TMAP TAX UPDATES

January 16 to February 15, 2022

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BUREAU OF INTERNAL REVENUE

1. **Revenue Regulations No. (RR) 1-2022** issued on January 20, 2022 extends the following deadlines for 30 calendar days from their due dates, which fall due during the period declared as Alert Level 3 or higher by the Inter-Agency Task Force (IATF) for the month of January 2022:

   (1) Filing of tax returns and payment of corresponding taxes thereon, including submission of certain documents (position papers, replies, protests, documents and other similar letters and correspondence in relation to the ongoing BIR audit investigation);
   (2) Filing of application for tax refund, including claim for Value-Added Tax (VAT) refund;
   (3) Processing of VAT refund; and
   (4) Issuance of Assessment Notices and Warrants of Distraint and Levy.

   The affected taxpayers within the Revenue Region or Revenue District Offices, which declared Alert Level 3 or higher, may file their returns and pay corresponding taxes to the nearest Authorized Agent Banks (AABs) or to the BIR Revenue Collection Officer, notwithstanding the covered jurisdiction of the Revenue District Office.

2. **Revenue Memorandum Order No. (RMO) 9-2022** issued on January 21, 2022 adopted the A.M. No. 20-12-01-SC, which provides for the guidelines for videoconferencing as an alternative mode to in-court proceedings, particularly in conducting formal investigation of administrative cases under the Revised Rules of Procedure in the Investigation/Hearing of Administrative Cases implemented by RMO 19-2011.

   Zoom or Microsoft Teams shall be used in the formal investigation. However, the Hearing Officer, shall use Microsoft Teams in conducting hearings. Documents to be presented as evidence shall be sent in the outlook email of the Hearing Officer, in PDF format.

3. **Revenue Memorandum Circular No. ("RMC") 11-2022** issued on January 24, 2022 circulates Republic Act No. ("RA") 11595, which amends the Retail Trade Liberalization Act of 2000, allowing foreign corporations, partnerships and sole proprietorship to invest or engage in retail business.

4. **RMC 13-2022** issued on January 24, 2022 circulates RA 11635, which amended Section 27(B) of the Tax Code, imposing an income tax rate of one percent (1%) on hospitals which are nonprofit and proprietary educational institutions during the period of July 1, 2020 to June 30, 2023.

5. **RMC 16-2022** issued on January 31, 2022 clarifies the scope and coverage of the extension of deadlines under RR 1-2022 to include, among others, the submission of all required documents, including but not limited to Inventory Lists, and all returns, whether tax returns or information returns, including Alphalists; registration of books of accounts; and filing of application for tax refund, including VAT refund, and processing of VAT refund claim.

   The 30-day extension also applies even if the applicant is a registered taxpayer in the area declared as Alert Level 1 or 2, provided that the venue of the filing thereof is in the area declared as Alert Level 3 or higher.

6. **RMC 19-2022** issued on February 4, 2022 clarifies Section 8 of RR 5-2021 on Tax-Free Exchanges under Section 40 (C)(2) of the National Internal Revenue Code of 1997, as amended by Republic Act No. 11534 (NIRC). The amendment (issuance of CAR sans prior BIR confirmation on tax-free exchanges) merely defers the recognition of the gain or loss only in tax-free exchanges for income tax purposes, and not in its subsequent transfers. Thus, the subsequent transfers shall be monitored by the BIR and the same shall be taxed accordingly.

   The following revenue issuances shall continue to apply on exchanges of properties made pursuant to Section 40(C)(2) of the NIRC, particularly on the establishment and monitoring of substituted basis of the properties transferred and stocks received in case of their subsequent sale or disposition, including their tax treatment: (a) Revenue Regulations No. 18-2001; (b) Revenue Memorandum Ruling (RMR) No. 1-2001; (c) RMR No. 1-2002; (d) RMR No. 2-2002; (e) Revenue Memorandum Order (RMO) No. 32-2001; and (f) RMO No. 17-2016.

SECURITIES AND EXCHANGE COMMISSION

The **Notice on the Extension of the Admission Deadline of the Anti-Money Laundering and Combatting the Financing the Terrorism (AML/CFT) Inherent Risk Assessment Data Form (AIRDF)** posted on January 21, 2022 extended the period of submitting AIRDF to February 28, 2022 for the persons who failed to submit due to circumstances beyond their control. Failure to file the same within the extended period shall constitute a violation of SEC Memorandum Circular No. 26, Series of 2020.

DECISIONS OF THE COURT OF TAX APPEALS

1. **Commissioner of Internal Revenue v. Pilipinas Kyohritsu, Inc.**
   CTA EB No. 2334, January 20, 2022

The non-submission of complete supporting documents at the administrative level is not necessarily fatal to the claimant's judicial claim nor is it a condition precedent to a judicial claim. A taxpayer may present additional documents before the Court of Tax Appeals (CTA) to substantiate its claim for refund, albeit the same were not presented at the administrative level. RA 1125, as amended, provides that CTA is a court of record. Further, in the case of *Philippine Airlines, Inc. v. Commissioner of Internal Revenue* (G.R. Nos. 206079-80 and 206309, January 17,

2018), the Court held that the power of the Court of Tax Appeals to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the Bureau of Internal Revenue.

The CTA Division is not barred from receiving, evaluating and appreciating evidence submitted before it. Once the claim for refund has been elevated to the CTA, the admissibility, materiality, relevance, probative value, and weight of evidence presented to substantiate the claim become subject to the relevant provisions of the Rules of Court. It can also be noted that there is nothing in Section 112 of the NIRC of 1997, as amended, or even in RMO No. 53-98, which states that failure to submit all documents enumerated therein would automatically result in the dismissal of the taxpayer's claim for refund.

2. People of the Philippines v. Grand East Empire Corporation and Solania G. Ong
CTA Crim. Case Nos. O-779, O-780 & O-781, January 24, 2022

In order for an accused to be liable under Section 255 of the NIRC, the following elements must all be proven by the prosecution, to wit:

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

Concomitantly, since the person required under the Tax Code to file a return, pay the tax and supply correct and accurate information is a juridical entity, Sections 253 and 256 of the NIRC state that the penal liability shall be imposed on the corporation's responsible officers. Thus, prosecution must also establish that Ong is one of the responsible officers of GEEC.

The charges against GEEC are based on the accused's failure to pay its assessed deficiency fees despite notice and demand of the BIR. BIR then is required to issue the Notice for Informal Conference ("NIC"), the Preliminary Assessment Notice ("PAN"), and the FAN/FLD and to ensure that the same are received by the taxpayer either through personal service, registered mail, or constructive service. Failure to do so is tantamount to a violation of the taxpayer's right to due process, which will render the assessment void and ineffectual. In this case, record shows that the prosecution failed to establish that an NIC was issued to accused GEEC. Neither was it able to show that NIC, PAN, and FAN/FLD were served to the GEEC by way of personal service, registered mail, or constructive service.

Further, fatal to its case, the prosecution failed to adduce proof that Ong was the Treasurer of GEEC during the time of the crime. In fact, it did not present any evidence identifying any of the officers of the accused corporation. Thus, without proof of Ong's role, designation or position in GEEC, she cannot be held liable for the crimes charged.

3. Ten-Four Readymix Concrete, Inc. v. Commissioner of Internal Revenue
CTA EB No. 2311, January 25, 2022

Pursuant to Section 228 of the NIRC and RR 12-99, as amended, a taxpayer has two (2) alternative remedies from the denial of its protest by the Commissioner of Internal Revenue's (CIR) authorized representative. First, a taxpayer can file a request for reconsideration with the CIR within 30 days from the denial's receipt. Second, the taxpayer may directly elevate its claim within the same period to this Court. The taxpayer's failure to exercise either remedy within such 30-day period shall make the assessment final and executory.

In the case at bar, petitioner denies receiving the FDDA. Instead, petitioner was served with a Preliminary Collection Letter (PCL) and a Final Notice Before Seizure. The provisions above do not patently disclose a remedy when such circumstances occur. However, as the CTA Division correctly ruled, in the case of *Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue* (G.R. No. 148380, December 9, 2005), the demand letter received by petitioner verily signified a character of finality. Therefore, it was tantamount to a denial of the protest. In herein case, when the petitioner received a copy of the PCL on November 27, 2018, it was already informed of the BIR's decision to collect its tax deficiencies.

4. Commissioner of Internal Revenue v. Vestas Services Philippines (VWS), Inc.
CTA EB No. 2255, January 25, 2022

Services rendered to a foreign shareholder, which is a non-resident foreign corporation doing business outside the Philippines qualify as zero-rated.

First, CTA Division already ruled that VWS is a non-resident foreign corporation doing business outside the Philippines. It is settled that findings of fact by the CTA Division are generally accorded great weight and are not to be disturbed without any showing of grave abuse of discretion, considering that the members of the Division are in the best position to analyze the documents presented by the parties.

Second, VWS and respondent are two distinct corporate entities separately registered in two different countries, Denmark and Philippines. Although VWS is one of the shareholders of Respondent, it is fundamental principle of corporation law that " a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected.

5. Maersk Global Services Centres (Philippines) Ltd. v. Commissioner of Internal Revenue
CTA Case No. 10022, January 26, 2022

Pursuant to Section 112(A) of the NIRC, the administrative claim for the issuance of a tax credit certificate (TCC) or refund of input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. The instant claim

covers the first to fourth quarters of taxable year 2016, the respective last day for the filing of its administrative claim for the four quarters of CY 2017 is shown below:

Taxable Quarter	Close of Taxable Quarter	Last Day of Filing Administrative Claim	Date of Filing Administrative Claim
1st Quarter	March 31, 2017	March 31, 2019	September 12, 2018
2nd Quarter	June 30, 2017	June 30, 2019	September 12, 2018
3rd Quarter	September 30, 2017	September 30, 2019	September 12, 2018
4th Quarter	December 31, 2017	December 31, 2019	September 12, 2018

Considering that the petitioner's administrative claim covering said four (4) quarters was filed on September 12, 2018, the same was timely filed.

With regard to the judicial claim, respondent had 120 days from the filing of petitioner's administrative claim on September 12, 2018, or until January 10, 2019, within which to act on the said claim. In a letter dated December 4, 2018, BIR denied the administrative claim, which was received by the petitioner on January 8, 2019. Accordingly, petitioner had a period of 30 days from January 8, 2019, or until February 7, 2019, to file its judicial claim. It appearing that the Petition was filed on February 7, 2019, the judicial claim was likewise filed on time.

6. New York Bay Philippines, Inc. v. Commissioner of Internal Revenue
CTA Case No. 9896, January 26, 2022

Pursuant to Section 112 of the NIRC and RA 10963, and in line with the jurisprudential pronouncements of the Supreme Court, the following requisites must be complied with by the taxpayer-applicant to successfully obtain a credit/refund of input VAT, and these are categorized as follows:

(1) The claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;
(2) That in case of full or partial denial or failure on to part of the CIR to act on the said claim for 120 days, judicial claim with CTA Division within 30 days from receipt of the decision or after expiration of 120 day period;
(3) The taxpayer is registered;
(4) The taxpayer is engaged in zero-rated or effectively zero-rated sales;
(5) That for zero-rated sales, the acceptable currency have been accounted in accordance with BSP Rules and Regulations;
(6) The input taxes are not transitional input taxes;
(7) The input taxes are due and paid;
(8) The input taxes are attributable to zero-rated or effectively zero-rated transactions; and
(9) That input taxes have not been applied against output taxes during and in the succeeding quarters.

7. Metro Main Star Asia Corp. v. Commissioner of Internal Revenue
CTA Case No. 9302, January 26, 2022

The Revenue Officer (RO) who conducted the audit investigation was not validly authorized since her authority is based merely on a Memorandum of Assignment, not a Letter of Authority (LOA).

Section 6(A) of the NIRC lays down the power of the CIR or his duly authorized representative to authorize the examination of any taxpayer and the assessment of the correct amount of tax, and based on such, an authority emanating from respondent CIR or his duly authorized representative is required before an examination and an assessment may be made. Related thereto, Section 13 of the NIRC provides that the authority of a RO to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to a LOA.

Evidently, a grant of authority, through a LOA, must be issued assigning a revenue officer to perform tax assessment functions, in order that such officer may examine taxpayers and collect the correct amount of tax, or to recommend the assessment of any deficiency tax due. Thus, based on the foregoing, ROs must be authorized.

8. Vanguard Logistics Services Phils., Inc. v. Commissioner of Internal Revenue
CTA Case No. 10155, January 27, 2022

An LOA should be served upon the taxpayer within 30 days from its issuance, otherwise, the LOA becomes unenforceable.

In *AFP General Insurance Corporation v. Commissioner of Internal Revenue* (G.R. No. 222133, November 4, 2020), the Supreme Court interpreted the provisions of RAMO No. 1-00 dated March 17, 2000 as one clearly imposing a 30-day expiration period for service; otherwise, the LOA becomes wholly unenforceable. The said rule invalidates a previously issued LOA, which has remained unserved for more than 30 days past its issuance date, unless the same is revalidated.

In this case, the subject LOA was issued on April 1, 2016. Thus, respondent only had until May 1, 2016 within which to serve the said LOA. However, as testified, petitioner only received it on June 2, 2016, or sixty-two (62) days after its issuance. In the absence of the revalidation, the subject LOA became void and without effect. Resultantly, any investigation conducted pursuant to the void LOA is unauthorized, and therefore, a nullity.

9. People of the Philippines v. Rebecca S. Tiotangco,
CTA EB Crim. No. 080 (CTA Crim. Case Nos. O-599, O-601, O-603, O-604), February 3, 2022

While an assessment is *not* necessary before the civil liability of a taxpayer in a criminal case may be imposed, it is still incumbent upon the CIR to provide competent evidence on which the amount of such civil liability may be based. In the case at bar, the computations in the Joint Complaint-Affidavit are not sufficient to fix with definiteness the civil liabilities of respondent relative to the taxable periods under consideration. *Firstly,* it is evident from the wordings of the

said Joint Complaint-Affidavit that such computations are *mere estimates,* as stated therein. *Secondly,* said computations include other taxable periods *not* included in the consolidated criminal actions before the CTA. Hence, while it is true that the First Division had found respondent guilty beyond reasonable doubt in the consolidated criminal cases where the quantum of proof required to prove the same is higher than that for the civil aspect; still, the absence of a precise computation prevents the court from decreeing the resulting civil liabilities.

10. Asurion Hong Kong Limited- ROHQ v. Commissioner of internal Revenue
CTA Case No. 9852, February 9, 2022
Regus Service Centre, Philippines B.V. – ROHQ v. Commissioner of Internal Revenue
CTA Case 10124, February 9, 2022

In a refund of unutilized input VAT attributable to zero-rated sales of services, the taxpayer must present evidence to prove that the services were rendered in the Philippines.

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

The CTA held that to establish compliance with the *fourth* essential element, it is important that the petitioner is able to prove that the services were performed in the Philippines. In this case, there is no indication in the Service Agreement that the services were to be performed in the Philippines. Moreover, the evidence are bereft of any indication that the subject services were performed in the Philippines by petitioner. Thus, for failure of petitioner to establish that the subject services were performed in the Philippines, it is clear that it failed to comply with the said *fourth* essential element. Consequently, petitioner failed to establish its zero-rated sales, rendering its claim for refund of input VAT attributable to zero-rated sales untenable.

11. Calamba Premier Realty Corporation v. Commissioner of Internal Revenue
CTA EB No. 2312 (CTA Case No. 9541), February 3, 2022

In a refund of unutilized input VAT attributable to zero-rated sales of services, the taxpayer must present the VAT official receipt to prove compliance with the invoicing requirements on zero-rated sales.

Petitioner incurred input VAT on interest payments to a lender which is also its lessee, a PEZA-registered entity. Petitioner considered the leasing services to the foregoing PEZA-registered

entity as zero-rated sales, and hence filed for a claim for refund/issuance of a tax credit certificate of unutilized input VAT attributable to its zero-rated sales.

The CTA denied the claim and held that by failing to present the VAT official receipts on its lessee's alleged zero-rated rental payments, petitioner also failed to prove the factual basis of its claim and to comply with the invoicing requirements in the law and its implementing regulations. Strict compliance with substantiation and invoicing requirements is necessary considering the VAT's nature and the VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.

12. City of Makati and Jesusa E. Cuneta, in her capacity as the Makati City Treasurer v. DMCI Holdings, Inc.
CTA AC No. 234, February 10, 2022

Payment under protest is not a requisite for protesting a local business tax assessment.

Under Section 195 of the Local Government Code of 1991 (LGC), there is no requirement that payment should have been made by the taxpayer in order to validly protest the assessed local business tax. Notably, it is only required that the protest be done within a period of sixty (60) days from receipt of the notice of assessment; otherwise, the assessment becomes conclusive and unappealable. Jurisprudence supports that a taxpayer may opt either to pay or *not* to pay the assessed tax, when protesting the pertinent notice of assessment. In other words, where an assessment is to be protested or disputed, the taxpayer may proceed without payment, or with payment, of the assessed tax.

Section 7B.14(c) of Makati Ordinance No. 025-A-04, also known as *"An Ordinance Adopting the Revised Makati Revenue Code"* (RMRC) is in conflict, or at least, not consistent, with Section 195 of the LGC. To recall, said Section 7B.14(c) requires the taxpayer to first pay the assessed tax; otherwise, the protest shall not be entertained. However, as shown, such requirement is not present under the said Section 195 of the LGC for the protest to be given due course. Thus, Section 7B.14(c) of the RMRC must be set aside.

13. City of Makati and Jesusa E. Cuneta, in her capacity as the Makati City Treasurer v. DMCI Holdings, Inc.
CTA AC No. 234, February 10, 2022

A holding company may not be taxed under Section 143(F) of the LGC.

The City of Makati imposed local business taxes on holding companies specifically under Section 3A.02(p), in relation to Section 3A.02(h), of the RMRC, which tax imposition was made pursuant to Section 143(f), in relation to Section 151, both of the LGC of 1991. Notably, Section 143(f) deals

with the taxation of banks and financial institutions. The CTA thus held that for a holding company to be taxable under Section 3A.02(p), in relation to Section 3A.02(h), of the RMRC, it must fall under the purview of *"banks and other financial institutions".* Otherwise, it is not taxable under the said provisions. Considering that DMCI Holdings, Inc. cannot be considered as a bank or other financial institution, the CTA held that it cannot be taxed under Section 3A.02(h) of the RMRC.

14. Commissioner of Internal Revenue v. Dunlevy Food Corporation
CTA EB No. 2294, February 8, 2022

The CTA has jurisdiction over claims for refund of compromise penalties.

The exclusive appellate jurisdiction of the CTA under Section 7(a)(1) of RA 1125, as amended by RA 9282, includes the CIR's decisions and inactions in cases involving, *inter alia,* refunds of penalties in relation to taxes. The second part of the same provision covers other cases that arise out of the NIRC of 1997, as amended, or related laws administered by the BIR. The refund of compromise *penalties* collected or imposed without authority by the BIR, for supposed violations committed by a taxpayer, may be categorized under "other matters" arising from the NIRC, over which the CTA has exclusive appellate jurisdiction.

15. Commissioner of Internal Revenue v. Dunlevy Food Corporation
CTA EB No. 2294, February 8, 2022

The imposition of compromise penalties should conform to Annex A of RMO 19-2007.

Strict adherence to the schedule of penalties listed in Annex A of RMO 19-2007 is required. As it stands, there are only two exceptions when the penalties may differ from the said schedule: (a) when a compromise offer is lower than what is provided in the said schedule, there must be an approval from the CIR, or concerned Deputy Commissioner/ Assistant Commissioner/ Regional Director; and (b) when a compromise offer is higher than those penalties, the offer must be in writing and if there is an Apprehension Slip, the form provided in Annex B of RMO 19-2007 shall be used. Since the records of the case show a dearth of evidence not only as regards the assessment notice or demand letter, but also as to the required written offer from the taxpayer, the compromise penalties assessed may be refunded to the taxpayer.

16. Commissioner of Internal Revenue v. First Life Financial Co., Inc.
CTA EB No. 2263, CTA Case No. 9029, February 3, 2022
Commissioner of Internal Revenue v. First Philippine Power Systems, Inc.
CTA EB No. 2243 (CTA Case No. 9067), February 3, 2022

A Memorandum of Assignment not issued by the CIR or his authorized representative may not substitute an LOA.

Pursuant to RMO 43-90, any reassignment of a tax audit/investigation shall always require the issuance of a new LOA in favor of the ROs who will continue the examination. A Memorandum

of Assignment may, however, be considered a valid and effective LOA, provided that it was issued by the CIR or by his duly authorized representative. Under Section 13 of the NIRC, the duly authorized representative is the Revenue Regional Director. Under Section D (4) of RMO 43-90, petitioner expanded the list of duly authorized representatives who may issue LOAs to Regional Directors, Deputy Commissioners, Commissioner, and other officials that may be authorized by the Commissioner for the exigencies of service. Moreover, under No. 29-07, the equivalent of a Regional Director in the LTS is the Assistant Commissioner or Head Revenue Executive Assistants. A Memorandum of Assignment may be considered a valid and effective Letter of Authority, provided that it was issued by any of the persons named above. A Memorandum of Assignment Issued by the Chief of Regular LT Audit Division, which is not one of among those listed above, cannot qualify as a valid LOA. Considering that the ROs who examined and audited respondent's books of accounts and other accounting records are not armed with a proper LOA, the resulting deficiency tax assessment is null and void.

17. Commissioner of Internal Revenue v. Jinzai Experts, Inc.
CTA EB No. 2259 (CTA Case No. 9473), February 9, 2022

A Tax Verification Notice (TVN) issued by the Revenue District Office (RDO) does not validly substitute an LOA.

A TVN, which was nowhere mentioned in the NIRC, is not an LOA that vested an authority to revenue officers to conduct tax examination into the financial records of a taxpayer. The lack of the required LOA shall invalidate the tax examination itself as well as the notices issued after such examination "for it is well-settled that a void assessment bears no fruit."

18. Commissioner of Internal Revenue v. Market Strategic Firm, Inc.
CTA EB No. 2281 (CTA Case No. 9280), February 9, 2022

A Memorandum of Assignment is not equivalent to an LOA when such will refer the continuance of the audit/investigation to a new set of ROs. It does not refer to a situation where the RO named in the original LOA will just continue the audit/investigation without the other ROs named in the original LOA. The words "transfer of cases to another RO" suggests quite plainly that a *new* set of ROs will continue the audit/investigation of the taxpayer's records, hence necessitating the issuance of a new LOA. This situation is not the same in the instant case where RO Allan Maniego is tasked to merely continue his assignment of conducting an audit/investigation of respondent's tax records. Transfers or reassignments of ROs to other RDOs ordinarily take place within the BIR, and thus, may leave their assigned tasks unfinished so that a Memorandum of Assignment or Referral Memorandum becomes necessary not only to formalize the assignment of these new set of ROs but also to inform the taxpayer that a new set of ROs will continue the audit/investigation. In this particular circumstance, the authority of RO Allan Maniego emanates from the original LOA dated September 20, 2011, hence, amply clothes him with the requisite authority to *continue* the audit/investigation of respondent's books for TY 2010 without the other original ROs who presumably have been transferred/reassigned, resigned or retired. Regardless of the reason for discontinuing the audit/investigation of respondent's tax records, the fact

remains that RO Allan Maniego was tasked to continue the audit/investigation. Respondent's argument that a Referral Memorandum is not equivalent to an LOA citing the Supreme Court decision in the *Composite* case, finds no application in the instant case because there was no substitution of ROs but a mere reduction of ROs to only one (1), i.e., RO Allan Maniego.

19. Commissioner of Internal Revenue v. San Miguel Brewery, Inc.
CTA EB No. 2283 (CTA Case No. 9743), February 10, 2022

The CTA has exclusive jurisdiction to determine the validity or constitutionality of rules and regulations, and other administrative issuances of the CIR, whether as part of the assessment or refund case being heard or a direct challenge thereof.

20. Commissioner of Internal Revenue v. San Miguel Brewery, Inc.
CTA EB No. 2283 (CTA Case No. 9743), February 10, 2022

Failure to present crucial evidence due to time and workload constraints does not warrant the opening of the trial for reception of evidence. The motion for new trial may only be granted upon specific well-defined grounds. Excusable negligence, which the petitioner contends to be present in the non-presentation of the sworn declarations provided for in Section 7 of RR 17-2012 to the independent certified public accountant (ICPA), does not find application in the case at bar. The failure of petitioner's personnel to submit to the ICPA the sworn declarations due to time and workload constraints is a mundane occurrence, and does not constitute excusable negligence as to warrant the opening of the trial and the reception of evidence.

21. Orica Philippines, Inc. v. Commissioner of Internal Revenue,
CTA EB No. 2367 (CTA Case No. 9647), February 3, 2022

A motion to reopen a case filed to address the failure to discharge the burden of proof to substantiate a claim cannot be considered a good reason to allow the same.

In this case, petitioner's prayer for the reopening of the case to submit additional evidence was primarily based on the findings of the Court in Division that it failed to satisfy the documentary requirements for claiming a refund of unutilized input VAT. Considering that the burden of proof to substantiate its refund claim rests on petitioner, the evidence sought to be presented does not fall within the purview of a rebuttal evidence. Likewise, it bears noting that petitioner did not specify the additional evidence it seeks to present. Thus, petitioner failed to discharge its burden of establishing that the same are newly discovered evidence. The Court likewise finds that petitioner has not established any good reason why a decree for reopening the case should be granted by this Court. The failure of petitioner to discharge the burden of proof to substantiate its claim for refund cannot be considered as a good reason to allow the re-opening of this case. Additionally, petitioner also failed to show that the paramount interest of justice would be served in granting its motion to reopen the case. As regards petitioner's assertion that there was a mistake on the representation of the ICPA and that its reliance on the ICPA Report constitutes excusable negligence, the same deserves scant consideration. It is ultimately the taxpayer who

determines the documents it will subject for verification to substantiate its claims. Although the ICPA is tasked to examine voluminous documents in claims for refund, it is, however, the burden of the taxpayer-claimant to ensure that the evidence submitted for the ICPA's examination comply with the documentary requirements provided by law.