TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

TAX UPDATES FROM JULY 16, 2023 TO AUGUST 16, 2023

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		challenge or as a defense in disputing or contesting an assessment or claiming a refund. Neither will the doctrine of exhaustion of administrative remedies apply in cases where the question involves purely legal questions, there is an urgency of judicial intervention, and there is futility of an appeal to the Secretary of Finance (SOF) as the latter appeared to have adopted the challenged BIR ruling.	
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** The digests of the relevant BIR issuances are reproduced from the BIR website, www.bir.gov.ph.*

DISCUSSION

A. COURT OF TAX APPEALS DECISIONS

1. In tax evasion cases involving failure to pay deficiency taxes, the five-year prescriptive period is reckoned from the lapse of the Bureau of Internal Revenue's (BIR) final demand for payment following an assessment for deficiency taxes, and the taxpayer's failure to file an appeal.

On January 15, 2020, the Department of Justice (DOJ) Office of the Prosecutor General filed an Information against the taxpayer alleging tax evasion due to willful failure to pay taxes [i.e., violation of Section 255 in relation to Sections 253(d) and 256, Tax Code].

The taxpayer asserts that the prescriptive period commences upon the expiration of the period to pay taxes. On the other hand, DOJ argues that the five-year prescriptive period begins to run upon filing the criminal complaint.

The CTA distinguished different reckoning dates for tax evasion cases involving (a) clandestine commissions of tax evasion ; and (b) those which have an ascertainable date of commission (such as in the case of willful failure to pay), as follows:

a. In cases involving fraudulent returns, the crime is only discovered after the BIR has been given an opportunity to investigate the taxpayer and certain discrepancies constituting such offense are found. The 5-year prescription period for the offense should only begin to run from the moment that there is a final determination of fraud, i.e., the filing of the criminal complaint.

b. In cases where the date of commission is readily available, prescription shall begin to run from the date the crime is committed. If a taxpayer thus fails to file a tax return on the date it is due, the crime of tax evasion, through failure to file a return, is immediately committed upon the lapse of the due date. The same can be said when after an assessment for deficiency taxes has been instituted by the BIR and a final demand has been made upon the taxpayer to pay its deficiencies on a certain date, the taxpayer fails or refuses to pay regardless without perfecting an appeal. In such case, the commission of willful failure to pay is already certain since the BIR's demand has already become final, executory and no longer subject to judicial review.

In the case at bar, although it is alleged that accused-appellee SKI failed to file a correct or accurate return, the BIR made no finding of fraud. Instead, it pursued an audit of accused-appellee SKI until the former issued a FAN on January 13, 2014.

As alleged in the Joint Complaint-Affidavit, filed before the DOJ, the FAN demanded that payment be made within 30 days from the date of the FAN, or until February 12, 2014. When the period of payment had lapsed without any payment being made, a perceived offense of tax evasion due to willful failure to pay was apparently committed by accused-appellee SKI and its responsible officers on February 13, 2014. Counting five (5) years from the date of the apparent commission of the said offense, an Information for the same should have been filed with the RTC by February 13, 2019. Therefore, when the Information was filed on January 15, 2020, the offense charged in the Information had already prescribed pursuant to Section 281, Tax Code, as amended. **(People of the Philippines v. SKI Construction Group, Inc. et al., CTA Crim. Case No. A-17, July 17, 2023)**

2. The jurisdiction of the CTA over local taxes only includes local business taxes and real property taxes, and does not include regulatory fees imposed by local government units.

The taxpayer appealed to the CTA the Decision of Regional Trial Court (RTC) Malolos ordering the taxpayer to pay the Municipality of Guiguinto, Bulacan an amount corresponding to the assessed local business taxes, mayor's permit, and other regulatory fees. The CTA-Division cancelled the amount corresponding to the assessed local business taxes only. The taxpayer thereafter further appealed the CTA-Division's Decision for the total cancellation of the amount assessed by the Respondent against the taxpayer, including the regulatory fees.

The CTA *En Banc* determined that the Court is precluded from ruling on the taxpayer's prayer relative to the assessed regulatory fees as such matter is outside its jurisdiction. Section (7)(a)(3), RA No. 1125, as amended, provides that decisions, orders, or resolutions of the RTC in local taxes originally decided or resolved by them in the exercise of their original or appellate jurisdiction are within the exclusive appellate jurisdiction of the CTA. Similarly, Section (3)(a)(3), Rule 4, Revised Rules of the CTA (RRCTA) provides that the CTA in Division shall exercise exclusive original or appellate jurisdiction to review by appeal the decisions, resolutions, or orders of the RTC in local taxes decided or resolved by them in the exercise of their original jurisdiction. The Court then discussed National Power Corporation vs. Municipal Government of Navotas (G.R. No. 192300, November 24, 2014) where the Supreme Court ruled that local tax cases consists only of cases arising from local business tax and real property taxes.

Hence, the assessed regulatory fee is a subject matter outside the jurisdiction of the CTA. Lack of jurisdiction over the subject matter of an action cannot be cured by the silence, acquiescence, or by express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. **(NLEX Corporation v. Municipality of Guiguinto, Bulacan et al., CTA EB Case No. 2514, July 19, 2023)**

3. **A corporation shall not be considered a withholding agent, unless such corporation has been determined and duly notified, in writing by the CIR that it has been selected as one of the top ten thousand (10,000) private corporations. Furthermore, service of Notice on the Designation as Withholding Agent to the taxpayer's accounting clerk is a valid service.**

Section 3.1.4, Rev. Regs. No. 12-99 provides that the assessment shall be sent to the taxpayer either by personal delivery or registered mail. In this case, petitioner contends that the assessments against it are void since respondent failed to notify petitioner to withhold upon the issuance of Revenue Memorandum Circular (RMC) No. 44-2007.

In order to prove that petitioner was notified as a top ten thousand (10,000) private corporation, respondent presented a Letter dated February 17, 2004 (the "Letter") addressed to petitioner with subject: "Designation as Withholding Agent." Even so, petitioner declared that the one who signed the Letter as the recipient, was not authorized to receive the Letter, and as such the requisite notification to the taxpayer did not arise.

The Court ruled in favor of respondent. The Court ruled that although there was no visible annotation of the recipient's authority to receive the said letter, the CTA found the statement of her connection with petitioner (i.e., accounting clerk) as substantial compliance. As an accounting clerk, it is highly likely that she knows and would be able to appreciate the significance of a letter/ notice from the BIR and her receipt thereof. Considering this, the Court found that the requisites under Section 3.1.4, Rev. Regs. No. 12-99 on personal delivery complied with. **(Donato C. Cruz Trading Corp. v. CIR, CTA EB No. 2573, July 25, 2023)**

4. **Under Section 7, Tax Code, the CIR may delegate the powers vested in him under the pertinent provisions of the Code. For Regional cases, the Regional Director may approve or disapprove the claim. Should there be no proof that a Denial Letter from the Regional Director was received by the claimant, the Court deems that there is no decision rendered on the application for refund or tax credit. The Court treats the case as an appeal due to CIR's inaction, having received no "decision" after the lapse of the 90-day period.**

On March 29, 2019, petitioner filed with Revenue District Office (RDO) its administrative claim of its unutilized input VAT for calendar year (CY) 2017 attributable to zero-rated sales.

A Notice to Comply dated April 14, 2019 was then issued to petitioner by the BIR through Revenue District Officer Mr. Ignacio Camba (RDO Camba), requesting petitioner to submit certain documents to facilitate the verification and processing of its claims for VAT refund. On June 28, 2019, petitioner received a Letter ("Denial Letter") signed by RDO Camba, stating that petitioner's claim for refund was denied for non-compliance with the requirements enumerated in the Notice to Comply. Subsequently, Regional Director

Glen A. Geraldino issued a Letter dated July 2, 2019, denying petitioner's claim for VAT refund for failure to substantiate its claim. However, there was no proof that the Letter was received by the petitioner. Thereafter, on July 26, 2019, petitioner filed its Petition for Review with the CTA.

Under Section 7, Tax Code, the respondent may delegate the powers vested in him under the pertinent provisions of the Code. For Regional cases, the Regional Director may approve or disapprove the claim within the 90-day time frame set forth in Section 112(C), Tax Code. If the claim is disapproved or denied, the Regional Director may also sign the denial letter. Notably, the participation of an RDO after the filing of the claim is limited only to "verification/processing."

In the present case, records revealed that aside from the RDO, the Regional Director of Revenue Region No. 8, also signed a Letter denying petitioner's claim for a VAT refund for failure to substantiate the same. However, there is no allegation or indication that the same was issued by the BIR Regional Director and received by petitioner.

Such being the case, even if the Court would treat the Petition for Review as an appeal of the Regional Director's denial letter dated July 2, 2019, there was no way for this Court to determine whether the same was timely filed, i.e., within the 30 days to appeal to this Court.

Considering that the RDO was not authorized to sign the denial letter and there was no proof that petitioner has received the Regional Director's Denial Letter, the Court deemed that there was no decision rendered on petitioner's application for refund or tax credit and treated the case as an appeal due to respondent's inaction, having received no "decision."

Under Section 7(a)(2), RA No. 1125, as amended by RA No. 9282, respondent's inaction shall be deemed a denial of the refund or tax credit claim. Petitioner filed with RDO its administrative claim for refund or tax credit on March 29, 2019. Consistent with RMC No. 17-2018, respondent CIR had 90 days, or until June 27, 2019, to act on petitioner's claim. In case of inaction within the 90-day period, petitioner had 30 days from June 27, 2019, or until July 27, 2019, to file an appeal before this Court. Thus, petitioner timely filed its Petition of Review on July 26, 2019. **(Halliburton Worldwide Limited – Philippine Branch v. CIR, CTA Case No. 10139, July 26, 2023)**

5. The CTA has no jurisdiction over the inaction of the Commissioner of Customs over protests filed with the latter.

L.T.J.S. Store, the petitioner, declared in its Bureau of Customs (BOC) Single Administrative Document that it was importing 26,000 bags of rice from Vietnam with customs duty and fees amounting to Php9,198,517.50. However, when the shipment of rice from the exporter arrived in the Philippines, the BOC assessed the petitioner for Php11,123,040.10.

While the petitioner paid the total assessed amount, it also filed on March 4, 2021, its Protest and Appeal for Duty and Tax Refund with the Office of the Commissioner of the BOC. Without waiting for the decision of the Commissioner, the petitioner filed a Petition for Duty and Tax Refund before the CTA Division on June 25, 2021.

The CTA Division dismissed the Petition for lack of jurisdiction. This dismissal is affirmed in the present Decision of the CTA *En Banc* for the following reasons:

1. The CTA has no jurisdiction over the inaction of the Commissioner of Customs (COC) over protests filed with the latter;
2. The Petition failed to comply with the requirements of Section 2, Rule 6, RRCTA; and
3. Even assuming that there is a supposed ruling that was "deemed affirmed" due to inaction, the Petition was still filed beyond the prescription period.

(1) The CTA *En Banc* ruled that it has no jurisdiction over the inaction of the COC reasoning that the RRCTA does not confer upon the CTA jurisdiction to review by appeal the inaction of the COC and that the RRCTA provides that only decisions of the COC are appealable to the CTA. This is compared to the inaction of the CIR such that the RRCTA explicitly states that the inaction by the CIR is appealable to the CTA.

Even the Customs Modernization and Tariff Act is explicit in stating that it is the ruling and decision of the COC which may be appealed to the CTA, not its inaction.

(2) The CTA *En Banc* also ruled that the Petition failed to comply with the requirements regarding contents of and the documents that should accompany the petition which is sufficient ground for dismissal pursuant to Sections 2 and 3, Rule 42, RRCTA.

A cursory reading of the Petition for Duty and Tax Refund of the Company reveals that it has no allegation of the Court's jurisdiction, no statement of material dates showing that it was filed on time, no statement of the issue/s that puts forth the questions of fact or law to be considered by the Court, no argument or reason for the allowance of the appeal was adduced, no jurisprudence cited, and no certified true copies of the assailed judgments or final order. It also failed to attach a copy of its March 4, 2021 Protest and Appeal for Duty and Tax Refund filed with the COC.

(3) The proper procedure of disputing the valuation of the BOC requires that the importer (i) to elevate the matter to the principal appraiser, and (ii) thereafter to the Chief, Formal Entry Division, (iii) then to the Deputy Collector for assessment, and (iv) finally to the District Collector.

Even if the Company seasonably filed a protest with the concerned officers described above such that there is a supposed ruling issued by the District Collector that was "deemed affirmed" due to the COC's inaction within 30 days from receipt of the Protest and Appeal for Duty and Tax Refund on March 4, 2021, or until April 3, 2021, the Court in Division would still have no jurisdiction over the Petition as it was filed only on June 25, 2021. **(L.T.J.S. Store v. Commissioner of Customs et al., CTA E.B. No. 2563, July 27, 2023)**

6. A taxpayer's right to due process is violated when the BIR issues the FLD/FAN before the lapse of the 15-day period from the taxpayer's receipt of the PAN, thus, making the assessment void. The BIR's issuance of the FLD/FAN prior to the lapse of the period for the taxpayer to respond to the PAN is not cured by taxpayer's subsequent filing of its protest.

On October 13, 2014, the petitioner received a PAN dated October 7, 2014 issued by the BIR. Thereafter, the BIR issued a FLD dated October 28, 2014, with assessment notices assessing petitioner for alleged

deficiency income tax in the amount of P6,055,509.36 for taxable year 2011. The BIR then issued the FDDA dated July 27, 2015, to which petitioner filed a Request for Reconsideration. The CIR rendered its Final Decision dated 15 August 2019.

On September 26, 2019, petitioner filed a Petition for Review questioning the validity of the FLD arguing that it is void for violation of due process.

The petitioner argues that it was denied the right to due process, explaining that it received the PAN only on October 13, 2014. The petitioner contends that it had fifteen (15) days from receipt of PAN, or until October 28, 2014, within which to file a protest or motion for reconsideration/reinvestigation. The petitioner believes it was not given the opportunity to respond when respondent issued the FLD/F AN on October 28, 2014. The petitioner, however, admits that it filed its protest only on November 11, 2014 but maintains that the FLD is void for violation of due process.

The CTA ruled that the BIR is required to give the taxpayer a period of fifteen (15) days from the date of receipt of the PAN to file its response or protest against the same. It is only after receiving the taxpayer's response or the lapse of the said 15-day period that the BIR can issue the FLD/FAN.

In the present case, records show that petitioner received the PAN on October 13, 2014. Counting fifteen (15) days therefrom, the petitioner had until October 28, 2014 within which to file its response or protest against the PAN. However, the respondent issued the FLD/FAN on October 28, 2014. Clearly, respondent did not wait for the lapse of the mandatory fifteen (15)-day period prior to the issuance of the FLD/FAN.

The respondent's issuance of the FLD/FAN prior to the lapse of the period for the petitioner to respond to the PAN is not cured by the petitioner's subsequent filing of its protest. Such premature issuance of the FLD/ FAN violates the petitioner's right to procedural due process, rendering the FLD/FAN fatally infirm and, therefore, void. **(Hi-Stakes Incorporated v. CIR, CTA Case No. 10172, July 28, 2023)**

7. The letter denying the request for reconsideration in this case cannot be construed as the FDDA appealable to the CTA since it lacks certain essential elements. Electric cooperatives registered with the NEA are subject to income tax with respect to income derived from: (1) electric service operations; and (2) other sources such as interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements.

On July 25, 2019, the taxpayer received a letter dated July 19, 2019 wherein the taxpayer was informed that its protest in the form of a request for reconsideration was denied. The taxpayer filed its Petition for Review on September 11, 2019.

The CIR argues that the Petition was filed out of time. It argues that the taxpayer should have filed the Petition on August 24, 2019, which is the 30th day from the receipt of the letter of denial.

The CTA ruled that the Petition for Review was filed on time. The letter of denial in this case cannot be construed as the FDDA that can be the subject of appeal before the CTA for the following reasons:

1. The letter of denial does not state the facts, the applicable law, rules and regulations, or jurisprudence on which the decision to deny the taxpayer's request for reconsideration was based;
2. The letter of denial does not state that it is the final decision;
3. The letter of denial states that the FDDA shall still be issued accordingly; and
4. The letter is not issued by the CIR and there is no showing that the latter authorized Revenue District Officer to deny the taxpayer's request for reconsideration or protest toa tax assessment.

The taxpayer also argues the Presidential Decree (PD) No. 269 has not been amended or repealed by the enactment of the Cooperative Code, and thus, the exemption from paying income taxes for electric cooperatives under Section 39, PD No. 269 still applies.

The CTA ruled that while there has been a series of enactments in relation to the fiscal incentives of electric cooperatives, the standing rule is that an electric cooperative established under PD No. 269 is entitled to tax exemption privileges subject to the conditions stated in the Fiscal Incentives Regulatory Board Resolution No. 24-87. In this regard, electric cooperatives registered with the NEA are subject to income tax with respect to income derived from: (1) electric service operations; and (2) other sources such as interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements. This interpretation was amplified by RMC No. 74-2013, which circularized a BIR ruling regarding the income tax exemption of electric cooperatives registered with the NEA. Correspondingly, petitioner, being an electric cooperative registered with the NEA, cannot claim exemption from taxation on its income from electric service operations and other sources. **(Zambales Electric Cooperative I, Inc. (ZAMECO I) v. Bureau of Internal Revenue Regional Director of Revenue Region No. 4, CTA Case No. 10165, August 1, 2023)**

8. The CTA has exclusive jurisdiction to rule on the constitutionality or validity of a tax law, regulation, or tax issuances by the CIR, when raised by the taxpayer as a direct challenge or as a defense in disputing or contesting an assessment or claiming a refund. Neither will the doctrine of exhaustion of administrative remedies apply in cases where the question involves purely legal questions, there is an urgency of judicial intervention, and there is futility of an appeal to the SOF as the latter appeared to have adopted the challenged BIR ruling.

On December 12, 2018, San Miguel Brewery, Inc (SMBI) filed an administrative claim for refund representing erroneously, excessively, and/or illegally collected excise taxes due on the removals of its beer products for the period covering January 1, 2017 to December 31, 2017.

On December 27, 2018, SMBI filed a Petition for Review before the CTA invoking, among other issues, their entitlement to a refund; assailing the excise tax rate of Php20.57 imposed by validity of RMC No. 90-2012; and questioning the validity of Rev. Regs. No. 17-2012 on the increase of the applicable tax rate by 4% annually starting January 1, 2014.

The CTA partially granted SMBI's Petition, declaring that SMBI is entitled to a refund, and declaring as null and void RMC No. 90-2012, particularly the imposition of the excise tax rate of Php20.57, and Rev. Regs. No. 17-2012, specifically on the increase of the applicable tax rate by 4% annually starting January 1, 2014.

The CIR filed a Petition for Review on the ground that the CTA erred in assuming jurisdiction over the case, given that the CTA does not have jurisdiction to nullify the excise tax rate imposed under RMC No. 90-2012, and Rev. Regs. No. 17-2012, citing British American Tobacco v. Camacho (G.R. No. 163583, August 20, 2008). Additionally, the tax issuances were issued in accordance with the rule-making or quasi-legislative power to interpret tax laws under Section 4, Tax Code, thus validity of RMC No. 90-2012, and Rev. Regs. No. 17-2012 should have been appealable to the SOF.

The CTA *En Banc* ruled that the CTA has exclusive jurisdiction to rule on the constitutionality or validity of a tax law, regulation, or tax issuance by the CIR, such as RMC No. 90-2012, and Rev. Regs. No. 17-2012, when raised by the taxpayer as a direct challenge or as a defense in disputing or contesting an assessment or claiming a refund. The ruling in British American Tobacco v Camacho was already overturned in the case of Banco de Oro v Republic of the Philippines (G.R. No. 198756, January 13, 2015) and affirmed in COURAGE v. Commissioner of Internal Revenue (G.R. No. 213446, July 3, 2018).

It was also noted that the doctrine of exhaustion of administrative remedies does not apply in cases where the question involves purely legal questions, there is an urgency of judicial intervention, and there is futility of an appeal to the SOF as the latter appeared to have adopted the challenged BIR ruling.

In this case, the CTA in Division found the circumstances in this case indicate an urgency of judicial intervention. The CTA En Banc also found the question involved as purely legal. Thus, it was ruled that there was no violation of the exhaustion doctrine even if SMBI did not elevate the matter to the Secretary of Finance before coming to the CTA. **(CIR v. San Miguel Brewery Inc., CTA EB No. 2625, August 2, 2023)**

9. The rescission of an instrument embodying a sales transaction operates to cancel liability with respect to CGT, which is dependent on a transfer of ownership resulting from conveyance of real property, but it does not operate to cancel liability as to DST, which is imposed on the privilege to transfer or convey a real property through the execution of a contract.

On October 4, 2017, Great Landho, Inc. (GLI) entered into separate notarized Deeds of Absolute Sale with TT&T Development, Inc. (TDI) and Tama Properties, Inc. (TPI) involving parcels of land situated in Trece Martires City, Cavite. In order to secure the Certificate Authorizing Registration (CAR) and the Tax Clearance Certificate (TCC) from the BIR, the parties proceeded to pay the CGT and DST due on the foregoing sale transactions.

However, on February 5, 2018, before effecting the transfer of the titles over the real properties in favor of GLI, the parties mutually agreed to rescind, revoke and cancel the foregoing sale transactions.

In view thereof, GLI, TDI, and TPI filed administrative claims for refund with the BIR's RDO No. 54A-East Cavite of its allegedly erroneously paid CGT and DST. However, GLI's claim for refund of DST was denied on the ground that the subsequent cancellation of the sale transactions does not have the effect of canceling the DST due on the sale transactions. GLI subsequently filed a Request for Reconsideration of the RDO's decision, arguing that there was no actual transfer or conveyance of the properties subject of the sale transactions and that the obligation to pay DST does not attach upon the mere execution of the Deeds of Absolute Sale. However, due to the RDO's alleged inaction, GLI claimed that it was constrained to commence a judicial claim. There being no formal communication from the BIR on the status of TDI's

and TPI's administrative claims for refund of allegedly erroneously paid CGT, petitioners claimed that they were likewise constrained to seek relief through a judicial claim.

The CTA found that TDI is entitled to the refund of its erroneously paid CGT, while GLI is not entitled to a refund of its DST payments.

As emphasized in RMC No. 35-2017, the payment of CGT is dependent and a direct consequence of a transfer of ownership that resulted from a sale, disposition, or conveyance of real property. It is not the transfer of ownership or possession *per se* that subjects the sale/transfer/exchange of the six percent (6%) CGT but the profit or gain that was presumed to have been realized by the seller by means of said transfer. Here, the rescission of a Deed of Absolute Sale signifies that the sale transaction was not consummated. Since there is no actual transfer of real properties, no income is derived thereon that is subject to CGT.

On the other hand, DST on the sale and conveyance of real property is an excise tax imposed on the privilege to transfer or convey a real property through the execution of a Contract of Sale or a Deed of Absolute Sale and not upon the transfer or conveyance itself. Thus, DST must be paid upon the issuance of the instrument evidencing the transfer or conveyance of real property, irrespective of whether the contract that gave rise to it is rescissible, void, voidable, or unenforceable. As such, the subsequent mutual cancellation or revocation of the instrument embodying the transaction to which the DST liability attaches does not have the effect of canceling such liability. **(Great Landho, Inc. et al. v. CIR, CTA Case No. 10184, August 4, 2023)**

10. The option of filing an administrative appeal to the CIR is available only when the assailed decision on the protest is issued by the CIR's duly authorized representative.

On December 05, 2014, the taxpayer received the CIR's FDDA (the original FDDA) signed by then CIR, Kim Jacinto-Henares, reiterating the taxpayer's deficiency liabilities. This prompted the taxpayer to file a request for reinvestigation with the CIR on December 22, 2014.

On August 20, 2015, the taxpayer received the CIR's Revised FDDA (RFDDA) partially denying the request. Feeling aggrieved, the taxpayer filed a Petition for Review before the CTA on September 18, 2015.

Both the CTA in Division and *En Banc* ruled against the judicial protest on the ground of lack of jurisdiction. It held that jurisdiction is conferred by law and cannot be waived by stipulation, by abdication, or by estoppel. As a court of special jurisdiction, the CTA, as a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction. Under the law, a party is given a period of thirty (30) days from receipt of the assailed decision within which to file an appeal with the CTA. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the CTA from acquiring jurisdiction over the case. The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law.

The option of filing an administrative appeal to the CIR is available only when the assailed decision on the protest is issued by the CIR's duly authorized representative. However, if it were issued by the CIR himself, as in this case, the proper remedy available for the taxpayer is to file an appeal with the CTA within thirty

(30) days from receipt of the CIR's decision. An FDDA issued and signed by the CIR cannot be appealed again to the CIR for logical and practical reasons. The filing of the administrative appeal to the CIR in this case did not toll the running of the 30-day period to appeal to the CTA. **(JG Summit Holdings, Inc. v. CIR, CTA EB No. 2397, August 4, 2023)**

11. The Rules of Court cannot be made to apply to the service of decisions denying refund claims as administrative bodies are not bound by the technical niceties of law and procedure and the rules in courts of law.

On March 29, 2019, the taxpayer, through counsel, filed an administrative application for refund/tax credit of its excess and unutilized input VAT with the BIR. Subsequently on May 29, 2019, the respondent served on the taxpayer, not its counsel, a letter informing that its claim for refund has been denied. The taxpayer filed its Petition for Review on July 26, 2019 which was beyond the 30-day reglementary period. The taxpayer argues that the BIR's service of the denial letter to it, rather than to its counsel or duly authorized counsel, renders the denial ineffectual. Hence, its petition has been timely filed. Such argument is anchored in the Rules of Court which provides that if a party has appeared by counsel, service shall also be made upon his/her counsel.

The respondent, on the other hand, contends that the proceedings in the BIR are administrative in nature and not judicial. Thus, what should be observed are the laws, rules, and regulations affecting the BIR's functions. The respondent further contends that neither the Tax Code nor the BIR's issuances support the petitioner's argument.

The CTA held that the proceeding involved is administrative in nature and that the petition was clearly filed out of time. The Rules of Court cannot be made to apply to the service of decisions denying refund claims as administrative bodies are not bound by the technical niceties of law and procedure and the rules in courts of law.

The taxpayer failed to show any provision of law or rule to support its argument. Further, the CTA noted the taxpayer cannot claim ignorance of the 30-day prescriptive period as an excuse for failing to furnish its counsel with the denial letter. **(Manulife Data Services, Inc. v. CIR, CTA Case No. 10138, August 10, 2023)**

12. The CTA has no jurisdiction over a judicial claim for refund filed prematurely or out of time as the timeliness of filing of the claim is mandatory and jurisdictional.

On October 23, 2014, the taxpayer filed an administrative application for refund/tax credit of its excess surcharge and interest penalties paid on August 14, 2014 for the third and fourth quarters of TY 2013 with the BIR. Subsequently on May 25, 2017, the taxpayer received a letter from the BIR informing the taxpayer that its claim for refund has been denied due to unsettled tax assessment (i.e., 2012 FDDA).

The taxpayer filed its Petition for Review on June 26, 2017, which was beyond the two (2) year prescriptive period for filing of Judicial Claim for Tax Refund/Credit. The taxpayer argued that the appeal filed with the CTA was made on the ground of Section 8, R.A. No. 9282 and not on Section 229, Tax Code. To emphasize,

the taxpayer is contesting not the denial of the refund *but the ground for the denial which is the existence of a delinquent account*.

The CTA held that the taxpayer's cause of action for filing of the Petition for Review is the respondent's (i.e., the BIR) denial of its administrative claim and the appeal for the non-existence of the delinquent account is only incidental. To which, the CTA *En Banc* agreed. Following this line of reasoning, if an administrative claim was denied, the subsequent course of action should have been a judicial claim, which should be timely filed within the two-year period. Also, the court emphasizes that there is no specific provision of law stating that the Administrative Claim should be acted upon by the CIR first before a Judicial Claim may be filed.

The Court stated that in order for a judicial claim to be considered and taken within its jurisdiction, the filing of the claim must be made within the prescriptive period. The same has been repeatedly ruled on and emphasized by the Supreme Court.

The Court in Division found that the last day to file the Petition for Review was on August 14, 2016. While the administrative claim was timely filed (see date of filing below), the judicial claim was belatedly filed, thus, the Court did not acquire jurisdiction over the instant case.

Date of Payment	Last date to file both Administrative and Judicial Claim	Date of Filing of Administrative Claim	Date of filing of Judicial Claim
August 14, 2014	**August 14, 2016**	October 23, 2014	**June 27, 2017**

(Ace/Saatchi & Saatchi Advertising, Inc. v. The Honorable CIR, CTA EB No. 2645, August 15, 2023)

B. REVENUE REGULATIONS

1. Clarifies the information that shall appear in the official receipts/sales invoices on purchases of Senior Citizens (SCs) and Persons With Disabilities (PWDs) through online (E-Commerce) or mobile applications, in relation to Rev. Regs. No. 10-2015.

The signature of the SC/PWD, as contemplated in Rev. Regs. No. 10-2015, shall not be required for qualified purchases made by SCs/PWDs online or through mobile applications. Nonetheless, the SC/PWD Identification Card number should still be provided by the SC/PWD when purchasing through online or mobile platforms; and the rules on entitlement to the benefits of the SC/PWD and to the tax deduction, pursuant to Rev. Regs. No. 7-2010, as amended; Rev. Regs. No. 5-2017, as amended; JMC No. 01 s.2022; and to future issuances pertaining to SC/PWD purchases through online or mobile applications, shall be strictly followed**. (Rev. Regs. No. 8-2023 issued on July 26, 2023)**

2. **Prescribes the rules and regulations governing the imposition of excise tax on perfumes and toilet waters as provided under Section 150(b), Tax Code.**

There shall be levied, assessed and collected a tax equivalent to twenty percent (20%) based on the wholesale price, net of Excise and Value-Added Tax (VAT), for locally manufactured perfumes and toilet waters. For imported articles, the Excise Tax of twenty percent (20%) shall be based on the value of importation used by the Bureau of Customs (BOC) in determining tariff and customs duties, net of Excise Tax and VAT.

The Excise Tax shall be paid by the manufacturer or producer of locally manufactured perfumes and toilet waters. Should the said products be removed from the place of production without payment of the Excise Tax, the wholesaler/distributor, retailer, owner or any person having possession thereof shall be liable for the Excise Tax due thereon.

The Excise Taxes on imported perfumes and toilet waters shall be paid by the owner or importer to the BOC, in conformity with the regulations of the Department of Finance (DOF), and before the release of such articles from customs custody, or by the person who is found in possession of articles which are exempt from Excise Taxes other than those legally entitled to exemption.

In cases where tax-free articles are brought or imported into the Philippines by persons, entities, or agencies exempt from tax and are subsequently sold, transferred, or exchanged in the country to non-exempt persons, entities, or agencies, the purchaser or recipient of such goods shall be considered as the importer, and shall be liable for the Excise Tax due on such importation.

All locally purchased imported excisable products illegally removed or released from customs custody or to a non-registered importer/s wherein the Excise Tax has not been declared or paid or found to be untaxed, the possessor, distributor or buyer of such goods shall pay the Excise Taxes with the corresponding interest or penalties.

Unless otherwise specifically allowed, the return shall be filed and the Excise Tax paid by the manufacturer or producer of locally manufactured perfumes and toilet waters before removal of domestic products from place of production using eBIR Forms or Form 2200-AN (Automobiles and Non-Essential Goods) via Electronic Filing and Payment System (eFPS), indicating the type of Tax marked as XG.

In case of payment of the tax by any person other than the local manufacturer, the Excise Tax return shall likewise be accomplished and filed by such person indicating all the pertinent information therein.

The Excise Tax due on locally manufactured or produced perfumes and toilet waters shall be paid by the manufacturer or producer before removal from the place of manufacture/production and warehouse. Excise Tax herein imposed and based on selling price or other specified value of goods shall be referred to as “ad valorem tax.”

In the event that the brand owner(s) uses or engages in a toll manufacturing or subcontracting service or agreement, to facilitate the production of the excisable products, payment of Excise Tax shall be paid by the brand owner itself who owns the product or formulation before removals from their toll manufacturer’s or subcontractor’s production premises. In cases where labor or services are provided

only by the toll manufacturer or subcontractor, payment of Excise Tax shall be filed and paid by the brand owner before the transfer of articles for bottling.

Relative thereto, unless otherwise provided, a contract and/or service agreement that allows the subcontractor (toll manufacturers) to file and pay the Excise Tax in behalf of the brand owner shall be allowed, provided that the basis for the computation of Excise Tax, net of excise and VAT, shall be determined or computed by the brand owners. Provided, that, all the manufacturers or producers of goods and products subject to Excise Taxes shall file with the Commissioner on the date or dates designated by the latter, and as often as may be required, a "sworn statement" showing among other information, the different goods or products manufactured or produced and their corresponding gross selling price or market value, together with the cost of goods manufactured or produced plus expenses incurred or to be incurred until the goods or products are finally sold.

Except as the Commissioner otherwise permits, the return shall be filed with and the tax paid to a bank duly accredited by the Commissioner under the jurisdiction of the RDO where the person liable for the payment of the tax is registered or required to be registered. In places where there are no duly accredited agent banks within the municipality or city, the Excise Tax return shall be filed with and any amount due paid to the duly authorized collection agent under the jurisdiction of the RDO or duly authorized treasurer of the city or municipality where the manufacturing or production plant is located or where the person in possession of untaxed perfumes and toilet waters is registered or required to be registered.

Large taxpayers duly notified by the Commissioner and other persons or entities who are required to file their tax returns and pay their internal revenue taxes through eFPS shall strictly comply with the existing rules and regulations governing eFPS with respect to the filing of Excise Tax returns and payment of Excise Taxes due on removals of perfumes and toilet waters.

The Excise Tax due on imported perfumes and toilet waters shall be paid by the importer to the BOC or its duly authorized representative prior to the release of such goods from customs custody. In case a person is found in possession of untaxed locally manufactured or imported perfumes and toilet waters, the tax due thereon shall be paid immediately upon demand. This includes or covers any person, natural or juridical directly engaged in the reselling, retailing, marketing, on-line selling and distribution of perfumes and toilet waters.

In cases where denatured alcohol is being used as raw material in the manufacture of perfumes and toilet waters, the manufacturer of perfumes and toilet waters should be registered with the BIR as Buyer or User of Denatured Alcohol. Prior to each and every purchase or delivery of denatured alcohol from any distillery or importer/dealer holding a duly issued Permit to Engage as Dealer of Denatured Alcohol, an application for an authority to denature shall be filed by the distillery with the Excise LT Field Operations Division (ELTFOD) accompanied by a copy of a purchase order or supply agreement with the distiller or importer/dealer, as the case may be.

The said application shall be accompanied with a liquidation report containing the dates and volume received, volume put into production and the remaining balance of inventory covering the previously issued permit.

Receipt, transfer or usage of denatured alcohol shall be used purposely for the manufacture of perfumes and toilet waters and other related perfumed-based products. Accordingly, in case of unauthorized sale, usage or transfer of the denatured alcohol, without the required permits from the Bureau, the corresponding Excise Tax shall be imposed under Section 141, Tax Code. Similarly, in cases where pure ethyl alcohol that is "not suitably denatured" is used, the same Code shall apply.

Every person, whether individual or juridical entity, who intends to engage in business as manufacturer, producer, or brand owner availing the services of a toll manufacturer, subcontractor or importer-dealer of perfumes and toilet waters shall file an application in writing for a permit to engage in such business with the Commissioner of Internal Revenue through his duly authorized representative. The application shall be accompanied with copies of the following documents:

- Request Letter (Attention: Chief, Excise LT Regulatory Division)
- Importer's/Manufacturer's Surety Bond (₱100,000.00 - initial coverage)
- BIR Certificate of Registration Location Map and Plat and Plan of the Warehouse; and if manufacturer, Blueprint of the production plant
- Latest approved Certificate of Product Registration issued by the Food and Drug Administration (FDA), if required
- Subcontracting/Toll Manufacturing Agreement
- Production process flow charts

The following Permits shall be secured from the Excise LT Regulatory Division (ELTRD):

A. Local Manufacturers/Producers
    - Permit to Operate as Manufacturer of Non-Essential Goods
    - Permit to Operate as Buyer/User of Ethyl Alcohol and/or Denatured Ethyl Alcohol
B. Brand Owners Engaging Toll Manufacturing or Subcontractors
    - Permit to Operate as Manufacturer of Non-Essential Goods
    - Permit to Operate as Buyer/User of Ethyl Alcohol and/or Denatured Ethyl Alcohol
    - Permit to Engage the Services of a Toll Manufacturer/Subcontractor
C. Importers
    - Permit to Operate as Importer of Non-Essential Goods
D. Toll Manufacturers or Subcontractors
    - Permit to Operate as Toll Manufacturer and/or Subcontractor

No person shall engage in business as manufacturer, producer or importer of perfumes and toilet waters unless the premises upon which the business is to be conducted shall have been approved by the Commissioner or his duly authorized representative.

Every manufacturer/producer and importer of perfumes and toilet waters shall, for each and production of plant and warehouse, respectively, be assigned a permanent and official assessment number, distinct for each paragraph under he operates. This assessment number shall be indicated in the Permit to Operate as an Excise taxpayer. No two (2) manufacturers or importers under the same paragraph shall be given the same assessment number. For manufacturers operating more than one manufacturing plant, a separate assessment number shall be assigned for each and every place of production. When a manufacturer retires from business, his assessment number shall be dropped from the roll.

When there is a change in ownership of the production plant by reason of sale, transfer, or otherwise, the Commissioner shall not allow the new owner or transferee thereof to use the old assessment number of his vendor or transferor, even if the right to use said assessment number has been included in the sale or transfer. Such assessment number, when dropped from the roll, shall no longer be allowed to be issued to another production plant or establishment. In case of importers of perfumes and toilet waters for resale, an assessment number shall likewise be issued for each establishment, storage facility or warehouse.

The manufacturer/producer or importer shall file with the Excise LT Regulatory Division (ELTRD) a duly notarized manufacturer's/importer's sworn statement containing a list of all the brands of perfumes and toilet waters and variants, showing the corresponding wholesale price and the suggested retail price for purposes of determining the unit cost or market value of each product manufactured and sold.

The manufacturer shall submit thereafter an updated sworn statement of the brand/s on or before the end of the months of June and December of the year: Provided, however, That whenever there is a change in the cost to manufacture, produce or import and sell the brand or change in the actual selling price of the brand, the updated sworn statement shall be submitted at least five (5) days before the actual removal of the product from the place of production or release from customs custody, as the case may be: Provided, further, That if the manufacturer sells and allows such goods to be sold at wholesale in another establishment of which he is the owner or in the profits of which he has an interest, the gross selling price in such establishment shall constitute the wholesale price. Should such price be less than the said costs and expenses, a proportionate margin of profit of not less than ten percent (10%) thereof shall be added to constitute the wholesale price, pursuant to Section 130(B), Tax Code.

The sworn statement prescribed herein shall be subject to verification and/or validation by the authorized BIR Revenue Officer(s) from the ELTFOD with respect to its accuracy and completeness. In the event that the contents thereof or prices therein are found to be inaccurate and/or incomplete, the taxpayer shall be required to submit a revised sworn statement, without prejudice to the imposition of corresponding assessment, sanctions and penalties.

The understatement of the suggested net retail price by as much as fifteen percent (15%) of the actual net retail price as determined using the survey price net of Excise and Value Added Taxes declared per manufacturer's/importer's sworn statement, shall render the manufacturer or importer of covered products liable for additional Excise and Value Added Taxes equivalent to the difference between the recomputed (Excise and Value Added) Taxes based on the annual net retail price and the declared Excise and Value-Added Taxes per submitted sworn statement.

For each and every importation of perfumes and toilet waters, primary raw materials, including equipment, apparatus, mechanical contrivances and devices especially used in the production of perfumes and toilet waters, an application for Authority To Release Imported Goods (ATRIG) shall be filed through the National Single Window System and the duly notarized application together with the importation documents shall be submitted to the ELTRD for the processing and issuance of the ATRIG. Application for ATRIG shall be made prior to the release of such articles from customs custody.

No ATRIG shall be issued in case the imported products are already released from customs custody. Likewise, no subsequent application for ATRIG shall be processed unless the importer has submitted proofs of payment of the Excise Tax due on the imported products covered by previously issued ATRIG.

Every removal of locally manufactured/produced perfumes and toilet waters from the place of production/warehouse shall be accompanied with the corresponding Excise Tax Removal Declaration (ETD) [BIR Form No. 2299], or any form to be prescribed by the BIR, which shall be requisitioned from the ELTFOD in the BIR National Office, or from the Excise Tax Area Offices at the respective BIR Revenue Regions having jurisdiction over the concerned manufacturers of perfumes and toilet waters.

Any shipment of perfumes and toilet waters not properly accompanied by the prescribed ETRD and BIR Form 2200-AN duly signed and witnessed by the Revenue Officers on Premise (ROOP), shall be deemed prima facie evidence of illegal removal thereof.

Subject to the provisions of Rev. Regs. No. 3-2008 on product replenishment, all manufacturers of perfumes and toilet waters who intend to export the same shall file an application for a Permit to Export with the ELTFOD before the said products are removed from the place of production.

The Commissioner or his duly authorized representative may assign revenue officer(s) as the need so requires for an effective supervision of the operations of perfume and toilet water manufacturers to monitor the revenue collection. The manufacturer shall provide suitable office space and equipment for the use of the revenue officer(s) assigned thereat, who shall render at least eight (8) hours service daily. Such office space shall be strategically located in a place that is adjacent to the manufacture and removal areas. It shall be designed in such manner that the assigned revenue officer(s) can have a clear and unobstructed view of the taxpayer's manufacture and removal activities. Should overtime service be required, an advance notification to that effect should be filed with the ELTFOD.

No changes, alterations, or new constructions shall be made in the establishment as per the plat and plan originally approved by the Commissioner or his duly authorized representative, nor alterations of new equipment, transferring or putting up of new equipment, transferring or putting up of new warehouse or storage facilities, or any other form of changes or alterations, shall be made without first securing the necessary permit from the Commissioner or his duly authorized representative. In case any changes shall be made, the plat and plan, as amended, shall be submitted for approval.

Every person or entity engaged in the manufacture or importation of non-essential goods shall keep Official Register Books (ORBs) and such other forms or records that may be required by the Commissioner, which may be kept within the place of production or importer's warehouse and shall at all times be made available for inspection by duly authorized internal revenue officer(s).

The submission of all transcript sheets of ORBs by all manufacturers and importers, including subcontractors, for non-essential goods to the LT Performance Monitoring & Programs Division or the Excise Tax Area having jurisdiction of the place of production shall be on or before the eighth (8th) day of the month immediately following the month of operation.

After every six (6) months, reckoned from the date of the initial or last stocktaking, or at any time the Commissioner may direct, an inventory taking shall be conducted on the finished goods, raw materials

and intermediate or in-process products of the manufacturers, importers or wholesale dealers of perfumes and toilet waters in the presence of the representative of the company, who shall jointly attest to the result using a duly notarized Stock Inventory. A spot-checking or verification of the operation of the establishments and the up-to-date maintenance of the prescribed records may be conducted at any time as may be directed by the Commissioner or his duly authorized representative to determine compliance with the existing laws and regulations and/or to ascertain a specific fact or figure.

Any person who is engaged as a subcontractor/toll manufacturer of perfumes and toilet waters or who undertakes any part of the manufacturing process such as packaging, etc., shall secure a Permit to Operate as subcontractor/toll manufacturer from the ELTRD.

In case the subcontractor/toll manufacturer is a newly registered taxpayer for Excise Tax purposes, he/she/it shall be issued an Assessment Number. In case he/she/it is already a registered excise taxpayer, a separate assessment number for this purpose shall no longer be required.

In case the primary raw materials are supplied by the manufacturer/ importer/owner of the brand, the same shall be transported directly to and unloaded in the premises of the subcontractor from the production premises/warehouse of the manufacturer/importer/owner of the brand or from customs custody, in case of importation.

Every delivery of the said basic raw materials shall be accompanied by an ETRD or any form to be prescribed by the BIR duly issued by the authorized taxpayer's representative and attested to by the revenue officer assigned at the manufacturer's/importer's/brand owner's place of production/warehouse. In case of direct delivery from customs custody, the same shall be accompanied by applicable BIR permits, ATRIG, importation documents and proofs of Excise Tax payments.

The dedicated storage areas, storage tank and line of production that are to be used for the purpose shall be clearly identified as depicted in the supporting plant layout. Only the assigned storage area, storage tank and line of production as granted in the permit shall be used during the period of the subcontracting agreement. In case of any change thereof, a prior permit shall be secured from the concerned BIR Office. However, if such change is temporary or emergency in nature such as due to the occurrence of fortuitous events, force majeure, etc., a written notification therefore shall be filed immediately with the BIR, in lieu of the said permit.

In cases where the brand owner and his/her/its toll manufacturers/ subcontractors entered into an agreement to allow the purchase of the primary raw materials, full production and the payment of Excise Tax by the toll manufacturers/subcontractors shall be for the account of the brand owner.

In cases where the concerned BIR Office cannot provide a revenue officer to monitor the operations of the toll manufacturer or subcontractor, an advance production schedule, together with the documents that may be prescribed under the permit, shall be submitted to the ELTFOD prior to every scheduled production run indicating the quantity of the basic raw materials to be used for production, the scheduled date of production/tolling/bottling and the quantity of the finished products that will be produced.

The finished products or results of the subcontracted activity shall be immediately removed from the toll manufacturer's/subcontractor's production premises and shall be directly delivered to the intended customers, as the case may be.

Within fifteen (15) days from the effectivity of the Regulations, all manufacturers and importers of perfumes and toilet waters shall prepare and submit to the Chief, ELTFOD a duly notarized list of inventory of their primary raw materials, perfumes and toilet waters held in their possession as of the effectivity of the Regulations. **(Rev. Regs. No. 9-2023 issued on August 3, 2023)**

C. REVENUE MEMORANDUM CIRCULARS

1. Prescribes the administrative requirements for importers and manufacturers of raw materials, apparatus or mechanical contrivances, and equipment specially used for the manufacture of heated tobacco products and vapor products

Prescribes the administrative requirements for importers and manufacturers of raw materials, apparatus or mechanical contrivances, and equipment specially used for the manufacture of Heated Tobacco Products (HTPs) and vapor products, to wit:

a. Application for a Permit to Operate as importer or manufacturer of raw materials, apparatus or mechanical contrivances, and equipment specially used for the manufacture of HTPs and vapor products – to be filed in writing addressed to the Commissioner of Internal Revenue, Attention: Chief, Excise LT Regulatory Division (ELTRD), together with the following basic supporting documents:

   - BIR Certificate of Registration (BIR Form No. 2303), including Payment Form (BIR Form No. 0605) evidencing payment of registration fee;
   - Copy of latest Income Tax Return duly filed with and received by the BIR, if applicable;
   - Location map, and plat and plan of the Production Plant/Warehouse, if applicable; and
   - Specifications (model/serial number) of the apparatus or mechanical contrivance, and equipment, if locally manufactured.

b. Application with the ELTRD for Electronic Authority to Release Imported Goods (eATRIG) for every importation shall be done using the Philippine National Single Window System (https://nsw.gov.ph/). The basic documentary requirements include the following:

   - Bill of lading
   - Packing list
   - Commercial invoice
   - Import Entry and Internal Revenue Declaration

RMO No. 14-2014 prescribes the procedures and guidelines for the processing and issuance of eATRIG for Excise Tax purposes.

The raw materials specially used for the manufacture of HTPs and vapor products shall include, but not limited to: propylene glycol, vegetable glycerin, organic sweetener, artificial flavoring and nicotine.

On the other hand, the devices specially used for the manufacture of HTPs and vapor products shall refer to, or comprise, any device or combination of devices designed or used to deliver the desired purpose, function, or effect of HTPs and vapor products. These devices or combinations thereof include, but are not limited to, a mechanical or electronic heating element (or atomizer), circuit, cartridge (or reservoir or pod), tank, mod, cartridge, or mouthpiece. **(RMC No. 78-2023 issued on August 4, 2023)**

2. **Clarifies the issues relative to the implementation of Rev. Regs. No. 3-2023 and other related concerns on Value-Added Tax (VAT) zero-rate transactions on local purchases of the Registered Export Enterprises (REEs) and other entities granted with vat zero-rate incentives under special laws and international agreements**

Rev. Regs. No. 3-2023 was published in a newspaper of general circulation on April 28, 2023, thus, it took effect on the said date. Upon the effectivity of Rev. Regs. No. 3-2023, the local supplier of goods and/or services of REEs shall no longer be required to secure prior approval for VAT zero-rate with the BIR.

To qualify for VAT zero-rating, the local purchase of the REE must be directly and exclusively used in the registered project or activity, and not included in the negative list provided in Rev. Regs. No. 3-2023. Should the goods and/or services fall within the negative list, the REE is not precluded from further proving, with supporting evidence, to the concerned Investment Promotion Agency (IPA) that such goods and/or services are indeed directly and exclusively used in the registered project or activity. Upon determination that such goods and/or services are directly and exclusively used in the registered project or activity of the REE, a VAT Zero-Rate Certificate shall be issued by the concerned IPAs. This is without prejudice to the BIR's power to conduct post audit.

While it is true that the VAT zero-rating on local purchases of goods and/or services shall be availed of on the basis of VAT Zero-Rate Certification issued by the concerned IPA pursuant to Rev. Regs. No. 3-2023, the REE-buyer must still provide a certified copy of the following documents to its local supplier for the latter's documentation in case of post-audit by the BIR, to wit:

a. VAT Zero-Rate Certification issued by the concerned IPA;
b. Certificate of Registration (COR) issued by the BIR having jurisdiction over the head office/branch/freeport/ ecozone location where the goods and/or services are to be delivered;
c. COR issued by the concerned IPA stating all registered ecozone location; and
d. A sworn affidavit executed by the REE-buyer, stating that the goods and/or services are directly and exclusively used for the production of goods and/or completion of services to be exported or for utilities and other similar costs, the percentage of allocation be directly and exclusively used for the production of goods and/or completion of services to be exported, following the prescribed format under RMC No. 84-2022.

Applications for VAT zero-rate accompanied by VAT Zero-Rate Certificate issued by the concerned IPA, as prescribed in RMC No. 36-2022, which have been received prior to the effectivity of Rev. Regs. No. 3-2023 but have not yet been acted upon by the concerned office of the BIR, shall be accorded VAT zero-rating

treatment from the date of filing of such application subject to the conduct of post audit by the BIR that the services are indeed directly and exclusively used by the REE in its registered project or activity.

If the transaction was entitled for purposes of VAT zero-rating, i.e., the goods and/or services sold were directly and exclusively used in the registered project or activity, and the REE is duly endorsed by the concerned IPA, but the seller failed to secure an approved Application for VAT Zero-Rate, such sale shall be subject to twelve percent (12%) VAT.

Application for VAT zero-rate for a particular sale transaction that was previously disapproved will not be considered VAT zero-rate upon the effectivity of Rev. Regs. No. 3-2023 since there was already a prior determination by the BIR that the transaction is not qualified for VAT zero-rate. Accordingly, the same is subject to twelve percent (12%) VAT notwithstanding the issuance of Rev. Regs. No. 3-2023.

BIR-disapproved applications for VAT zero-rate determined to be not qualified for VAT zero-rating purposes, are subject to VAT. Inasmuch as these transactions are subject to VAT, the VAT-registered REE enjoying 5% Gross Income Tax (GIT) or Special Corporate Income Tax (SCIT) may claim the corresponding input VAT from the said purchase, which can be utilized as deduction against future output VAT liability after the incentive period or may be claimed as VAT refund under Section 112(B), Tax Code, in relation to Q & A No. 40 of RMC No. 24-2022.

The following elements must be considered in the evaluation of transaction subject for VAT zero-rating during audit of transactions with REE:

a. The REE's place of business where the registered project or activity is being processed/rendered must be duly registered with the appropriate BIR office;
b. The REE must be duly registered with the IPA administering tax incentives;
c. A VAT Zero-Rate Certificate has been issued by the IPA to the REE;
d. The transaction occurred within the period the REE is entitled to VAT zero-rate incentives and is corroborated with a valid documentation, such as but not limited to duly certified copies of purchase order, job order or service agreement, sales invoice and/or official receipt, delivery receipt, or similar documents to prove existence and legitimacy of the transaction;
e. The purchased goods and/or services must be delivered within the REE's registered head office/branch/freeport/ecozone/location granted with VAT zero-rate incentives; and
f. The transaction is indeed qualified for VAT zero-rating in accordance with the provisions of the Tax Code, and its implementing rules and regulations, revenue issuances.

Since the application for VAT zero-rate is no longer required upon effectivity of Rev. Regs. No. 3-2023, the supplier should identify the goods and/or services being sold that are directly and exclusively attributable to the registered project or activity of the REE by enumerating them in Section Ill, Annex "A" of the prescribed template for VAT Zero-Rate Certification per RMC No. 36-2022. The aforementioned goods and/or services must likewise be declared in the REE's sworn undertaking.

The VAT zero-rating shall not extend to Health Maintenance Organization (HMO) plans procured for employees' dependents, as well as HMO plans for employees not directly involved in the operations of the registered projects or activities of the REEs. Accordingly, only those HMO plans acquired for

employees directly involved in the operation of REE's registered project or activities and forming part of their compensation package shall be accorded with VAT zero-rating.

For audit investigation/verification purposes, the supplier of HMO plans must still require the REE-buyer to provide a detailed information on the acquired HMO plans as prescribed in Annex "A" of RMC No. 137-2022 and maintain a database of the same, for ease of reference.

The submission of application for VAT zero-rating of the local suppliers of other entities granted with VAT zero-rate incentives under special laws and international agreements shall not be required. Alternatively, such local suppliers of goods and/or services shall require from the aforementioned entities the documentary requirements enumerated below:

A. For the Supplier of Renewable Energy (RE) Developer

   The local suppliers of goods, properties, and services shall require from the duly registered RE Developer a certified copy of the following documents:
   - COR issued by the BIR which has jurisdiction over the location of the RE Project;
   - COR issued by the Board of Investments (BOI); and
   - COR issued by the Department of Energy (DOE).

   It is emphasized that the VAT zero-rating shall apply only on the sale of goods, properties, and services, for the development, construction and installation of the RE Developer's power plant facilities. This includes the whole process of exploring and developing renewable energy sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contactors.

B. For the Supplier of Other Entities Under Special Law and International Agreements

   The buyer must provide its local supplier a certified copy of VAT Exemption Certificate/Ruling or equivalent document, issued by the appropriate office of the BIR and other documentary requirements as may be required under the special law and international agreement, including its implementing rules and regulations.

The following elements must be considered in the evaluation of transaction subject for VAT zero-rate:

a. The location of the registered project of the entity granted with VAT zero-rate incentives under special law must be duly registered with the appropriate BIR office;
b. The entity granted with VAT zero-rate incentives under special law must be duly registered with other government agency (OGA) administering tax incentives;
c. The entity granted with VAT zero-rate incentives under special law or international agreement must have been issued by its concerned OGA administering Tax Incentives a VAT Exemption Certificate/BIR Ruling/equivalent certificate; and
d. The transaction is indeed qualified for VAT zero-rating in accordance with the provisions of the Tax Code, and its implementing rules and regulations, revenue issuances, special laws or international agreements; and is likewise corroborated with a valid documentation, such as but not limited to duly certified copies of purchase order, job order or service agreement, sales invoice

and/or official receipt, delivery receipt, or similar documents to prove existence and legitimacy of the transaction;

The template for VAT Zero-Rate Certificate to be issued by the concerned IPA to its compliant REEs is prescribed under RMC No. 36-2022 and attached as Annexes "B-1" and "B-2" of the Circular, for registered under Corporate Recovery and Tax Incentives for Enterprises (CREATE) and Pre-CREATE, respectively.
The template for VAT Zero-Rate endorsement of IPAs, which contains basic information needed in the audit investigation/verification by the concerned investigating office of the BIR, is attached as Annex "C" of the Circular and shall be submitted to the BIR through the Assessment Service, Attention: Audit Information, Tax Exemption and Incentives Division (AITEID), in softcopy (excel file format), via email address: aiteid_ies@bir.gov.ph, within twenty (20) days following the close of each taxable quarter. **(RMC No. 80-2023 issued on August 9, 2023)**

3. Publishes the full text of the Memorandum of Agreement (MOA) between the Bureau of Internal Revenue (BIR) and its Multi-Sectoral Partners

Publishes the full text of the Memorandum of Agreement (MOA) between the BIR and its nine (9) multi-sectoral partners, namely: the Philippine Chamber of Commerce and Industry (PCCI), Tax Management Association of the Philippines (TMAP), Management Association of the Philippines (MAP), Financial Executives Institute of the Philippines (FINEX), Philippine Institute of Certified of Public Accountants (PICPA), Association of Certified Public Accountants in Public Service and Practice (ACPAPP), Association of Certified Public Accountants in Commerce and Industry (ACPACI), Philippine Exporters Confederation, Inc. (PHILEXPORT), and the Joint Foreign Chambers of the Philippines (JFC), that will effectively address issues and concerns raised by the partner-stakeholders on matters that impact tax administration through consultation and collaboration.

The Parties agreed to cooperate, within the context of their respective mandates, policies and resources, and instruments, to contribute to the following key initiatives:

1. Creation of a "BIR-Multi-Sectoral Working Group" which will be a mechanism for consultations regarding issues on tax administration;
2. Sharing of knowledge and expertise on best practices on taxation policies and regulations and strategies on how the Philippine business tax system can be improved to make the Philippine business environment conducive and supportive of business growth and expansion;
3. Advocacy for comprehensive, relevant, and lawful policies, plans, and regulations for tax administration.

The BIR's responsibilities are as follows:

a. Designate an official and alternate representative to the Working Group;
b. Convene the Working Group in partnership with the Parties;
c. Host the "BIR-Multi-Sectoral Working Group" meetings, as needed;
d. Assign a focal person who will coordinate with the Parties' focal person to ensure the implementation of activities pursuant to the Agreement;
e. Participate and promote the activities covered in the Agreement.

The PCCI, TMAP, MAP, FINEX, PICPA, ACPAPP, ACPACI, PHILEXPORT, and JFC's responsibilities are as follows:

a. Designate an official and alternate representative to the Working Group who are knowledgeable on tax issues and can officially speak on behalf of their organizations;
b. Host meetings of the Working Group, as needed;
c. Assign a focal person who will coordinate with the BIR and the private sector members of the Working Group on the implementation of the activities pursuant to the Agreement;
d. Participate and promote the activities covered in the Agreement; and
e. Attend in meetings/consultations/discussion on issues/concerns pertinent to the Sector/Industry represented by the organization.

Except as required by law or pursuant to prior written consent, each of the Parties agrees to protect and not to disclose any Confidential Information under Section 270, Tax Code and information protected by the Data Privacy Act, obtained or accessed through the other Party on account of the implementation of the MOA. The Parties agree to take all reasonable steps to ensure their personnel and authorized agents comply with this confidentiality clause. This clause shall survive the termination of the MOA.

In case any one or more of the provisions contained in the MOA shall, for any reason, be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any of the provisions of the Agreement.
The Agreement shall be amended, altered, and/or modified through consultation between and among the parties, which shall be effected through an addendum, duly signed by the parties, to be applicable from the date agreed upon up to expiration of the MOA.

Any of the parties may withdraw from the Agreement by giving a thirty (30) day prior notice to the other parties. Provided that the withdrawal of any party, other than the BIR, shall not affect the subsistence of the Agreement.

The MOA shall take effect immediately upon signing and shall continue for a period of one year unless otherwise affected by the withdrawal of any of the parties in relation to Article 10 of the Agreement. The same terms and conditions of the Agreement may subsist beyond said period provided that the parties desirous thereof, shall enter into a renewal agreement. **(RMC No. 82-2023 issued on August 14, 2023)**

4. Circularizes Republic Act (RA) No. 11956, Entitled "AN ACT FURTHER AMENDING REPUBLIC ACT NO. 11213, OTHERWISE KNOWN AS THE "TAX AMNESTY ACT", AS AMENDED BY RA NO. 11569, BY EXTENDING THE PERIOD OF AVAILMENT OF THE ESTATE TAX AMNESTY UNTIL JUNE 14, 2025, AND FOR OTHER PURPOSES"

Circularizes RA No. 11956, titled "An Act Further Amending RA No. 11213, Otherwise Known as the "Tax Amnesty Act", as Amended by RA No. 11569, by Extending the Period of Availment of the Estate Tax Amnesty Until June 14, 2025, and for Other Purposes".

Section 4, RA No. 11213, as amended by RA No. 11569, is further amended to read as follows:

"SEC. 4. *Coverage.* — There is hereby authorized and granted a tax amnesty, hereinafter called Estate Tax Amnesty, which shall cover the estate of decedents who died on or before May 31, 2022, with or without assessments duly issued therefor, whose estate taxes have remained unpaid or have accrued as of May 31, 2022: *Provided; however,* That the Estate Tax Amnesty hereby authorized and granted shall not cover instances enumerated under Section 9 hereof."

Section 6, RA No. 11213, as amended by RA No. 11569, is further amended to read as follows:

"SEC. 6. Availment of the Estate Tax Amnesty; When and Where to File and Pay. — The executor or administrator of the estate, or if there is no executor or administrator appointed, the legal heirs, transferees or beneficiaries, who wish to avail of the Estate Tax Amnesty shall, within June 15, 2023 until June 14, 2025, file either electronically or manually, with any authorized agent bank, Revenue District Office through the Revenue Collection Officer, or authorized tax software provider, a sworn Estate Tax Amnesty Return, in such forms as may be prescribed in the Implementing Rules and Regulations. The payment of the amnesty tax shall be made, either electronically or manually, at the time the Return is filed with any authorized agent bank, Revenue District Office through the Revenue Collection Officer, or authorized tax software provider: Provided, That the appropriate Revenue District Officer shall issue and endorse an acceptance payment form, in such form as may be prescribed in the Implementing Rules and Regulations of this Act for the authorized agent bank, or in the absence thereof, the revenue collection agent or authorized tax software provider concerned, to accept the tax amnesty payment: Provided, further, That for the availment of the estate tax amnesty, the requirements to be submitted to the BIR by the filers of the estate tax amnesty shall be limited to the following:

"(A) Mandatory requirements:

"(1) Certified true copy of the Death Certificate (DC), or if not available, the certificate of no record of death from Philippine Statistics Authority and any valid secondary evidence including, but not limited to, those issued by any government agency/office sufficient to establish, the fact of death of the decedent;

"(2) Taxpayer Identification Number (TIN) of decedent and heir/s;

"(3) For "claims against the estate" arising from contract of loan, notarized promissory note, if applicable;

"(4) Proof of the claimed "property previously taxed", if any;

"(5) Proof of the claimed "transfer for public use", if any; and

"(6) At least one (1) government-issued identification card (ID) of the executor/administrator of the estate, or if there is no executor or administrator appointed, the heirs, transferees, beneficiaries or authorized representative.

“(B) For real property/ies, if any:

“(1) Certified true copy/ies of the transfer/original condominium certificate/s of title of real property/ies;

“(2) Certified true copy of the tax declaration of real property/ies: if untitled, including the improvements at the time of death or the succeeding available tax declaration issued nearest to the time of death of the decedent, if none is available at the time of death; and

“(3) Where declared property/ies has/have no improvement, Certificate of No Improvement issued by the assessor's office at the time of death of the decedent.

“(C) For personal property/ies, if applicable:

“(1) Certificate of Deposit/Investment/Indebtedness owned by the decedent alone, or decedent and the surviving spouse, or decedent jointly with others;

“(2) Certificate of Registration of vehicle/s and other proofs showing the correct value of the same;

“(3) Certificate of Stocks;

“(4) Proof of valuation of shares of stock at the time of death; or

“(5) Proof of valuation of other types of personal property.

“(D) Other requirements, if applicable:

“(1) If the person transacting/processing the transfer is the authorized representative, duly notarized original Special Power of Attorney (SPA) and/or, if one of the heirs is designated as executor/administrator, sworn statement;

“(2) If the document is executed abroad, certification from the Philippine Consulate or Apostille; or

“(3) If zonal value cannot be readily determined from the documents submitted, location plan/vicinity map.

“In the absence of any of the documents required above, the Commissioner of Internal Revenue may request for alternative documents, as may be deemed appropriate.

“The application for payment of estate taxes shall be a distinct and separate process from the application for transfer of properties: Provided, however, That the proof settlement of the estate, whether judicial or extrajudicial, shall only be required by the BIR for the issuance of the Electronic Certificate Authorizing Registration (ECAR) for the transfer of properties, and not for purposes of filing and payment of the estate taxes.

"x x x."

Section 8, RA No. 11213, as amended by RA No. 11569, is further amended to read as follows:

> "SEC. 8. Immunities and Privileges. — Estates covered by the Estate Tax Amnesty, which have fully complied with all the conditions set forth in this Act, including the payment of the estate amnesty tax shall be immune from the payment of all estate taxes, as well as any increments and additions thereto, arising from the failure to pay any and all estate taxes for the period ending May 31, 2022 and prior years, and from all appurtenant civil, criminal, and administrative cases and penalties under the National Internal Revenue Code of 1997, as amended. "x x x."

Payment by installment shall be allowed within two (2) years from the statutory date for its payment without civil penalty and interest. **(RMC No. 83-2023 issued on August 14, 2023)**

5. Publishes the consolidation of the BIR's Freedom of Information (FOI) Manual

Publishes the consolidation of the BIR's Freedom of Information (FOI) Manual, the list of FOI Receiving Officers as of December 2022 and the updated One-page FOI Manual. **(RMC No. 85-2023 issued on August 15, 2023)**

D. REVENUE MEMORANDUM ORDERS

1. Prescribes the policies, guidelines, and procedures in the processing of request for corporate information, including beneficial ownership information, with the Securities and Exchange Commission

Prescribes the policies, guidelines and procedures in the processing of request for corporate information, including beneficial ownership information, with the Securities and Exchange Commission (SEC).

The Data Sharing Agreement (DSA) allows the BIR to obtain information on corporations and other registered/licensed entities, including beneficial ownership information. The following information may be requested from the SEC:

a. Complete name of incorporators, stockholders, directors, trustees, members, officers of a SEC-registered corporation, including their specific residential address, date of birth, nationality, Taxpayer Identification Number (TIN), and percentage of ownership;
b. Beneficial owners of SEC-registered corporations;
c. Partners in a partnership; and
d. Information on other persons licensed by the SEC.

To implement the mandates of the DSA, the Deputy Commissioner for Information Systems Group, the duly designated Data Protection Officer (DPO) of the BIR shall act through the Chief of the International Tax Affairs Division (ITAD), as her alternate DPO.

The BIR shall develop a web-based application for the purpose of receiving requests for corporate information from BIR offices, and storing, transmitting, and accessing the information and documents provided by the SEC. While the said web-based application is not yet in place, the requesting office shall send its request for assistance to the official email address created for this purpose, i.e. boinfo_itad@bir.gov.ph. All requests for corporate information shall be addressed to the DPO, for the attention of the alternate DPO and coursed through the ITAD. The letter shall follow the prescribed format (Annex A of the Order).

In turn, the alternate DPO shall assign a reference number, which will be used to track the said request, and thoroughly evaluate if said request is sufficient in form and in substance. If found to be complete and in order, he/she shall prepare a letter-request addressed to the SEC. The letter-request shall follow the prescribed format (Annex B of the Order) and shall likewise be sent to the SEC using the same email facility.

The official email address shall be managed exclusively by the alternate DPO and any other person authorized to act as such pursuant to a Revenue Delegation Authority Order. It shall not only be used when sending requests to the SEC but also when receiving information/documents from the said government agency and transmitting the same to the requesting office.

All personal data obtained pursuant to this DSA shall be used, processed, disclosed, and transferred following the policies and guidelines for personal data protection and security prescribed under RMO No. 1- 2020 or the Data Privacy Manual of the BIR, in compliance with the Data Privacy Act (DPA) of 2012 and its implementing rules and regulations.

Files and documents containing personal data shall be encrypted and transferred preferably via a secure email facility or via the cloud storage associated with the official email address. Access to the uploaded files shall only be given to the head of the requesting office and any other person authorized by the head of office and whose name has been indicated in the request-letter. Other revenue employees shall only be given access to the uploaded files upon receipt by the alternate DPO of an authorization letter duly signed by the head of the requesting office.

Personal data stored in paper files or any physical media shall be transmitted only through registered mail or, where appropriate, authorized parcel post service. As much as possible, facsimile technology shall not be used in transmitting documents containing personal data.

The data sharing between the BIR and the SEC shall be carried out in accordance with the provisions of the relevant DSA. Any information obtained pursuant to this DSA shall be treated with utmost confidentiality pursuant to DPA of 2012 and Section 270, Tax Code and shall be used only for the purpose(s) stated in the letter-request in accordance with the objectives set forth in item II of the Order. **(RMO No. 26-2023 issued on July 19, 2023)**

2. Amends certain provisions of RMO No. 23-2023 to align existing policies in the issuance of Tax Verification Notices (TVNs) in the processing of claims for Value-Added Tax (VAT) Credit/Refund except those under the authority and jurisdiction of the Legal Group

Amends certain provisions of RMO No. 23-2023 to align existing policies in the issuance of Tax Verification Notices (TVNs) in the processing of claims for Value-Added Tax (VAT) credit/refund, except those under the authority and jurisdiction of the Legal Group.
The following Items under RMO No. 28-2023 are hereby amended as follows:

- Item 8 under "General Policies" –
  "8. Tax Verification Notice (TVN) shall be issued by the herein indicated Revenue Officials to authorize the verification of VAT credit/refund claims filed under Sections 112, 204 (C) and 229, Tax Code."

Processing Office	Revenue Official
Revenue District Office (RDO)	Revenue District Officer
VAT Audit Section (VATAS)	Assistant Regional Director
VAT Credit Audit Division (VCAD)	Division Chief
Large Taxpayer VAT Unit (LTVATAU)	Assistant Commissioner, LTS

- Item 1(c) under "Procedures" –
  "c. The Revenue Officials identified under item I.8 of this Order shall issue a TVN to authorize the verification of VAT credit/refund."
- Item 1 of Annex C.3 –
  "1. The Revenue officials identified under I.8 of this Order shall issue a Tax Verification Notice (TVN) to authorize the verification of VAT credit/refund." **(RMO No. 28-2023 issued on August 10, 2023)**