TAX Insights

BDB Law
DU-BALADAD AND ASSOCIATES

Insights

MAY ● VOL. 5 ● SERIES OF 2024

What's Inside...

INSIGHTS is a quarterly publication of BDB LAW to inform, update and provide perspectives to our clients and readers on significant tax-related court decisions and regulatory issuances (*includes BIR, SEC, BSP and various government agencies*).

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HIGHLIGHTS for MARCH-MAY 2024

HIGHLIGHTS

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- **A burden of proof is defined as the "duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law."** *(Barrio Fiesta Manufacturing Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9871, March 01, 2024)*
- **The removal of the requirement regarding the revalidation of LOAs for failure of the revenue officials to complete the audit within the prescribed 120-day period shall begin on June 1, 2010.** *(Barrio Fiesta Manufacturing Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9871, March 01, 2024)*
- **The National Food Authority (NFA) is a Government Instrumentality, and which is not liable for Real Property Tax (RPT) under Section 6 of PD No. 4.** (*Municipality of Nabunturan vs. National Food Authority, CTA AC No. 281. March 01, 2024*)
- **A collection letter, having the character of finality, may be treated as the BIR's final decision, which may already be appealed to the CTA.** *(BETA Electromechanical Corporation vs. Commissioner of Internal Revenue. CTA Case No. 10040. March 05, 2024)*
- **Unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct examinations without prior authority.** *(Commissioner of Internal Revenue v. Formula Sports. CTA EB No. 2674, March 06, 2024)*
- **While the CIR should be given an opportunity to act on the taxpayer's claim, the taxpayer should not be faulted for lawfully filing a judicial claim before the expiration of the two-year prescriptive period, notwithstanding the alleged defects in its administrative claim.** *(Tullett Prebon (Philippines) Inc., vs. CIR. CTA EB No. 2713. March 07, 2024)*
- **If no BIR adverse decision is received by the taxpayer on the 90th day after filing the administrative claim, the said administrative claim was considered denied by law.** *(Citco International Support Services Limited Philippine ROHQ v. Commissioner of Internal Revenue, CTA Case No. 10258, March 7, 2024)*
- **The Financial or Technical Assistance Agreement (FTAA) is explicit that all taxes collected during the recovery period are recoverable provided that they are detrimental to the contractor's recovery of pre-operating and property expenses**. *(Oceanagold Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2663, March 8, 2024)*
- **There is only one (1) "180-day period" of inaction to speak of which shall be counted from the date of filing of the protest or from the submission of relevant supporting documents and not from the date when the decision of CIR's duly authorized representative was appealed to the CIR.** *(Bayugan Farmers Millers Multi-purpose Cooperative v. Commissioner of Internal Revenue and Atty. Nasser A. Tanggor, CTA Case No. 9928, March 7, 2024)*

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- **For criminal cases heard before the CTA, it is the filing of an Information before said Court, not the filing of a complaint before the DOJ, that interrupts the prescriptive period.** *(People of the Philippines v. Antonio Valeriano M. Bernardo, CTA EB Crim No. 123, March 8, 2024)*
- **The authority provided under Section 131(A) of the NIRC, as amended, for the Customs Officers to collect excise taxes does not automatically signify that excise taxes on imported articles are governed by customs law.** *(Commissioner of Internal Revenue v. Philippine Airlines, Inc., CTA EB No. 2559, March 13, 2024)*
- **A Preliminary Collection Letter, as well as a Final Notice Before Seizure, Warrant of Distraint and/ or Levy, or other means of summary administrative collection, remain tentative for as long as there is a pending administrative appeal before the Office of the Commissioner of Internal Revenue.** *(C.U.T. Commercial Corporation v. Bureau of Internal Revenue, CTA Case No. 9933, March 22, 2024)*
- **When the Expenditure Method is resorted to in the determination of tax liabilities, the prosecution must show proof of the likely source of income or funds which the taxpayer used for his/her expenditures.** *(People of the Philippines v. Janet Lim Napoles, CTA Crim. Case Nos. O-485, O-486, O-487, O-488, O-490, O-491, O-492, O-493, O-494, O-495, O-496, & O-498, March 21, 2024)*
- **A FAN should contain a definite amount due as well as the due date for payment. Without a valid FAN, the assessment that sprung from it is inescapably void.** *(IBMS Technology Phils. Corporation v. Commissioner of Internal Revenue, CTA Case No. 10177, March 15, 2024)*
- **The real property owned by the government, its agencies, and instrumentalities shall be exempt from tax. As for GOCC, any exemption from payment of RPT that was previously granted to, or presently enjoyed by them was withdrawn upon the LGC's effectivity.** *(City Government of Davao v. National Food Authority, CTA EB No. 2691, March 15, 2024)*
- **BSP, an independent central monetary authority, is not under the supervision and control of the President and Executive Branch. It follows, then that the claim for refund is not governed by PD 242 but by Section 7 (a)(1) of RA 1125, as amended.** *(Bangko Sentral ng Pilipinas v. Commissioner of Internal Revenue, CTA EB No. 2680, April 2, 2024)*
- **If there arises TPI discrepancies, the BIR is mandated to obtain sworn statements from TPI sources to attest the veracity of the data provided.** *(Powernet Systems Corp. vs. Commissioner of Internal Revenue, C.T.A. Case No. 10383, April 11, 2024)*
- **The BIR should have presented factual evidence, not only mere allegations, to successfully controvert the taxpayer's refund claim.** *(Commissioner of Internal Revenue v. New York Bay Philippines, Inc. CTA EB No. 2748 (CTA Case No. 9896), April 18, 2024)*
- **The exemption of PAGCOR from income tax inures to the benefit of its licensees and contractees.** *(Premium Leisure and Amusement, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2712 (C.T.A. Case No. 10060), April 22, 2024)*
- **The BIR has 5 years counted from the finality of the tax assessment to file the information in court and criminally indict the responsible corporate officers.** *(People v. Star Asset Management NPL, Inc., C.T.A. EB Crim. Case No. 129 (C.T.A. Crim. Case No. O-995), April 22, 2024)*
- **A local business tax assessment contained in the First Notice can no longer be changed by the Local Treasurer through the issuance of the Second Notice.** *(Service Resources, Inc. v. Pasig City, C.T.A. EB Case No. 2719 (C.T.A. AC No. 243), April 23, 2024)*
- **Approvers of the FLD/FAN does not need a LOA for proper authorization.** (*Major Shopping Management Corp. v. Commissioner of Internal Revenue, C.T.A. Case No. 9300, April 25, 2024*)

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- **Persons who sign the relevant Memoranda recommending the issuance of PAN and FDDA requires an authority granted by an LOA.** (*Concepcion Industries Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 10584 (Resolution), April 26, 2024*)
- **Failure to submit "complete documents" in relation to a tax refund at the administrative level is not fatal to a judicial refund claim.** (*Global Energy Supply Corp. v. Commissioner of Internal Revenue, C.T.A. Case No. 10501, May 3, 2024*)
- **The right of a taxpayer to answer the PAN carries with it the correlative duty on the part of the BIR to consider the response thereto.** *(Commissioner of Internal Revenue vs. Rieckermann Philippines, Inc., CTA EB No. 2704 [CTA Case No. 9613], May 13, 2024)*
- **Although the law states that an LOA shall cover a taxable period not exceeding one taxable year, it does not foreclose on the possibility of an LOA covering more than one taxable period as long as "the other periods or years shall be specifically indicated in the LOA.** *(Justice Maria Lourdes P. A. Sereno vs. CIR., CTA Case No. 10792, May 14, 2024)*
- **The requirement to file quarterly VAT returns must be differentiated from that of quarterly corporate income tax returns.** *(Applied Food Ingredients Co, Inc. vs. CIR., CTA Case No. 9952, May 23, 2024)*
- **A valid waiver for the extension of prescriptive period to assess internal revenue taxes must contain the kind and amount of tax due.** *(Plastic Container Packaging Corporation vs. CIR., CTA Case No. 10095, May 23, 2024)*
- **If an authorized representative of the CIR denies the protest within the 180-day period and the taxpayer appeals to the CIR, the CIR only has the remainder of the 180-day period within which to act.** *(Friendlycare Foundation, Inc. vs. CIR, CTA Case No. 10123, May 30, 2024)*

BIR ISSUANCES

- ***Revenue Regulations No. 3-2024, April 11, 2024*** – This provides for the implementation of the amendments introduced by the EOPT Act on VAT and Percentage Tax.
- ***Revenue Regulations No. 4-2024, April 11, 2024*** – This provides for the implementation of the amendments introduced by the EOPT Act on the filing of tax returns and payment of taxes.
- ***Revenue Regulations No. 5-2024, April 11, 2024*** – This provides for the implementation of the amendments introduced by the EOPT Act on tax refunds.
- ***Revenue Regulations No. 6-2024, April 11, 2024*** – This provides for the implementation of the amendments introduced by the EOPT Act on penalties and interest for Micro and Small taxpayers.
- ***Revenue Regulations No. 7-2024, April 11, 2024*** – This provides for the implementation of the amendments introduced by the EOPT Act on registration procedures and invoicing requirements.
- ***Revenue Regulations No. 8-2024, April 11, 2024*** – This provides for the implementation of the amendments introduced by the EOPT Act on taxpayer classification.
- ***Revenue Memorandum Circular*** **No. 34-2024, March 5, 2024 –** This provides updates to the List of VAT-Exempt products.
- ***Revenue Memorandum Circular*** **No. 36-2024, March 11, 2024 –** This clarifies the manner of computing the Minimum Corporate Income Tax (MCIT) for Taxable Year 2023.
- ***Revenue Memorandum Circular*** **No. 37-2024, March 14, 2024** – This announces the availability of TIN Inquiry thru electronic mail (eMail).
- ***Revenue Memorandum Circular*** **No. 38-2024, March 15, 2024** – This provides guidelines on the determination on whether the source of income of the listed cross-border services is within the Philippines.

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- ***Revenue Memorandum Circular No. 51-2024, April 8, 2024*** – This provides for the extension of the 90-day period for the actual imposition of withholding tax on gross remittances made by electronic marketplace operators and digital financial service providers to sellers/merchants.
- ***Revenue Memorandum Circular No. 55-2024, April 15, 2024*** – This provides the guidelines in the filing of Annual Income Tax Returns and payment of taxes due for Calendar Year 2023.
- **Revenue Memorandum Circular No. 56-2024, April 17, 2024** – This provides for the clarification on the issuance of Electronic Certificate Authorizing Registration Relative to One-Time Transactions.
- **Revenue Memorandum Circular No. 60-2024, May 9, 2024** – This provides clarifications and guidance the effects on tax audits of the repeal of the requirement of withholding on the deductibility of expenses.
- ***Revenue Memorandum Circular No. 62-2024, May 16, 2024*** – This provides for the availability of the "Taxpayer's Classification Inquiry" Functionality in ORUS.

SEC ISSUANCES

- **SEC Memorandum Circular No. 6-2024, March 27, 2024 –** This provides for updated fines and penalties on late and non-submission of reportorial requirements.
- **SEC OGC Opinion No. 24-06, April 04, 2024 -** While a dissolved corporation is given 3 years to continue as a body corporate for purposes of liquidation, the disposition of the remaining undistributed assets must necessarily continue even after such period.

SUPREME COURT

DECISION HIGHLIGHTS

RMCs should have been first subjected to the review of the Secretary of Finance before the taxpayer sought judicial recourse as dictated by the rule on exhaustion of administrative remedies.

The taxpayer provided accommodation services to the pilots and cabin crew of a foreign international air transport services provider. VAT has been imposed on said services and the taxpayer eventually filed an administrative claim for refund. The claim for refund was later on elevated to the tax court.

The tax court ruled against the taxpayer and the case was appealed to the Supreme Court. One of the issues passed upon by the Supreme Court was whether or not Revenue Memorandum Circular (RMC) No. 46-2008 and RMC No. 31-2011 was valid.

In a collateral attack, the taxpayer argued against the validity of Revenue Memorandum Circular (RMC) No. 46-2008 and RMC No. 31-2011. The said RMCs provide that, in order to qualify for VAT zero-rating, the services rendered to a person engaged in international air transport operations must be attributable to the transport of goods and services. On the other hand, the BIR argued that the taxpayer failed to exhaust administrative remedies and observe the doctrine of primary jurisdiction.

The Supreme Court held that the RMCs should have been first subjected to the review of the Secretary of Finance before the taxpayer sought judicial recourse as dictated by the rule on exhaustion of administrative remedies.

While the taxpayer failed to prove the presence of any of the recognized exceptions, the Supreme Court still took cognizance of the case considering the significant economic implications of the issue. *(Manila Peninsula Hotel v. Commissioner of Internal Revenue, G.R. No. 229338, April 17, 2024)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

To prove the fact of mailing, the BIR must present the Registry Receipt issued by the Bureau of Posts or the Registry Return card.

The BIR issued a FAN in 2018, which was followed up by a Warrant of Distraint and/or Levy (WDL) and a Warrant of Garnishment (WG) in 2020. The taxpayer filed its Petition, alleging that the assessment notices and the WDL and WG should be declared null and void due to the failure of the BIR to serve the taxpayer with a copy of the FAN/FLD. The BIR argued that the taxpayer duly received the FAN, which was served via registered mail. However, the registry receipt or the return card were not presented by the BIR as evidence during the trial.

The Court held that the assessments made for deficiency internal revenue taxes are void, for failure to accord the taxpayer due process in the issuance of assessment notices. Registry receipt is a proof that the FAN/FLD is mailed, while the registry return card is proof that it was received.

Here, nowhere can it be seen from the BIR's evidence that there was actual service and receipt of the subject FAN since the registry receipt**,** or the return card were not presented. Neither did the BIR offer any other form of evidence such as certification from the Bureau of Posts or other pertinent document executed with its intervention, to prove that the FAN was served to, or received by taxpayer. (*Konica Minolita Marketing Services Philippines, Inc., vs. Commissioner of Internal Revenue. CTA Case No. 10255. March 01, 2024)*

A burden of proof is defined as the "duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law."

A Letter of Authority (LOA) was issued authorizing *RO Balajadia* and *GS Salenga* to examine the taxpayer's books of accounts. Subsequently, an undated letter was received by the taxpayer, stating that ROs *Valencia* and *Mendiola* are authorized to assist in the audit of taxpayer's book. The taxpayer argues that the subject assessment is void since the ROs who conducted the audit of its books were not authorized by a valid LOA. The issue is whether the assessment is void due to the BIR's violation of the taxpayer's right to due process.

The Court ruled that the assessment issued against the taxpayer is valid and lawful. The law defines burden of proof as the "duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law."

Here, while the taxpayer insists that the assessment is void due to the BIR's violation of its right to due process, it failed to present evidence other than its self-serving declarations. The Court finds that *RO Balajadia,* who was named in the LOA, was neither replaced nor transferred. The Court notes that even the responses made by the taxpayer's witness to the clarificatory questions posed by the Court,

	failed to prove that *RO Balajadia* was not the one who conducted the audit in all its stages from the issuance of the LOA authorizing him up to the recommendation for the issuance of the assessment. The assessment was issued under a valid LOA. *(Barrio Fiesta Manufacturing Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9871, March 01, 2024)*
The removal of the requirement regarding the revalidation of LOAs for failure of the revenue officials to complete the audit within the prescribed 120-day period shall begin on June 1, 2010.	On February 17, 2016, the taxpayer received the Letter of Authority (LOA). The BIR then issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies dated February 27, 2017. Now, the taxpayer argues that the tax audit/investigation and the resulting assessment are void for having been made in the absence of a revalidated LOA, outside the 120-day validity period of the LOA. The CTA held that the mere lack of revalidation does not render an assessment invalid. The removal of the requirement regarding the revalidation of the LOAs for failure of the revenue officials to complete the audit within the prescribed 120-day period shall begin on June 1, 2010. Here, the subject LOA was issued on February 17, 2016, the same need not be revalidated even when the 120-day period was not observed. Such being the case, the failure of the RO to request for revalidation of the LOA or the expiration of the revalidation period does not nullify the LOA, nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued. *(Barrio Fiesta Manufacturing Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9871, March 01, 2024)*
The National Food Authority (NFA) is a Government Instrumentality, and which is not liable for Real Property Tax (RPT) under Section 6 of PD No. 4.	The National Food Authority (NFA) received a Notice of Delinquency for the non-payment of the Real Property Tax (RPT) on its land and building. NFA then filed a Petition for Prohibition in the Regional Trial Court (RTC) which the latter ruled in its favor. The Municipality of Nabunturan argues that the RTC erred in ruling that NFA is an instrumentality of the government and that its real properties are exempt from payment of RPT. The CTA held that the NFA is a Government Instrumentality and therefore, not liable for RPT under Section 6 of PD No. 4. To be classified as a government instrumentality, the government entity must: not be a stock or non-stock corporation; not integrated within the department framework; be vested with special functions or jurisdiction by law; be endowed with some if not all corporate powers; administer special funds; enjoy operational autonomy, usually through a charter; and perform "essential public services for the common good, services that every modern State must provide its citizens."

	Here, NFA is not a stock nor non-stock corporation, and it was originally attached to the Office of the President with vested special functions as it administers special funds while enjoying operational autonomy under its charter. While there is no doubt that the reason for the creation of NFA is for the common good, still, economic viability is not at all considered in its creation thereby precluding it from becoming a Government-Owned or Controlled Corporations (GOCC). Thus, it is exempt from Real Property Tax. *(Municipality of Nabunturan vs. National Food Authority, CTA AC No. 281. March 01, 2024*)
A collection letter, having the character of finality, may be treated as the BIR's final decision, which may already be appealed to the CTA.	A protest was filed by the taxpayer with the BIR seeking cancellation of the alleged deficiency tax assessments. However, despite the repeated letters filed with the BIR, it issued a Collection Letter and a Warrant of Distraint and/or Levy (WDL) against the taxpayer for the subject assessment. The taxpayer filed a Petition for Review, arguing that their right to due process was violated. The BIR, however, argued that the CTA has no jurisdiction, there being no final decision on the protest. The Court held that it has jurisdiction to rule on questions surrounding the Collection letter and the WDL. A collection letter, having the character of finality, may be treated as the BIR's final decision, which may already be appealed to the CTA. Further, the Court also has jurisdiction in instances when the BIR, without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, proceeds with distraint and levy or institutes an action for collection in the ordinary courts. In such case, the Supreme Court has considered this an implied denial. Here, the taxpayer had thirty (30) days from receipt of the said WDL on February 1, 2019, or until March 3, 2019, within which to file its appeal before this Court. Correspondingly, the filing of the Petition for Review on March 1, 2019, was timely made. (*BETA Electromechanical Corporation vs. Commissioner of Internal Revenue. CTA Case No. 10040. March 05, 2024)*
Unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct examinations without prior authority.	The BIR sought the reversal of the CTA decision in favor of the taxpayer and finding the taxpayer's assessment void. The CIR argued that a valid LOA is not a requirement when an audit investigation is conducted under the office of the CIR since the power is organic to his office. It further assails that the LOA is not among the statutory requirements when the audit is conducted by the Large Taxpayers Service (LTS) and the LOA is only required for (ROs) in Revenue District Offices (RDO). The CIR further argues that that the law does not specifically state that LOAs could be the only source of authority (for an RO) to conduct audits, as such authority may be granted in another form like a Mission Order issued to the taxpayer.

The CTA held that the LOA is a crucial prerequisite to the observance of the taxpayer's due process rights. The authority of the RO assigned to audit a taxpayer stem from the LOA. Contrary to the CIR's contentions, it is not simply an administrative document issued for monitoring purposes. Unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct examinations without prior authority.

Here, the Mission Order issued by the CIR does not encompass the same kind of authority as the LOA. The CIR had not exhibited any basis for exempting the handling ROs from needing to derive authority from a valid LOA. Therefore, the BIR's assessment against the taxpayer, pursuant to an investigation conducted by ROs without the authority granted by a valid LOA, is null and void. (*Commissioner of Internal Revenue v. Formula Sports. CTA EB No. 2674, March 06, 2024)*

While the CIR should be given an opportunity to act on the taxpayer's claim, the taxpayer should not be faulted for lawfully filing a judicial claim before the expiration of the two-year prescriptive period, notwithstanding the alleged defects in its administrative claim.

This is a claim for refund of excess and unutilized CWT for CY 2016. Due to inaction by the CIR, the taxpayer filed a Petition for Review before the Court in Division seeking the refund of unutilized CWT. The CTA in Division partially allowed the refund, and both parties moved to assail the decision.

The CIR maintains that the taxpayer's s judicial claim for CWT refund covering CY 2016 is premature because the latter failed to await his adverse decision on its administrative claim for refund, thereby violating the principle of prior exhaustion of administrative remedies.

The CTA En Banc ruled that while the CIR should be given an opportunity to act on the taxpayer's claim, the taxpayer should not be faulted for lawfully filing a judicial claim before the expiration of the two-year prescriptive period, notwithstanding the alleged defects in its administrative claim. The law does not require the taxpayer to await the BIR's action on its administrative claim for CWT refund, prior to seeking judicial redress. Here, the taxpayer's judicial claims for CWT refund covering CY 2016 were correctly instituted within the two-year prescriptive period. Therefore, there is no violation of the principle of prior exhaustion of administrative remedies. (*Tullett Prebon (Philippines) Inc., vs. CIR. CTA EB No. 2713. March 07, 2024*)

If no BIR adverse decision is received by the taxpayer on the 90th day after filing the administrative claim, the said administrative

The taxpayer filed its administrative claim for input value-added tax (VAT) refund and its supporting documents on *September 30, 2019*. On January 14, 2020, the taxpayer received the BIR Letter's dated December 5, 2019. Subsequently, the taxpayer filed its Petition for Review before the CTA on *February 13, 2020.* The Court found that it failed to acquire jurisdiction over the case because the taxpayer failed to comply with 90+30 days mandatory and jurisdictional periods under.

claim was considered denied by law.

In its Motion for Reconsideration (MR), the taxpayer contends that the reckoning of the thirty (30)-day period to appeal before the CTA should be counted from receipt of the BIR's adverse decision, irrespective of whether it was received within or after the lapse of ninety (90)-day period to decide granted by law.

The Court held that that taxpayer should not have waited for the adverse decision rendered by the BIR outside the ninety (90)-day period. If no adverse decision is received, the administrative claim was considered denied by law. Counting thirty (30) days from the 90th day or from *December 29, 2019*, the taxpayer had until January 28, 2020, to seek judicial redress. The taxpayer's belated filing of its Petition for Review on *February 13, 2020,* resulted in the Court's lack of jurisdiction over its judicial claim for unused input VAT refund. (*Citco International Support Services Limited Philippine ROHQ v. Commissioner of Internal Revenue, CTA Case No. 10258, March 7, 2024)*

The Financial or Technical Assistance Agreement (FTAA) is explicit that all taxes collected during the recovery period are recoverable provided that they are detrimental to the contractor's recovery of pre-operating and property expenses.

The Court *En Banc* denied the taxpayer's claim for refund representing excise taxes illegally collected by the BIR. It ruled that to be entitled to the refund, the taxpayer must establish that the collection of excise taxes during the recovery period was detrimental to the recovery of its pre-operating and property expenses and that the taxpayer's recovery period had already ended in 2016.

The taxpayer cites Section 81 of Republic Act ("RA") No. 7942 or the Philippine Mining Act of 1995 ("Mining Act"), which provides that the government share in the Financial or Technical Assistance Agreement ("FTAA") consists of excise tax, among others, and shall be collected only after the contractor has fully recovered its pre-operating expenses. It emphasizes that the law makes no qualifications or conditions. Thus, while the FTAA uses the term "detrimental" with respect to recoverable taxes, said qualification should be deemed effectively superseded upon the enactment of the Mining Act.

The Court ruled that Financial or Technical Assistance Agreement (FTAA) is explicit that all taxes collected during the recovery period are recoverable provided that they are detrimental to the contractor's recovery of pre-operating and property expenses. To be entitled to refund, taxpayer had the burden to prove two things: 1.) that the taxes were paid during the recovery period; and 2.) that the taxes were detrimental to the recovery of pre-operating and property expenses. Here, as found by this Court, the taxpayer did not present evidence to establish the latter. Instead, it solely relied on its theory that it is no longer required to do so, the plenary tax exemption under Sec. 81 of the Mining Act having already eliminated such requirement under the FTAA.

(Oceanagold Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2663, March 8, 2024)

There is only one (1) "180-day period" of inaction to speak of which shall be counted from the date of filing of the protest or from the submission of relevant supporting documents and not from the date when the decision of CIR's duly authorized representative was appealed to the CIR.

The BIR issued the FLD/FANs against the taxpayer on *July 18, 2017*. In response, the taxpayer sent a Letter dated *August 14, 2017* to the BIR, which the latter treated as a Protest against its deficiency taxes. After the taxpayer received the Final Decision on Disputed Assessment ("FDDA") on *October 12, 2017*, it filed an administrative appeal with the CIR on *November 10, 2017*. However, without waiting for the CIR's final decision, petitioner filed the instant Petition for Review on May 22, 2018, allegedly due to the inaction of the CIR on the said administrative appeal.

The taxpayer contends that the 180-day period, counted from the filing of the administrative appeal on November 10, 2017, lapsed on May 10, 2018, without any resolution or decision on the administrative appeal; thus, it had 30 days from May 10, 2018, to file the petition.

The Court finds that the taxpayer erroneously applied the 180-day period. In determining the timeliness of an appeal from the inaction of the CIR, there is only one (1) "180-day period" of inaction to speak of which shall be counted from the date of filing of the protest or from the submission of relevant supporting documents and not from the date when the decision of CIR's duly authorized representative was appealed to the CIR.

If the protest is denied, the taxpayer is given two (2) alternative remedies, either to:

1. appeal to the CTA within 30 days from the date of receipt of the representative's decision: or
2. elevate the protest through a request for reconsideration to the CIR within the same 30-day period, or "administrative appeal", i.e., await the final decision of the CIR on the disputed assessments, and appeal such final decision to the CTA within 30 days from receipt of a copy of such decision.

Here, the taxpayer mistakenly reckoned the 30-day period to appeal to the CTA from May 10, 2018, or after the lapse of the 180-day period from the filing of the administrative appeal and not from the filing of the protest. Therefore, Petitioner's only recourse would be to wait for the BIR's final decision on its administrative appeal and appeal the same before the CTA within 30 days from receipt thereof. *(Bayugan Farmers Millers Multi-purpose Cooperative v. Commissioner of Internal Revenue and Atty. Nasser A. Tanggor, CTA Case No. 9928, March 7, 2024)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

For criminal cases heard before the CTA, it is the filing of an Information before said Court, not the filing of a complaint before the DOJ, that interrupts the prescriptive period.

The taxpayer allegedly filed a fraudulent income tax return ("ITR") in violation of the Tax Code. The CIR referred the case for preliminary investigation with the Department of Justice ("DOJ") on *February 18, 2016*. Acting upon such, the DOJ filed an Information before the CTA on *September 6, 2022*. The Court in Division granted the Motion to Quash and dismissed the case on the ground of prescription.

The prosecution maintains that the running of the 5-year prescriptive period is interrupted when a complaint is filed before the proper officer, for the purpose of conducting the requisite preliminary investigation or the filing of complaint before the DOJ.

The Court held that the period of prescription for the offense charged for all violations of any provision of the NIRC of 1997, as amended, is five (5) years. The filing of an Information interrupts the running of the prescriptive period before the Court in Division. Since the preliminary investigation necessarily entails the investigation and consequent punishment of the subject offense, the five (5)- year prescriptive period begins to run on such date. The prosecution, therefore, had until *February 18, 2021,* to file the requisite Information with the Court. Accordingly, when the prosecution filed the Information on *September 6, 2022* with the CTA, the government's right to file an action has already prescribed. *(People of the Philippines v. Antonio Valeriano M. Bernardo, CTA EB Crim No. 123, March 8, 2024)*

The authority provided under Section 131(A) of the NIRC, as amended, for the Customs Officers to collect excise taxes does not automatically signify that excise taxes on imported articles are governed by customs law.

In the consolidated Petitions for Review, the COC contends that excise tax on imported articles under Section 131 (a) of the NIRC of 1997, as amended, is a "customs law" under the BOC's jurisdiction. According to the BOC, customs laws include taxes imposed by the NIRC.

The Court disagrees. The authority provided for the Customs Officers to collect excise taxes does not automatically signify that excise taxes on imported articles are governed by customs law. As such, the individual or agency collecting the tax is not determinative of whether or not a tax is a national internal revenue tax. It is axiomatic that the power to decide refunds of internal revenue taxes, is vested in the CIR, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Here, the taxpayer correctly and timely filed an administrative claim for refund with the CIR before filing a judicial claim with the CTA, within the two years prescribed under the Tax Code. (*Commissioner of Internal Revenue v. Philippine Airlines, Inc., CTA EB No. 2559, March 13, 2024)*

COURT OF TAX APPEALS UPDATES

DECISION HIGHLIGHTS

A Preliminary Collection Letter, as well as a Final Notice Before Seizure, Warrant of Distraint and/ or Levy, or other means of summary administrative collection, remain tentative for as long as there is a pending administrative appeal before the Office of the Commissioner of Internal Revenue.

While the taxpayer's motion for reconsideration of the Final Decision on Disputed Assessment ("FDDA") was still pending before the Commissioner of Internal Revenue ("CIR"), the BIR issued a Preliminary Collection Letter ("PCL"). Now, the taxpayer argues that the issuance of the PCL is premature.

The Court declared the PCL void and without force and effect. The BIR's authority to proceed against the taxpayer for the collection of taxes is grounded on the premise that the taxpayer has become delinquent. One of the instances wherein a taxpayer becomes delinquent is when an assessment issued against it becomes final and executory and, thus, due and demandable.

Here, the assessment remained to be non-demandable because the assessment is still pending appeal before the CIR through a motion for reconsideration. Therefore, the issuance of the PCL is premature. (*C.U.T. Commercial Corporation v. Bureau of Internal Revenue, CTA Case No. 9933, March 22, 2024*)

When the Expenditure Method is resorted to in the determination of tax liabilities, the prosecution must show proof of the likely source of income or funds which the taxpayer used for his/her expenditures.

The *Informations* and *Amended Informations* charge the taxpayer before the Court of Tax Appeals for willful attempt to evade or defeat tax and willful failure to supply correct and accurate information in her Income Tax Return ("ITR"), respectively.

In proving the criminal liabilities of the taxpayer, the prosecution resorted to the Expenditure Method, where it was disclosed that she had accumulated a substantial gross sales or revenue receipts; whereas her ITRs only reflected a lower net taxable income.

The Court, however, acquitted the taxpayer of all charges. The Court of Tax Appeals held that when the Expenditure Method is resorted to in the determination of tax liabilities, it is not enough that the expenditures are proven, the prosecution must likewise show proof of the likely source of income or funds which the taxpayer used for his/her expenditures.

Here, the Court found that the records are bereft of any effort to show proof of a likely source of income. There was even no proof that the nature of the taxpayer's business has the capacity of generating a substantial income or that specific income items were omitted by the taxpayer in her ITRs. (*People of the Philippines v. Janet Lim Napoles, CTA Crim. Case Nos. O-485, O-486, O-487, O-488, O-490, O-491, O-492, O-493, O-494, O-495, O-496, & O-498, March 21, 2024*)

A FAN should contain a definite amount due as well as the due date for payment. Without a valid FAN, the assessment that sprung from it is inescapably void.

The taxpayer filed a *Petition for Review* praying, among others, that the Formal Assessment Notice ("FAN") covering deficiency taxes for taxable period 2015 issued by the Commissioner of Internal Revenue ("CIR") be cancelled and withdrawn.

Ruling in favor of the taxpayer, the Court held that despite the validity of the letter of authority ("LOA") and the conduct of audit, the FAN suffers an incurable defect as it lacks the definite amount for which the taxpayer is accountable for as well as the due date for payment. Without a valid FAN, the assessment that sprung from it is inescapably void.

Here, the assessment Notices enclosed in the FAN shows that the due date for payment of the deficiency taxes were all stamped January 7, 2018. Noteworthy is the fact that the FAN was issued on December 7, 2018. Glaringly, the supposed deadline for payment was eleven (11) months before the issuance date of the Assessment Notices. Even considering that the correct due date for payment is January 7, 2019, there is a discord in the computation of the interest vis-a-vis the deadline for payment which negates the definiteness of the total amount due. (*IBMS Technology Phils. Corporation v. Commissioner of Internal Revenue, CTA Case No. 10177, March 15, 2024*)

The real property owned by the government, its agencies, and instrumentalities shall be exempt from tax. As for GOCC, any exemption from payment of RPT that was previously granted to, or presently enjoyed by them was withdrawn upon the LGC's effectivity.

The City Government of Davao assessed the taxpayer for the alleged unpaid real property tax ("RPT") of a property occupied and possessed by the latter, registered under the name of the Republic of the Philippines. The Court in Division partially granted the taxpayer's *Petition for Review.* Thereafter, the City Government of Davao's *Petition for Review* before the Court *En Banc*.

The Court *En Banc* clarified that, with the promulgation of the Local Government Code ("LGC"), the general rule now is that real property owned by the government, its agencies, and instrumentalities shall be exempt from tax. As for government-owned and controlled corporation ("GOCCs"), on the other hand, any exemption from payment of RPT previously granted to, or presently enjoyed by them was withdrawn upon the LGC's effectivity.

Here, the Court *En Banc* held that the taxpayer qualifies as a GOCC. Upon determination that the taxpayer is a GOCC, the Court *En Banc* found no cogent reason to invalidate the RPT assessment issued by the City Government of Davao to the taxpayer.[1] (*City Government of Davao v. National Food Authority, CTA EB No. 2691, March 15, 2024*)

[1] The conclusion reached by the Court in this case is different from the decision in *Municipality of Nabunturan vs. National Food Authority, CTA AC No. 281. March 01, 2024*.

COURT OF TAX APPEALS
DECISION HIGHLIGHTS

UPDATES

BSP, an independent central monetary authority, is not under the supervision and control of the President and Executive Branch. It follows, then that the claim for refund is not governed by PD 242 but by Section 7 (a)(1) of RA 1125, as amended.

Before the Court En Banc is a Petition for Review filed by Bangko Sentral ng Pilipinas ("BSP"), praying for the refund of the Documentary Stamp Taxes ("DST") it paid under protest.

The issue, in this case, is whether the tax court has jurisdiction over the claim for refund of DST.

Jurisdiction is defined as the power and authority of the courts to hear, try, and decide cases. It is conferred by law. The charter of the Court of Tax Appeals (Republic Act No. 1125, as amended) intends the tax court to have exclusive jurisdiction to resolve all tax problems. On the other hand, Presidential Decree ("PD") 242 will apply when all the parties involved are purely government offices and government-owned or controlled corporations.

PD 242 does not apply to the present dispute. Although the BIR is under the President's executive control and supervision, the BSP is neither under the Executive Branch of the government nor under the President's supervision and control to fall within the realm of PD 242. Considering that the tax court is vested with exclusive appellate jurisdiction to review by appeal the inaction of Respondent in cases invoking refunds of internal revenue taxes, the tax court has jurisdiction over the case. *(Bangko Sentral ng Pilipinas v. Commissioner of Internal Revenue, CTA EB No. 2680, April 2, 2024)*

If there arises TPI discrepancies, the BIR is mandated to obtain sworn statements from TPI sources to attest the veracity of the data provided.

Arguing against the assessment alleging deficiency taxes, the taxpayer claims that the assessment is not valid because of due process violations and that the third-party information ("TPI") was not confirmed or validated.

If there arises TPI discrepancies, the BIR is mandated to obtain sworn statements from TPI sources to attest to the veracity of the data provided. To obtain the sworn statements, confirmation requests must be sent to third-party sources or coordinate with the RDO having jurisdiction over them.

Upon examination of the records of the case, the BIR did not send confirmation requests to TPI sources in relation to undeclared sales. Thus, no sworn statements were executed by the third-party sources. The BIR failed to comply with its own regulations, resulting in an assessment arising from or based on unverified information. *(Powernet Systems Corp. vs. Commissioner of Internal Revenue, C.T.A. Case No. 10383, April 11, 2024)*

The BIR should have presented factual evidence, not only

The BIR alleged that claims that the application for refund or tax credit should be denied since the taxpayer failed to submit the complete supporting documents.

COURT OF TAX APPEALS

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mere allegations, to successfully controvert the taxpayer's refund claim.

The tax court ruled against the BIR. It noted that the taxpayer submitted its Sworn Certification attesting to the completeness of its supporting documents. Thus, a disputable presumption exists that the taxpayer had submitted complete supporting documents for its refund claim. The taxpayer cannot be faulted if it believes it has submitted complete documents in support of its refund claim.

The BIR's arguments mainly consist of general averments quoting the provisions of the Tax Code and its implementing regulations but without specifying the alleged missing documents from the taxpayer. The BIR should have presented factual evidence, not only mere allegations, to successfully controvert the taxpayer's refund claim. *(Commissioner of Internal Revenue v. New York Bay Philippines, Inc. CTA EB No. 2748 (CTA Case No. 9896), April 18, 2024)*

The exemption of PAGCOR from income tax inures to the benefit of its licensees and contractees.

The taxpayer, as a licensee of Philippine Amusement and Gaming Corporation ("PAGCOR"), subjected its gaming revenue share to corporate income tax. Upon learning that the PAGCOR Charter remains in effect based on a Supreme Court pronouncement, the taxpayer filed a tax refund.

On appeal, the tax court's 1st Division ruled that the taxpayer is not entitled to its claim for refund and that it is not entitled to the tax incentives granted to PAGCOR.

Aggrieved, the taxpayer appealed the case to the tax court En Banc and alleged that the exemption privilege of PAGCOR from all kinds of taxes upon payment of the 5% franchise tax inures to the benefit of PAGCOR's contractees and licensees.

The tax court En Banc ruled in favor of the taxpayer. It held that the exemption of PAGCOR and its licensees and contractees from payment of all kinds of taxes, except the 5% franchise tax, has been upheld by the Supreme Court. It follows, as PAGCOR's licensee, that the taxpayer enjoys the tax exemption benefits of PAGCOR. (*Premium Leisure and Amusement, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2712 (C.T.A. Case No. 10060), April 22, 2024*)

The BIR has 5 years counted from the finality of the tax assessment to file the information in court and criminally indict

A Final Assessment Notice (FAN) was served to the taxpayer on January 13, 2017. The taxpayer allegedly failed to timely file a protest letter to the FAN. On December 6, 2022, an information was filed against the taxpayer's corporate officers for alleged criminal violations of the Tax Code.

The taxpayer's corporate officers argued that the case against them should be dismissed because prescription had already set in on February 13, 2022. The Information, meanwhile, was only filed with the court on December 6, 2022. On the other hand, the BIR argues that even assuming that there is negligence

the responsible corporate officers.

on its part, this should not prejudice the interest of the State in prosecuting the criminal case.

The tax court ruled in favor of the taxpayer's corporate officers and held that the BIR had five (5) years counted from February 13, 2017, or until February 13, 2022, to file the Information in court. However, the information in this case was filed with the court only on December 6, 2022.

Clearly, the government's right to institute a criminal action against taxpayer's corporate officers had already prescribed for more than nine (9) months when the Information was filed. (*People v. Star Asset Management NPL, Inc., C.T.A. EB Crim. Case No. 129 (C.T.A. Crim. Case No. O-995), April 22, 2024*)

A local business tax assessment contained in the First Notice can no longer be changed by the Local Treasurer through the issuance of the Second Notice.

The taxpayer received the First Notice containing a local business tax assessment from the local treasurer. After filing its protest letter to the First Notice beyond the prescriptive period, the taxpayer received a Second Notice with a higher assessment. Another protest letter was filed by the taxpayer.

Eventually, the taxpayer sought an appeal with the tax court. The local treasurer contended that the assessment on the First Notice already became conclusive and unappealable for the taxpayer's failure to institute a timely action before the tax court.

One of the questions raised before the tax court is whether or not the First Notice assessment can be changed through the issuance of a Second Notice.

The tax court ruled in the negative. Being final, the local business tax assessment contained in the First Notice can no longer be changed by the local treasurer through the issuance of the Second Notice. As a consequence, the higher local business tax assessment contained in the Second Notice is null and void.

Nonetheless, the tax court agreed with the local treasurer that the First Notice already become final, conclusive, and unappealable. *(Service Resources, Inc. v. Pasig City, C.T.A. EB Case No. 2719 (C.T.A. AC No. 243), April 23, 2024)*

Approvers of the FLD/FAN does not need a LOA for proper authorization.

The taxpayer received a tax assessment from the BIR and challenged the same before the tax court. Among the arguments of the taxpayer is that the Final Letter of Demand (FLD)/Final Assessment Notice (FAN) was signed by nine (9) individuals whose initials. By comparing them to the Letter of Authority (LOA), it can be deduced that four (4) signatories are not duly authorized.

However, the tax court held that the signatories not named in the LOA did not sign the FLD/FAN as revenue officers but as approvers. These approvers do not need a LOA for proper authorization.

Nonetheless, the tax court still held the assessment null and void for other violations of the due process rights of the taxpayer. (*Major Shopping Management Corp. v. Commissioner of Internal Revenue, C.T.A. Case No. 9300, April 25, 2024*)

Persons who sign the relevant Memoranda recommending the issuance of PAN and FDDA requires an authority granted by an LOA.

The taxpayer challenged a tax assessment before the tax court. Among the arguments of the taxpayer was that the persons who recommended the issuance of the Preliminary Assessment Notice ("PAN") and the Final Decision on Disputed Assessment ("FDDA") are not named in the Letter of Authority ("LOA").

The BIR, on the other hand, contended that such participation was merely clerical and ministerial or that they signed the memoranda only as part of the same group as the revenue officers named in the LOA.

The tax court agreed with the taxpayer. It held that having signed the relevant memoranda, they effectively recommended the issuance of the PAN and FDDA. Considering that such recommendations require the authority granted by a LOA, said act was enough to violate the taxpayer's right to due process.

The tax court cannot lend credence to the BIR's claims. If these were true, then the revenue officers should not have signed the memoranda in the first place, regardless of which "groups" they were members of. (*Concepcion Industries Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 10584 (Resolution), April 26, 2024*)

Failure to submit "complete documents" in relation to a tax refund at the administrative level is not fatal to a judicial refund claim.

The taxpayer filed an administrative claim for refund with the BIR for its excess creditable withholding tax (CWT). Due to BIR's inaction, the taxpayer elevated the case to the CTA.

The BIR, on the other hand, contended that the taxpayer's claim for CWT refund is tainted with procedural infirmities because it failed to submit complete documents to support its administrative claim for CWT refund.

The CTA held that failure to submit "complete documents" is not fatal to a refund claim. In the same light, contrary to BIR's contention, it does not render the judicial action dismissible on the ground of lack of jurisdiction. Moreover, it is clear that BIR's inaction in a claim for refund does not preclude CTA from considering evidence that was not presented in the administrative claim with the BIR. (*Global Energy Supply Corp. v. Commissioner of Internal Revenue, C.T.A. Case No. 10501, May 3, 2024*)

The right of a taxpayer to answer the PAN carries with it the correlative duty on the part of the BIR to consider the response thereto.

The taxpayer questioned an assessment made by the BIR. It alleged that despite providing its defenses and arguments against the findings in the Preliminary Assessment Notice ("PAN"), the basic taxes as stated in the PAN and in the Formal Letter of Demand/Final Assessment Notice ("FLD/FAN") remained unchanged. Moreover, Details of Discrepancies attached to the FLD/FAN and FDDA show that the BIR merely reiterated the same findings as stated in the Details of Discrepancies attached to the PAN and FLD/FAN without giving any reason for rejecting the explanations made by the taxpayer in its Reply to the PAN and Protest.

The CTA held that the right of a taxpayer to answer the PAN carries with it the correlative duty on the part of the BIR to consider the response and that the issuance of the FAN without even hearing the side of the taxpayer is anathema to the cardinal principles of due process. Right to due process is the opportunity to be heard. However, such an opportunity would be wasted if the reply or protest to assessments submitted to the BIR is not considered.

Here, the BIR failed to give the reason/s for rejecting the taxpayer's explanations and to provide the particular facts upon which his conclusions are based. As a consequence of the violation of taxpayers's right to due process, the said deficiency tax assessments are rendered void and cannot be enforced against the taxpayer. *(Commissioner of Internal Revenue vs. Rieckermann Philippines, Inc., CTA EB No. 2704 [CTA Case No. 9613], May 13, 2024)*

Although the law states that an LOA shall cover a taxable period not exceeding one taxable year, it does not foreclose on the possibility of an LOA covering more than one taxable period as long as "the other periods or years shall be specifically indicated in the LOA.

The taxpayer argues against the validity of the Letter of Authority ("LOA") issued against her. She argues that the LOA covers the period "from 1 January 2011 to 31 December 2016." In contrast, regulation requires that one LOA shall be issued for each taxable year or period.

The CTA held that although Revenue Memorandum Order No. 42-1990 states that a LOA shall cover a taxable period not exceeding one taxable year, it does not foreclose on the possibility of an LOA covering more than one taxable period as long as "the other periods or years shall be specifically indicated in the LOA." There is no prohibition under the Tax Code, as amended, as to the number of taxable periods to be covered by a LOA.

Nonetheless, the CTA found the assessment void for the BIR's failure to give due consideration to the taxpayer's defenses, explanations, and supporting documents when he made his conclusion as to the taxpayer's tax liability. *(Justice Maria Lourdes P. A. Sereno vs. CIR., CTA Case No. 10792, May 14, 2024)*

The requirement to file quarterly VAT returns must be differentiated from that of quarterly corporate income tax returns.

The taxpayer questioned an assessment made against it by the BIR on the ground of prescription. The latter defended its assessment for the first three quarters against prescription by arguing that the assessment for VAT was lumped on an annual basis since the disallowed excess input tax was earned over up to the 4th quarter of the TY 2010.

The CTA ruled that the prescriptive period to assess the taxpayer for deficiency VAT is separable into four quarters, in as much as the taxpayer is mandated by law to file a VAT return on a quarterly basis. The requirement to file quarterly VAT returns must be differentiated from that of quarterly corporate income tax returns. While corporations are required by law to file income tax returns for the first, second, and third quarters of a taxable year, the Final Adjustment Return must reflect the transactions for the whole taxable year, not just the fourth quarter. Thus, the prescriptive period to assess a corporate taxpayer for that taxable year shall be reckoned from the filing of the Final Adjustment Return. On the other hand, each quarterly VAT return thus filed constitutes a final computation of the taxpayer's VAT payable for that taxable quarter; the filing thereof/statutory deadline therefore shall commence the three-year period for assessment.

In the present case, the taxpayer filed its quarterly VAT returns prior to its respective statutory deadlines. It appears that when the BIR issued the FLD/FAN on January 27, 2014, the right to assess the taxpayer for deficiency VAT relative to the first, second, and third quarters of TY 2010 had already prescribed. *(Applied Food Ingredients Co, Inc. vs. CIR., CTA Case No. 9952, May 23, 2024)*

A valid waiver for the extension of prescriptive period to assess internal revenue taxes must contain the kind and amount of tax due.

The pertinent portion of the taxpayer's waiver states that the subject thereof pertains to the investigation of all internal revenue tax liabilities for TY 2010, without any express mention of: (1) the particular taxes covered by such waiver; and (2) respective amounts.

The CTA held that one of the requirements for a waiver to produce a valid extension of prescriptive period to assess internal revenue taxes is that it must contain the kind and amount of tax due. This is to prevent the waiver from becoming applicable to multiple tax audits for the same taxable period. There can be no agreement between the taxpayer and the BIR if the kind and amount of the taxes to be assessed or collected were not indicated.

Here, there is a defect found in the waiver for failure to indicate the specific taxes involved and the amount of taxes to be assessed. For this reason, the FLD/FAN made by the BIR, and received by the taxpayer on December 19, 2014 is indeed void and ineffectual against the latter due to prescription. *(Plastic Container Packaging Corporation vs. CIR., CTA Case No. 10095, May 23, 2024)*

If an authorized representative of the CIR denies the protest within the 180-day period and the taxpayer appeals to the CIR, the CIR only has the remainder of the 180-day period within which to act

The taxpayer was assessed by the BIR and was eventually issued with a Final Decision on Disputed Assessment ("FDDA") by an authorized representative of the Commissioner of Internal Revenue ("CIR"). It opted to file an administrative appeal before the CIR on December 21, 2018. On the belief that it was granted a fresh 180-day period (until June 19, 2019), the taxpayer appealed the inaction of the CIR within 30 days from the lapse of the said 180-day period.

The CTA held that there is a singular 180-day period, *i.e.,* the period counted from the filing of the protest or the submission of the required documents. Accordingly, if an authorized representative of the CIR denies the protest within the 180-day period and the taxpayer appeals to the CIR, the CIR only has the remainder of the 180-day period within which to act. If the same period lapses with no action from the CIR, the taxpayer can appeal to this Court within 30 days after the lapse of the said remaining period.

Here, considering that the 180-day period has already lapsed by the time the CIR issued the FDDA, there is no longer any appealable inaction on the part of the CIR. It is only after CIR acts on the taxpayer's administrative appeal that the taxpayer could file an appeal before this Court. *(Friendlycare Foundation, Inc. vs. CIR, CTA Case No. 10123, May 30, 2024)*

Revenue Regulations No. 3-2024, April 11, 2024.
This provides for the implementation of the amendments introduced by the EOPT Act on VAT and Percentage Tax.

These regulations implement the amendments on VAT and Percentage Tax provisions as introduced by the Ease of Paying Taxes ("EOPT") Act.

Uniform Application

The following shall be uniformly applied:

"Gross Sales" shall be used to refer to gross selling price, gross value in money, and gross receipts regardless of whether the sale is for goods or for services.

"Invoice" shall be used to refer to sales/commercial invoices or official receipts.

Filing of tax return shall be done:
- Electronically in any of the available electronic platforms; or
- Manually, in case of unavailability of the electronic platforms.

Tax payment shall be made either:
- Electronically in any of the available electronic platforms; or
- Manually to any AABs and RCOs.

Sale of Goods

No output tax credit shall be allowed for outstanding receivables from sale of goods on account prior to the effectivity of the regulation.

Sale of Services and Use or Lease of Properties

The definition of gross sales excludes amounts:
- Earmarked for payment to 3rd party; or
- Received as reimbursement for payment on behalf of another which do not redound to the benefit of the seller.

Invoices for long-term contracts (with a period of one year or more) shall be issued on the month in which the service, or use, or lease of property was rendered/supplied.

Deductions from gross sales are as follows:
- Refunds/credit memorandum for refund was made or issued during the quarter;
- Sales discount granted and indicated in the invoice at the time of sale and which is not dependent upon the happening of a future event

For outstanding receivables on services on account rendered prior to the effectivity of the regulation, the output VAT shall be declared once collected.

Revenue Regulations No. 3-2024, April 11, 2024. *This provides for the implementation of the amendments introduced by the EOPT Act on VAT and Percentage Tax.*

VAT-Exempt Transactions

VAT-exempt threshold shall be adjusted to its present value using the Consumer Price Index as published by the Philippine Statistics Authority every 3 years.

Tax Credits

Output VAT pertaining to uncollected receivables[2] may be deducted on the next quarter provided the following requisites are present:

- **Sale or exchange has taken place after the effectivity of the regulation;**
- **Sale is on credit or on account;**
- **There is a written agreement on the period to pay the receivable;**
- **VAT is separately shown on the invoice;**
- **Sale is specifically reported in the SLS and not reported as "various" sales;**
- **The corresponding output VAT was declared in the tax return within the period prescribed;**
- **The period agreed upon, whether extended or not, has elapsed; and**
- **The VAT component of the uncollected receivable was not claimed as a deduction from gross income.**

In case of recovery of uncollected receivables, the output VAT shall be added to the output VAT of the taxpayer during the period of recovery.

Claims for Refund/Tax Credit Certificate of Input Tax

The "date of cancellation," for purposes of determining the reckoning of the 2-year period to apply for a claim for refund/issuance of TCC, shall refer to the date of the issuance of the BIR Tax Clearance.

Claims for tax credits/refunds shall be filed with the appropriate BIR Office that will be designated by the Commissioner of Internal Revenue.

The 90-day period to process the refund shall be from the date of submission of the invoices and other documents in support of the application. The said period shall also cover up to the release of the payment of the VAT refund.
If the refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial. Also, the following remedies are likewise available:

Action/Inaction	Remedy

[2] Sales of goods and/or services on account that transpired upon the effectivity of the regulations which remain uncollected by the buyer despite the lapse of the agreed period to pay.

BIR ISSUANCES

Full or partial denial	Appeal with the CTA within 30 days from receipt of the decision
Inaction	Appeal with the CTA within 30 days from the expiration of the 90-day period to process the claim Forego the judicial remedy and await the decision.

The VAT refund claim may still continue to be processed administratively despite the lapse of the 90-day period.

Based on the amount, tax compliance history, frequency of filing, among others, VAT refund claims shall be classified into:

- **Low-risk**
- **Medium-risk – Subject to audit or other verification processes**
- **High-risk – Subject to audit or other verification processes**

Refunds shall be subject to post-audit by COA. In case of disallowance by COA:

- **Only the taxpayer shall be liable for the disallowed amount;**
- **BIR employee who may be found to be grossly negligent in the grant of the refund may become administratively liable.**

Revenue Regulations No. 4-2024,
April 11, 2024.
This provides for the amendments introduced by the EOPT Act on the

These regulations implement the amendments on the filing of tax returns and payment of taxes as introduced by the Ease of Paying Taxes ("EOPT") Act.

Mode of Filing of Tax Returns and Payment of Taxes

filing of tax returns and payment of taxes.

Activity	Mode
Filing of Tax Returns	Electronically in any of the available electronic platforms. However, in case of unavailability, manual filing may be allowed.
Payment of Taxes	Either electronically in any of the available electronic platforms or manually to any AAB and RCOs[3].

In general, electronic and manual modes mean:

Electronic	Manual
☑ BIR's eFPS/eBIRForms ☑ AAB e-Payment Channels (*e.g.* LinkBiz, PesoNet, UPay, MyEG, etc.) ☑ Authorized Tax Software Provider	☑ Over-the-counter with any AAB ☑ RCO of the BIR for cash payment (up to P20,000.00) or check payment (regardless of the amount)

Filing of ITR by married individuals

As a general rule, married individuals shall file jointly, provided:
- ☑ whether citizens, resident, or nonresident aliens; and
- ☑ both self-employed, either engaged in business or practice of profession.

On the other hand, separate filing if joint filing is impracticable (*i.e.* registered in different RDOs)

Civil Penalty for Wrong Venue

The civil penalty of 25% for wrong venue filing shall no longer be imposed.

Individuals Not Required to File ITRs

[3] AABs and RCOs shall only accept tax payments manually after electronic filing of tax returns, unless an advisory is issued allowing manual filing.

Documentary requirement for substituted filing has been changed:

From	To
Certificate of Withholding	Certified List of Employees Qualified for Substituted Filing of Income Tax Return, reflecting the amount of income payment, the tax due and tax withheld, if any.

OFWs/OCWs working and deriving income solely from abroad is not required to file ITR.

Withholding of Taxes

The obligation to withhold arises (whichever comes first):

- At the time an income payment is accrued or recorded as an expense/asset in the payor's books; or
- At the issuance by the seller of the sales invoice or other adequate document to support such payable.

Withholding of taxes is no longer a requirement for the deductibility of certain income payments. However, the obligation to withhold and remit remains.

The amount of tax withheld over the tax due on the taxpayer's return shall be refunded subject to the provision of Section 204 of the Tax Code.

Revenue Regulations No. 5-2024, April 11, 2024. *This provides for the amendments introduced by the EOPT Act on tax refunds.*

These regulations implement the amendments on tax refunds as introduced by the Ease of Paying Taxes ("EOPT") Act.

VAT Refund Claims – Risk-Based Approach

The risk-based approach to verification and processing of VAT refunds shall be as follows:

Risk Level	Submission of Complete Documentary Requirements	Scope of Verification of Sales	Scope of Verification of Purchases
Low	Yes	No verification	No verification

		Mandatory full verification on the 4th VAT refund claim after 3 consecutive filing of low-risk VAT refund claims	
Medium	Yes	At least: • Amount of sales – 50%; and • Invoices/ receipts including inward remittance and proof of VAT zero-rating – 50%	At least: • Amount of purchases with input tax claimed – 50%; and • Suppliers on "Big-Ticket" purchases – 50%
		Adjusted to 100% if there is at least 30% disallowance of the amount of refund	
High	Yes	100%	100%

Specific circumstances with automatic high-risk classifications:

- First-time claimants for the succeeding 3 VAT refund claims;
- The succeeding claim following a full denial; and

VAT refund claims arising from retirement/cessation of business.

Main risk factors in establishing the risk level of each claim:

- Amount of VAT refund claim;
- Frequency of VAT refund claim;
- Tax compliance history; and
- Other risk factors that may be identified.

For taxpayer-claimants filing on a quarterly basis, the risk classification shall be made for every filing.

VAT Refund Claims – Processing

Verification and processing of VAT refund claims shall be separate from the regular audit. Findings on the verification that has no effect on the refund shall be:

- If regular audit is conducted by a different BIR office: Endorsed for further verification and/or consolidation; or
- If regular audit and refund verification is with the same BIR office: Incorporate with the existing audit.

All documentary requirements shall be submitted regardless of the risk-level and shall be subject to post-audit by COA (if the claim is approved).

The BIR may utilize sales and/or purchase data available in the E-Invoicing System (EIS).

The 90-day period to process the refund shall be from the date of submission of the invoices and other documents in support of the application. The said period shall also cover up to the release of the payment of the VAT refund.

Available remedies to taxpayers in case of denial or inaction:

Action/Inaction	Remedy
Full or partial denial	Appeal with the CTA within 30 days from receipt of the decision
Inaction	Appeal with the CTA within 30 days from the expiration of the 90-day period to process the claim *Note: Administrative claim shall be considered moot and shall no longer be processed.*

Action/Inaction	Remedy
Inaction	Forego the judicial remedy and await the decision.

BIR officials, agents, and employees causing deliberate delay in the processing of the refund may be subjected to penalties.

Approved refunds shall be subject to post audit by COA. In case of disallowance by COA:

- Only the taxpayer shall be liable for the disallowed amount;
- BIR employee who may be found to be grossly negligent in the grant of the refund may become administratively liable.

Credit/Refund of Unutilized Excess Income Tax Credit – Regular Claims

Regular claims refer to refunds by taxpayers that are of "going concern" status. The excess of the amount of tax withheld over the tax due shall be refunded subject to the provisions of Section 204 of the Tax Code.

The option to carry-over shall be irrevocable. In case the taxpayer chooses refund/issuance of tax credit but carried forward the said amount, this shall be a ground for denial. However, the amount carried over may be applied against future income tax liabilities.

Requisites in claiming tax credit/refund of unutilized excess income tax:

- Filing must be within 2 years from the date of filing of the AITR;
- Income upon which the taxes were withheld must be included as part of the gross income declared in the AITR;
- Fact of withholding must be established by a copy of the withholding tax certificate showing:
  - Amount of income payment;
  - Amount of tax withheld; and
  - Taxpayer-claimant as the payee.

Processing of the refund shall not be held in abeyance pending completion of the audit for all internal revenue taxes.

Credit/Refund of Unutilized Excess Income Tax Credit – Upon Dissolution/Cessation

The BIR shall decide on the refund application within 2 years from the date of the dissolution or cessation of business. This is an exception to the 180-day processing of refund claims under Section 204(C) of the Tax Code.

The 2-year period shall commence from the submission of the application (BIR Form 1905) together with the complete documentary requirements for the closure and refund.

The approved refund shall be released only:

- After completion of mandatory audit covering the immediately preceding year and the short period return; and
- Full settlement of all tax liabilities for the closure/cessation of business and any existing prior tax liability.

Tax Credit/Refund for Erroneously or Illegally Collected Tax

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No credit/refund shall be allowed unless the taxpayer files a claim in writing. However, a return filed showing an overpayment shall be considered as a written claim for credit/refund.

The 180-day period shall:

- Be counted from the submission of complete documents which should be within the 2-year prescriptive period;
- Cover the time-frame to process and decide up to the payment of the approved refund/receipt of TCC.

Requisites in claiming tax credit/refund:

- Pertains to erroneously or illegally collected taxes or penalties imposed without authority;
- Filing of a claim must be done within 2 years after the payment of tax or penalty;
- Supported with a copy of the duly filed tax return with the corresponding payment remitted to the BIR.

The result of the application, whether approval or denial, shall be communicated to the taxpayer-claimant. In case of full/partial denial, the legal and/or factual basis shall be stated.

The following remedies are available to the taxpayer-claimant:

Action/Inaction	Remedy
Full or partial denial	Appeal with the CTA within 30 days from receipt of the decision
Inaction	Appeal with the CTA within 30 days from the expiration of the 180-day period to process the claim *Note: Administrative claim shall be considered moot and shall no longer be processed.*
	Forego the judicial remedy and await the decision

BIR officials, agents, and employees causing deliberate delay in the processing of the refund may be subjected to penalties.

A validly issued tax credit certificate (TCC) may be applied against any internal revenue tax liability, excluding withholding taxes. Any unutilized TCC may be converted into refund upon request provided that:

- The original TCC showing a creditable balance is surrendered;
- The TCC is not a result of availment of incentives for which no actual payment was made.

Judicial Claim for Credit/Refund of Erroneously or Illegally Collected Tax

No suit or proceeding in any court shall be filed/maintained unless there is:

- A prior claim duly filed with the Commissioner.
- A full or partial denial of the claim or a failure to act within the 180-day period.

A prior claim filed with the Commissioner is required to maintain a suit or proceeding in any court. However, such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

For refund of excess income tax in relation to dissolution/cessation of business, the judicial claim must be made within 30 days from full/partial denial by the Commissioner.

Revenue Regulations No. 6-2024,
April 11, 2024.
This provides for the amendments introduced by the EOPT Act on penalties and interest for Micro and Small taxpayers.

These regulations implement the amendments on the penalties and interest for Micro and Small taxpayers as introduced by the Ease of Paying Taxes ("EOPT") Act.

Coverage

The reduced interest and penalties shall apply to:

Taxpayer Classification	Annual Gross Sales Threshold
Micro	Less than P3,000,000.00
Small	P3,000,000.00 to less than P20,000,000.00

Penalties

The following civil penalties shall apply to micro and small taxpayers:

Penalty Rate	Applicable Cases

10% of the amount due (*reduced rate*)	➢ Failure to file the return and pay the tax due; ➢ Failure to pay the deficiency tax within the prescribed period[4]; or ➢ Failure to pay the full/part of the tax shown on any return required to be filed, or the full tax due for which no return is required to be filed, on or before the date prescribed for its payment.
50% of the tax (*standard rate*)	➢ Willful neglect to file a return ➢ False or fraudulent filing of return
P500 per failure (aggregate amount not to exceed P12,500.00 during a calendar year)	Failure to file an information return, statement or list, or keep any record, or supply any information as may be required, on the date prescribed for.

50% of the rate or amount of compromise (*reduced rate*)	Criminal violations not involving fraud

Imposition of Interest

Interest imposed against micro and small taxpayers shall be at the reduced rate of 50% of the interest rate mandated. As such, the legal interest rate imposable is 6%.

In case a new legal interest rate is prescribed, a separate circular shall be issued.

Revenue Regulations No. 7-2024, April 11, 2024.

These regulations implement the amendments on registration procedures and invoicing requirements as introduced by the Ease of Paying Taxes ("EOPT") Act.

Invoicing and Accounting Requirements

A VAT invoice shall contain:

[4] No penalty shall be imposed to an amended tax return if the initial tax return was filed and the tax due was paid on or before the prescribed due date for filing. Further, in deficiency tax assessments, the penalty shall be imposed on the tax deficiency if the tax return was found to have been filed beyond the prescribed due date.

This provides for the amendments introduced by the EOPT Act on registration procedures and invoicing requirements

- ☑ Statement that the seller is VAT-registered followed by the seller's TIN and branch code;
- ☑ Total amount with the indication that it includes VAT, provided that:
  - VAT is shown as a separate item;
  - "VAT-Exempt Sale" or "Zero-Rated Sale" is written/printed if the sale is such;
  - If the sale is partly subject to VAT and partly subject to VAT Zero-Rated or VAT-Exempt, the invoice shall indicate the breakdown and the calculation of VAT;
  - Date of the transaction, quantity, unit cost, and description is indicated;
  - Registered name, address, and TIN of purchaser is indicated in case of sales amounting to P1,000.00 or more;
- ☑ Registered address where the invoice shall be used;
- ☑ The term "Invoice";
- ☑ ATP number and BIR permit number; and
- ☑ Serial number.

In addition to regular accounting records, VAT-registered persons shall maintain a subsidiary sales/purchase journal.

Issuance of erroneous VAT invoice shall have the following consequences:

Error	Consequence
Issuance of a VAT invoice by a person who is not VAT-registered	i. Liable for VAT without benefit of input tax credit; and ii. 50% surcharge
Failure to display "VAT-Exempt Sale" or providing a breakdown of the VAT-exempt sale	Liable for VAT
Lack of required information on the invoice	Liable for non-compliance with invoicing requirements However, the buyer may still claim the input tax credit if the following information are present: i. Amount of sales; ii. VAT amount; iii. Registered name and TIN of both buyer and seller; iv. Description of goods or services; and v. Date of transaction.

Books and Other Accounting Records

All books of accounts shall be preserved for a period of 5 years following the deadline for filing a return of the date of filing the return (if filed after the deadline) in the following manner:

Type	Manner of Preservation
Manual/Loose Leaf books of accounts and other accounting records	In hard copies
Computerized books of accounts and other accounting records	In electronic copies

The taxpayer is required to preserve the books of accounts and other accounting records even beyond the 5-year period if these are material to any pending protest or claim for credit/refund.

For income tax purposes, examination and inspection of books of accounts and other accounting records shall be made only once in a taxable year, except for:

- Fraud, irregularity, or mistakes;
- Reinvestigation requested by the taxpayer;
- Verification (for withholding tax compliance and capital gains tax liabilities); and
- Obtaining information by the Commissioner.

In cases of retirement from business, books of accounts and accounting records shall be submitted within 10 days from retirement or within such period as may be allowed by the Commissioner.

Registration Requirements

Registration shall be done:

Type	Timing of Registration
Self-employed individuals, estates, trusts, corporations	On or before commencement of business
Corporations/One Time Transaction	Before payment of any tax due
Corporations, partnerships, associations, cooperatives, and government agencies and instrumentalities	Before or upon filing of any required and applicable tax return, statement, or declaration

Employees	Within 10 days from date of employment
For individuals with transactions with government agencies (EO No. 98, S. 1999)	Any time before they complete their transaction

The manner and place of registration are as follows:

Type	Timing of Registration
Self-employed individuals	Online or manual at the RDO having jurisdiction over the business address (or the residence if there is no business address)

The manner and place of registration are as follows:

Type	Timing of Registration
Corporations, partnerships, associations, cooperatives, and government agencies and instrumentalities	Online or manual at the RDO having jurisdiction over the business address
Nonresidents (Filipino citizens, aliens, and foreign corporations)	Online or manual at the RDO having jurisdiction over the business address
OFW/OCW	Online or manual at the RDO having jurisdiction over the place of residence
Hired employees – Local and Resident aliens	Online or manual at the RDO having jurisdiction over the place of residence
Nonresident alien employees	Online or manual at the RDO having jurisdiction over the place of residence
Non-registered parties to an ONETT	Online or manual at the RDO having jurisdiction over the place of residence
Estate – Engaged in business	RDO having jurisdiction over the head office of the business of the decedent

Estate – Not engaged in business	Where the estate tax return will be filed
Trust	RDO having jurisdiction over the registered address (if not registered, the business address) of the trustee
Branch and Facility	RDO having jurisdiction over the business address/facility or at the LT Office/Division where the head office is registered

All online business, sellers, or merchants and service providers shall display the electronic copy of their BIR Certificate of Registration (COR) on their website, seller/merchant's account, or profile pages of the e-commerce platform/mobile application.

Issuance of Invoices

An invoice is required to be issued if the sale is valued at P500.00 or more, except:

- If the buyer so requires regardless of the amount of the transaction;
- If the seller is VAT-registered, regardless of the amount of the transaction; and
- If the amount per transaction is below P500.00 but the aggregate sales amount is at least P500.00, seller will issue 1 invoice for the aggregate amount.

Transitory Provisions

Existing BIR CORs that includes the Registration Fee need not be replaced by a new one.

For unused official receipts:

- Unused/unissued official receipts may still be used as a supplementary document until fully consumed provided that the phrase "THIS DOCUMENT IS NOT VALID FOR CLAIM OF INPUT TAX.";
- Strikethrough of the word "Official Receipt" and stamping "Invoice" shall be allowed as a primary invoice and valid for claiming input tax from January 22 to December 31, 2024. Any official receipt issued after December 31, 2024 shall be considered as supplementary document and ineligible for input tax claims;
- All converted official receipts shall be reported within 30 days upon effectivity of the Regulations.

For Cash Register Machines (CRM) and Point-of-Sales (POS) Machines and E-receipting or Electronic Invoicing Software, changing the word "Official Receipt" to "Invoice" shall not require notification to the relevant RDO since it is considered as a minor enhancement.

For Computerized Accounting Software (CAS) or Computerized Books of Accounts (CBA), the reconfiguration is considered as a major enhancement which will require a new application. Such adjustments shall be undertaken on or before June 30, 2024 which may be extended by 6 months upon prior approval.

Revenue Regulations No. 8-2024, April 11, 2024 *This provides for the amendments introduced by the EOPT Act on taxpayer classification.*

These regulations implement the amendments on taxpayer classification as introduced by the Ease of Paying Taxes ("EOPT") Act.

Coverage and Classification of Taxpayers

Classification	Criteria – Amount of gross sales for a taxable year
Micro	Less than P3,000,000.00
Small	P3,000,000.00 to less than P20,000,000.00
Medium	P20,000,000.00 to less than P1,000,000,000.00
Large	P1,000,000,000.00 and above.

For taxpayers registering upon effectivity of the regulation, initial classification shall be based on the declaration in the Registration Forms. The BIR shall notify taxpayers on the latter's classification/reclassification.

Transitory Provisions

Period of Registration	Basis of Classification
2022 and prior years	Based on gross sales for taxable year 2022
i. 2022 and prior years but w/o submitted information on gross sales; and ii. 2023 or in 2024 prior to the effectivity of the regulations	Micro – if non-VAT taxpayer Small – if VAT-registered taxpayer

RMC No. 34-2024, March 5, 2024 – *This provides updates to*

The List of VAT-Exempt Medicines under Republic Act (RA) No. 10963 (TRAIN Law) and RA No. 11534 (CREATE Act) now includes certain medicines for cancer, hypertension and mental illness.

As clarified under Q&A No. 1 of Revenue Memorandum Circular No. 99-2021, the effectivity of the VAT exemption of the covered medicines and medical devices

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the List of VAT-Exempt products.	under the CREATE Act shall be on the date of publication by the FDA of the updates to the said list.
RMC No. 36-2024, March 11, 2024 – *This clarifies the manner of computing the Minimum Corporate Income Tax (MCIT) for Taxable Year 2023.*	Republic Act No. 11534 (CREATE Act) prescribed the one percent (1%) MCIT for the period July 1, 2020 until June 30, 2023. Effective July 1, 2023, the MCIT rate returned to its old rate of two percent (2%) based on the gross income of the corporation. In computing the MCIT, the gross income shall be divided by 12 months to get the average monthly gross income and apply the rate of 1% for the period January 1 to June 30, 2023; and 2% for the period July 1 to December 31, 2023. This RMC provides rates that the taxpayer can be used which corresponds to difference taxable periods.
RMC No. 37-2024, March 14, 2024 – *This announces the availability of TIN Inquiry thru electronic mail (eMail).*	Taxpayers, Individual or corporation, may inquire on their issued TIN via email at tin.inquiry@bir.gov.ph. Upon receipt of the TIN Inquiry, the BIR shall verify the submitted information with the BIR's Internal Revenue Integrated System-Taxpayer Registration System (IRIS-TRS). If information provided are correct with the information in the BIR's IRIS-TRS, an email reply will be sent to the taxpayer with the information on his/her TIN indicated. However, if information provided are incorrect, the request for TIN Inquiry shall be denied with the reason for denial of request stated in the email reply.
RMC No. 38-2024, March 15, 2024 – *This provides guidelines on the determination on whether the source of income of the listed cross-border services is within the Philippines.*	The ruling in *Aces Philippines Cellular Satellite Corp. v. Commissioner of Internal Revenue*, that the source of income of the Satellite Airtime Purchase Agreement between Aces Bermuda and Aces Philippines to be within the Philippines and, thus, subject to Income Tax, does not automatically apply to international service provision or cross-border services agreements. To determine whether the source of income of the listed cross-border services is within the Philippines, the long-standing rule is that the source of income is in the Philippines and if the property, activity or service that produces the income is in the Philippines. Once the source of income is established to be within the Philippines using the aforesaid guidelines, then, the affected taxpayer can invoke the application of a particular tax treaty to assert that the income derived or sourced within the Philippines (e.g., business profits, dividends, royalties or interests) is exempt from Income Tax for lack of permanent establishment or subject to preferential rate, as the case may be.

	Once it is established that the source of income of cross-border services is within the Philippines, the subject transaction will also be subject to Value Added Tax (VAT). Sections 105 and 108 of the Tax Code provide that services rendered or performed in the Philippines by non-resident foreign persons are subject to VAT
Revenue Memorandum Circular No. 51-2024, April 8, 2024. This provides the guidelines in the filing of Annual Income Tax Returns and payment of taxes due for Calendar Year 2023	*Filing of Annual Income Tax Return* General Rule – Electronically in any of the available BIR electronic platforms (Electronic Filing and Payment System (eFPS) or eBIRForms) Exception – Manual filing is allowed in case of unavailability/inaccessibility of the electronic platforms *Payment of income tax* Payment shall be made either electronically in any of the available electronic payment (ePay) gateways or manually to any Authorized Agent Bank (AAB) or Revenue Collection Officer (RCO) of any Revenue District Office (RDO).
Revenue Memorandum Circular No. 55-2024, April 15, 2024. This provides for the extension of the 90-day period for the actual imposition of withholding tax on gross remittances made by electronic marketplace operators and digital financial service providers to sellers/merchants.	In order to provide taxpayers sufficient time to comply and adjust to the requirements of RR No. 16-2023 and other government agencies, if any, the transitory period is extended by an additional 90 days or until July 14, 2024.

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Revenue Memorandum Circular No. 56-2024, April 17, 2024.
This provides for the clarification on the issuance of Electronic Certificate Authorizing Registration Relative to One-Time Transaction (ONETT).

Venue of Processing and Issuance

Regardless of where the tax return was filed and the tax payment was made, the processing and issuance of the eCAR shall be at the RDO which has jurisdiction:

One-Time Transaction	RDO which has jurisdiction
Sale of real property	over the location of the property subject of sale
Sale of personal property	over the residence of the seller
Donation	*If individual* – over the residence of the donor; or *If non-individual* – where the donor is registered
Estate	*If decedent has registered business* – where the business is registered; or *If decedent has no registered business* – where the administrator/heirs intend to apply for eCAR issuance

Computation of Taxes

Taxpayers may either:

- ☑ Secure the approved ONETT computation sheet from the RDO as stated above; or
- ☑ Use the eONETT[5] in the application and processing of the eCAR.

[5] https://eonett.bir.gov.ph/

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Revenue Memorandum Circular No. 60-2024, May 9, 2024.
This provides clarifications and guidance the effects on tax audits of the repeal of the requirement of withholding on the deductibility of expenses.

Ongoing Audit Covering Taxable Period Prior to January 1, 2024

Expenses subject to withholding shall be allowed as deduction only if the corresponding tax required to be withheld have been paid.

The Revenue Officer shall recommend for the issuance of an assessment notice both on income and withholding tax.

Taxable Year Covering January 1, 2024

Expenses shall be allowed as deduction even if no tax was withheld provided the other requirements for deductibility have been met.

Taxpayer shall still be liable for the payment of the corresponding withholding tax.

Revenue Memorandum Circular No. 62-2024, May 16, 2024.
This provides for the availability of the "Taxpayer's Classification Inquiry" Functionality in ORUS.

Rule on delay in presentation of notarized deeds of sale or other transfer documents

The relevant laws and regulations effective at the date of notarization shall be applied.

Penalties and interest for late filing of return and payment of taxes shall be imposed.

Rule if the deeds of sale or other transfer documents are ante-dated

The relevant laws and regulations effective at the time of presentation of deeds of sale or other transfer documents shall be applied.

Unless otherwise proved, the following documents are considered ante-dated:

- Dated before the effectivity of the capital gains tax law;
- Dated before the effectivity of the regulations imposing the creditable withholding tax on sales or transfers of real property; and
- Dated before the effectivity of the effectivity of the current zonal values as reflected in the latest Revised Schedule of Zonal Values

The relevant laws and regulations effective at the time of presentation of deeds of sale or other transfer documents shall be applied.

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SEC Memorandum Circular No. 6- 2024, March 27, 2024 –

This provides for updated fines and penalties on late and non-submission of reportorial requirements.

I. Period of Submission of Reportorial Requirements

Reportorial Requirements	Period to File/Register
For One Person, Stock, and Non-Stock Domestic Corporations	
GIS[1]	Within thirty (30) calendar days from the date of the actual meeting. For Financing and Lending Companies, the reckoning period for the filing of the GIS is from the date of actual meeting or within seven (7) calendar days from the date of change, as the need arises.
AFS	Within one hundred twenty (120) calendar days from fiscal year-end or as prescribed by the Commission.
SEC MC 28	Upon filing of the registration forms or within thirty (30) calendar days from the issuance of the certificate of registration, license, or authority.
For Stock and Non-Stock Foreign Corporations	
GIS	Within thirty (30) calendar days from the anniversary date of the issuance of the SEC license.
AFS	Within one hundred twenty (120) calendar days from fiscal year-end or as prescribed by the Commission.
SEC MC 28	Upon filing up of the registration forms or within thirty (30) calendar days from the issuance of the certificate of registration, license, or authority.

[1] Not applicable for OPCs

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II. Fines and Penalties – Late Filing of AFS and/or GIS

Based on Retained Earnings/ Fund Balance / Equity	First Offense	Second Offense	Third Offense	Fourth Offense	Fifth Offense
Domestic Stock Corporations and One Person Corporations					
Capital Deficiency	₱5,000	₱6,000	₱7,000	₱8,000	₱9,000
Negative Retained Earnings (Deficit)	₱5,000	₱6,000	₱7,000	₱8,000	₱9,000
	Plus ₱500 per month of delay				
₱0 to ₱100,000	₱5,000	₱6,000	₱7,000	₱8,000	₱9,000
	Plus ₱1,000 per month of delay				
₱100,001 to ₱500,000	₱10,000	₱12,000	₱14,000	₱16,000	₱18,000
	Plus ₱1,000 per month of delay				
₱500,001 to ₱5,000,000	₱15,000	₱18,000	₱21,000	₱24,000	₱27,000
	Plus ₱1,000 per month of delay				
₱5,000,001 to ₱10,000,000	₱20,000	₱24,000	₱28,000	₱32,000	₱36,000
	Plus ₱1,000 per month of delay				
Above ₱10,000,000	₱25,000	₱30,000	₱35,000	₱40,000	₱45,000
	Plus ₱1,000 per month of delay				
Domestic Non-Stock Corporations					
Negative Fund Balance/ Equity (Deficit)	₱5,000	₱6,000	₱7,000	₱8,000	₱9,000
	Plus ₱500 per month of delay				
₱0 to ₱100,000	₱5,000	₱6,000	₱7,000	₱8,000	₱9,000
	Plus ₱1,000 per month of delay				
₱100,001 to ₱500,000	₱7,500	₱9,000	₱10,500	₱12,000	₱13,500
	Plus ₱1,000 per month of delay				
₱500,001 to ₱5,000,000	₱10,000	₱12,000	₱14,000	₱16,000	₱18,000
	Plus ₱1,000 per month of delay				

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₱5,000,001 to ₱10,000,000	₱12,500	₱15,000	₱17,500	₱20,000	₱22,500
	Plus ₱1,000 per month of delay				
Above ₱10,000,000	₱15,000	₱18,000	₱21,000	₱24,000	₱27,000
	Plus ₱1,000 per month of delay				

Based on Accumulated Income (AI) / Fund Balance / Members' Equity	First Offense	Second Offense	Third Offense	Fourth Offense	Fifth Offense
Foreign Stock Corporations					
Capital Deficiency	₱10,000	₱12,000	₱14,000	₱16,000	₱18,000
Negative Accumulated Income (Deficit)	₱10,000	₱12,000	₱14,000	₱16,000	₱18,000
	Plus ₱500 per month of delay (if filed after 30 calendar days); Plus ₱6,000 per month of delay (if filed after 60 calendar days)				
₱0 to ₱100,000	₱10,000	₱12,000	₱14,000	₱16,000	₱18,000
	Plus ₱1,000 per month of delay (if filed after 30 calendar days); Plus ₱12,000 per month of delay (if filed after 60 calendar days)				
₱100,001 to ₱500,000	₱15,000	₱18,000	₱21,000	₱24,000	₱27,000
	Plus ₱1,000 per month of delay (if filed after 30 calendar days); Plus ₱12,000 per month of delay (if filed after 60 calendar days)				
₱500,001 to ₱5,000,000	₱20,000	₱24,000	₱28,000	₱32,000	₱36,000
	Plus ₱1,000 per month of delay (if filed after 30 calendar days); Plus ₱12,000 per month of delay (if filed after 60 calendar days)				
₱5,000,001 to ₱10,000,000	₱25,000	₱30,000	₱35,000	₱40,000	₱45,000
	Plus ₱1,000 per month of delay (if filed after 30 calendar days);				

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	Plus ₱12,000 per month of delay (if filed after 60 calendar days)				
Above ₱10,000,000	₱30,000	₱36,000	₱42,000	₱48,000	₱54,000
	Plus ₱1,000 per month of delay (if filed after 30 calendar days); Plus ₱12,000 per month of delay (if filed after 60 calendar days)				
Foreign Non-Stock Corporations					
Negative Fund Balance/ Equity (Deficit)	₱5,000	₱6,000	₱7,000	₱8,000	₱9,000
	Plus ₱500 per month of delay (if filed after 30 calendar days); Plus ₱6,000 per month of delay (if filed after 60 calendar days)				
₱0 to ₱100,000	₱5,000	₱6,000	₱7,000	₱8,000	₱9,000
	Plus ₱1,000 per month of delay (if filed after 30 calendar days); Plus ₱12,000 per month of delay (if filed after 60 calendar days)				
₱100,001 to ₱500,000	₱10,000	₱12,000	₱14,000	₱16,000	₱18,000
	Plus ₱1,000 per month of delay (if filed after 30 calendar days); Plus ₱12,000 per month of delay (if filed after 60 calendar days)				
₱500,001 to ₱5,000,000	₱15,000	₱18,000	₱21,000	₱24,000	₱27,000
	Plus ₱1,000 per month of delay (if filed after 30 calendar days); Plus ₱12,000 per month of delay (if filed after 60 calendar days)				

Based on Accumulated Income (AI) / Fund Balance / Members' Equity	First Offense	Second Offense	Third Offense	Fourth Offense	Fifth Offense
Foreign Non-Stock Corporations					
₱5,000,001 to ₱10,000,000	₱20,000	₱24,000	₱28,000	₱32,000	₱36,000
	Plus ₱1,000 per month of delay (if filed after 30 calendar days); Plus ₱12,000 per month of delay (if filed after 60 calendar days)				
Above ₱10,000,000	₱25,000	₱30,000	₱35,000	₱40,000	₱45,000
	Plus ₱1,000 per month of delay (if filed after 30 calendar days); Plus ₱12,000 per month of delay (if filed after 60 calendar days)				

III. Fines and Penalties – Non-Filing of AFS and/or GIS

Based on Retained Earnings/ Fund Balance / Equity	First Offense	Second Offense	Third Offense	Fourth Offense	Fifth Offense
Domestic Stock Corporations and One Person Corporations					
Capital Deficiency	₱10,000	₱12,000	₱14,000	₱16,000	₱18,000
Negative Retained Earnings (Deficit)	₱10,000	₱12,000	₱14,000	₱16,000	₱18,000
	Plus ₱500 per month of delay				
₱0 to ₱100,000	₱10,000	₱12,000	₱14,000	₱16,000	₱18,000
	Plus ₱1,000 per month of delay				
₱100,001 to ₱500,000	₱15,000	₱18,000	₱21,000	₱24,000	₱27,000
	Plus ₱1,000 per month of delay				

SEC ISSUANCE

₱500,001 to ₱5,000,000	₱20,000	₱24,000	₱28,000	₱32,000	₱36,000
	Plus ₱1,000 per month of delay				
₱5,000,001 to ₱10,000,000	₱25,000	₱30,000	₱35,000	₱40,000	₱45,000
	Plus ₱1,000 per month of delay				
Above ₱10,000,000	₱30,000	₱36,000	₱42,000	₱48,000	₱54,000
	Plus ₱1,000 per month of delay				
Domestic Non-Stock Corporations					
Negative Fund Balance/ Equity (Deficit)	₱10,000	₱12,000	₱14,000	₱16,000	₱18,000
	Plus ₱500 per month of delay				

Based on Retained Earnings/ Fund Balance / Equity	First Offense	Second Offense	Third Offense	Fourth Offense	Fifth Offense
Domestic Non-Stock Corporations					
₱0 to ₱100,000	₱10,000	₱12,000	₱14,000	₱16,000	₱18,000
	Plus ₱1,000 per month of delay				
₱100,001 to ₱500,000	₱12,500	₱15,000	₱17,500	₱20,000	₱22,500
	Plus ₱1,000 per month of delay				
₱500,001 to ₱5,000,000	₱15,000	₱18,000	₱21,000	₱24,000	₱27,000
	Plus ₱1,000 per month of delay				
₱5,000,001 to ₱10,000,000	₱17,500	₱21,000	₱24,500	₱28,000	₱31,500
	Plus ₱1,000 per month of delay				
Above ₱10,000,000	₱20,000	₱24,000	₱28,000	₱32,000	₱36,000
	Plus ₱1,000 per month of delay				

SEC ISSUANCE

Based on Accumulated Income (AI) / Fund Balance / Members' Equity	First Offense	Second Offense	Third Offense	Fourth Offense	Fifth Offense
Foreign Stock Corporations					
Capital Deficiency	₱10,000	₱12,000	₱14,000	₱16,000	₱18,000
Negative Accumulated Income (Deficit)	₱10,000	₱12, 000	₱14,000	₱16,000	₱18,000
	Plus ₱6,000 penalty				
₱0 to ₱100,000	₱10,000	₱12,000	₱14,000	₱16,000	₱18,000
	Plus ₱12,000 penalty				
₱100,001 to ₱500,000	₱20,000	₱24,000	₱28,000	₱32,000	₱36,000
	Plus ₱12,000 penalty				
₱500,001 to ₱5,000,000	₱30,000	₱36,000	₱42,000	₱48,000	₱54,000
	Plus ₱12,000 penalty				
₱5,000,001 to ₱10,000,000	₱40,000	₱48,000	₱56,000	₱64,000	₱72,000
	Plus ₱12,000 penalty				
Above ₱10,000,000	₱50,000	₱60,000	₱70,000	₱80,000	₱90,000
	Plus ₱12,000 penalty				

Based on Accumulated Income (AI) / Fund Balance / Members' Equity	First Offense	Second Offense	Third Offense	Fourth Offense	Fifth Offense
Foreign Non-Stock Corporations					
Negative Fund Balance/ Equity (Deficit)	₱10,000	₱12,000	₱14,000	₱16,000	₱18,000
	Plus ₱6,000 penalty				

₱0 to ₱100,000	₱10,000	₱12,000	₱14,000	₱16,000	₱18,000
	Plus ₱6,000 penalty				
₱100,001 to ₱500,000	₱15,000	₱18,000	₱21,000	₱24,000	₱27,000
	Plus ₱6,000 penalty				
₱500,001 to ₱5,000,000	₱20,000	₱24,000	₱28,000	₱32,000	₱36,000
	Plus ₱6,000 penalty				
₱5,000,001 to ₱10,000,000	₱25,000	₱30,000	₱35,000	₱40,000	₱45,000
	Plus ₱6,000 penalty				
Above ₱10,000,000	₱30,000	₱36,000	₱42,000	₱48,000	₱54,000
	Plus ₱6,000 penalty				

IV. Fines and Penalties – Late and Non-Compliance with MC 28 Series of 2020

Imposable fine is ₱20,000 for late filing and non-compliance.

V. Delinquency and 6th Offense

- Failure to submit reportorial requirements 3 times, consecutively or intermittently, within 5 years may cause the SEC to declare a corporation under delinquent status.
- After notification of delinquent status, commission of a 6th offense constitutes a ground for revocation[2] and imposition of monetary fines equivalent to the 5th offense plus 100% surcharge of the total assessed fine.

VI. Reversion of Penalty to 1st Offense

Penalties to corporations may revert to that of the 1st offense in the following conditions:

[2] Revocation pertains to the corporation's Certificate of Registration, License to Transact Business in the Philippines, or Secondary License.

SEC ISSUANCE

- If found to be compliant with the submission of GIS and AFS for 3 consecutive years immediately after the imposition of higher fines (*i.e.* 2023 to 2025); or
- Successful availment and issuance of corresponding Confirmation of Payment of Amnesty Fees.

VII. Effectivity

It shall cover requests for monitoring received on April 1, 2024. Further, requests for monitoring must be sent to the proper email addresses. Otherwise, the request will not be entertained.

SEC OGC Opinion No. 24-06, April 04, 2024. *While a dissolved corporation is given 3 years to continue as a body corporate for purposes of liquidation, the disposition of the remaining undistributed assets must necessarily continue even after such period.*	The Corporation sought the legal opinion of the SEC on whether it can liquidate its investment, particularly shares of stock in another company, after the lapse of the 3 years from the revocation of its primary registration. While Section 122 of the Corporation Code gives a dissolved corporation 3 years to continue as a body corporate for purposes of liquidation, the disposition of the remaining undistributed assets must necessarily continue even after such period. If the three-year extended life has expired without a trustee or receiver having been expressly designated by the corporation within that period, the board of directors itself may be permitted to continue as trustees by legal implication to complete corporate liquidation.

INVOICING UNDER EOPT AND ITS IMPLEMENTING REGULATIONS

By

Rodel C. Unciano

As you may already be aware, one significant amendment introduced by the Ease of Paying Taxes Act (EOPT) is the uniform use of VAT invoice for both sale, barter, exchange, or lease of goods or properties, and for every sale, barter or exchange of services. So, for VAT compliance and for the purpose of claiming input tax credit, only VAT invoice is the acceptable proof to substantiate the claim for input tax credit, whether it is a purchase of goods or purchase of services.

As defined under Revenue Regulations (RR) 7-2024, invoice is a written account evidencing the sale of goods and/or services issued to customers in the ordinary course of trade or business. This includes Sales Invoice, Commercial Invoice, Cash Invoice, Charge/Credit Invoice, Service Invoice, or Miscellaneous Invoice. It is also referred to as a principal invoice.

VAT Invoice is a written account evidencing the sale of goods, properties, services, and/or leasing of properties subject to VAT issued to customers or buyers in the ordinary course of trade or business, whether cash sales or on account or charge sales. It shall be the basis of the output tax liability of the seller and the input tax claim of the buyer or purchaser.

INVOICING UNDER EOPT AND ITS IMPLEMENTING REGULATIONS

By

Rodel C. Unciano

Non-VAT Invoice is a written account evidencing the sale of goods, properties, services, and/or leasing of properties not subject to VAT issued to customers or buyers in the ordinary course of trade or business, whether cash sales or on account or charge sales. It shall be the basis of the percentage tax liability of the seller, if applicable.

While invoice is now the primary document supporting sale of both goods and services, the taxpayer is not precluded from issuing supplementary document other than sales or commercial invoice. This includes but is not limited to official receipt, delivery receipt, order slip, debit and/or credit memo, purchase order, acknowledgment or cash receipt, collection receipt, bill of lading, billing statement, statement of account, and any other document, by whatever name it is known or called, whether prepared manually or pre-printed/pre-numbered loose leaf or computerized as long as they are used in the ordinary course of business and being issued to customers.

But for purposes of VAT, supplementary documents are not valid proof to support the claim of input taxes by the buyers/purchasers of goods and/or services. All VAT-registered persons and those required to register for VAT are now required to issue VAT invoice as the principal document and are required to comply with the amended invoicing requirements under the EOPT Act.

Under RR 7-2024, during the transitory period, all unused or unissued Official Receipts may still be used as supplementary document until fully consumed, provided that the phrase "THIS DOCUMENT IS NOT VALID FOR CLAIM OF INPUT TAX." is stamped on the face of the document. The Official Receipt, along with other equivalent documents such as Collection Receipt, Acknowledgement Receipt, and Payment Receipt will serve as proof of payment that cash has been received or that payment has been collected.

Taxpayers shall be allowed to strikethrough the word "Official Receipt" on the face of the manual and loose leaf printed receipt and stamp "Invoice", "Cash Invoice", "Charge Invoice", "Credit Invoice", "Billing Invoice", "Service Invoice", or any name describing the transaction, and to be issued as primary invoice to a buyer/purchaser until December 31, 2024. These documents shall be valid for claim of input tax by the buyer/purchaser for the period issued from January 22 to December 31, 2024, provided that the invoice to be issued bears the stamped "Invoice" and contains information required under RR 7-2024.

The converted invoice can serve as proof of sales transaction and proof of payment at the same time. Any Official Receipts, whether stamped with "Invoice" or unstamped, issued after December 31, 2024, will be considered supplementary document only and shall no longer be eligible for input tax claims.

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