TMAP TAX UPDATES
(May 16, 2022 – June 15, 2022)

10. Orica Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9974	May 24, 2022	CTA is not precluded from considering evidence not presented in the administrative claim for refund filed with the BIR.	**7-8**
11. Sellery Phils. Enterprises, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10047	May 24, 2022	Identifying the authorized ROs in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.	**8**
12. Commissioner of Internal Revenue v. Sonoma Services, Inc., CTA EB No. 2467 (CTA Case No. 9808)	May 24, 2022	Presentation of Summary Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax ("SAWT") and Monthly Alphalist of Payees ("MAP") are not required to substantiate a claim for refund of excess or unutilized creditable withholding tax ("CWT").	**8**
13. Premium Leisure and Amusement, Inc. (PLAI) v. Commissioner of Internal Revenue, CTA Case No. 10060	May 26,2022	The two-year prescriptive period provided under Section 229 of the National Internal Revenue Code ("NIRC") should be computed from the time of filing of the adjustment return or annual income tax return and final payment of income tax.	**8-9**
14. Commissioner of Internal Revenue v. Marily Development Corporation, CTA EB No. 2450 (CTA Case No. 9756)	May 31, 2022	Receipt of the LOA and PCL does not guarantee receipt of PAN and Formal Letter of Demand ("FLD") and FAN.	**9**
15. *People of the Philippines v. Shirley Yang (President) Raquel O. Villarante (Corporate Secretary) and Zaldy G. Trinidad (Accounting Manager), (Cardona Apparel, Inc., Warehouse 4, Corporate Park Development Site, Malitlit, Sta. Rosa Laguna, CTA Crim Case Nos. O-202 to O-205*	June 1, 2022	The civil liability of a corporate taxpayer, being personal to it, may not be enforced against its corporate officers.	**9-10**
16. People of the Philippines v. Agerico L. Banzon, as owner of Banz Built Construction, CTA Crim. Case Nos. O-501 to O-514	June 1, 2022	The government's power to enforce the collection through judicial action, whether civil or criminal, is not conditioned upon a previous valid assessment.	**10**
17. People of the Philippines v. Shirley Yang (President) Raquel O. Villarante (Corporate Secretary) and Zaldy G. Trinidad (Accounting Manager), (Cardona Apparel, Inc., Warehouse 4, Corporate Park Development Site, Malitlit, Sta. Rosa Laguna, CTA Crim Case Nos. O-202, O-203, O-204 and O-205	June 1, 2022	Registry return receipt, as proof of receipt of letters sent through registered mail, must be authenticated by proof of actual receipt by the addressee or duly authorized agent of the addressee.	**10**
18. Lantro Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB 2406 (CTA Case No. 9436)	June 9, 2022	The re-filing of administrative claim within the prescriptive period is not prohibited. However, taxpayer-claimants must abandon its initial	**10-11**

		administrative claim as the actual date of filing of refund claim is crucial for purposes of counting the 120-day [now 90-day] period for the Commissioner to act on the claim.	
19. Commissioner of Internal Revenue v. Bicyclepoker, Inc., CTA EB No. 2448 (CTA Case No. 9868)	June 9, 2022	The reassignment or transfer of an RO requires the issuance of a new or amended LOA that will enable the substitute or replacement RO to continue the audit or investigation.	**11**
REVENUE REGULATIONS ("RRs")[1]			
1. RR No. 4-2022	May 26, 2022	Implementing Section 295(F), in relation to Section 294, of the NIRC on the tax treatment of importation of petroleum and petroleum products into, and subsequent transfer, transport, and/or withdrawal through and from freeport zones and economic zones	**11**
REVENUE MEMORANDUM CIRCULARS ("RMCs")[2]			
1. RMC No. 76-2022	May 30, 2022	Suspension of audit and other field operations pursuant to and under authority of, all task forces created thru revenue special orders, operations memoranda and other similar orders/directors	**12**
2. RMC No. 77-2022	May 30, 2022	Suspends all pending Letters of Authority/Mission Orders as of May 30, 2022 and requires the submission of inventory thereafter	**12**
3. RMC No. 78-2022	June 9, 2022	Clarifies the income tax treatment of the different classifications of educational institutions and their tax obligations	**12**

[1] Digests reproduced from the BIR website
[2] Digests reproduced from the BIR website

DISCUSSION

A. COURT OF TAX APPEALS DECISIONS

1. Cases filed with the CTA are litigated de novo, thus, every minute aspect of the case must be proven by presenting, formally offering and submitting to the CTA all evidence required for the successful prosecution of the case.

In claims for VAT refund or credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC and other implementing rules and regulations. Thus, Pilipinas Kyohritsu, Inc.'s ("PKI") compliance with all the VAT invoicing requirements is required to be able to file a claim for input taxes attributable to zero-rated sales. The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims. Moreover, it must be emphasized that compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.

Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and 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.

Furthermore, it must be emphasized that in cases filed before the CTA, which are litigated *de novo,* party-litigants must prove every minute aspect of their case. Thus, it behooves PKI to show compliance with each of the foregoing requisites. As a corollary, the absence of *any* of the said requisites is already a valid ground to deny the refund claim. *[Pilipinas Kyohritsu, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9991, May 16, 2022]*

2. A PCL issued by the representative of the Commissioner qualifies as a final decision appealable to the CTA.

On February 19, 2018, Steel Corporation of the Philippines ("Steel") received a Final Decision on Disputed Assessment ("FDDA") signed by OIC-Regional Director. Steel opted to file a Request for Reconsideration against the FDDA with the Commissioner on March 21, 2018. In response to said Request for Reconsideration, Commissioner, acting through his duly authorized representative, the Chief of Collection Division of BIR, issued a PCL which was received by Steel on May 31, 2018. Steel filed a letter in response to the PCL on June 6, 2018 and on June 19, 2018 received a Final Notice Before Seizure ("FNBS"). Steel filed the petition for review on July 2, 2018.

The CTA's First Division held that the PCL qualified as the final decision appealable to the Court. The First Division explained that the Commissioner did not directly act on Steel's Request for Reconsideration but instead issued a PCL. The Court found the tenor of finality which characterizes the wordings of the PCL qualifies as the final decision appealable to the Court.

It is well-settled that a final demand letter from the BIR, reiterating to the taxpayer the immediate payment of a tax deficiency assessment previously made, is tantamount to a denial of the taxpayer's request for reconsideration.

The Court found that the wordings of the PCL leave no doubt as to the finality of the demand made upon Steel to pay the deficiency taxes, otherwise collection will be made without further notice. Records show that Steel received the PCL on May 31, 2018 and reckoned from the date of receipt, it had until June 30, 2018 within which to appeal with the Court. The Petition for Review filed on July 2, 2018 is still within the thirty (30) day period as June 30, 2018 fell on a Saturday. *[Steel Corporation of the Philippines v. Commissioner of Internal Revenue, CTA Case No. 9866, May 17, 2022]*

3. In order for the 10-year period to assess to apply, the return must be shown to be false or fraudulent. A return shall be considered false or fraudulent if there is intent to evade taxes.

BIR held that the period to assess the deficiency income tax for taxable year 2014 has not yet prescribed, as the ten (10) year period to assess on account of false return applies due to the alleged substantial understatement in the income tax return of petitioner Megaconstruct Group, Inc. ("MGI").

Section 222(a) of the NIRC, as amended, provides an exception to the three (3) year prescriptive period, thereby extending the period to assess to ten (10) years from the discovery of the falsity, fraud or omission. Simply put, ten-

year prescriptive period applies in cases of (1) false or fraudulent return with intent to evade tax or (2) failure to file a return.

Where there is a substantial under declaration of taxable sales, receipts or income, or a substantial overstatement of deductions exceeding thirty percent (30%) of that declared per return, the same shall constitute *prima facie* evidence of a false or fraudulent return.

In the case of *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*[3], the Supreme Court clarified that for a return to be considered false, there must be an intent to evade the taxes due.

In this case, BIR presented no evidence to prove fraud or intentional falsity or that MGI filed the return with the intent to evade the taxes due. For that reason, the said return does not constitute as a false return. *[Megaconstruct Group, Inc. v. Bureau of Internal Revenue, CTA Case No. 9992, May 17, 2022]*

4. Undeclared import purchases, by itself, should not be treated as income, to which income tax should be imposed.

The deficiency income tax and VAT assessments sprung from the data the BIR obtained from the Bureau of Customs ("BOC") on the supposed undeclared "Imported Purchases" of Steel Corporation of the Philippines (Steel) in the computed amount of P178,708,658.33, which the BIR translated as its "Undeclared Sales" amounting to P184,883,776.47, for the purpose of the deficiency VAT assessment; and "Undeclared Sales" amounting to P6,175,118.13, in relation to the deficiency income assessment.

The CTA held that the amount of undeclared "Imported Purchases", by itself, should not be treated as income, to which income tax should be imposed.

Income in tax law is an amount of money coming to a person within a specified time, whether as payment for services, interest, or profit from investment. It means cash or its equivalent. It is the gain derived and severed from capital, from labor or from both combined. Income is profit or gain or the flow of wealth. The determining factor for the imposition of income tax is whether any gain or profit was derived by a taxpayer from a 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. Thus, even if a taxpayer has not claimed purchases or declared a lesser amount thereof, in the Income Tax Return ("ITR"), such action is allowed, and shall not necessarily result in the imposition of income tax on the undeclared or underdeclared purchases.

Thus, in this case, there being no gain or profit, and since Steel is free to deduct from its gross income a lesser amount, the income tax imposition has clearly no factual and legal bases.

In the same vein, just as no income tax should be imposed on the supposed undeclared "Imported Purchases", no VAT should likewise be imposed thereon. *[Steel Corporation of the Philippines v. Commissioner of Internal Revenue, CTA Case No. 9866, May 17, 2022]*

5. An Amended Decision is considered a new or different decision which calls for the filing of another motion for reconsideration or new trial before appeal to the CTA *En Banc* may be made.

The Court in Division issued the Assailed Decision on February 26, 2020. In response, Ayala Corporation filed a "Motion for Partial Reconsideration" while the Commissioner filed *via* registered mail his "Motion for Partial Reconsideration (re: Decision dated February 26 2020)" on June 29, 2020. Thereafter, the Court in Division promulgated the Assailed Amended Decision on January 11, 2021. Both parties then filed their respective Petitions for Review with the CTA *En Banc* on February 11,2021.

The rule is that as long as an amended decision was issued by the court *a quo,* a litigant planning to file an appeal with the Court *En Banc* must necessarily file a motion for reconsideration or new trial first, even though one or both litigants already filed a motion for reconsideration to the original decision. Such amended decision is considered a new or different decision which therefore calls for the filing of another motion for reconsideration or new trial, before appeal to the CTA *En Banc* may be made.

An amended decision which is a mere clarification does not need a motion for reconsideration or new trial before filing a petition for review with the Court *En Banc.*

[3] G.R. No. 213943, March 22, 2017.

The Assailed Decision partially granted Ayala Corporation's claim for issuance of a TCC in the amount of Php44,691,731.64, representing its excess and unutilized CWT for CY 2014. Consequently, both the Commissioner and Ayala Corporation filed through registered mail their motions for partial reconsideration on June 29, 2020 and July 14, 2020, respectively. The Second Division then issued the Amended Decision on January 11, 2021 increasing the amount of the refund claim.

It can be noted that the conclusions in the Assailed Amended Decision were arrived at by the court *a quo* by (a) re-evaluating Ayala Corporation's arguments on its substantiation of prior year's excess tax credit and (b) re- examining some of Ayala Corporation's Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307) which were disallowed as a result. Undoubtedly therefore, the Assailed Amended Decision is a "new or different" decision, which was based on the Second Division's reevaluation of the parties' allegations and existing evidence that were not considered and/or rejected in the original Assailed Decision. It follows then that in this case, a motion for reconsideration of the "new or different" amended decision must be filed before lodging an appeal to the CTA *En Banc.*

Since both Ayala Corporation and the CIR failed to comply with this procedural requirement, the Court *En Banc* cannot validly acquire jurisdiction over their appeals. Accordingly, the Assailed Amended Decision has already attained finality, and can no longer be questioned by the parties. *[Ayala Corporation v. Commissioner of Internal Revenue, CTA EB Nos. 2417 and 2418 (CTA Case No. 9556), May 18, 2022]*

6. The filing of judicial claim for refund within the 30-day period after the expiration of the 90-day period is both mandatory and jurisdictional.

Mitsuba Philippines Technical Center Corporation is seeking the issuance of a tax credit certificate (TCC) of its excess and unutilized VAT for the 3rd and 4th quarters of the taxable year 2016 in the aggregate amount of P3,265,900.00. The administrative claim covering the said taxable quarters was timely filed on 27 September 2018. However, the Petition for Review was only filed on 19 February 2019, beyond the thirty (30)-day period allowed by law within which to perfect an appeal of the "deemed denial decision" due to Commissioner's inaction (upon the expiration of the ninety [90]-day period reckoned from the date of filing of its administrative claim or on 27 September 2018). Thus, the Court dismissed the belatedly filed Petition for Review for lack of jurisdiction.

Failure to file the claim within the stated period renders the claim outside the jurisdiction of the CTA and, therefore, dismissible*. [Mitsuba Philippines Technical Center Corporation v. Commissioner of Internal Revenue, CTA Case No. 10025, May 19, 2022]*

7. A Revalidation / Reassignment Notice is a functional equivalent of a new LOA required for the transfer or reassignment of the case to a new revenue officer provided its contents is similar to that of an LOA and it was issued by the official duly authorized to issue LOAs.

In this case, RO Karen Joy D. Lutching continued the examination of AirGlobe Inc.'s ("AirGlobe") books of accounts and other accounting records on the strength of the Revalidation/Reassignment Notice. The same explicitly referred to "Letter of Authority No. LOA000044111 dated July 29, 2008" and indicated RO Lutching and Group Supervisor (GS) Dela Cruz's authority to continue such examination.

A closer scrutiny of the said Revalidation/Reassignment Notice yields that its contents are similar to the contents of an LOA. *First,* both documents were particularly addressed to AirGlobe. *Second,* both documents specifically named the ROs authorized to examine the books of accounts and other accounting records. *Third,* both documents stated that the taxes covered by the examination are AirGlobe's all internal revenue taxes. *Lastly and more importantly,* both documents were signed by the Regional Director (RD), who is duly authorized to issue LOAs under Section 10(c) of the NIRC.

Furthermore, while the Court *En Banc* notes that the period indicated in the Revalidation/Reassignment Notice only states "from December 31, 2007", its specific reference to the subject LOA, which shows that the period subject thereof is in fact "from January 1, 2007 to December 31, 2007" would indubitably show that the period subject of RO Lutching's authority to continue the audit is the period of pertinent to this claim - TY 2007.

Clearly, for all intents and purposes, the Revalidation/ Reassignment Notice issued to AirGlobe, which specifically referred to "Letter of Authority No. LOA000044111 dated July 29, 2008" and contains essentially all the essential details of an LOA, is sufficient authorization for RO Lutching to continue the examination of the books of account and other accounting records of AirGlobe.

The Court *En Banc* finds that the subject Revalidation/Reassignment Notice is a functional equivalent of the new LOA required for the transfer or reassignment of the case to a new RO. Its denomination or nomenclature as "Revalidation/Reassignment Notice" and not "Letter of Authority" does not negate its nature as an LOA especially so that their contents are similar and it was issued by the official duly authorized to issue LOAs pursuant to existing laws. *[Commissioner of Internal Revenue v. AirGlobe, Inc., CTA EB No. 2348 (CTA Case No. 9466), May 23 2022]*

8. The immediate issuance of a FAN without waiting for taxpayer's reply to the PAN or default thereof renders the assessment void for violation of right to due process.

In this case, the subject PAN was issued on 29 December 2010 and was served upon AirGlobe on 30 December 2010. Thus, AirGlobe had 15 days therefrom, or until 14 January 2011, within which to file its reply. However, on the last day that it was supposed to reply to the PAN or on 14 January 2011, the FAN was immediately issued and mailed to AirGlobe. Since BIR did not wait for the 15-day period to lapse for AirGlobe to file a reply to the PAN (before issuing the FAN), AirGlobe was, thus, deprived of the opportunity to contest the PAN. Resultantly, its right to due process was violated.

BIR violated AirGlobe's right to due process as a result of the immediate issuance of the FAN without waiting for respondent's reply or default. *[Commissioner of Internal Revenue v. AirGlobe, Inc., CTA EB No. 2348 (CTA Case No. 9466), May 23 2022]*

9. It is indispensable for the claimant of tax refund to prove that the services it rendered to its foreign affiliates were performed in the Philippines.

Whether a certain service is performed within or outside the Philippines is a question of fact which must be proved by clear and convincing evidence. Regus Service Centre, Philippines B.V. – ROHQ (petitioner) failed to clearly establish its compliance therewith as the Services Agreement between petitioner's Head Office and Franchise International S.A.R.L. does not bear any indication that the subject services were to be performed by petitioner in the Philippines. Neither is there any other evidence which tend to prove such fact. In addition, a reading of the said Services Agreement, it can be inferred that the same services may be performed by petitioner's Head Office or even Third-Party Provider, not only by petitioner itself. Since it was never established that the place of performance of the subject services is in the Philippines, petitioner's sales of services cannot qualify as subject to the zero percent (0%) VAT under Section 108(B)(2) of the 1997 NIRC. *[Regus Service Centre, Philippines B.V. – ROHQ v. Commissioner of Internal Revenue, CTA Case No. 10124, May 23, 2022]*

10. CTA is not precluded from considering evidence not presented in the administrative claim for refund filed with the BIR.

BIR submits that the role of the Court is confined to the determination of whether his denial of the subject claim in the administrative level is proper. Thus, Orica Philippines, Inc. ("Orica") has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny the claim; and that it is necessary for Orica to show the Court that not only is it entitled under substantive law to the grant of its claim, but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund to prosper. BIR points out that Orica did not specifically assail the reason or basis why its administrative claim was denied by BIR, instead Orica presented its case before this Court as if it was an original action.

The CTA ruled that it is not only confined to the determination of whether or not the denial of the subject claim in the administrative level is proper. More so, the CTA cited the case of *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*[4], where Supreme Court categorically stated that the CTA is not precluded from considering evidence that was not presented in the administrative claim with the BIR.

Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) categorically provides that the CTA shall be a court of record and as such it is required to conduct a formal trial (trial *de novo)* where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration. As such, Orica Philippines Inc.'s failure to submit documents at the administrative level is not fatal to its case filed and pending at the judicial level since the said case is litigated de novo and decided based on what has been presented and formally offered by the parties during trial. *[Orica Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9974, May 24, 2022]***.**

11. Identifying the authorized ROs in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment.

[4] G.R. No. 231581, April10, 2019.

LOA No. LOA-25A-2015- 00000050, dated 25 August 2015, signed by then OIC-Regional Director of RR 5, Mr. Gerardo R. Florendo, was issued to RO Jayson Baello and GS Marita Panteriori, of RDO No. 25-A, authorizing them to perform an audit of Sellery Phils. Enterprises, Inc.'s ("Sellery") books of accounts and other accounting records for the purpose of determining the correct amount of taxes due from Sellery for taxable year 2013. Thereafter, on 18 May 2016, a Memorandum of Assignment was issued by the Revenue District Officer of RDO No. 25-A, Mr. Carlos S. Salazar, in favor of RO Cristina C. Yu and GS Rodolfo M. Roldan, Jr. to continue the audit of Sellery's accounting records in light of the previous RO and GS' resignation/retirement/transfer to another RDO.

Through the Memorandum of Assignment, RO Yu was able to a) audit and examine Sellery's books of accounts and other accounting records; b) determine through audit results and findings that deficiency IT and VAT is due from Sellery; c) recommended the issuance of the PAN through a Memorandum; and d) convince BIR to issue a PAN and FAN/FLD. In totality, the aforementioned RO was able to audit, examine, and inspect Sellery's books of accounts and other accounting records (which then lead to the present deficiency IT and VAT assessment against Sellery) through a mere Memorandum of Assignment, despite the clear mandate of RMO 43-90 requiring the issuance of a new LOA for the revenue officers to whom the audit of a taxpayer has been re-assigned.

It is clear from the foregoing that RO Yu examined Sellery's books of accounts and other accounting records without the requisite authority emanating from a prior issued LOA.

It is noteworthy that an LOA is a safeguard against abuses that may be perpetrated by revenue officers against taxpayers. An LOA guarantees a taxpayer that only persons named therein are allowed to examine his books of accounts and other accounting records. Hence, he or she has a right to deny other revenue officers not so named from auditing him or her for potential deficiency tax assessments.

Due to the absence of an LOA authorizing RO Yu to examine Sellery, the deficiency IT and VAT assessments issued against it are void. Consequently, no tax collection can be pursued based on this deficiency VAT assessment. *[Sellery Phils. Enterprises, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10047, May 24, 2022]*

12. Presentation of SAWT and MAP is not required to substantiate a claim for refund of excess or unutilized creditable withholding tax (CWT)

In seeking the denial of Sonoma Services, Inc.'s ("Sonoma") claim for refund of CWT, the Commissioner argued that Sonoma failed to present the Summary Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax (SAWT) and Monthly Alphalist of Payees (MAP), prescribed under RR No. 2-98, as amended by RR No. 2-2006 in support of its claim for refund of excess/unutilized CWT for CY 2015.

RR No. 2-2006 issued on January 5, 2006 prescribes the mandatory attachments of the SAWT to tax returns with claimed tax credits due to Creditable Tax Withheld at Source and of the MAP whose income received have been subjected to withholding tax to the withholding tax remittance return filed by the withholding agent/payor of income payments.

However, the CTA explained that there is nothing in RR No. 2-2006 which states that the non- submission of SAWT and MAP would ipso facto result to the denial of a claim for tax refund or credit of excess and unutilized CWT. Truth to tell, RR No. 2-2006 merely imposes, among others, a penalty of fine for non-submission of the information or statement required therein, but not the outright denial of a claim for tax refund or credit. There is, therefore, no legal basis for the Commissioner to insist that the alleged non-submission of SAWT and MAP should result in the denial of Sonoma's claim for tax refund or credit. *[Commissioner of Internal Revenue v. Sonoma Services, Inc., CTA EB No. 2467 (CTA Case No. 9808), May 24, 2022]*

13. The two-year prescriptive period provided under Section 229 of the NIRC should be computed from the time of filing of the adjustment return or annual income tax return and final payment of income tax.

Section 229 states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with respondent. Plainly stated, the administrative and judicial claims for refund and/or issuance of TCC must be filed within the two-year prescriptive period starting from the date of payment of tax.

It is jurisprudentially settled that the two-year prescriptive period in Section 229 of the NIRC of 1997, as amended, should be computed from the time of filing the Adjustment Return or Annual ITR and final payment of income tax. This is so because at that point, it can already be determined whether there has been an overpayment by the taxpayer. Quarterly tax payments are "mere advance payments of the annual corporate income tax.

The prescriptive period of two (2) years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. In this case, Premium Leisure and Amusement, Inc. (PLAI) filed its Annual ITR for CY 2016 and paid the corresponding income tax due on April 7, 2017. Thus, reckoned from said date, PLAI had until April 7, 2019, within which to file its refund claim both at the administrative and judicial levels.

PLAI filed its administrative claim for refund entitled Claim for Refund of Erroneously Paid Income Tax for CY 2016 with attached Application for Tax Credits/Refunds (BIR Form No. 1914) stamped received by the BIR on February 14, 2019. Petitioner then filed an *"Amended Claim for Refund of Erroneously Paid Income Tax for CY 2016"* in the amount of P115,384,991.00 on April 4, 2019. A day after filing the *Amended Claim for Refund,* petitioner then filed the present Petition for Review on April 5, 2019, two (2) days before the end of the two (2)-year prescriptive period on April 7, 2019, as above determined. Thus, both administrative and judicial claims of petitioner were timely made. *[Premium Leisure and Amusement, Inc. (PLAI) v. Commissioner of Internal Revenue, CTA Case No. 10060, May 26,2022]*

14. Receipt of the LOA and PCL does not guarantee receipt of PAN and FLD and FAN.

In the instant case, Marily Development Corporation ("Marily") alleges that it did not receive any prior assessment notices, *i.e.,* the PAN, FLD and FAN. Meanwhile, petitioner claims that the PAN, FLD and FAN were sandwiched between the LOA and PCL which respondent does not deny receiving. Petitioner insists that respondent could not have not received the PAN, FLD and FAN considering that the latter received the LOA and PCL.

Commissioner insists that a presumption of proper service exists, and said presumption was not overthrown by Marily. Commissioner also asserts that Marily is estopped from denying the receipt of the PAN, FLD and FAN since these documents, which allegedly were not received by Marily, are in between the LOA and PCL, which Marily does not deny receiving. According to CIR, Marily was already notified of the assessment; thus, Marily's right to due process was not violated.

Commissioner's reasoning is flawed. Receipt of the LOA and PCL is not a guarantee that Marily also received the PAN, FLD and FAN, which were issued after the LOA and before the PCL. CIR must prove that Marily actually received the PAN/FLD/FAN. *[Commissioner of Internal Revenue v. Marily Development Corporation, CTA EB No. 2450 (CTA Case No. 9756), May 31, 2022]*

15. The civil liability of a corporate taxpayer, being personal to it, may not be enforced against its corporate officers.

In this case, accused Raquel O. Villarante is charged in this case, pursuant to Section 253 (d) of the NIRC of 1997, as amended, as Corporate Secretary or the "officer in charge" of Cardona Apparel, Inc. (CARDONA), the corporate entity alleged to be responsible for violations of Section 255 of the NIRC of 1997, as amended.

Since the Court has not acquired jurisdiction over CARDONA, as it is not an accused in the present case, no civil action against it pursuant to Section 7(b)(1) of Republic Act No. 1125, as amended, is deemed instituted in this case.

Basic is the rule in corporation law that a corporation is a juridical entity which is vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Thus, obligations incurred by the corporation, acting through its directors, officers, and employees, are its sole liabilities. A director, officer, or employee of a corporation is generally not held personally liable for obligations incurred by the corporation. To pierce the separate legal personality of a corporation, the facts justifying the piercing thereof must be pleaded and proved. There must be clear and convincing proof that the separate and distinct personality of the corporation was purposely employed to commit fraud.

The civil liability of a corporate taxpayer, being personal to it, may not be enforced against its corporate officers.

There being no liability of the corporate taxpayer, CARDONA, its Corporate Secretary, accused Raquel 0. Villarante, cannot assume a liability that does not exist. *[People of the Philippines v. Shirley Yang (President) Raquel O. Villarante (Corporate Secretary) and Zaldy G. Trinidad (Accounting Manager), (Cardona Apparel, Inc., Warehouse 4, Corporate Park Development Site, Malitlit, Sta. Rosa Laguna, CTA Crim Case Nos. O-202 to O-205, June 1, 2022)*

16. The government's power to enforce the collection through judicial action, whether civil or criminal, is not conditioned upon a previous valid assessment.

The accused points out that no PAN, FAN or FLD, were issued to the accused before the filing of the complaint, and that said documents were only issued thereafter which is a clear violation of his right to due process.

The CTA held that there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the NIRC, as amended, as held by the Supreme Court in *Ungab us. Cusi, Jr., et* al. Furthermore, under Sections 254 and 255 of the NIRC, as amended, the government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the said Code or the payment thereof. The crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. It is therefore not required that a tax deficiency assessment must first be issued for a criminal prosecution for tax evasion to prosper.

It is clear that in the case of a false and fraudulent return with intent to evade tax or of failure to file a return, a proceeding in court, either by civil or criminal action, for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud, or omission. *[People of the Philippines v. Agerico L. Banzon, as owner of Banz Built Construction, CTA Crim. Case Nos. O-501 to O-514, June 1, 2022]*

17. Registry return receipt, as proof of receipt of letters sent through registered mail, must be authenticated by proof of actual receipt by the addressee or duly authorized agent of the addresses.

To prove the fact of mailing of the PAN, the prosecution presented a Registry Return Receipt. However, only the back side of the Registry Return Receipt was presented and offered in evidence, which only contains the name of addressee, which reads: "CARDONA APPAREL, INC. (2004)." The front side, which was not presented, would have indicated relevant information that will prove due service, such as: (a) the date of mailing; (b) the name of the sender; (c) the street number; (d) the name of the post office; and (f) file case/account number.

The Memorandum of the prosecution likewise provides that the *"was issued and was sent to the registered office address of CARDONA.* " In RO Bernardo A. Mora's Affidavit, he averred that he *"served the said PAN, by way of registered mail, to CARDONA, INC. at its registered office address at Warehouse 4, Corporate Park Development Site, Malitlit, Sta. Rosa, Laguna, but the same was returned unserved as the company was alleged to have moved out."*

However, upon questioning by the Court, RO Bernardo A. Mora testified that the PAN was mailed to the office of accused Raquel 0. Villarante.

Also, while RO Bernardo A. Mora testified by way of Judicial Affidavit that an assessment notice attached to the Registry Return Card was signed and received, the PAN offered in evidence did not bear any signature of Reynaldo Custodio or by AGH. Even assuming that there was a signature of Reynaldo Custodio or AGH, the prosecution failed to establish the corresponding authority of Reynaldo Custodio or AGH to receive the PAN on behalf of CARDONA. Likewise, the service of the PAN cannot be established as only the back side of the Registry Return Receipt was presented and offered in evidence, which only contains the name of the addressee, which reads: "CARDONA APPAREL, INC. (2004)."

In *Ting v. Court of Appeals,* the Supreme Court ruled that to serve as proof of receipt of letters sent through registered mail, Registry Return Receipts must be authenticated by proof of actual receipt by the addressee or duly authorized agent of the addressee.

Only the taxpayer or its authorized representative may receive the assessment from the BIR and the mere presentation of the registry receipts are insufficient. To ascertain whether the signatures appearing therein were authorized representatives of the taxpayer, the signatures should be identified and authenticated. *[People of the Philippines v. Shirley Yang (President) Raquel O. Villarante (Corporate Secretary) and Zaldy G. Trinidad (Accounting Manager), (Cardona Apparel, Inc., Warehouse 4, Corporate Park Development Site, Malitlit, Sta. Rosa Laguna, CTA Crim Case Nos. O-202, O-203, O-204 and O-205, June 1, 2022)*

18. The re-filing of administrative claim within the prescriptive period is not prohibited. However, taxpayer-claimants must abandon its initial administrative claim as the actual date of filing of refund claim is crucial for purposes of counting the 120-day [now 90-day] period for the Commissioner to act on the claim.

On January 7, 2016, Lantro Philippines, Inc. ("LPI") filed with the BIR its administrative claim for VAT refund covering the period of taxable year 2014 via the letter dated January 5, 2016, and *Applications for Tax Credits/Refunds* (BIR Form No. 1914). LPI prepared the *Transmittal Sheet* dated February 26, 2016, indicating therein that it is submitting certain documents/requirements needed for its application of VAT refund for the year 2014.

The crux of the controversy pertains to the date of filing of the administrative claim by LPI, *i.e.,* whether the administrative claim was filed on January 7, 2016,16 or was it refiled on February 26, 2016,17 as claimed by LPI.

A perusal of the *Letter of Request* filed on January 7, 2016, and the *Transmittal Sheet* dated February 26, 2016, shows that the administrative claim for refund was actually filed on January 7, 2016**.** In fact, the *Transmittal Sheet* dated February 26, 2016, was a mere submission of the documentary requirements in support of its administrative claim for refund.

Contrary to LPI's claims, the stark difference in both the title and the contents of the two (2) letters, demonstrate the true intentions of LPI in the filing thereof. To be specific, the *Letter of Request* categorically states that it is *applying for a VAT refund,* while the *Transmittal Sheet* merely states that it is *transmitting the documents/requirements needed for their application for VAT refund.*

The Court notes that nowhere in the subject *Letter of Request* is it stated that petitioner was re-applying, or re-filing its administrative claim for refund, or that the previous filing is being superseded. Rather, the *Transmittal Sheet* indicates that it is transmitting the documentary requirements for their claim for refund.

The Court *En Banc* held that the re-filing of administrative claims within the prescriptive period is ***not*** prohibited, however*,* taxpayer-claimants must be cautioned to act judiciously and with circumspection, considering that the actual date of filing a refund claim is crucial for purposes of counting the 120-day period for the CIR to act on the claim, and thereafter, the 30-day period to file a judicial claim, which ultimately affects the jurisdiction of this Court to entertain the claim for refund. The Court *En Banc* that it cannot countenance LPI's assertion that it re- filed its administrative claim on February 26, 2016 without any showing that it categorically and definitely abandoned its initial administrative claim filed on January 7, 2016, as it will give rise to an undesirable precedent and practice wherein a taxpayer claimant will freely refile its administrative claim, without first withdrawing its earlier claim.

Considering now that the filing made on February 26, 2016 was a mere transmission of documentary requirements, the same shall not be considered as a re-filing of petitioner's administrative claim for refund. Therefore, petitioner's administrative claim is considered to have been made on January 7, 2016**.** *[Lantro Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB 2406 (CTA Case No. 9436), June 9, 2022]*

19. The reassignment or transfer of an RO requires the issuance of a new or amended LOA that will enable the substitute or replacement RO to continue the audit or investigation.

A memorandum of assignment, referral memorandum, or any equivalent document is not a proof of the existence of authority of the substitute or replacement revenue officer. Neither is a referral memorandum issued by the Revenue District officer directing another RO to continue with the examination equivalent to an LOA, nor does it cure the RO's lack of authority. In the absence of a new LOA issued in favor of the revenue officers who recommended the issuance of the deficiency tax assessments against the taxpayer, the resulting assessments are void. *[Commissioner of Internal Revenue v. Bicyclepoker, Inc., CTA EB No. 2448 (CTA Case No. 9868), June 9, 2022]*

B. REVENUE REGULATIONS

1. REVENUE REGULATIONS NO. 4-2022 [May 26, 2022] – Implementing Section 295(F), in relation to Section 294, of the NIRC on the tax treatment of importation of petroleum and petroleum products into, and subsequent transfer, transport, and/or withdrawal through and from freeport zones and economic zones.

This Regulations are promulgated in order to prescribe the following:

a. the tax administration treatment of all petroleum products entered and/or imported into Philippine Freeport Zones or Economic Zones;
b. the strict monitoring of the movement of all petroleum and petroleum products within the aforementioned Zones and the subsequent transfer, transport and/or withdrawal of the same therefrom; and
c. the refund of Value-Added Tax (VAT) and Excise Taxes paid for transactions statutorily zero-rated or exempt therefrom.

C. REVENUE MEMORANDUM CIRCULARS

1. **REVENUE MEMORANDUM CIRCULAR NO. 76-2022** [May 30, 2022] – Suspension of audit and other field operations pursuant to and under authority of, all task forces created thru revenue special orders, operations memoranda and other similar orders/directors.

No field audit, field operations, or any form of business visitation in execution of LOA or Mission Orders ("MO") should be conducted by all task forces until further notice. Further, no written orders to audit and/or investigate taxpayers' internal revenue tax liabilities shall be issued and/or served pursuant to, and under authority of, said task forces.

2. **REVENUE MEMORANDUM CIRCULAR NO. 77-2022** [May 30, 2022] - Suspends all pending Letters of Authority/Mission Orders as of May 30, 2022 and requires the submission of inventory thereafter

Effective May 30, 2022, no field audit, field operations, or any form of business visitation in execution of LOAs or MOs should be conducted, nor any new LOAs/ MOs be further issued. No written orders to audit and/or investigate taxpayers' internal revenue tax liabilities shall be issued and/or served, except in the following cases:

- Investigation of cases prescribing on or before October 31, 2022;
- Processing and verification of Estate Tax returns, Donor's Tax returns, Capital Gains Tax returns and Withholding Tax returns on the sale of real properties or shares of stocks, together with the Documentary Stamp Tax returns related thereto;
- Examination and/or verification of internal revenue tax liabilities of taxpayers retiring from business;
- Audit of National Government Agencies (NGAs), Local Government Units (LGUs) and Government-Owned and Controlled Corporations (GOCCs), including subsidiaries and affiliates; and
- Other matters/concerns where deadlines have been imposed or under the orders of the Commissioner of Internal Revenue.

However, service of Assessment Notices, Warrants, and Seizure Notices should still be effected. Also, taxpayers may voluntarily pay their known deficiency taxes without the need to secure authority from concerned Revenue Officials.

3. **REVENUE MEMORANDUM CIRCULAR NO. 78-2022** [June 9, 2022] - Clarifies the Income Tax treatment of the different classifications of educational institutions and their tax obligations

This Circular is issued to clarify the different classifications of educational institutions ref-erred to in the National Internal Revenue Code of 1997, as amended ("Tax Code"), the income tax treatment under each classification, the tax exemption and tax liabilities of specified class of educational institutions, the required withholding taxes on certain income payments, and their compliance requirements.