TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

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

Prepared by:
CASTILLO LAMAN TAN PANTALEON & SAN JOSE LAW FIRM

DECISION / ISSUANCE	DATE ISSUED	SUBJECT	PAGE NO.
SUPREME COURT ("SC") DECISIONS			
1. Lapanday Foods Corp. v. Commissioner of Internal Revenue (G.R. No. 186155)	Jan. 17, 2023 (uploaded on Feb. 8, 2023)	VAT applies to the sale of services in the course of trade or business which includes transactions incidental thereto. It does not follow that an isolated transaction cannot be an incidental transaction for purposes of VAT liability. However, it must be clearly established that the transaction in question must be intimately related or connected with the conduct of the main business activity which is subject to the VAT.	**6**
2. Commissioner of Internal Revenue v. CE Casecnan Water and Energy Company, Inc. (G.R. No. 212727)	Feb. 01, 2023 (uploaded on Feb. 17, 2023)	The completeness of the documents to support a claim for refund should be determined by the taxpayer, and not by the BIR. Moreover, the 120-day period for the BIR to decide a claim for refund should be counted from the time the application for refund was filed before the BIR, not from the time the taxpayer submits all the requirements stated in RMO 53-98.	**6-7**
COURT OF TAX APPEALS ("CTA") DECISIONS			
1. People v. Cliref Enterprises, Inc. (CTA Crim. Case No. 0-966)	Mar. 3, 2023	Absent proof of receipt of the FLD and Assessment notices, the assessments could never attain finality and therefore there is no willful failure to pay tax.	**7**
2. People v. Delos Santos (CTA Crim. Case No. O-970)	Mar. 03, 2023	The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of 5 calendar days from receipt of the Resolution. Otherwise, the same shall be denied.	**7**
3. People v. Logistics.com Corporation (CTA Crim. Case No. O-973)	Mar. 06, 2023	The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of 5 calendar days from receipt of the Resolution. Otherwise, the same shall be denied.	**7-8**
4. People v. Matten Technologies Inc. (CTA Crim. Case No. O-982)	Feb. 21, 2023	The 5-year prescriptive period shall be interrupted by the institution of the criminal action - through the filing of Information in court, and not by filing of the Complaint before the DOJ for preliminary investigation.	**8**
5. People v. Amposta, CTA Crim. Case No. O-998)	Mar. 13, 2023	Failure to submit documents showing actual receipt of the FDDA results in the inexistence of the time when the obligation to pay arose or when the offense of failure to pay deficiency tax was committed.	**8**

6. People v. Haleiwa International Corp. (CTA Crim. Case No. O-1010)	Mar. 03, 2023	Failure to submit evidence that the FLD and FAN were received by the accused results in the assessments not having attained finality and therefore there is no failure to pay tax committed.	**8-9**
7. Yap v. BIR (CTA Case No. 10019)	Mar. 09, 2023	Undeclared purchases and expenses, even when the same are truly undeclared, should not be automatically treated as income to which income tax should be imposed.	**9**
8. Philippine Hydro PH Inc., v. Commissioner of Internal Revenue (CTA Case No. 10618)	Mar. 06, 2023	A Letter of Authority should cover a taxable period not exceeding one taxable year.	**9**
9. FILAIRCO, Inc. v. Commissioner of Internal Revenue (CTA Case No. 10862)	Mar. 10, 2023	Issuing a FAN within the 15-day period allowed by law for the petitioner to file a reply to the PAN is violative of the latter's right to due process on assessment.	**9**
10. People v. Pensotes (CTA Crim. Case No. O-685)	Feb. 16, 2023	The RRCTA is clear in stating that the institution of the criminal action shall interrupt the running of the period of prescription, which is done by the filing of information with this Court.	**10**
11. People v. Bernardo (CTA Crim. Case No. O-931)	Feb. 21, 2023	The 5-year prescriptive period in Section 280 of the Tax Code does not commence to run by the mere fact of discovery. This must be coupled by judicial proceedings.	**10**
12. People v. Tian (CTA Crim Case No. O-941)	Mar. 02, 2023	The discovery and institution of judicial proceedings do not trigger the interruption of the prescriptive period. It is the filing of the Information in Court that interrupts such.	**10**
13. Misamis Oriental Rural Electric Service Cooperative, Inc. v. Commissioner of Internal Revenue (CTA Case No. 10145)	Feb. 28, 2023	Electric cooperatives are exempt from payment of income taxes during its existence under PD 269 as amended.	**10**
14. Grid Solutions LLC., v. Commissioner of Internal Revenue (CTA Case No. 10146)	Feb. 28, 2023	A tax treaty exemption must be upheld when exemption is sufficiently proven.	**10-11**
15. Xpert Air Services Inc., v. Commissioner on Internal Revenue (CTA Case No. 10171)	Mar. 14, 2023	RMO No. 044-10 provides explicitly that LOAs are no longer required to be validated. WDLs are void if issued while the deficiency tax assessment is still pending appeal with the Commissioner of Internal Revenue.	**11**
16. Oceanagold Philippines Inc., v. Commissioner of Internal Revenue (CTA Case No. 10382)	Feb. 20, 2023	All requisites for entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales must be fully substantiated by evidence in order for the taxpayer to be qualified.	**11**
17. City of Manila v. Marina Square Properties (CTA AC No. 252)	Feb. 20, 2023	Collection of alleged deficiency local business taxes by way of counterclaim in a civil case, based on a data and assessment form, is contrary to Sec. 195 of the Local Government Code.	**11-12**
18. Zuellig Pharma Corporation v. Commissioner of Internal	Mar. 02, 2023	To prove entitlement to refund or tax credit under the NIRC, the certificate of creditable tax withheld at source is competent proof to establish the fact	**12**

Revenue (CTA Case No. 9030)		that taxes are withheld. There is no requirement on the part of the petitioner to prove that it has remitted the tax.	
19. Diddley Bow Investment Holdings v. Commissioner of Internal Revenue (CTA Case No. 9759)	Mar. 02, 2023	The 20% withholding tax rate for interests on foreign loans may be reduced to the extent required by a tax treaty entered into by the Philippines.	**12**
20. One Cypress Agri-Solution Inc., v. Commissioner of Internal Revenue (CTA Case No. 9937)	Mar. 07, 2023	Due process requires that notices must be served on and received by the taxpayer otherwise such notices are null and void. Mere presentation of registry receipts is insufficient to prove the taxpayer's receipt of notices.	**13**
21. Aecom Philippines Consultants Corp. v. Commissioner of Internal Revenue (CTA Case No. 10008)	Feb. 28, 2023	The Court is not bound by the findings of the Independent CPA.	**13**
22. Avaloq Philippines Operating Headquarters v. Commissioner of Internal Revenue (CTA Case No. 10119)	Mar. 13, 2023	Cases filed before the CTA are litigated de novo. As such, party litigants should prove every minute aspect of their cases.	**13**
23. Pera Multi-Purpose Cooperative v. Commissioner of Internal Revenue (CTA Case No. 11026)	Mar. 03, 2023	Upon receipt of the FDDA, the filing of a motion for reconsideration within 30 days is not a remedy provided for by law and therefore does not interrupt the running of such prescriptive period.	**14**
24. Benchmark Marketing Corp. v. Commissioner of Internal Revenue (CTA EB No. 2212)	Mar. 10, 2023	If the accrual method is used in recording income, the same shall be used in recording the expenses, as the hybrid method of using accrual basis in one and cash basis in the other is not contemplated by Philippine Tax Laws.	**14**
25. Commissioner of Internal Revenue v. Clark Water Corporation (CTA EB No. 2379)	Feb. 17, 2023	No VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority (Cross Border Doctrine).	**14-15**
26. Commissioner of Internal Revenue v. Western Mindanao Power Corporation (CTA EB Nos. 2449, 2457)	Feb. 20, 2023	Any statement that "the interest will be adjusted if paid before or beyond the due date" serves merely to remind the taxpayer of the adjustment of interest due. It is not a violation of the requirement that a due date must be specified.	**15**
27. Commissioner of Internal Revenue v. Cebu Light Industrial Park, Inc. (CTA EB No. 2466)	Mar. 08, 2023	Among the national internal revenue taxes is the DST. Hence, the DST may not be imposed on business establishments operating within the ECOZONE.	**15**
28. Commissioner of Internal Revenue v. Medical Center Trading Corporation (CTA EB No. 2473)	Feb. 22, 2023	The absence of an Electronic Letter of Authority does not invalidate the assessment nor violate due process.	**15-16**
29. Vestas Services Philippines, Inc. v. Commissioner of	Mar. 08, 2023	Certificate of Endorsement (COE) from the DOE is not a mandatory requirement to avail the VAT	**16**

Internal Revenue (CTA EV No. 2479)		zero-rating incentive provided under RA No. 9513.	
30. Service Resources Inc. v. Commissioner of Internal Revenue (CTA EB No. 2484)	Mar. 08, 2023	Pursuant to the power granted to it by Secs. 204(c) and 229 of the NIRC, the CIR has the power to make a choice between granting a refund or credit of taxes erroneously received.	**16**
31. Commissioner of Internal Revenue v. Chevron Holdings, Inc. (CTA EB No. 2488)	Feb. 23, 2023	Section 112(A) of the NIRC of 1997, as amended, does not require that the input VAT must be "directly attributable" to zero-rated sales to be creditable.	**16**
32. Sycamore Global Shipping Corp. v. Commissioner of Internal Revenue (CTA EB No. 2505)	Feb. 28, 2023	The burden of establishing the factual basis of a claim for a refund rests upon the taxpayer. It is not the duty of the government to disprove a taxpayer's claim for refund.	**17**
33. Citiaire Industrial Services Corp. v. Commissioner of Internal Revenue (CTA EB No. 2511)	Mar. 07, 2023	Service of the assessment to the old address of the taxpayer is valid and justified if the taxpayer failed to inform the CIR of its new address and the CIR was not aware of the new address prior to issuing the notices.	**17**
34. Commissioner of Internal Revenue v. Heirs of Gan, (CTA EB No. 2538)	Feb. 27, 2023	Revenue officers are required to be specifically authorized by a valid LOA, prior to the exercise of their assessment functions, such as the examination of books of accounts and accounting records of the taxpayer. A letter notice or a memorandum of assignment do not provide such authority.	**17**
35. Commissioner of Customs v. Sta. Rosa Farm Products Corp. (CTA EB No. 2542)	Mar. 10, 2023	Due to the expiration of the Special Treatment for Rice on June 20, 2017, there is no longer a need to secure an NFA import permit regarding rice shipments.	**18**
36. Commissioner of Internal Revenue v. Tullet Prebon Philippines Inc. (CTA EB No. 2576)	Feb. 16, 2023	Taxpayers need not prove actual remittance of tax for its claim for refund or credit of excess CWT to prosper.	**18**
37. Commissioner of Internal Revenue v. Philippine Mining Service Corporation (CTA EB No. 2579)	Mar. 14, 2023	The NIRC, as amended, does not mandate that a taxpayer must obtain a prior application for zero rating for a transaction with PEZA-registered entities to be considered as zero-rated.	**18**
REVENUE MEMORANDUM ORDERS ("RMOs")			
1. RMO 07-2023	Feb. 23, 2023	The contents of this RMO are intended primarily as directive to Internal Revenue Offices and Officials in order to provide uniform guidelines and procedures in the handling of the One-Time Transactions ("ONETT") filed through the eONETT System, to define the duties and responsibilities of the identified revenue officials and personnel on the use of the system, and to prescribe the reporting requirements for the effective monitoring of ONETT application and other related transactions.	**19**
REVENUE MEMORANDUM CIRCULARS ("RMCs")			
1. RMC 21-2023	Feb. 16, 2023	This is issued to clarify the provisions pertaining to the posting of an export bond as an option available to manufacturers/exporters intending to	**19**

		export their tobacco products, heated tobacco products, and vapor products prior to the removal thereof from the place of manufacture under par. 7, Sec. 5 of RR No. 18-2021, in relation to the provisions for a claim for product replenishment under RR No. 3-2008.	
2. RMC 22-2023	Feb. 16, 2023	This is issued to all Revenue Officials and employees of the BIR to circularize the revised travel guidelines issued by the Department of Finance.	**19**
3. RMC 23-2023	Feb. 17, 2023	This is issued to amend the provisions of RMC 48-2018 on the classification of ONETT and its corresponding processing time for the issuance of ONETT Computation Sheet ("OCS") and eCAR.	**19-20**
4. RMC 24-2023	Feb. 17, 2023	This is issued to address certain questions that need to be addressed despite the issuance of RMC 15-2023 on the coverage of logistics services as "activities in support to exporters" under the 2022 Strategic Investment Priority Plan (SIPP).	**20-21**
5. RMC 25-2023	Feb. 20, 2023	This is issued to circularize RA 11314, entitled "An Act Institutionalizing the Grant of Student Fare Discount Privileges on Public Transportation and for Other Purposes."	**21**
6. RMC 26-2023	Feb. 27, 2023	This is issued to circularize the updated list of Accredited Microfinance Non-Government Organizations as of January 2023.	**21**
7. RMC 27-2023	Mar. 1, 2023	This is issued to notify the public of the loss of eCAR with serial number eCR202100127490, and to inform that such eCAR is canceled. As such, all official transactions involving the use thereof is therefore considered as invalid.	**21**
8. RMC 28-2023	Mar. 2, 2023	This is issued to circularize RA 11898, otherwise known as the "Extended Producer Responsibility Act of 2022" and its Implementing Rules and Regulations.	**21**
9. RMC 29-2023	Mar. 9, 2023	This is issued to clarify the effect of publication of the list of taxpayers determined as Cannot Be Located ("CBL").	**21-22**
10. RMC 30-2023	Mar. 15, 2023	This is issued to inform importers of automobiles of the basis for the Total Landed Value of imported automobiles as defined under RR 25-2003 in the processing of applications for electronic Authority to Release Imported Goods (eATRIG) by Importers of Automobiles.	**22**
11. RMC 32-2023	Mar. 16, 2023	This is issued to provide the guidelines in the filing of Annual Income Tax Return for Calendar Year 2022, as well as the payment of corresponding taxes due thereon, until April 17, 2023. The guidelines provide for a file-and-pay anywhere scheme.	**22-23**

DISCUSSION

A. SUPREME COURT DECISIONS

1. **VAT applies to the sale of services in the course of trade or business which includes transactions incidental thereto. It does not follow that an isolated transaction cannot be an incidental transaction for purposes of VAT liability. However, it must be clearly established that the transaction in question must be intimately related or connected with the conduct of the main business activity which is subject to the VAT.**

   Lapanday Foods Corp. was assessed for deficiency taxes (VAT, EWT, FWT, and DST) covering the taxable year 2000. After the EWT, FWT, and DST were canceled, Lapanday argued that the interest on the loans it extended to its parent company and subsidiaries should not be subject to VAT. Moreover, it argues that the deficiency VAT assessment (Jan. 21, 2004) for the first quarter of 2000 is barred by prescription because the 3-year period should be counted from the date of its original filing of its monthly VAT declaration (April 25, 2000) and not the date of the filing of the amended return (Sept. 4, 2001).

   The Court held that the interest on the loans extended by petitioner Lapanday to its affiliates are not subject to VAT. The loans were granted only to accommodate affiliates which did not have existing credit lines with banks. For an activity to be subject to VAT, it must be in pursuit of a commercial or economic undertaking. In this case, however, whatever interest Lapamday may have earned from the loan accommodations is merely passive. Moreover, the financial assistance extended in this case could not normally be embraced in the activity of managing or administering the affairs of, or even promoting, a business.

   On prescription, the Court held that the nature of the amendment of its return is determinative of the prescriptibility of the assessment. In this case, there are no substantial changes. A substantial amendment could have consisted of an increase or reduction of either taxable sales/receipts or input VAT for any of the months of the taxable quarter in question, which would have led also to a corresponding change in the amount of VAT payable for the entire quarter. (Lapanday Foods Corp. v. Commissioner of Internal Revenue)

2. **The completeness of the documents to support a claim for refund should be determined by the taxpayer, and not by the BIR. Moreover, the 120-day period for the BIR to decide a claim for refund should be counted from the time the application for refund was filed before the BIR, not from the time the taxpayer submits all the requirements stated in RMO 53-98.**

   CE Casecnan Water and Energy filed a claim for refund/tax credit for unutilized input VAT payments attributable to its zero-rated sales to NIA covering the year of 2008. Being unacted upon, it filed petitions for review with the CTA Division. CIR argues that CE Casecnan is not entitled to the claim because it must submit complete documents to support its claim before the 120-day period under Sec. 112 (C) of the Tax Code can commence. (Note: under the TRAIN law, the period to grant or deny by the BIR is now reduced to 90 days; but the 30-day period within which to appeal to the CTA remains.)

   The Court held that the completeness of the documents to support a claim for refund under Sec. 112 (C) of the Tax Code should be determined by the taxpayer, and not by the BIR. Echoing the CTA, should the taxpayer decide to submit only certain documents, or should the taxpayer fail, or opted not

to submit any document at all, in support of its application for refund under Sec. 112 (C) of Tax Code, the 120-day period should be reckoned from the filing of the said application. Otherwise, taxpayers will be at the mercy of the BIR and the period within which they can elevate their case to the CTA will never run, to their extreme prejudice. Moreover, even assuming that respondent did not comply with the 120-day period, its claim is not premature if it relied on the erroneous BIR Ruling No. DA- 489-03, before the same was reversed, which states that "a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the [Court of Tax Appeals] by way of a Petition for Review." (Commissioner of Internal Revenue v. CE Casecnan Water and Energy Company, Inc.)

B. COURT OF TAX APPEALS DECISIONS

1. Absent proof of receipt of the FLD and Assessment notices, the assessments could never attain finality and therefore there is no willful failure to pay tax.

An Information was filed against the accused, indicting them of violation of Sec. 255 in relation to Secs. 253(d) and 256 of the NIRC as amended when they failed to pay deficiency value-added tax despite final notice and demand. However, records do not show that the FLD and Assessment Notices were received by the accused. Moreover, the Information was filed beyond the five-year prescriptive period provided under Sec. 281 of the NIRC as amended.

The Court held that absent proof of receipt, these assessments could not have attained finality, there is no willful failure to pay tax and there is insufficiency to show that the accused sought to be arrested probably committed the crime charged. On the issue of prescription, the crime was committed on Aug. 3, 2017 while the Information was filed on Dec. 2, 2022 which is more than 5 years and 4 months from the date of the commission of the crime. (People v. Cliref Enterprises, Inc. CTA Crim. Case No. 0-966)

2. The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of 5 calendar days from receipt of the Resolution. Otherwise, the same shall be denied.

On Jan. 25, 2023 the Court issued a Resolution dismissing the case on the ground of prescription of the offense charged. The prosecution filed a Motion for Reconsideration on Feb. 10, 2023.

The Court held that under Item III (2) (c) of the Revised Guidelines for Continuous Trial of Criminal Cases, the motion for reconsideration of the resolution of a meritorious motion shall be filed within 5 calendar days from receipt of the resolution. In this case, the prosecution admitted receiving the resolution on Jan. 31, 2023. Since it is belatedly filed, the Court has no other choice but to deny the same.

Even assuming the motion is timely filed, it shall be denied for lack of merit because while the Revised Rules of the CTA explicitly provides that the institution of the criminal action shall interrupt the running of the period of prescription, the tax offense in this case was committed on February 25, 2017 and the Information was filed (Dec. 2, 2022) well beyond the 5-year prescriptive period under Sec. 281 of the NIRC. Thus, the right of the government to institute the case against the accused had already been prescribed. (People v. Delos Santos, CTA Crim. Case No. O-970)

3. The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of 5 calendar days from receipt of the Resolution. Otherwise, the same shall be denied.

After the Court issued a Resolution dismissing the case on the ground of prescription, the prosecution filed a motion for reconsideration (Feb. 13, 2023) arguing that prescription has not set in because the period was tolled upon the filing of the Joint Complaint-Affidavit against the accused before the DOJ.

The Court denied the motion stating that under Item III (2) (c) of the Revised Guidelines for Continuous Trial of Criminal Cases, a party has a non-extendible period of 5 calendar days from receipt of the resolution to file a motion for reconsideration. In this case, the prosecution received the Resolution on Feb. 1, 2023. Further, even assuming it was timely filed, it shall likewise be denied for lack of merit. While the institution of a criminal action shall interrupt the running of the 5-year prescriptive period under Sec. 281 of the NIRC, the FDDA was received by the accused on Aug. 5, 2015 while the Information was filed on Dec. 5, 2022. Clearly, the right of the government to institute this case has already prescribed. (People v. Logistics.com Corporation, CTA Crim. Case No. O-973)

4. **The 5-year prescriptive period shall be interrupted by the institution of the criminal action - through the filing of Information in court, and not by filing of the Complaint before the DOJ for preliminary investigation.**

The FLD was received by the accused on Jan. 10, 2014. Sans payment thereof by accused, the tax offense, in this case, was committed on Feb. 10, 2014. Counting from such date, the five (5) year prescriptive period to indict accused for failure to pay tax lapsed on Feb. 10, 2019. Thus, the right of the government to institute the case against the accused had already prescribed when the Information was filed before this Court on Dec. 5, 2022. The failure of the prosecution to timely file the Information in Court, within the five (5)-year prescriptive period renders the present case dismissible on the ground of prescription. (People v. Matten Technologies Inc., CTA Crim. Case No. O-982)

5. **Failure to submit documents showing actual receipt of the FDDA results in the inexistence of the time when the obligation to pay arose or when the offense of failure to pay deficiency tax was committed.**

In the Joint Complaint-Affidavit, it was alleged that the FDDA was served on the accused through registered mail. However, the Court found that there is no proof of receipt of the FDDA which would give rise to the accused's obligation to pay the said assessment. The Court gave the prosecution a period to submit documents showing actual receipt of the FDDA but it failed to. Hence, there is no showing of when the accused's obligation to pay arose, or when the offense of failure to pay the assessed deficiency tax was committed.

Moreover, the Information is dismissible for prescription presuming that the FDDA was received in ordinary course and the willful failure to pay was committed on Nov. 12, 2016. The Information was filed on Dec. 6, 2022 while the prescriptive period lapsed on Nov. 12, 2021. Hence, there is no probable cause to issue a warrant of arrest. (People v. Amposta, CTA Crim. Case No. O-998)

6. **Failure to submit evidence that the FLD and FAN were received by the accused results in the assessments not having attained finality and therefore there is no failure to pay tax committed.**

There was no evidence that the FLD and FAN both dated April 12, 2021 were received by the accused. Absent proof of receipt, these assessments could not have attained finality, hence, there is no willful failure to pay tax and there is insufficiency to show that the accused sought to be arrested probably committed the crime charged. Assuming for the sake of argument that accused indeed received the alleged FAN and FLD, the case should still be dismissed on the ground that the Information was filed beyond the five-year

prescriptive period provided under Section 281 of the NIRC of 1997, as amended. (People v. Haleiwa International Corp., CTA Crim. Case No. O-1010)

7. Undeclared purchases and expenses, even when the same are truly undeclared, should not be automatically treated as income to which income tax should be imposed.

After receiving BIR's Warrant of Distraint and/or Levy based on liability for deficiency income tax for the years of 2011-2013, petitioner filed a petition for review with motion to suspend collection of taxes arguing that she is not liable for the deficiency income tax because undeclared sales cannot prove undeclared income.

The Court held that in a purchase or expense transaction, no amount of money comes to a taxpayer; instead, money is spent out by the latter. In other words, the said taxpayer does not derive any gain or profit from the transaction. Moreover, it must be emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not to claim any deduction at all. What is prohibited by the income tax law is to claim a deduction beyond the amount authorized therein.78 Thus, even when a taxpayer has not claimed purchases and expenses, or declared a lesser amount thereof, in the Income Tax Return, such action is allowed, and shall not necessarily result in the imposition of income tax on the undeclared or underdeclared purchases. In the same vein, just as no income tax should be imposed on the supposed undeclared purchases and expenses of petitioner, no VAT should likewise be imposed thereon. (Yap v. BIR, CTA Case No. 10019)

8. A Letter of Authority should cover a taxable period not exceeding one taxable year.

CIR issued a second and final request for presentation of books of account and other accounting records of the Petitioner. Petitioner explained in a reply letter that it has already complied with the submission of documents as evidence by a transmittal letter, that tax investigations for most of the covered taxable years in the 2nd LOA were already terminated and the LOA issued covers more than 1 taxable year hence such is void, and that the period to preserve the books of account and other accounting records for such taxable years has already lapsed. Despite this, CIR issued a Subpoena Duces Tecum.

The Court held that the 2 LOAs covered more than one taxable year which is invalid as it violates respondent's own rules and regulations. The period covered under the first lOA refers to taxable period from Jan. 1, 2006 to Dec. 31, 2012 while the second LOA covered the period of Jan. 1, 2008 to Dec. 31, 2012. Hence, the coverage of the two LOAs were substantially the same. (Philippine Hydro PH Inc., v. Commissioner of Internal Revenue, CTA Case No. 10618)

9. Issuing a FAN within the 15-day period allowed by law for the petitioner to file a reply to the PAN is violative of the latter's right to due process on assessment.

The PAN was received by the petitioner on Jan. 10, 2017, while the FAN was received on Jan. 13, 2017. Petitioner had 15 days from receipt of the PAN or until Jan. 25, 2017 within which to file a reply thereon but the FAN was issued only within 3 days on Jan. 13, 2017. Thus, petitioner argues that the issuance of the FAN violates its right to due process on assessment under Sec. 228 of the NIRC.

The Court found grave abuse of discretion as the issuance of the FAN was violative of petitioner's right to due process. It held that the BIR's right to assess and collect taxes must conform to the requirements for assessment and collection set forth in the law. There can be no equivocation from this right and duty nexus. (FILAIRCO, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10862)

10. The RRCTA is clear in stating that the institution of the criminal action shall interrupt the running of the period of prescription, which is done by the filing of information with this Court.

The plaintiff argues that the recent interpretations of Act No. 3326 provides that the filing of complaint with the prosecutor interrupts the running of prescription. The Court held that under Sec. 2 Rule 9 of the Revised Rules of the Court of tax Appeals (RRCTA), the filing of Information in Court interrupts the running of prescriptive period. (People v. Pensotes, CTA Crim. Case No. O-685)

11. The 5-year prescriptive period in Section 280 of the Tax Code does not commence to run by the mere fact of discovery. This must be coupled by judicial proceedings.

Accused argues that the period to institute a criminal action against him as prescribed pursuant to the 5-year period under Sec. 281 of the NIRC since the Information was filed on Sept. 6, 2022 while the Joint Complaint-Affidavit was filed with the DOJ on Feb. 18, 2016. Plaintiff argues that the 5-year prescriptive period began to run and, at the same time, is interrupted upon the filing of a complaint with the DOJ, making tax cases practically imprescriptible.

The 5-year prescriptive period in Section 280 of the Tax Code does not commence to run by the mere fact of discovery. This must be coupled by judicial proceedings, such as a preliminary investigation before the Prosecutor's Office, before the five (5) year limitation period begins to run. Hence, when the Information was filed on Sept. 6, 2022, the right of the State to prosecute the accused has already prescribed. (People v. Bernardo, CTA Crim. Case No. O-931)

12. The discovery and institution of judicial proceedings do not trigger the interruption of the prescriptive period. It is the filing of the Information in Court that interrupts such.

The Plaintiff argues that the period of discovery and the institution of judicial proceedings not only triggers the commencement of the prescriptive period but also triggers the interruption of the same prescriptive period." The Court did not agree. The Supreme Court has held that violations shall nevertheless prescribe if more than five (5) years have lapsed from the time of commencement of the investigation before the Department of Justice, i.e., the filing of a complaint-affidavit, up to the filing of the Information before the Court. (People v. Tian, CTA Crim Case No. O-941)

13. Electric cooperatives are exempt from payment of income taxes during its existence under PD 269 as amended.

Despite tax exemptions granted to electric cooperatives (ECs) under PD 269 as amended, petitioner still received a GDAA denying its protest to a tax assessment and holding it liable for deficiency income tax for the year 2015. Respondent argues that petitioner's failure to register with the CDA disqualified it from enjoying a preferential tax treatment.

The Court held that PD 269 as amended provides an EC with 3 options as regards registration and the second option, i.e. to convert itself into a stock cooperative and register under the CDA, is not mandatory. The law also provides that an EC has 2 types of benefits and the first being that an EC is entitled to a permanent exemption from payment of income taxes during its existence. The first exemption is not dependent on any condition other than an EC's legal existence hence, the exemption stands as long as petitioner legally operates. (Misamis Oriental Rural Electric Service Cooperative, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10145)

14. A tax treaty exemption must be upheld when exemption is sufficiently proven.

Petitioner seeks the refund of erroneously paid capital gain tax arising from its sale of its shares of stock. It based its claim for refund on Sec. 32(B)(5) of the NIRC, and Art. 14 of the RP-US Tax Treaty in relation to Art. 1 of its Reservation Clause.

The Court held that under the RP-US Tax Treaty, the subject capital gains may be exempt from Philippine tax if the interest being disposed of is in a corporation whose assets do not consist principally of a real property interest located in the Philippines. The phrase "principally of a real property interest" is defined as the ratio of such immovable property over the total assets of the domestic corporation in terms of value is more than 50%. In this case, the domestic corporation's real property interest did not exceed 50%, hence petitioner's capital gains should be exempt from CGT in the Philippines pursuant to the RP-US Tax Treaty. (Grid Solutions LLC., v. Commissioner of Internal Revenue, CTA Case No. 10146)

15. RMO No. 044-10 provides explicitly that LOAs are no longer required to be validated. WDLs are void if issued while the deficiency tax assessment is still pending appeal with the Commissioner of Internal Revenue.

The petitioner claims that WDL and the deficiency assessments issued against it are null and void as the LOA authorizing the examination of its books of accounts for taxable year 2010 had ceased to be valid. Under the BIR's General Audit Procedures and Documentation, a regional officer is allowed only 120 days from receipt of LOA by the taxpayer to conduct the audit and submit the required investigation report. If such a report cannot be submitted within the period, the RO must submit a progress report and surrender the LOA for revalidation.

The Court held that nowhere in the NIRC does it state that an LOA needs to be revalidated after the lapse of the 120 days for it to be continuously valid. The failure of a revenue officer to revalidate the LOA will not cause its invalidity but would only expose the officer to administrative charges. Moreover, the revalidation rule has already been withdrawn starting June 1, 2010. However, the WDL is void for being issued while the deficiency tax assessment is still pending appeal. (Xpert Air Services Inc., v. Commissioner on Internal Revenue, CTA Case No. 10171)

16. All requisites for entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales must be fully substantiated by evidence in order for the taxpayer to be qualified.

For the four quarters of taxable year 2018, petitioner engaged in zero-rated sales of minerals out of which it claimed input VAT attributable to its zero-rated sales which remained unapplied to the same and succeeding quarters. It filed a claim for refund with the BIR but the latter did not act on petitioner's claim.

The requisites for entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales are the ff: (1) taxpayer must be VAT-registered, (2) taxpayer must be engaged in sales which are zero-rated or effectively zero-rated, (3) claim must be filed within 2 years after close of taxable quarter when such sales were made and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax. In this case, the claim was partially granted. (Oceanagold Philippines Inc., v. Commissioner of Internal Revenue, CTA Case No. 10382)

17. Collection of alleged deficiency local business taxes by way of counterclaim in a civil case, based on a data and assessment form, is contrary to Sec. 195 of the Local Government Code.

The city treasurer issued a SOA requiring Marina Square Properties to pay local business tax for calendar year 2016. After paying the same, Marina Square Properties filed a letter of even date requesting for refund of the excess payment that it made. It also filed a complaint with the RTC. By way of counterclaim, City of Manila claims an among ot deficiency business tax liability for the years 2014, 2017, and 2018.

The Court held that Marina Squares Properties cannot be held liable for deficiency taxes for the years 2014, 2017, and 2017 because whenever the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, the local treasurer is mandated to issue a notice of assessment. Here, no notice of assessment was issued. (City of Manila v. Marina Square Properties, CTA AC No. 252)

18. To prove entitlement to refund or tax credit under the NIRC, the certificate of creditable tax withheld at source is competent proof to establish the fact that taxes are withheld. There is no requirement on the part of the petitioner to prove that it has remitted the tax.

Petitioner filed a letter requesting for refund of its excess and unutilized credit withholding tax for the year 2012 in the amount of P467,578,787.20.

The requisites for entitlement to refund or tax credit under Sec. 76(c) of NIRC are the following: (1) that both the administrative and judicial claims are filed within 2 year period, (2) that the fact of withholding is established by a copy of a statement issued by the payor to the payee shows the amount paid and amount of tax withheld therefrom, and (3) that the income upon which taxes were withheld was included in the return of the recipient and declared as part of the gross income. Anent the second requisite, the Court held that the certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. In the case of CIR v. PNB, the Supreme Court categorically stated that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits.

Moreover. a taxpayer's failure to submit the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund considering that RMO No. 53-98 is merely a guide to revenue officers as to what documents they may require taxpayers to present upon audit of their tax liabilities, and is never intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund. (Zuellig Pharma Corporation v. Commissioner of Internal Revenue, CTA Case No. 9030)

19. The 20% withholding tax rate for interests on foreign loans may be reduced to the extent required by a tax treaty entered into by the Philippines.

Petitioner Diddley Bow Investment Holdings derived interest income from its investments in treasury bonds which was subjected to FWT at the rate of 20%. Such FWT were withheld and remitted to the BIR by the Bureau of Treasury. Petitioner filed with the BIR a claim for refund or issuance of a tax credit certificate representing FWT erroneously withheld because its interest income from the treasury bonds exempt from income tax and consequently from FWT.

The Court held that the 20% withholding tax rate for interests on foreign loans may be reduced to the extent required by a tax treaty entered into by the Government of the Philippines. In this case, The RP-Netherlands Tax Treaty is thus clear that interest arising in one the States and paid in respect of a bond, debenture or other similar obligation of the Government of that State or of a political subdivision or local authority thereof shall be exempt from tax in that State. (Diddley Bow Investment Holdings v. Commissioner of Internal Revenue, CTA Case No. 9759)

20. Due process requires that notices must be served on and received by the taxpayer otherwise such notices are null and void. Mere presentation of registry receipts is insufficient to prove the taxpayer's receipt of notices.

One Cypress received the PAN on Feb. 7, 2017 alleging deficiency taxes for the year 2013. On Sept. 7, 2018, One Cypress attempted to withdraw the amount of P20,000 from its BDO Savings account but failed because its account had been garnished by the BIR on July 20, 2018. It was given a copy of the Warrant of Garnishment then. It argues that it was denied due process in the issuance of the FAN and Warrant of Garnishment; and that it is not liable for deficiency taxes.

The Court held that it has been settled that while a mailed letter is deemed received by the addressee in the course of mail, this is merely a disputable presumption subject to controversion, the direct denial of which shifts the burden to the sender to prove that the mailed letter was, in fact, received by the addressee. In this case, Registry Receipts do not suffice as proof that notices were indeed served on and received by the taxpayer. These receipts merely prove the fact of mailing and nothing more. (One Cypress Agri-Solution Inc., v. Commissioner of Internal Revenue, CTA Case No. 9937)

21. The Court is not bound by the findings of the Independent CPA.

As stated in Section 2.58.3 (B) of RR 2-98, a claim for CWT refund may only prosper upon proof that income payment has been declared as part of the gross income subject to income tax. Following a tracing procedure, it was found in this case that there are BIR Forms No. 2307 with CWTs that do not match its respective ORs, Tax Recovery General Ledger Account's CWT amounts, and Project Performance Reports (PPRs). The ICPA attempted to reconcile the differences. The Court held that the ICPA's findings are not conclusive upon the Court as the same are subject to verification, to determine its accuracy, veracity, and merit. The Court may either adopt or reject the ICPA Report, wholly or partially, depending on the outcome of its own independent verification.

Consequently, the Court finds that petitioner failed to prove that the income payments upon which the alleged excess CWTs were withheld were declared as part of the gross income subject to income tax. (Aecom Philippines Consultants Corp. v. Commissioner of Internal Revenue, CTA Case No. 10008)

22. Cases filed before the CTA are litigated *de novo*. As such, party litigants should prove every minute aspect of their cases.

Avaloq claims for refund representing its unutilized input VAT attributable to its zero-rated sales for the for the first and second quarters of 2017. As an ROHQ established as a branch of Avaloq Group AG in the Philippines, petitioner explains that it is allowed to derive income in the Philippines by performing qualifying services. CIR argues that Avaloq failed to prove that it is a VAT-registered entity and that the place of performance of its services was in the Philippines.

The Court held that Avaloq primarily anchors its claim that it has sufficiently proven that its services were performed in the Philippines, on the fact that it is an ROHQ of Avaloq Group AG. The issue as to whether or not petitioner performed services in the Philippines is a question of fact which must be proven by specific evidence. In this case, not only did Avaloq solely rely on the fact that it is an ROHQ for claiming refund, the General Framework Services Agreement itself has no provision as to where the services are to be performed. Hence, it is not proven that the place of performance is in the Philippines. As such, the sales of services to its non-resident foreign affiliates cannot qualify as subject to zero percent (0%) VAT. (Avaloq Philippines Operating Headquarters v. Commissioner of Internal Revenue, CTA Case No. 10119)

23. Upon receipt of the FDDA, the filing of a motion for reconsideration within 30 days is not a remedy provided for by law and therefore does not interrupt the running of such prescriptive period.

Pera MPC received a FAN assessing it for deficiency DST, EWT, WTC and additional penalties on Sept. 20, 2021. On Oct. 29, 2021, it filed a Request for Reinvestigation of the FAN which was denied. An FDDA was issued to which Pera MPC filed a protest by way of a motion for reconsideration with the Regional director. The Regional director did not act upon the motion but instead referred Pera MPC to the filing of a request for reinvestigation with the CIR or a judicial protest with the CTA. Pera MPC then filed a motion for reconsideration with the CIR. The latter did not act on the same until the 180-day period lapsed.

The Court ruled that upon receipt of the FDDA, Pera MPC could file an appeal to the CTA within 30 days or file an appeal to the CIR within 30 days. Instead of availing these options, it filed a motion for reconsideration before the Regional Director during the 30-day period. Such a remedy is not provided for by law and, therefore, did not interrupt the running of the 30-day period. Moreover, if the taxpayer appeals to the CIR the final decision of the latter's duly authorized representative, the taxpayer's remaining option is to wait for the CIR's decision before elevating its case to the CTA. The CIR is not given a separate 180-day period within which to decide such administrative appeal. Given that the CIR has not yet acted on the petitioner's appeal, the filing of the appeal to the CTA is still premature. (Pera Multi-Purpose Cooperative v. Commissioner of Internal Revenue, CTA Case No. 11026)

24. If the accrual method is used in recording income, the same shall be used in recording the expenses, as the hybrid method of using accrual basis in one and cash basis in the other is not contemplated by Philippine Tax Laws.

Benchmark received a FAN assessing it for deficiency income tax, VAT, and EWT. It filed a protest but due to the inaction of the BIR, it filed a petition praying for such notices to be declared null and void. The CTA in Division upheld the assessment for deficiency income tax for taxable year 2011 in the amount of P109,154,369.56.

Highlightable in the disposition of the case by the CTA En Banc is the discussion on the claiming of expenses as deduction and the accrual method of accounting for revenue and expenses. The CTA En Banc explained that if the taxpayer accounts for its income on the accrual method, it should also adopt the accrual method of accounting for its expenses. A hybrid method, i.e., accrual for income recognition and cash method for expense recognition, is not contemplated by Philippine tax laws, rules and regulations. In this case, Benchmark should have claimed the expenses incurred in 2009 and 2010 in the same years and not in 2011. The CTA En Banc reiterated the ruling in CIR v. Isabela Cultural Corporation, GR 172231, Feb. 12, 2007, that under the accrual method of accounting, expenses not being claimed as deductions by a taxpayer in the current year when they are incurred cannot be claimed as deduction from income for the succeeding year. (Benchmark Marketing Corp. v. Commissioner of Internal Revenue (CTA EB No. 2212)

25. No VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority (Cross Border Doctrine).

Clark Water Corporation received an FDDA, after its protest to the FLD and FAN were denied, assessing it for deficiency VAT for 2014 in the amount of P4,406,648.49. The CTA in Division ruled that the assessment did not indicate a definite tax due nor a demand for the payment of tax.

The Court ruled that Clark Water Corporation is liable to pay VAT from its sales of services within the Customs Territory. It is considered importation by the buyer; hence, subject to 12% VAT. (Commissioner of Internal Revenue v. Clark Water Corporation, CTA EB No. 2379)

26. Any statement that "the interest will be adjusted if paid before or beyond the due date" serves merely to remind the taxpayer of the adjustment of interest due. It is not a violation of the requirement that a due date must be specified.

Western Mindanao Power Corp received an FDDA demanding payment of alleged deficiency income tax, VAT, WTC, EWT, Final Tax, DST, and administrative penalties for calendar year 2012 in the amount of P50,3968,525.45.

The Court held that the *Fitness* case does not apply to the instant case. Unlike the *Fitness* case which did not specify a due date, the FLD/FAN issued to petitioner contained a due date, which is Sept. 30, 2015. With said due date, together with the computation of tax liability up to Sept. 30, 2015, there is a definite amount of tax liability and definite demand to pay. Any statement that the interest will be adjusted if paid before or beyond the due date serves merely to remind the taxpayer of the adjustment of interest due if not paid on the due date. (Commissioner of Internal Revenue v. Western Mindanao Power Corporation, CTA EB Nos. 2449, 2457)

27. Among the national internal revenue taxes is the DST. Hence, the DST may not be imposed on business establishments operating within the ECOZONE.

Cebu Light Industrial Park Inc. received an FDDA on Sept.10, 2013, issued by the Regional Director finding it liable for deficiency IT, EWT, and DST, in the amount of P5,566,865.94. Cebu Light argued that it cannot be made liable to pay for DST because it is a PEZA-registered enterprise who elected 5% preferential rate in lieu of national taxes, among others, including DST. Besides, such DST was already paid by its shareholders. CIR argues that Sec. 173 of the NIRC provides that in the event that a party enjoys DST exemption on a taxable document, the party who is not exempt therefrom shall be directly liable for its payment. Following said provision, respondent is liable for basic deficiency DST emanating from advances to stockholders, considered as loans by virtue of Section 179 of the same Code.

The Court held that Cebu Light is not liable for the DST. It held that save for real property taxes on land owned by developers, national and local taxes may not be imposed on business establishments operating within the ECOZONE, in lieu of a special tax rate of 5% of its gross income. (Commissioner of Internal Revenue v. Cebu Light Industrial Park, Inc., CTA EB No. 2466)

28. The absence of an Electronic Letter of Authority does not invalidate the assessment nor violate due process.

Medical Center Trading received an FDDA demanding payment for deficiency income tax, VAT, EWT, WTC, and DST for taxable year 2009. Such were canceled by the Court in Division. CIR argues that the Court in Division erred in ruling that the absence of an eLOA invalidates the tax assessment. It posits that a valid LOA was issued; thus, an eLOA does not invalidate the assessment.

The Court held that the purpose of an LOA is to comply with due process: that the taxpayer needs to be informed that the revenue officer knocking at the taxpayer's door has the proper authority to examine the latter's books of accounts. Under RMO No. 69-2010, the BIR mandates the replacement of existing LOAs with eLAs. Here, Medical Center Trading does not deny receipt of the manual LOA. Hence, the issue is merely a matter of form of the LOA and this shall not affect petitioner's right to due process. Further, RMO

No. 69-2010 does not state that the conduct of the audit would be invalidated in the event that a new eLA is not issued. The fact that an LOA was issued already satisfies the due process requirement. (Commissioner of Internal Revenue v. Medical Center Trading Corporation, CTA EB No. 2473)

29. Certificate of Endorsement (COE) from the DOE is not a mandatory requirement to avail the VAT zero-rating incentive provided under RA No. 9513.

Vestas Services filed a claim for input VAT refund or tax credit certificate for the 3rd quarter of calendar year 2014 which was granted by the CTA En Banc. CIR argues that a Certificate of Endorsement (COE) issued by the DOE to EDC Burgos Wind Power Corporation (a renewable energy developer) is a mandatory requirement to avail VAT zero-rating and that Vestas Services failed to present this hence it cannot avail of the incentives under RA No. 9513. Vestas Services argues that the COE is applicable only for the incentive of duty-free importation of RE machinery, equipment, and materials.

The Court held that the IRR of RA No. 9513 already clarified that RE Developers are automatically qualified to avail of the incentive of VAT zero-rating sans the requirement of COE on per transaction basis. (Vestas Services Philippines, Inc. v. Commissioner of Internal Revenue, CTA EV No. 2479)

30. Pursuant to the power granted to it by Secs. 204(c) and 229 of the NIRC, the CIR has the power to make a choice between granting a refund or credit of taxes erroneously received.

SRI filed a claim for refund or issuance of a tax credit certificate of unutilized CWTs for taxable year 2016 in the amount of P16,683,795.71. SRI argues that the Court erred in granting, as an alternative, the issuance of a tax credit certificate when it only prayed for a cash refund of its unutilized creditable withholding taxes. The CIR asserts that since the taxes paid and collected were presumed to have been made in accordance with law and its implementing regulations, they are not refundable.

The Court held that Secs. 204(c) and 229 of the NIRC grant the CIR the power to either credit or refund taxes erroneously or illegally received. Since Sec. 204 uses the word “may” and “or,” the grantee of the option has the power to exercise authority to either refund or credit SRI’s unutilized CWT subject of the claim. This also means that the CIR is given the discretion to grant or deny, partially or in full, a refund or tax credit. (Service Resources Inc. v. Commissioner of Internal Revenue, CTA EB No. 2484)

31. Section 112(A) of the NIRC of 1997, as amended, does not require that the input VAT must be "directly attributable" to zero-rated sales to be creditable.

The CTA En Banc ruled in favor of Chevron when it dismissed the CIR’s petition. Among the arguments of the CIR is that as to Chevron’s entitlement to its claim for refund of creditable input VAT attributed to its zero-rated sales, the law requires that only such input taxes that are “directly attributable” may be refunded.

The Court held that Section 112 (A) of the NIRC of 1997, as amended, caters to instances wherein the taxpayer is engaged in zero-rated or effectively zero-rated sales and in taxable or exempt sales, and the input taxes cannot be directly or entirely attributed to any of the sales. The law allows the allocation of creditable input taxes which cannot be directly or entirely attributable to zero-rated sales, in which case, the input taxes shall be allocated proportionally on the bases of the volume sales. Simply put, the attribution of input VAT to a taxpayer's zero-rated sales may either have a direct or indirect connection in order to be creditable. (Commissioner of Internal Revenue v. Chevron Holdings, Inc., CTA EB No. 2488)

32. The burden of establishing the factual basis of a claim for a refund rests upon the taxpayer. It is not the duty of the government to disprove a taxpayer's claim for refund.

Sycamore Global Shipping filed its annual ITR for taxable year 2016. A year later, it requested for a cash refund representing erroneously paid income tax to the BIR arising from the cash dividend it received from Banyan Towage Services, Inc. for taxable year 2016.

The Court held that Sycamore Global Shipping was unable to present competent evidence to prove that the cash dividend it received was duly reported as part of its "Other Income" in the 2016 ITR. No other documents such as petitioner's audited financial statements or any other source documents were presented to validate the entries in the 'Other Income' of the ITR. (Sycamore Global Shipping Corp. v. Commissioner of Internal Revenue, CTA EB No. 2505)

33. Service of the assessment to the old address of the taxpayer is valid and justified if the taxpayer failed to inform the CIR of its new address and the CIR was not aware of the new address prior to issuing the notices.

Citiaire received a Warrant of Garnishment in Sept. 2017. As a response, it requested for reinvestigation but the same was denied. It argued before the Court, among others, that the service of the PAN and FAN/FLD were made via registered mail to its old address.

The Court held that it was Citiaire's move to its current address without informing the BIR or CIR thereof, which rendered the personal service of the assessment to petitioner not practicable. The CIR cannot be expected to serve the assessment at Citiaire's new address considering that the BIR or respondent was not yet aware of Citiaire's new address at the time the PAN and FAN/FLO were served by registered mail. Indeed, the subsequent service by registered mail of the assessment to Citiaire's registered address was justified and thus, valid. (Citiaire Industrial Services Corp. v. Commissioner of Internal Revenue, CTA EB No. 2511)

34. Revenue officers are required to be specifically authorized by a valid LOA, prior to the exercise of their assessment functions, such as the examination of books of accounts and accounting records of the taxpayer. A letter notice or a memorandum of assignment do not provide such authority.

The BIR issued a PAN and Assessment Notice on Jan. 6, 2016 against the late Gan assessing him of deficiency VAT in the amount of P39,762.96 for taxable year 2012. An FLD was issued on Jan. 25, 2016. On May 12, 2016 and July 19, 2016, the BIR issued a supplemental PAN and FLD respectively finding liability in the amount of P969,163.42 for the same taxable year. The heirs filed a letter requesting for reconsideration or recomputation but the same was not acted upon hence the petition filed with the CTA. The CIR asserts that the issuance of a Mission Order, and not a LOA, was sufficient to authorize the examination and conduct of inventory taking to determine the correct amount of tax due of a taxpayer pursuant to RMO No. 3-2003

The Court held that the revenue officers who conducted the assessment against Gan were not duly authorized with a LOA. The grant of authority mentioned in Section 6(A) of the NIRC can only be validly carried out through the issuance of a LOA in favor of a revenue officer assigned to perform the audit and issue the corresponding assessment against a taxpayer as expressly stated in Section 13 of the NIRC. Moreover, a MOA is insufficient to grant the ROs the authority to conduct the audit investigation. There being no valid authority to examine the late Gan from the very start, the subject tax assessments are void. (Commissioner of Internal Revenue v. Heirs of Gan, CTA EB No. 2538)

35. Due to the expiration of the Special Treatment for Rice on June 20, 2017, there is no longer a need to secure an NFA import permit regarding rice shipments.

Three shipments of white rice consigned to Sta. Rosa Farm Products arrived at the Manila port. Sta. Rosa Farm Products asked the NFA for approval allowing the former to process the release of these shipments. On June 13, 2018, customs officers issued reports of seizure against the subject shipments for lack of NFA import permits prior to importation. Sta. Rosa Farm Products appealed to the BOC. The BOC ruled that import permit from NFA is required and that forfeiture of the shipments of rice is proper.

The Court held that when respondent imported the rice shipments, there was no need for it to secure an NFA Import Permit since the Philippines' Special Treatment for Rice has already expired. Such requirement only applied until June 20, 2017. After this expiration, the provisions under the WTO Agreement were rendered effective including the prohibition on imposing quantitative restriction on the importation of rice. Hence, there is no valid basis to support the seizure and forfeiture proceedings, as well as the public auction, which were conducted by the BOC. (Commissioner of Customs v. Sta. Rosa Farm Products Corp., CTA EB No. 2542)

36. Taxpayers need not prove actual remittance of tax for its claim for refund or credit of excess CWT to prosper.

Tullet Prebon Philippines filed with the BIR a claim for refund and request for tax credit certificate in the amount of P10,786,046.53 representing excess CWTs for the calendar year 2014. The CTA in Division ruled that Tullet Prebon Philippines is entitled to a refund in the amount of P5,310,177.10. The CIR argues that the respondent should have presented evidence to prove actual remittance of the alleged withholding taxes.

The Court held that Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment by herein respondent-payee to the government itself through said agents. (Commissioner of Internal Revenue v. Tullet Prebon Philippines Inc., CTA EB No. 2576)

37. The NIRC, as amended, does not mandate that a taxpayer must obtain a prior application for zero rating for a transaction with PEZA-registered entities to be considered as zero-rated.

Philippine Mining Service Corp. filed an application for refund or tax credit covering the period of July 1, 2016 to Dec. 31, 2016. The same was partially granted by the BIR. As for the amount disallowed, Philippine Mining Service Corp. appealed to the CTA and the CTA granted the same. The issue is whether the respondent is required to secure an approved application for zero-rating of its sales to its customers registered with the PEZA for the same to be considered zero-rated, which is in turn necessary to claim a VAT refund or credit.

The Court ruled that a prior application for zero-rating is not necessary. BIR regulations additionally requiring an approved prior application for zero rating cannot prevail over the clear VAT nature of transactions with PEZA-registered entities. (Commissioner of Internal Revenue v. Philippine Mining Service Corporation, CTA EB No. 2579)

D. REVENUE MEMORANDUM ORDER

1. **REVENUE MEMORANDUM ORDER No. 07-2023 (Feb. 23, 2023) - The contents of this RMO are intended primarily as directive to Internal Revenue Offices and Officials in order to provide uniform guidelines and procedures in the handling of the One-Time Transactions ("ONETT") filed through the eONETT System, to define the duties and responsibilities of the identified revenue officials and personnel on the use of the system, and to prescribe the reporting requirements for the effective monitoring of ONETT application and other related transactions.**

Relevant to the taxpayers is the procedure for lost electronic Certificate Authorizing Registration ("eCAR"). The re-issuance and re-printing facility of the ONETT System shall only be used for eCARs that are generated and issued thru the said System. In case of lost eCAR issued thru the eONETT System within the validity period, the concerned RDO shall reprint and issue the same to the requesting taxpayer. A certification fee in the amount of One Hundred PEsos (Php 100.00) and affixture of Thirty Pesos (Php 30.00) Documentary Stamp Tax ("DST") on Certificates shall be required for each reprinted eCAR.

E. REVENUE MEMORANDUM CIRCULAR

1. **REVENUE MEMORANDUM CIRCULAR No. 21-2023 (Feb. 16, 2023) - This is issued to clarify the provisions pertaining to the posting of an export bond as an option available to manufacturers/exporters intending to export their tobacco products, heated tobacco products, and vapor products prior to the removal thereof from the place of manufacture under par. 7, Sec. 5 of RR No. 18-2021, in relation to the provisions for a claim for product replenishment under RR No. 3-2008.**

Pursuant to RR 18-2021, manufacturers/exporters of tobacco products, heated tobacco products, and vapor products intended for export may opt to either: (1) utilize their existing balance of excise tax credits, if any, under the Product Replenishment Scheme, or (2) post an export bond equivalent to the amount of the excise tax due on their products if sold domestically, prior to the removal of their excisable products intended for export.

the option of posting for an export bond may be availed of by the manufacturers/exporters of tobacco products, heated tobacco products, or vapor products, subject to the following conditions:

a. In no case shall they avail of (i.) product replenishment and (ii.) export bond at the same time to cover the excise tax due for the shipment;
b. the amount of the export bond shall be equivalent to, at a minimum, the applicable excise taxes due on the two (2) immediately preceding shipments;
c. the concerned manufacturers/exporters shall file and submit the export bond to the Excise Large Taxpayers Regulatory Division of the BIR and copy-furnish the Chief, Excise Large Taxpayers Field Operations Division.

2. **REVENUE MEMORANDUM CIRCULAR No. 22-2023 (Feb. 16, 2023) - This is issued to all Revenue Officials and employees of the BIR to circularize the revised travel guidelines issued by the Department of Finance.**

3. **REVENUE MEMORANDUM CIRCULAR No. 23-2023 (Feb. 17, 2023) - This is issued to amend the provisions of RMC 48-2018 on the classification of ONETT and its corresponding processing time for the issuance of ONETT Computation Sheet ("OCS") and eCAR.**

ONETT Transactions	Classifications	Total Processing Time
Sale of Real Property / Shares of Stocks Processing and Issuance		
a. OCS	Complex	7 working days
b. eCAR	Complex	
Donation of Properties Processing and Issuance		
a. OCS	Complex	7 working days
b. eCAR	Complex	7 working days
Estate of the Decedent Processing and Issuance		
a. OCS	Highly Technical	20 working days
b. eCAR	Complex	7 working days

The total processing time specified above is computed on a per application basis.

4. REVENUE MEMORANDUM CIRCULAR No. 24-2023 (Feb. 17, 2023) - This is issued to address certain questions that need to be addressed despite the issuance of RMC 15-2023 on the coverage of logistics services as "activities in support to exporters" under the 2022 Strategic Investment Priority Plan (SIPP).

The RMC provides the following clarifications:

a. Ecozone Logistics Service Enterprise ("ELSE") is defined as a Registered Business Enterprise ("RBE") supplying production-related raw materials and equipment that caters exclusively to the requirements of export manufacturing enterprises which are registered with the Philippine Economic Zone Authority ("PEZA"), Clark Development Corporation ("CDC"), Subic Bay Metropolitan Authority ("SBMA"), Authority of the Freeport Area of Bataan ("AFAB") or other special economic zones/freeports outside the administration of PEZA.

b. ELSEs that render at least 70% of their output/services to another RBE are covered by the definition of "export enterprise" under the CREATE Act.

c. The definition of an RBE under Section 293(M) of the NIRC of 1997, as amended, excludes certain service enterprises, such as those engaged in trucking or forwarding services. Moreover, BOI MC No. 2023-001 provided the only type of logistic service that will qualify to be registered as ELSE are those undertaking BOTH of the following:
    i. Establishment of a warehouse storage facility; and
    ii. Importation or procurement from local sources and/or from other registered enterprises of goods for resale, or for packing/covering (including marking, labeling),

cutting or altering to customers' specification, mounting and/or packaging into kits or marketable lots thereof for subsequent sale, transfer or disposition for export.

d. Purchases of registered ELSEs from VAT-registered suppliers are subject to VAT at zero-rate but shall only apply to goods and/or services directly and exclusively used in the registered project or activity of the ELSE. Details on the availment of VAT zero-rate incentives on local purchases under the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act are provided in Revenue Memorandum Circular (RMC) No. 24-2022 and its subsequent amendments.

e. The processing of applications for VAT zero-rating shall be governed by Revenue Memorandum Order (RMO) No. 7-2006 and its subsequent amendments, if any. However, provisions of Sections 294(E) and 295(D), Title XIII of the NIRC of 1997, as amended by the CREATE Act, and Rule 2, Section 5 and Rule 18, Section 5 of the CREATE Act Implementing Rules and Regulations, as amended, shall be strictly complied with. Relative hereto, the following must be included in the attachments to the application for VAT zero-rating:

i. Certificate of Registration and VAT Certification issued by the concerned Investment Promotion Agency (IPA) as submitted to it by its registered export enterprise buyers;

ii. A sworn affidavit executed by the registered export enterprise-buyer stating that the goods and/or services bought 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 to directly and exclusively used for the production of goods and/or completion of services to be exported; and

iii. Other documents to corroborate entitlement to VAT zero-rating, such as but not limited to duly certified copies of the valid purchase order, job order or service agreement, sales invoices and/or official receipts, delivery receipts, or similar documents to prove the existence and legitimacy of the transaction.

5. **REVENUE MEMORANDUM CIRCULAR No. 25-2023 (Feb. 20, 2023) - This is issued to circularize RA 11314, entitled "An Act Institutionalizing the Grant of Student Fare Discount Privileges on Public Transportation and for Other Purposes."**

6. **REVENUE MEMORANDUM CIRCULAR No. 26-2023 (Feb. 27, 2023) - This is issued to circularize the updated list of Accredited Microfinance Non-Government Organizations as of January 2023.**

7. **REVENUE MEMORANDUM CIRCULAR No. 27-2023 (Mar. 1, 2023) - This is issued to notify the public of the loss of eCAR with serial number eCR202100127490, and to inform that such eCAR is canceled. As such, all official transactions involving the use thereof is therefore considered as invalid.**

8. **REVENUE MEMORANDUM CIRCULAR No. 28-2023 (Mar. 2, 2023) - This is issued to circularize RA 11898, otherwise known as the "Extended Producer Responsibility Act of 2022" and its Implementing Rules and Regulations.**

9. **REVENUE MEMORANDUM CIRCULAR No. 29-2023 (Mar. 9, 2023) - This is issued to clarify the effect of publication of the list of taxpayers determined as Cannot Be Located ("CBL").**

The purpose of the publication is to give due notice to the concerned taxpayers and to the public as well, who may, in one way or another, have knowledge on the whereabouts of the published names of taxpayers or have transactions with them. Those with information on the CBL taxpayers' whereabouts can report to

the BIR while those with business transactions with them shall be given precaution in their future transactions as there are tax consequences for such, such as non-deductibility of purchases and the non-validity for claiming as input tax of the VAT component of such transaction.

10. REVENUE MEMORANDUM CIRCULAR No. 30-2023 (Mar. 15, 2023) - This is issued to inform importers of automobiles of the basis for the Total Landed Value of imported automobiles as defined under RR 25-2003 in the processing of applications for electronic Authority to Release Imported Goods (eATRIG) by Importers of Automobiles

Under Sec. 2(h) of RR 25-2003 dated September 16, 2003, Total Landed Value "shall refer to the total of the (i) market value of the motor vehicles imported as indicated in the motor vehicle reference books, such as Japanese and U.S. Red Book, Karo and World Car Book on automobile utility vehicles and other motor vehicles, or the dutiable value as defined in Sec. 201 of the Tariff and Customs Code of the Philippines as amended, whichever is higher; (ii) customs duties paid on the imported goods; and (iii) all other charges arising from, or incident to, the importation."

The BIR uses the U.S. Auto Red Book Online Price Digests as its reference for determining the proper market valuation of imported automobiles.

The computation of the ad valorem tax due on such imported automobiles shall be based on the following:

Description	Basis of Valuation (per Auto Red Book Online Price Digests)
1. Importer and at the same time engaged in business as Dealer of Automobiles	Wholesale Price
2. Importer of Automobiles for personal or company use or not engaged in business as Dealer of Automobile	Retail Price

For purposes of the Circular, Item 1, "Importer and at the same time engaged in business as Dealer of Automobiles" shall mean that the importer/dealer of automobiles must satisfy the following requirements:

a. He/she/it must be a holder of Permit to Operate (PTO) as Importer and Dealer of automobiles for Excise Tax purposes;
b. Has dealership agreement/contract with foreign suppliers/ manufacturers;
c. Maintains a showroom or registered storage/warehouse facility;
d. Imports by bulk or a minimum of twelve (12) units in a twelve-month period; and
The imported automobiles are for sale to customers.

The computation of the Ad Valorem Tax due on automobiles in cases where Importers do not satisfy the foregoing requirements shall be based on retail price.

11. REVENUE MEMORANDUM CIRCULAR No. 32-2023 (Mar. 16, 2023) – This is issued to provide the guidelines in the filing of Annual Income Tax Return ("AITR") for Calendar Year 2022, as well as the payment of corresponding taxes due thereon, until April 17, 2023. The guidelines provide for a file-and-pay anywhere scheme.

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

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

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

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

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

- Development Bank of the Philippines Pay Tax Online
- Land Bank of the Philippines Link.Biz Portal
- Union Bank's Online/The Portal Payment Facility and Instapay via UPAY
- Tax Software Provider/Taxpayer Agent – Gcash/Maya/MyEG

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

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

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

For electronically filed AITRs without any attachment required, printed copy of the e-filed tax returns need not be submitted to the office under the Large Taxpayers Service (LTS)/RDO. The generated Filing Reference Number from eFPS or the email confirmation from eBlRForms will serve as the proof of filing of returns. Likewise, for electronically filed AITRs, taxpayers may submit its attachments to the BIR's Electronic Audited Financial Statement (eAFS) System or to the LTS/RDO where the taxpayer is registered within fifteen (15) days from the date of the tax filing deadline. Only the attachments will be stamped received by the LTS/RDO, the printed copy of AITR need not be stamped "Received".