2) of the NIRC of 1997, as amended.	**20**
4. RMC No. 63-2023	May 31, 2023	Revokes and invalidates BIR Ruling Nos. 038-2001 and 046-1995, which ruled that Clark Development Corporation (CDC) is considered as a business enterprise because it was formed in accordance with the Philippine Corporation Law and existing rules and regulations promulgated by the Securities and Exchange Commission (SEC) and is performing activities that are proprietary in nature.	**21**
5. RMC No. 62-2023	May 29, 2023	Announces the availability of BIR Form Nos. 1604-C, 1604-E, 1604-F and 0620 in the Electronic Filing and Payment System (eFPS).	**21**
6. RMC No. 61-2023	May 24, 2023	Clarifies the procedures in the processing of taxpayer's request for stamping of Income Tax Returns/Annual Income Tax Returns (ITRs/AITRs) electronically filed through eBIR Forms.	**22**

7. RMC No. 60 – 2023	May 19, 2023	Circularizes the availability of the Enhanced BIR Registration Forms Relative to the Implementation of Ease of Doing Business and Efficient Government Service Delivery Act of 2018.	**22**
8. RMC No. 59-2023	May 19, 2023	Announces the availability of the revised BIR Form No. 2550Q [Quarterly Value-Added Tax (VAT) Return] January 2023 (ENCS).	**23**
9. RMC No. 58-2023	May 19, 2023	Clarifies the policies and guidelines on the issuance and validity of Taxpayer Identification Number (TIN) Card and Certificate of Registration (COR).	**24**
10. RMC No. 56-2023	May 19, 2023	Encourages taxpayers to use the Electronic One-Time Transactions (eONETT) System in the filing and payment of ONETT related returns and taxes.	**24**
11. RMC No. 55-2023	May 17, 2023	Circularizes the Veto Message of President Rodrigo Roa Duterte to the House of Representatives on Republic Act No. 11467.	**25**
12. RMC No. 54-2023	May 16, 2023	Announces the availability of the revised BIR Form No. 2200-T [Excise Tax Return for Tobacco, Heated Tobacco, Vapor and Novel Tobacco Products] August 2022 (ENCS).	**25**

DISCUSSION

A. SUPREME COURT DECISIONS

1. NONE

B. COURT OF TAX APPEALS DECISIONS

1. Commissioner of Internal Revenue v. CBK Power Company Limited; CTA EB Case no. 2600; June 14, 2023.

It is the taxpayer (and not the Court) who is given the option to either: 1. Charge a portion of its input taxes attributable to zero-rated sales to the output taxes, and refund the balance, if any; or 2. Refund all the input taxes attributable to zero-rated sales.

The Court in Division found that the input taxes attributable to valid zero-rated sales/receipts, which were not applied against output taxes during and in the subsequent quarters, amounted only to P37,901,257.45. Hence, it partially granted respondent's claim and ordered petitioner to issue a TCC in favor of respondent in the amount of P37,901,257.45,

However, considering the Supreme Court's ruling in the Chevron Holdings, Inc. v. CIR, the Court in Division's computation needs revisiting. In Chevron, the Supreme Court stated:

> "It must be stressed that the taxpayer can charge its input tax only against its output tax. The taxpayer cannot ask for a refund of or credit against its other internal revenue tax liabilities the "excess" input tax because the tax is not an excessively collected tax under Section 229 of the Tax Code. And, even if the "excess" input tax is in fact "excessively" collected, the person who can file the judicial claim for refund is the person legally liable to pay the input tax, not the person to whom the tax was passed on as part of the purchase price. The taxpayer will be entitled to the refund or tax credit of the "excess" and unused input tax only when its VAT registration is cancelled.
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> This rule, however, is not absolute. Sections 110 (B) and112 (A) of the Tax Code read in part below:
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> Thus, the input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety. It must be stressed that the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative. Furthermore, the option is vested with the taxpayer-claimant. It goes without saying that the CTA, and even the Court, may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund. The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of "excess" creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence.

In other words, with respect to its input taxes attributable to zero-rated sales, it is the taxpayer (and not the Court) who is given the option to either:

1. *Charge* a portion of its input taxes attributable to zero- rated sales to the output taxes, and refund the balance, if any; or,

2. *Refund* all of the input taxes attributable to zero-rated sales.

2. Croma Medic, Inc. v. Commissioner of Internal Revenue; CTA EB No. 2213; June 13, 2023.

The CTA in Division denied the petition for review, which dismissed the claim for refund of overpaid final withholding tax on dividend income, invoking the Philippines-Germany treaty. The Court en banc denied the petition for review and affirmed the decision of the Court in division on the ground that the petitioner failed to establish its qualification as a tax resident of Germany under the Philippines-Germany treaty.

Petitioner allegedly declared a cash dividend of Php32,000,000.00 in favor of its parent company (BEPHA.). Acting as a withholding agent, petitioner withheld therefrom the amount of Php3,200,000.00 as 10% final withholding tax.

BEPHA later notified petitioner that a tax treaty between the Philippines and Germany imposes only a 5% preferential tax on dividends. Petitioner allegedly verified BEPHA's notification with the BIR Records and Management Division and confirmed the existence of a *Double Taxation Avoidance Agreement between the Philippines and Germany* (Philippines-Germany Tax Treaty), as amended. Consequently, on 18 April 2016, petitioner filed with RDO No. 048 - West Makati its *Revised* BIR Form No. 1601- to reflect the amount of Pl,600,000.00, representing the 5% FWT on dividends under the Philippines-Germany Tax Treaty. On even date, petitioner also filed an administrative claim for refund for overpayment in the amount of Php1,600,000.00 and RDO No. 048 - West Makati acknowledged receipt of the same on 16 May 2016.

Thereafter, on 03 June 2016, petitioner filed a Tax Treaty Relief Application **(TTRA)** for Dividend Income (BIR Form No.0901-D) with the BIR International Tax Affairs Division **(ITAD).**

With respondent's inaction on its administrative claim for refund, petitioner elevated the matter to the Court in Division by filing its prior Petition for Review on 03 May 2017. The Special Second Division of the Court of Tax Appeals denied the petition on the ground of insufficiency of evidence to support petitioner's claim for refund. Aggrieved, the petitioner filed herein petition for review to the Court en banc and raised the following issue, among others:

> THE COURT OF TAX APPEALS - SPECIAL SECOND DIVISION SERIOUSLY ERRED IN FINDING THAT PETITIONER CROMA MEDIC, INC. IS NOT ENTITLED TO A REFUND IN THE AMOUNT OF P1,600,000.00 NOTWITHSTANDING THAT IT HAS PROVED AND ESTABLISHED FACTS EVIDENCING THE OVERPAYMENT OF FINAL CREDITABLE WITHHOLDING TAX.

Prior to determination of the petitioner's entitlement to the claim tax refund which arose from the preferential treaty rate, the Court En banc, deemed it necessary to pass-upon the applicability of the Philippines-Germany treaty to the dividend payment, to wit:

> "Nevertheless, for clarity, the Court *En Banc* shall pass upon petitioner's arguments to determine whether there is basis to apply the 5% preferential tax rate under the Philippines-Germany Tax Treaty,

> and consequently, grant its claim for refund. The Court en banc has determined that the petitioner failed to prove that the beneficial owner of the dividends is a non-resident foreign corporation (NRFC) entitled to the avail of the preferential tax rates under the Philippines-Germany Tax Treaty."

While petitioner, a domestic corporation, was able to prove that its parent company and controlling stockholder, BEPHA, owns 99,99993% (virtually 100%) of its common shares' and thus, may also be considered as the beneficial owner of the dividends it declared pertinent to the said shares, it nevertheless failed to prove that BEPHA is a resident of Germany.

It is clear from Article 10 of the Philippines-Germany Tax Treaty that for the preferential tax rates to apply, the subject dividends must be paid to a resident of the other Contracting State which, in this case, is Germany. Relative thereto, Article 1 of the said tax treaty is explicit that the same shall apply to residents of the Philippines or Germany, or both.

Unfortunately for petitioner, based on the admitted evidence, there is no indication that BEPHA is a resident of Germany or subject to tax in Germany based on various criteria such as domicile, residence, place of head or main office, place of incorporation or those of similar nature. This is because petitioner did not offer in evidence either BEPHA's Proof of Residency or AOL. It relied solely on its GIS declaration that BEPHA's nationality is German. Contrary to the Special Second Division's finding, petitioner's GIS and the unrebutted testimony of petitioner's lone witness, Ocampo, indicating that BEPHA is a German company, do not suffice to establish that BEPHA is a resident of Germany; if anything, these are merely self-serving.

Clearly, with the foregoing, there is no sufficient evidence to establish that the beneficial owner, BEPHA, is an NRFC entitled to avail of the preferential tax rates under the Philippines-Germany Tax Treaty. Consequently, the Court shall apply the normal rate of 30%, as provided in Section 28(B)(1) and (5)(b) of the NIRC of 1997, as amended, as to dividends paid to BEPHA.

3. Dole Philippines, Inc. v. Commissioner of Internal Revenue; Case 10212; June 13, 2023.

An applicant for a tax refund or tax credit must not only prove entitlement to the claim but also comply with all the documentary and evidentiary requirements, such as VAT invoicing requirements provided by tax laws and regulations.

Petition for Review filed by Dole Philippines Inc. (DOLE) against the CIR praying for the refund of the denied portion of its claim for refund of unutilized input VAT attributable to zero-rated sales.

DOLE argues that it is a VAT-registered taxpayer whose sales are entitled to VAT zero-rating citing Section 106(A)(2)(a) of the National Internal Revenue Code of 1997, as amended, (NIRC) as the legal basis for its zero-rating. It states that the CIR erred in imputing output VAT from its zero-rated sales to Board of Investments, Subic Bay Metropolitan Authority, and Clark Development Corporation enterprises as they are allegedly properly classified as zero-rated sales under Revenue Regulations No. 16-2005, as amended.

CIR argues that DOLE failed to comply with the mandatory requirements for claiming a refund or tax credit.

An applicant for a tax refund or tax credit must not only prove entitlement to the claim but also comply with all the documentary and evidentiary requirements, such as VAT invoicing

requirements provided by tax laws and regulations. Well settled is the rule that tax refunds or credits are strictly construed against the taxpayer, just like tax exemptions. However, once the requirements laid down by the NIRC have been met, a claimant should be considered successful in discharging its burden of proving its right to refund. Thereafter, the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party, the CIR. It is then the turn of the latter to disprove the claim by presenting contrary evidence.

Wherefore, the Petition for Review is partially granted. CIR is ordered to refund or issue tax credit certificate in favor of DOLE in the additional amount of Php123,351,829.83, representing DOLE's excess and unutilized input VAT attributable to its zero-rated sales for the first and fourth quarters of fiscal year ending March 2018.

4. Commissioner of Internal Revenue v. Axelum Resources Corporation; Case EB 2561; June 13, 2023.

The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part adopt such findings and conclusions subject to verification.

Application for tax credit/refund of input VAT filed by Axelum resulting in a partial refund granted by the Court in Division. The CIR filed a Petition for Review with the Court En Banc arguing that the Court in Division erred in relying on the ICPA report.

Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals provides that the findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part adopt such findings and conclusions subject to verification.

Indeed, the findings and conclusions of the ICPA are recommendatory. However, upon validation thereof, the Court may totally or partially adopt said findings and conclusions.

As exhaustively discussed in the challenged Resolution, the Court notes that CIR's arguments in the subject Motion are a mere rehash of the points raised in his memorandum. Axelum submitted the required supporting documents for its local purchase of goods and services and CIR failed to refute the evidence submitted by Axelum. Also, per BIR records, Axelum submitted the complete documents. A bulk of Axelum's input taxes on local purchases of goods and services comes from its acquisitions of assets classified as projects in progress. The same were found by the ICPA and the Court as partially supported by official receipts; invoices stamped with "Bureau of Internal Revenue, VAT Credit Audit Division, VAT Refund Claimed"; and Deeds of Sale, which includes a schedule of the projects, their description and corresponding amounts.

The BIR's Revised Checklist of Mandatory Requirements for Claims for VAT Refund shows that Axelum is "Complete as to Requirements," particularly on the local purchases of goods and services since a check mark has been indicated before every item therein.

Therefore, the Court may not be faulted for relying on the ICPA Report. Wherefore, the Petition for Review by the CIR is denied for lack of merit.

5. **Aecom Philippines, Inc. v. Commissioner of Internal Revenue; CTA EB No. 2653; June 7, 2023**

Tax refunds or credits, just like tax exemptions, are strictly construed against the claimant, the latter has the burden to prove strict compliance with the conditions for the grant of the tax refund or credit. The claimant should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to Court. Among other requirements, the claimant should be able to prove that the income upon which the alleged excess and unutilized CWTs were withheld were included as part of its gross income.

The CTA found that, in relation to Aecom Philippines, Inc.'s (Aecom) claim for refund of its excess unutilized CWTs for the fiscal year (FY) 2016, Aecom failed to show that its income upon which taxes were withheld was included as part of the gross income declared in its income tax returns.

The CTA held that Aecom's income payments could not be traced to the Annual ITR due to lack of supporting documents. In an attempt to show that the income payments were declared in the Amended Annual ITR, Aecom presented a Tax Recovery General Ledger Account and Project Performance Report (PPR) for FY 2016. However, no amount of income payment was reflected in the Tax Recovery General Ledger Account instead only the amounts of CWTs sourced from FY 2016 were indicated therein. Moreover, the Project Performance Report for FY 2016 does not show the name of petitioner's income payors, the amounts of income payment and the CWTs. These documents, taken together, were not sufficient to prove that the total income recorded per Aecom's books tallies with or were the same income that is reflected in its Amended Annual ITR for FY 2016.

Even the tracing procedure of Aecom's income in its PPR for FYs 2014, 2015 and 2016 did not convince the CTA. The tracing procedure was not able to prove that the gross income payments on which the subject withholding taxes were made certainly formed part of the gross income. The Year-to-Date Gross Revenue (YTD GR) for FY2016 per PPR does not match the gross income for FY 2016 nor at least the net sales/revenues/receipts/fees as reported in Aecom's AFS for FY2016.

Anent the timing difference allegedly caused by the use of the percentage of completion method of recognizing revenue, Aecom failed to point out the exact years when the respective incomes were reported. Aecom did not offer in evidence the AFS and Annual ITR of FYs other than that for 2016 and 2017 to show that the gross income in such other periods contained the timing difference being alleged.

Accordingly, the failure to prove that the income upon which the withholding was made formed part of its gross income declared in its return is fatal to Aecom's claim.

6. **CIR v. Maersk Global Services Centres (Philippines) Ltd.; CTA EB Case Nos. 2534 and 2554; June 7, 2023**

Notwithstanding a finding by the CTA En Banc that the CTA Division did not acquire jurisdiction over the claim for VAT refund, the decision of the CTA Division partially granting the claim for VAT refund was nonetheless confirmed considering that the required affirmative votes of at least five (5) members of the Court En Banc to reverse a decision of a Division, pursuant to Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals, was not met.

In finding that the CTA 3rd Division did not acquire jurisdiction over the judicial claim for VAT refund of Maersk Global Services Centres (Philippines) Ltd. (Maersk), the CTA En Banc reiterated the Supreme Court's pronouncements in various cases regarding the rules on judicial claims for refund or tax credit of input VAT.

The period for filing a judicial claim for the refund or tax credit of alleged excess or unutilized input VAT, as follows: (i) the period of ninety (90) days which serves as a period for the CIR to act on the administrative claim for refund or credit; and (ii) the thirty (30)-day period within which the taxpayer may file its judicial claim with the CTA. Taxpayers are reminded that when the 90-day period lapses and there is inaction on the part of the CIR, the taxpayer must no longer wait for the CIR to come up with a decision thereafter. The CIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 90-day waiting period. Any claim filed in a period less than or beyond the 90+30 days provided by the NIRC is outside the jurisdiction of the CTA. Claims for tax credit or refund, are strictly construed against the taxpayer. Thus, strict compliance with the 90+30-day period is necessary for such claim to prosper. Clearly, the CTA 3rd Division had no jurisdiction over the judicial claim.

However, notwithstanding the finding of the CTA 3rd Division's lack of jurisdiction, the CTA En Banc has emphasized the requirement under Republic Act (RA) No. 1125, as amended, and the Revised Rules of the Court of Tax Appeals (RRCTA) for the reversal of a decision of a Division. Section 2 of RA No. 1125, as amended, provides that the affirmative vote of five (5) members of the Court En Banc shall be necessary to reverse a decision of a Division. Likewise, Section 3, Rule 2 of the RRCTA states that the presence at the deliberation and the affirmative votes of at 5 members of the Court En Banc shall be necessary to reverse a decision of a Division. Where the necessary majority vote cannot be had in appealed cases, the judgment or order appealed from shall stand affirmed.

Consequently, considering that the required affirmative votes of 5 members of the Court En Banc was not obtained, the Petitions for Review filed by the CIR and Maersk were denied. The CTA 3rd Division's decision of partially granting Maersk's claim for refund of input VAT for the calendar year 2016 was affirmed.

7. Commissioner of Internal Revenue v. Petron Corporation; Case EB 2593; June 06, 2023.

Alkalyte is not of the same class or kind as gasoline and naphtha and cannot be contemplated by the words "*other similar products of distillation"* under Section 148 (e) of the NIRC of 1997, as amended. What is being taxed under Section 148 (e) of the NIRC are "naphtha, gasoline and other similar products of distillation" and not the ingredients or raw materials to produce them.

Petron filed three separate administrative claims for refund of excise taxes imposed on its importations of alkalyte. Petron then subsequently filed three separate judicial claims of refund with the Court of Tax Appeals (CTA), which cases were eventually consolidated into a single case. The CTA 1st Division granted Petron's tax refund claim of excise taxes on the importation of alkalytes. The Motion for Reconsideration filed by the CIR and Petron's Motion for Entry of Judgment were likewise denied by the CTA 1st Division. The CIR then filed the present Petition for Review with the CTA En Banc.

The CTA En Banc held that it was established that alkalyte is not a primary product of distillation. Alkalyte is not of the same class or kind as gasoline and naphtha and cannot be contemplated by the words "*other similar products of distillation"* under Section 148 (e) of the NIRC of 1997, as amended. What is being taxed under Section 148 (e) of the NIRC are "naphtha, gasoline and other similar products of distillation" and not the ingredients or raw materials to produce them.

Based on the principle of ejusdem generis, it is proper to construe the phrase "other similar products of distillation", in relation to the same class where "naphtha' and "regular gasoline" belong.

Accordingly, the Court En Banc agreed with the CTA 1st Division and ruled that the taxpayer-claimant's alkylate importations for the period of January 2016, April2016 and July 2016 are not subject to excise tax pursuant to Section 148(e) of the NIRC of 1997, as amended.

8. EDC Burgos Wind Power Corporation vs. CIR; CTA EB No. 2548; June 2, 2023.

To avail of the incentive of VAT zero-rating on the sale of fuel or power generated from renewable sources of energy, including biomass, all certifications must be obtained by the concerned RE Developer from the DOE, through its Renewable Energy Management Bureau. Moreover, it is likewise clear that the issuance of the certification issued by the DOE in favor of any RE developer is still "without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned."

EDC Burgos Wind Power Corporation filed with the BIR an Application for Tax Credits/Refunds requesting for the refund of or issuance of tax credit certificate for its alleged excess and unutilized input VAT for the period covering January 1, 2014 to June 30, 2014. The Assistant Commissioner for Large Taxpayers Service of the BIR, denied the abovementioned administrative claim for refund supposedly because no zero-rated sales were made during the periods covered by the claim for tax refund. The CTA 3rd Division both denied the judicial claim for refund and the Motion for Reconsideration subsequently filed by taxpayer-claimant.

To avail of the incentive of VAT zero-rating on the sale of fuel or power generated from renewable sources of energy, including biomass, all certifications must be obtained by the concerned RE Developer from the DOE, through its Renewable Energy Management Bureau. Moreover, it is likewise clear that the issuance of the certification issued by the DOE in favor of any RE developer is still "without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned."

The provisions of Section 15(g) of RA No. 9513 and Section 108(B)(7) of the Tax Code relevant to the VAT zero-rating granted to RE developers must be linked to RA No. 9136, which clearly provides that for a sale of power generated through renewable sources of energy to be considered as a VAT zero-rated sale under Section 108 (B) (7) of the 1997 NIRC, as amended, the said generation company must be so authorized by the ERC to operate facilities used in the generation of electricity.

Considering that the petitioner is into power generation, then the requisites of the EPIRA law, i.e., COC, must also be complied with. It is clear from the foregoing provisions that power generation companies must secure a COC from the ERC prior to its operations to categorize the corresponding sales as VAT zero-rated. Simply put, a renewable energy developer which generates power and sells the same is required to secure a COC from the ERC.

9. Commissioner on Elections vs. Commissioner of Internal Revenue; CTA EB Case No. 10245; June 2, 2023.

a) The Court of Tax Appeals may consider issues not initially raised or assigned as an error if the consideration thereof is necessary in arriving at a just and complete resolution of the case.

The CTA held that as an appellate court, it is undoubtedly clothed with ample authority to review rulings even if they are not assigned as errors in the appeal. This is supported by Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as amended, which states:

> SECTION 1. - *Rendition of judgment*- xxx
>
> In deciding a case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."

This was confirmed by the Supreme Court when it ruled in CIR vs Lancaster Philippines, Inc.:

> "on whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative."

This decision was confirmed in Comilang vs. Burcena, where the SC held that:

> "once a court acquires jurisdiction over a case, it has wide discretion to look upon matters which, although not raised as an issue, would give life and meaning to the law".

Thus, even if the issue of whether the COMELEC was denied due process in the issuance of the subject FDDA was not specifically raised or assigned as an error in the present case, the consideration thereof can still be made by the CTA since it is necessary in arriving at a just and complete resolution of the case.

b) The invalidity of the FDDA does not affect the validity of FLD or the FAN

Section 228 of the NIRC of 1997 explicitly requires that the taxpayer be informed in writing of the law and of the facts on which the assessment is made; otherwise, the assessment shall be void. The requirement that the taxpayer must be informed of the factual and legal bases of the assessment is mandatory. It cannot be presumed. As a requirement of due process, this rule allows the taxpayer to make an effective protest. This was affirmed by the Supreme Court when it ruled in the Avon Case that, "tax assessments issued in violation of the due process rights of a taxpayer are null and void".

Failure in complying with the above due process requirements will lead to an invalid FDDA.

However, the Supreme Court in the case of Commissioner of Internal Revenue v. Liquigaz Philippines Corporation, it was ruled that, the invalidity of the FDDA does not affect the validity of the final assessment since what is appealable to the CTA is the "decision" of the CIR on disputed assessment and not the assessment itself. An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or. fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.

Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other-unless the law or regulations otherwise provide.

10. Commissioner of Internal Revenue vs. Flour Daniel, Inc., CTA EB Case No. 2567; June 1, 2023.

The BIR's disregard of due process standards and rules and its failure to sufficiently inform response for his conclusions renders void and unenforceable its deficiency tax assessment and compromise penalty against the taxpayer.

Respondent, Flour Daniel was issued a Preliminary Assessment Notice by the BIR, with Details of Discrepancy. Respondent then filed a request for reconsideration of the PAN. Four (4) days after the filing of the request for reconsideration, Respondent received a FLD, with attached FAN and Details of Discrepancies, issued by the BIR-LTS.

Subsequently, Respondent filed with the BIR-LTS, a request for reconsideration of the FLO/FAN, and prayed for the cancellation and withdrawal of assessments for deficiency VAT, and the corresponding compromise penalty. The BIR failed to act in the request within the 180-day period, thus, Flour Daniel was constrained to file a Petition of Review with the CTA.

The CTA, in Division, ruled in favor of the Respondent stating that in issuing the FLD with FAN, the BIR never addressed or delved into the arguments raised by respondent in its request for reconsideration of the PAN. This was clear when the BIR issued a FAN, a complete replica of the PAN, without explaining the demerits of Respondent's contentions. According to the Court, the right of a taxpayer to answer the PAN carries with it the correlative duty on the part of the BIR to consider the response to it and the issuance of the FAN without even hearing the side of the taxpayer is anathema to the cardinal principles of due process.

Not happy with the decision, the BIR moved for reconsideration but such was denied. Undeterred, Petitioner filed the instant Petition for Review before the Court En Banc.

Petitioner maintains that he observed procedural and substantial due process in issuing the subject assessment. According to Petitioner, an administrative protest on the PAN has no real consequences, and failure to consider the protest is not a violation of Respondent's right to due process. Moreover, Petitioner claims that the right to due process in administrative proceedings merely requires notice and an opportunity to be heard, which Respondent was duly afforded.

The Court En Banc, citing Section 228 of the NIRC of 1997, in relation to Revenue Regulations (RR) No. 12-99, as amended, held that the BIR is mandated to inform the taxpayer in writing of the law and the facts on which the assessment is made and prescribes that the FLD /FAN must state, among others, the facts and the law on which the assessment is based as part of due process in the issuance of tax assessments; otherwise, the FLD/FAN shall be void.

The use of the word 'shall' in Section 228 of the NIRC of 1997, as amended, and in RR No. 12-99 indicates the requirement of informing the taxpayers of the legal and factual bases of the assessment and the decision made against them is mandatory. This is an essential requirement of due process and applies to the PAN, FLD with FAN, and the Final Decision on Disputed Assessment (FDDA).

In addition, the Supreme Court in several rulings, has consistently nullified FLDs/FANs that were issued in violation of the taxpayer's right to due process stating that a fair and reasonable opportunity to explain one's side" is one aspect of due process. Another aspect is the due consideration given by the decision-maker to the arguments and evidence submitted by the affected party.

Administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to

explain or defend itself. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions.

In the case at bar, Respondent filed its request for reconsideration of the PAN, addressing the findings in the PAN. It explained every line item/finding of the BIR and endeavored to refute the alleged deficiency assessments as devoid of any legal or factual bases. Just four (4) days from filing Respondent's request for reconsideration of the PAN, the BIR issued the subject FLD/FANs. The FLD/FANs contained the same issues and amount of deficiency taxes stated in the PAN. Moreover, in issuing the FLD/FANs, the BIR never addressed or even cited the arguments raised by respondent in its request for reconsideration of the PAN.

The fatal infirmity that attended the issuance of FLD/FANs is the fact that the BIR gave no reason for rejecting the explanations and defenses made by respondent in its request for reconsideration to the PAN. It must be stressed that "administrative due process is anchored on fairness and equity in procedure. It is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself. Moreover, it demands that the party's defenses be considered by the administrative body in making its conclusions, and that the party be sufficiently informed of the reasons for its conclusions."

A review of the PAN and FLD/FANs shows they are identical. The BIR merely reiterated its findings in the PAN.

Notably, this points the Court to the conclusion that petitioner failed to consider respondent's arguments in its request for reconsideration of the PAN and gave no reason for rejecting the explanations and defenses made by respondent in its request for reconsideration to the PAN, as the assessed amounts and the Details of Discrepancies in the FLD are replicas of those in the PAN.

Indeed, the Commissioner is not obliged to accept taxpayers' explanations; however, when he or she rejects these explanations, he or she must give some reason for doing so. He or she must give the particular facts upon which his or her conclusions are based, and those facts must appear in the record.

The right to be heard, which includes the right to present evidence, is meaningless if the Commissioner can simply ignore the evidence without reason. Petitioner's disregard of the due process standards and rules under RR No. 12-99, as amended, and his failure to sufficiently inform respondent of the reasons for his conclusions in the FLD /FAN under Section 228 of the 1997 NIRC, as amended, render the same null and void.

Given the foregoing, the Court En Banc is one with the Court in Division in holding that respondent's right to due process was violated by petitioner. Due to such violation, the deficiency VAT assessment and compromise penalty are rendered void and could not be enforced against respondent.

11. North Luzon Renewable Energy corp. vs. Commissioner of Internal Revenue; Case EB 2574; June 1, 2023.

The CTA in Division denied North Luzon Renewable Energy Corp.'s (NLREC) claim for refund of excess input tax even because NLREC failed to show that the Department of Energy ("DOE") had issued it a Certificate of Endorsement ("COE"). The CTA En Banc reversed and set aside the decision of the CTA in Division by ruling that a COE issued by the DOE is not necessary to qualify for the VAT zero-rating incentive under Section 108 (B) (7) of the NIRC of 1997, in relation to Section 15 (g) of Republic Act 9513, otherwise known as the Renewable Energy Act of 2008.

According to the Court En Banc, the submission of COE is necessary only when an RE Developer intends to avail of the incentive of duty-free importation of RE machinery equipment and materials, as provided in Section 15 (b) of RA No. 9513. In other words, the DOE endorsement is required for duty-free importations of RE machinery, equipment, materials and spare sparts to the RE Developer/Operator, as well as before any sale, transfer or disposition of the imported equipment, machinery, or spare parts is made. In contrast, the said endorsement is not necessary under Section 15 (g) of RA No. 9513 or the RE Developer's incentive on VAT zero-rating.

As an RE Developer, NLREC must only present its DOE and BOI registration certificates to be entitled to zero-rating under RR No. 7-2022. NLREC is not bound to submit the DOE endorsement. Moreover, the CTA En Banc also ruled that furnishing a Certificate of ITH Entitlement is not applicable to a claim for VAT refund.

In addition, the CTA En Banc ruled that NLREC cannot be required to comply with the requirements of the EPIRA and the related provisions of RR No. 16-2005, particularly to secure a Certificate of Compliance (COC) from the Energy Regulatory Commission (ERC) to be entitled to VAT zero-rating on its sale of energy generated from renewable sources because its VAT refund claim is anchored on Section 15 (g) of RA 9513, in relation to Section 108 (B) (7) of the NIRC of 1997, as amended, and not on the EPIRA.

12. Oceana Gold (Philippines) Inc. vs. Commissioner of Internal Revenue; Case 10183; June 1, 2023.

Sections 204 and 229 of the NIRC of 1997, as amended, are clear that within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with the CIR before filing its judicial claim with the CTA. Both claims must be filed within the two (2)-year reglementary period. Thus, cases which sprang from the inaction of the CIR to the claim of refund are within the CTA's jurisdiction.

These consolidated cases sprang from the inaction of the CIR to petitioner's recovery allegedly erroneously assessed and collected taxes under Section 229 of the NIRC. Petitioner claims that it is exempt from excise taxes pursuant to the FTAA dated June 20, 1994, RA 7942 (Philippine Mining Act) and DENR AO No. 95-23. Among the counter-arguments of the CIR is that: (a) Court has no jurisdiction over the case; (b) and that the petitioner failed to exhaust all remedies under the NIRC. The CTA held that the CTA, and not the RTC, has jurisdiction to rule on the constitutionality or validity of the CIR's administrative issuances pertaining to the enforcement of the NIRC.

Considering that the present consolidated cases are appeals for the inaction of the CIR to the petitioner's claim for refund, which are anchored on Section 204(C) and 229 of the NIRC, as amended. It must be emphasized that said provisions fixed the period of two (2) years for the filing of an administrative claim for refund before the BIR and to sue before the CTA. Thus, it is apt to conclude that the CTA has the jurisdiction over this case.

As to timeliness, Sections 204 and 229 of the NIRC of 1997, as amended, are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with this Court. Both claims must be filed within the two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."

Tax exemption privilege under the FTAA is a contractual tax exemption granted by the government in exchange for valid and material consideration, and thus, protected by the non-impairment clause of the 1987 Constitution.

The CTA reiterated that basis for the tax exemption granted to petitioner is the FTAA it executed with the Republic of the Philippines on June 20, 1994, or prior to the effectivity of RA No. 7942. Under Section 11.2 of the FTAA, "*The CONTRACTOR shall have a period of up to five (5) Contract years, counted from the Date of Commencement of Commercial Production within which to recover its: (a) Pre[-]operating Expenses; and (b) Property expenses incurred during the period in which Pre[-]operating Expenses are recovered, after which period only shall the right of the GOVERNMENT to share in the Net Revenue, as hereinafter defined, accrue."* This GOVERNMENT's share in the Net Revenue includes the collection of excise taxes. Thus, it is clear from the foregoing that the Government cannot collect from petitioner during the so-called "Recovery Period" — or the five (5) Contract Years beginning from the Date of Commencement of Commercial Production since the Government's right to share shall only accrue after the Recovery Period.

The contractual tax exemption in the real sense of the term and where the non-impairment clause of the Constitution can rightly be invoked, are those agreed to by the taxing authority in contracts, such as those contained in government bonds or debentures, lawfully entered into by them under enabling laws in which the government, acting in its private capacity, sheds its cloak of authority and waives its governmental immunity. Truly, tax exemptions of this kind may not be revoked without impairing the obligations of contracts. Thus, even with the enactment of RA No. 7942 after the execution of the FTAA, the former law cannot impair the contractual tax exemption already granted under the latter agreement. Based on this, petitioner is exempt from the payment of excise taxes.

13. Philippine Airlines Inc. vs. Commissioner of Internal Revenue; Case 10311; May 30, 2023.

For claims of tax refund, it is clear that within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Moreover, the recovery of taxes under shall only be due to erroneously or illegally collected taxes. In other words, what can be refunded or credited is a tax that is erroneously, illegally, excessively or in any manner wrongfully collected. There must be a wrongful payment because what is paid, or part of it, is not legally due.

PAL was granted a franchise to operate air transport services domestically and internationally by virtue of Presidential Decree (PD) No. 1590. PAL imported various liquors and wine, as part of its in-flight and commissary supplies for the period August 2014 to February 2018. The Bureau of Customs (BOC) demanded the payment of excise taxes for the importation. PAL paid under protest and requested for a refund or issuance of tax credit in relation thereof. PAL argues that its importation of commissary and catering supplies are exempt from all taxes pursuant to its franchise since Republic Act (RA) No. 9334 did not repeal PD No. 1590.

As correctly claimed by PAL, despite amendments to the NIRC, PAL remains exempt from all other taxes, duties, royalties, registrations, licenses, and other fees and charges, provided it pays the corporate income tax as granted in its franchise agreement. It further emphasized that no explicit repeals were made on Presidential Decree No. 1590.Thus, Presidential Decree No. 1590 and PAL's tax exemptions subsist.

However, it must be emphasized that petitioner's tax exemptions are *not* without conditions. PAL shall remain exempt from taxes, duties, royalties, registrations, licenses, and other fees and charges, *provided* it pays corporate income tax as granted in its franchise agreement; the

payment of which shall be in lieu of all other taxes, except VAT, and subject to certain conditions provided in its charter. Moreover, in order to be exempt from excise taxes on imported tobacco and alcohol products, Section 13 (b) (2) of the PD 1950 states that such articles or supplies or materials which are imported for the use of the grantee in its transport and transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price. Failing to prove this, PAL has not fulfilled all the conditions to be entitled to tax exemptions.

14. Bloomberry Resorts Corporation vs. Commissioner of Internal Revenue; CTA Case no. 10193; May 29,2023.

All loan agreements, whether made or signed in the Philippines or abroad, when the obligation or right arises from Philippine sources or the property or object of the contract is located in the Philippines, shall be subject to the payment of DST.

Petitioner Bloomberry Resorts extended a loan and advances to its affiliates Solaire Korea Co. LTD. (SKCL) and Golden and Luxury Co. LTD. (G&L), both non-resident foreign corporations existing under the laws of the Republic of Korea and are not doing business in the Philippines. The BIR assessed the petitioner for unpaid Documentary Stamp Tax (DST) for the loans and advances to its affiliates. The petitioner argued that the transactions should not be subject to DST since the transactions did not involve "obligations or rights arising from Philippine sources" and that the situs is outside the Philippines.

The CTA ruled that all loan agreements whether made or signed in the Philippines or abroad, when the obligation or right arises from Philippine sources or the property of object of the contract is located in the Philippines, it shall be subject to DST. Even if the affiliates are not residents, the petitioner, who is a principal party to the transaction, is a domestic corporation and its involvement as the obligee made the transaction one arising from Philippine sources.

Petitioner also argued that the transactions are not subject to DST since they are not debt instruments. The CTA disagreed as DST is not imposed on the document but on the transaction. Even in the absence of a debt instrument, as long as the transaction is established, the DST will be imposed. Further, the CTA also ruled that all parties to the transactions are primarily liable for the DST.

C. REVENUE REGULATION (RR)

1. **Revenue Regulations No. 6-2023 [June 13, 2023] - Amends certain provisions of Revenue Regulations No.13-2010 regarding Late/Out-of-District Filing of Tax Returns.**

Exceptions to Section 3. Non-acceptance of Out-of-Office District Returns.

- In cases where an AAB, in the regular course of its operations, inadvertently or erroneously accepted an Out-of-District Return and the corresponding tax payment, the RDO/LTDO/LT Division receiving such return and payment shall, in no case, process or encode data from the Out-of-District Return. Rather, the RDO/LTDO/LT Division concerned shall segregate all such Out-of-District Returns and, within five (5) calendar days from receipt thereof from the AAB, transmit such returns to the proper RDO/LTDO/LT Division where the returns are required to be filed (and the tax payments made) under the NIRC and existing rules and regulations. The proper RDO/LTDO/LT Division shall impose a penalty equivalent to twenty-five percent (25%) of the tax due for wrong venue filing of return, unless otherwise authorized by the Commissioner of the Internal Revenue pursuant to Section 248 (A)(2) of the 1997 NIRC, as amended.

- In case there is a pronouncement through a revenue issuance/ bank bulletin that a taxpayer can file a return and pay the corresponding tax due thereon anywhere, notwithstanding the RDO/LTDO/LT Division jurisdiction.

Section 4. Acceptance of Late Tax Returns.

- The following policies and guidelines shall be observed with respect to Late Returns:

  - In general, all RCOs, AABs, RDOs, LTDOs, LT Divisions, and other internal revenue officers concerned shall not accept any tax return filed, or taxes paid, beyond the deadline prescribed under the NIRC and existing pertinent revenue issuances, without the imposition of the applicable penalties pursuant to Sections 248 and 249 of the NIRC, and RMO No. 7-2015.

  - Prior to the filing of a Late Return, the following guidelines must be observed:

    - An AAB or RCO may accept a Late Return provided that it has been stamped with the qualifier "LATE FILING" or "LATE FILING, INCREMENTS NOT PAID".

    - Upon retrieval of returns from the AABs, the RDOs, LTDOs and LT Divisions shall impose the applicable penalties on Late Returns that have been stamped with the qualifier "LATE FILING" or "LATE FILING, INCREMENTS NOT PAID" pursuant to Sections 248 and 249 of the same Tax Code as amended.

Section 6. Reporting Requirements.

Relevant reports are to be submitted every thirtieth (30th) day of the month to the Office of the concerned Regional Director/Assistant Commissioner, Large Taxpayer Service for information and appropriate action.

D. REVENUE MEMORANDUM CIRCULAR (RMC)

1. REVENUE MEMORANDUM CIRCULAR NO. 68-2023 [June 13, 2023] expands the coverage of the non-issuance of the Authority to Release Imported Goods (ATRIG) to importers of goods covered by VAT exemption under Section 109(1)(B) of the National Internal Revenue Code of 1997, as amended, prior to the release of such imported goods by the Bureau of Customs (BOC).

Previously, RMC No. 112-2021 requires that an ATRIG be secured from the BIR for feed, feed ingredients and fertilizers before such imported goods can be released by the BOC. However, since the required ATRIG causes delays and losses on the importers' part, and to be consistent with the mandate of Republic Act No. 11032, or the Ease of Doing Business and Efficient Government Service Delivery Act of 2018, this Circular is issued to inform the public that ATRIG for feed, feed ingredients and fertilizers shall no longer be required from the BIR.

The certificate issued by the Bureau of Animal Industry (BAI), Fertilizer and Pesticides Authority (FPA) or other concerned regulatory agencies shall be directly presented to the BOC for the release of the imported goods. The regulatory agencies shall be responsible in conducting their own

validation of the declared goods to be released from the BOC and to submit to the BIR a list of importers that secured the certifications for tax audit purposes.

2. **REVENUE MEMORANDUM CIRCULAR NO. 66-2023 [June 9, 2023] - Circularizes the criminal penalties for violation of provisions of Republic Act (RA) No. 10173 (Data Privacy Act of 2012) and administrative penalties for violation of Information and Communication Technology (ICT) Security Infrastructure System under Revenue Memorandum Order (RMO) No. 67-2010.**

PENALTIES UNDER THE DATA PRIVACY ACT OF 2012

<table>
<tr><th>Offense</th><th colspan="2">Kind of Information Affected</th></tr>
<tr><th></th><th>Personal Information</th><th>Sensitive Personal Information</th></tr>
<tr><td>Unauthorized Processing</td><td rowspan="2">Imprisonment from 1 year to 3 years AND fine of not less than ₱500K to ₱2.0 Million</td><td rowspan="2">Imprisonment from 3 years to 6 years AND fine of not less than ₱500K to ₱4.0 Million</td></tr>
<tr><td>Accessing Information Due to Negligence</td></tr>
<tr><td>Improper Disposal (knowingly or negligently dispose, discard, or abandon the personal information of an individual in an area accessible to the public or has otherwise placed the personal information of an individual in its container for trash collection)</td><td>Imprisonment from 6 months to 2 years AND fine of not less than ₱100K to ₱500K</td><td>Imprisonment from 1 year to 3 years AND fine of not less than ₱100K to ₱1.0 Million</td></tr>
</table>

<table>
<tr><th>Offense</th><th colspan="2">Kind of Information Affected</th></tr>
<tr><th></th><th>Personal Information</th><th>Sensitive Personal Information</th></tr>
<tr><td>Processing for Unauthorized Purposes</td><td>Imprisonment from 1 year 6 months to 5 years AND fine of not less than ₱500K to ₱1.0 Million</td><td>Imprisonment from 2 years to 7 years AND fine of not less than ₱500K to ₱2.0 Million</td></tr>
<tr><td>Unauthorized Access or Intentional Breach (violating data confidentiality and security systems, breaking in any way into system storage)</td><td colspan="2">Imprisonment from 1 year to 3 years AND fine of not less than ₱500K to ₱2.0 Million</td></tr>
<tr><td>Concealment of Security Breaches involving sensitive personal information</td><td colspan="2">Imprisonment from 1 year 6 months to 5 years AND fine of not less than ₱100K to ₱1.0 Million</td></tr>
<tr><td>Malicious Disclosure by PIP, PIC, or its agents, employees</td><td colspan="2">Imprisonment from 1 year 6 months to 5 years AND fine of not less than ₱500K to ₱1.0 Million</td></tr>
</table>

Unauthorized Disclosure	Imprisonment from 1 year to 3 years AND fine of not less than ₱500K to ₱1.0 Million	Imprisonment from 3 years to 5 years AND fine of not less than ₱500K to ₱2.0 Million
Combination or series of acts	Imprisonment from 3 years to 6 years AND fine of not less than ₱1.0 Million to ₱5.0 Million	

The maximum penalty in the scale of penalties respectively provided for the preceding offenses shall be imposed when the personal information of at least one hundred (100) persons is harmed, affected or involved as the result of the abovementioned actions.

When the offender or the person responsible for the offense is a public officer, as defined in the Administrative Code of the Philippines, in the exercise of his or her duties, an accessory penalty consisting in the disqualification to occupy public office for a term double the term of criminal penalty imposed shall be applied.

The penalties imposed are without prejudice to the filing of appropriate administrative case/s if the offender is a public official and employee.

The Penalties for ICT Security Infrastructure Offenses, and Additional Circumstances as Grounds for Administrative Disciplinary Action with their Corresponding Penalties under RMO No. 67-2010 are specified under Sections II and III, respectively, of the Circular

3. Revenue Memorandum Circular No. 65-2023 [June 08, 2023] - Amends further the venue for the issuance of Certificate Authorizing Registration of properties pursuant to Sec. 40(C)(2) of the Tax Code, as amended.

Previously, under Item VIII of RMC No. 19-2022, the venue for the submission of documents listed in Annex "B" thereof in connection with the transfer of properties pursuant to the tax-free organization/exchange under Sec. 40(C)(2) of the Tax Code, as amended, was with the RDO having jurisdiction over real properties, in case of transfer of real properties, or in case of shares of stock, the RDO where the issuing corporation is registered. However, if the transaction involves transfer of multiple real properties and/or shares of stocks situated in various locations covered by different RDOs, the CAR processing shall be done in the RDO having jurisdiction over the place where the transferee corporation is registered.

As amended by RMC No. 65-2023, the parties to the transaction shall, in call cases, submit the documents as listed in Annex "B" for CAR issuance in the RDO/LT office where the transferee/surviving corporation is registered, regardless of the number of real properties and/or shares of stocks involved in the tax-free organization/exchange transaction, and whether or not, those properties are situated in various locations and covered by different RDOs/LT offices.

4. **REVENUE MEMORANDUM CIRCULAR No. 63-2023 [May 31, 2023] - Revoked and invalidated BIR Ruling Nos. 038-2001 and 046-1995, which ruled that Clark Development Corporation (CDC) is considered as a business enterprise because it was formed in accordance with the Philippine Corporation Law and existing rules and regulations promulgated by the Securities and Exchange Commission (SEC) and is performing activities that are proprietary in nature.**

While it is true that CDC is a private corporation and performing activities that are proprietary in nature, the fact remains that CDC is still a Government-Owned and Controlled Corporation (GOCC) entrusted with the responsibility of carrying out regulatory functions. As such, it does not stand on equal footing with business enterprises operating within Clark Special Economic Zone (CSEZ), thereby precluding it from claiming the same privileges available to them. Unless there is a law that expressly states otherwise, CDC must be treated on par with other GOCCs regardless of its formation or the nature of its operations. Consequently, its income shall be subject to Income Tax provided in Section 27(C) of the Tax Code.

Assuming arguendo that CDC is correctly treated as a business enterprise, the BIR's position remains unchanged. It must be noted that upon passage of the Corporate Recovery and Tax Incentives for Enterprise Act (CREATE Law), Section 12(c) of Republic Act No. 7227, as amended, was repealed and the availment of fiscal incentives becomes limited only to business enterprises registered with Investment Promotion Agencies (IPAs). IPAs refer to government entities created by law, executive order, decree, or other issuance, in charge of promoting investments, granting and administering fiscal and/or non-fiscal incentives, and overseeing the operations of the different economic zones and freeports in accordance their respective special laws.

Section 293(H) of the Tax Code explicitly states that CDC is an IPA. While CDC is performing functions that are proprietary in nature, it is classified as an IPA as defined and contemplated under the CREATE Law, its Implementing Rules and Regulations (IRR) and other related rules and regulations. Therefore, CDC cannot avail itself of the fiscal and non-fiscal incentives which are exclusively granted to Registered Business Enterprises (RBEs). In this regard, BIR Ruling Nos. 038-2001 and 046-1995 are hereby revoked and invalidated, and all revenue issuance inconsistent with this Circular are deemed repealed without prejudice to Section 246 of the Tax Code.

5. **REVENUE MEMORANDUM CIRCULAR NO. 62-2023 [May 29, 2023] - Announces the availability of the following BIR Forms in the Electronic Filing and Payment System (eFPS).**

BIR Form No.	Description	Deadline of Filing/Payment
1604-C	Annual Information Return of Income Taxes Withheld on Compensation	On or before January 31 of the year following the calendar year in which the compensation payment and other income payments were aid or accrued.
1604-E	Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax	On or before March 1 of the year following the calendar year in which the income payments subject to expanded withholding taxes or exempt from withholding tax were paid or accrued, whichever comes first.
1604-F	Annual Information Return of Income Payments Subjected to Final Withholding Taxes	On or before January 31 of the year following the calendar year in which the income payments subject to final withholding taxes were paid or accrued.

0620	Monthly Remittance Form of Tax Withheld on the Amount Withdrawn from the Decedent's Deposit Account	On or before the 10th day following the month when the withholding was made.

All taxpayers who are mandated to use the eFPS shall file the abovementioned returns and pay the corresponding taxes due, if any, using the eFPS facility, effective immediately.

6. REVENUE MEMORANDUM CIRCULAR NO. 61-2023 [May 24, 2023] - Procedures in the Processing of Taxpayer's Request for Stamping of Electronically Filed ITRs/AITRs thru eBIR Forms.

Pursuant to Revenue Memorandum Circular No. 32-2023, "No Payment AITRs" shall be filed electronically through the eBIR Forms. Thus, taxpayers no longer need to file "No Payment AITRs" manually.

Revenue District Offices (RDOs) may still manually stamp printed electronically filed AITRs for requesting taxpayers who can provide a letter request, with attached supporting documents, stating the need for their respective returns to be manually stamped "Received" by the BIR, as a requirement or proof of filing and payment of their taxes here in the Philippines (e.g., expatriates of multinational companies), or for whatever legal purpose it may serve. The RDOs shall also check and verify the supporting documents presented by the said taxpayers and have the abovementioned e-Filed ITRs/AITRs stamped "Received" by the BIR after the said supporting documents are validated.

7. REVENUE MEMORANDUM CIRCULAR NO. 60-2023 [May 19, 2023] - Circularizing the Availability of the Enhanced BIR Registration Forms Relative to the Implementation of Ease of Doing Business and Efficient Government Service Delivery Act of 2018.

This Circular is issued to inform taxpayers and others concerned on the availability of the Enhanced BIR Registration Forms (July 2021 Version) that can be accessed through the BIR website (www.bir.gov.ph), as follows:

Form No.	Description
1901 **(Annex "A")**	Application for Registration for Self-Employed (Single Proprietor/Professional), Mixed Income Individuals, Non-Resident Alien Engaged in Trade/Business, Estate and Trust
1902 **(Annex "B")**	Application for Registration for Individuals Earning Purely Compensation Income (Local and Alien Employee)
1903 **(Annex "C")**	Application for Registration for Corporations, Partnerships (Taxable/Non-Taxable), Including Government Agencies and Instrumentalities (GAIs), Local Government Units (LGUs), Cooperatives and Associations
1904 **(Annex "D")**	Application for Registration for Taxpayer and Person Registering under E.O. 98 (Securing a TIN to be able to transact with any government office) and Others
1905 **(Annex "E")**	Application for Registration Information Update/Correction/Cancellation

The revisions are part of the Bureau's effort to improve the existing registration forms and to streamline the current registration processes in compliance with the provisions of Republic Act (RA) No. 11032, otherwise known as the "Ease of Doing Business and Efficient Government Service Delivery Act of 2018.

8. REVENUE MEMORANDUM CIRCULAR NO. 59–2023 [MAY 19, 2023] – Announces the availability of the revised BIR Form No. 2550Q (Quarterly Value Added Tax (VAT) Return) January 2023 (ENCS).

The return was revised in line with the provisions of Republic Act No. 10963 (TRAIN Act) which amended certain provisions of the Tax Code of 1997, as follows:

Tax Code 1997	Particulars	RA No. 10963 Provisions
Section 114(A)	Filing of Return and Payment of VAT	**Section 37:** Beginning January 1, 2023, the filing and payment required under this Subsection shall be done within twenty-five (25) days following the close of each taxable quarter.
Section 110(A)(2)(b)	Creditable Input Tax	**Section 35:** The amortization of the input VAT shall only be allowed until December 31, 2021. After which, taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized.
Section 114(c)	Withholding of VAT	**Section 37:** Beginning January 1, 2021, the VAT withholding system shall shift from final to a creditable system.

The revised BIR Form No. 2550Q is already available in the BIR website (www.bir.gov.ph) under the BIR Forms-VAT/Percentage Tax Returns Section. However, the Form is not yet available in the Electronic Filing and Payment System (eFPS) and Electronic Bureau of Internal Revenue Forms (BIRForms). Thus, eFPS/eBIRForms filers shall continue to use BIR Form No. 2550Q in the eFPS and in Offline eBIRForms Package v7.9.4 in filing and paying the VAT payable/due. A separate revenue issuance shall be released once the return becomes available in the eFPS and in the Offline eBIRForms Package.

In addition, Manual filers shall download and print the PDF version of the revised BIR Form 2550Q and must fill out all the applicable fields. Otherwise, penalties under Sec. 250 of the Tax Code, as amended, shall be imposed. Payment of the tax due thereon, if any, shall be made thru:

a. Online Payment

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

b. Manual Payment

- In any Authorized Agent Bank (AAB) located within the territorial jurisdiction of the Large Taxpayers Service (LTS)/Revenue District Office (RDO) where the taxpayer (Head Office of the business establishment) is registered; or

- In places where there are no AABs, the return shall be filed and the tax due shall be paid through the concerned Revenue Collection Officer (RCO) under the jurisdiction of the RDO where the taxpayer (Head Office of the business establishment) is registered.

9. REVENUE MEMORANDUM CIRCULAR NO. 58-2023 [May 19, 2023] - Clarifies the policies and guidelines on the issuance and validity of Taxpayer Identification Number (TIN) Card and Certificate of Registration (COR).

A. TIN Card

The Bureau of Internal Revenue (BIR) now replaced the old TIN cards (yellow-orange color) with the new design TIN card (BIR Form No. 1931), which is an accountable form of the BIR. However, the old TIN card previously issued by the BIR are still considered as valid TIN ID and need not be replaced.

The new TIN Card shall be issued to individual taxpayers on instances where it is being issued for the first time, name update for married female, change of registered address or as replacement for lost/damaged TIN Card. Request and issuance of TIN Card shall only be to the Revenue District Office (RDO) where the taxpayer is registered.

Application for TIN Card requires personal appearance of the concerned taxpayer. On emergency or valid cases, a Special Power of Attorney (SPA) (including government-issued ID of the representative and taxpayer), stating the reason for non-appearance and relationship with the authorized representative shall be presented to the Revenue District Officer or Assistant Revenue District Officer, for approval.

The duly accomplished BIR Form No 1905, 1 copy of 1x1 ID Picture to be pasted on the TIN Card in the presence of the BIR personnel and any government issued ID are required for TIN Card application. In addition to these, Affidavit of Loss and Php100.00 shall be required for re-issuance of damaged or lost TIN Card.

B. Certificate of Registration

Certificate of Registration (COR) printed in old template/yellow-orange color is still valid and does not expire unless there are updates or changes on the face of the COR that require replacement of COR.

Electronic COR generated by the Philippine Business Hub (PBH) and Online Registration and Update System (ORUS) printed by the taxpayers are required to be posted conspicuously in the place of business. The printed COR is valid and does not require signature.

10. REVENUE MEMORANDUM CIRCULAR NO. 56-2023 [May 19, 2023] - Encourages taxpayers to use the Electronic One-Time Transactions (eONETT) System in the filing and payment of ONETT related returns and taxes.

Encourage all clients of the Bureau to use the Electronic One-Time Transaction (eONETT) System in filing an payment of ONETT related returns and taxes. The eONETT system allows taxpayers to apply for ONETT Computation Sheet (OCS) and eCAR as well as filing of returns and payment of taxes online.

Taxpayers who intend to transact their ONETT online thru the eONETT System shall be required

to register or sign up for an account. The Taxpayer User Guide/Job Aid is available and can be downloaded in the log-in page of the System. The said System is accessible through the eServices in the BIR website or thru https://eonett.bir.gov.ph/.

11. **REVENUE MEMORANDUM CIRCULAR NO. 55-2023 [May 17, 2023] - Circularizes the Veto Message of former President Rodrigo Roa Duterte to the House of Representatives on Republic Act (RA) No. 11467 (An Act Amending Sections 109, 141, 142, 143, 144, 147, 152, 263, 263-A, 265, and 288-A, and Adding a New Section 290-A to Republic Act No. 8424, as amended, otherwise known as the National Internal Revenue Code of 1997, and for Other Purposes).**

Salient parts of the veto message are as follows:

> *"However, I am constrained to veto Section 5 of the measure, which amends the second paragraph of Section 152 of the National Internal Revenue Code (NIRC) as this unduly curtails the search and seizure powers of the Bureau of Internal Revenue (BIR). The phrase "upon order of the court" unnecessarily requires the BIR, in the exercise of its mandate to examine, search, and seize under Section 171 of the NIRC, as amended, to secure an order from the court before its officers may be allowed to enter any house, building, or place where tobacco, heated tobacco, and vapor products are produced or kept, or are believed to be produced or kept. Such restriction does not exist with respect to any other taxable article.*
>
> *Under Section 27 (2) of Article VI in the 1987 Constitution, the President may veto particular items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object. This power covers items of appropriation, revenue, tariff, as well as inappropriate provisions in the measure. As such, I hereby register the item veto of Section 5 of the measure which was intended to further amend Section 152 of the NIRC, as it effectively curtails the power of the State to collect taxes and renders powerless the BIR to effectively implement enforcement mechanisms against illicit tobacco products."*

12. **REVENUE MEMORANDUM CIRCULAR NO. 54-2023 [May 16, 2023] - Announces the availability of the revised BIR Form No. 2200-T [Excise Tax Return for Tobacco, Heated Tobacco, Vapor and Novel Tobacco Products] August 2022 (ENCS). The said form was revised pursuant to Republic Act No. 11900 (Vaporized Nicotine and Non-Nicotine Products Regulations Act).**

The revised manual return is already available in the BIR website (www.bir.gov.ph) under the BIR Forms-Excise Tax Return Section. However, the Form is not yet available in the Electronic Filing and Payment System (eFPS) and Electronic Bureau of Internal Revenue Forms (eBIRForms); thus, eFPS/ eBIRForms filers shall continue to use BIR Form No. 2200- T in the eFPS and in Offline eBIRForms Package v7.9.4 in filing and paying the Excise Tax due. Once the return becomes available in the eFPS and in the Offline eBIRForms Package, a separate revenue issuance shall be released to announce its availability. Manual filers shall download and print the PDF version of the Form, and fill out all the applicable fields; otherwise penalties under Sec. 250 of the Tax Code, as amended, shall be imposed. Payment of the tax due thereon, if any, shall be made thru: a. Online Payment • Landbank of the Philippines (LBP) Link.BizPortal — for taxpayers who have LANDBANK/OFBank ATM account and taxpayer utilizing PCHC Paygate or PESONet facility (depositors of RCBC, Robinsons Bank, Union Bank, BPI, PSBank and Asia United Bank); or • Development Bank of the Philippines' (DBP PayTax Online) — for holders of VISA/MasterCard Credit Card and/or BancNet ATM/Debit Card; or • Union Bank of the Philippines (UBP) Online/The Portal — for taxpayers who have an account with UBP or Instapay using UPAY Facility for individual nonaccount holder of Union Bank. • Taxpayer Agent/Tax Software Provider (TSP)

— GCash, Maya, MyEG b. Manual Payment • In any Authorized Agent Bank (AAB) located within the territorial jurisdiction of the Large Taxpayers Service (LTS)/Revenue District Office (RDO) where the taxpayer (Head Office of the business establishment) is registered; or In places where there are no AABs, the return shall be filed and the tax due shall be paid through the concerned Revenue Collection Officer (RCO) under the jurisdiction of the RDO where the taxpayer (Head Office of the business establishment) is registered.