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**TAX**

**JOURNAL**

**FEBRUARY 2023**

***Highlights***

|  | Matter | Page |
| --- | --- | --- |
| **BIR ISSUANCES** |  |  |
| *Revenue Memorandum Circular (“RMC”)* |  |  |
| [RMC No. 24-2023](https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/2023%20RMCs/RMC%20No.%2024-2023.pdf) | Provides further clarifications on the qualifications of Ecozone Logistics Service Enterprise to the Incentives of VAT-Zero Rate on local purchases of goods and services exclusively and directly used in the registered project or activity | 3 |
|  |  |  |
| **COURT DECISIONS** | | |
| *Supreme Court* |  |  |
| * [Aces Philippines Cellular Satellite Corporation v. The Commissioner of Internal Revenue](https://sc.judiciary.gov.ph/32745/) | | 3 |
| * [Philippine Stock Exchange vs. Secretary of Finance](https://sc.judiciary.gov.ph/33170/) | | 4 |
| * [People of the Philippines v. Court of Tax Appeals Third Division](https://sc.judiciary.gov.ph/32747/), L.M. Camus Engineering Corporation and Lino M. Mendoza | | 5 |
| * [Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue](https://sc.judiciary.gov.ph/32583/) | | 6 |
|  | |  |
| *CTA En Banc* |  |  |
| * [Taguig City Government v. Serendra Condominium Corporation](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/5524f7ab4a0717a9102e6f9e86ce373b) | | 6 |
| * [Commissioner of Internal Revenue v. Henryville, Inc.](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/d92272d91f7c5c9b1805fd3981fe44b6) | | 7 |
| * [Adelc Trading/Ryan Dominique L. Tanjutco v. The Honorable Rey Leonardo B. Guerrero, in his capacity as Commissioner of Bureau of Customs](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/7fb11312835bb89db15eca285291590d) | | 8 |
| * [Vestas Services Philippines, Inc. v. Commissioner of Internal Revenue](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/7b3970a48c661aeaccfbe031c9322d44) | | 9 |
| * [Commissioner of Internal Revenue v. McKinsey & Co. (Phils)](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/4c22bb8fea01a100098c74d586ed2ac7) | | 9 |
| * [Nippon Express Philippines Corporation v. Commissioner of Internal R](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/3fd93a71fac07eacfd96e5f5397c8fc3)evenue | | 10 |
| * [Commissioner of Internal Revenue v. Tullet Prebon (Philippines), Inc.](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/c5a604ef4941bbacfaad73f740368b6c) | | 11 |
| * [Commissioner of Internal Revenue v. First Philec, Inc.](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/d661a381cdd662b38737b5b350ee0837) | | 12 |
| * [Commissioner of Internal Revenue v. Western Mindanao Power Corporation](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/54efa9dbeabffbe33b6a58993ed800e7) | | 13 |
| * [Commissioner of Internal Revenue v. Clark Water Corporation](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/cd586d9f16e81a0200b39220bb113f4e) | | 14 |
|  |  |  |
| *CTA Division* |  |  |
| * [Grand Geo Spheres Construction Corp. v. Commissioner of Internal Revenue](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/7b76bdbc08ddc35cd2b0de96e418d42c) | | 15 |
| * [Pacific Plaza Condominium Corporation v. Commissioner of Internal Revenue](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/dd35733490b4a0e59a7d9102876bc586) | | 16 |
| * [City of Manila v. Marina Square Properties](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/d3ee39e90a1ba7678531a316dc0b09cc) | | 17 |
|  | |  |
| **SECURITIES AND EXCHANGE COMMISSION** | | |
| [Salient Features of SEC Memorandum Circular No. 10](https://www.sec.gov.ph/notices/salient-features-of-sec-memorandum-circular-no-10-series-of-2022/%22%20/l%20%22gsc.tab=0) | Salient Features of SEC Memorandum Circular No. 10 | 18 |
| [SEC EB Case No. 03-22-494](https://www.sec.gov.ph/decision-2023/sec-eb-case-no-03-22-494/#gsc.tab=0) | Babel Holdings, Inc., et al. v. Dindo A. Espeleta and Karen M. Espeleta | 19 |
|  | |  |
| **NATIONAL PRIVACY COMMISSION** | | |
| [NPC Advisory Opinion No. 2023-004](https://www.privacy.gov.ph/wp-content/uploads/2023/02/Advisory-Opinion-No.-2023-004.pdf) | Disclosure of Subscribers’ Data Pursuant to Revenue Regulation No. 09-2022 | 20 |
|  |  |  |
| **DEPARTMENT OF JUSTICE** | | |
| [DOJ Opinion No. 05-2023](https://www.doj.gov.ph/files/2023/Legal%20Opinions/DOJ%20Legal%20Opinion%20No.%2005%20series%202023_0001.pdf) | Clarification of the Fiscal Incentives Review Board Secretariat in response to the Department of Trade and Industry-Board of Investments query on the procedure and requirements to secure FIRB’s approval to grant a Tax Expenditure Subsidy for the Comprehensive Automotive Resurgence Strategy (CARS) Program | 20 |
|  | |  |

**BUREAU OF INTERNAL REVENUE ISSUANCES**

**REVENUE MEMORANDUM CIRCULAR**

[**RMC No. 24-2023**](https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/2023%20RMCs/RMC%20No.%2024-2023.pdf) **issued on February 17, 2023**

*Highlights:*

* Provides further clarifications on the qualifications of Ecozone Logistics Service Enterprise (“ELSE”) to the Incentives of value-added tax (“VAT”)-Zero Rate on local purchases of goods and services exclusively and directly used in the registered project or activity.
* ELSE are formerly named as “Ecozone Facilities Enterprise Engaging in Warehouse Operation” under the Philippine Economic Zone Authority (“PEZA”).
* They are registered business enterprises supplying production-related raw materials and equipment that cater exclusively to the requirements of export manufacturing enterprises which are registered with the PEZA or other special economic zones/freeports outside the administration of PEZA.
* However, enterprises that only engage in trucking or delivery services cannot qualify as ELSE. Board of Investments Memorandum Circular No. 2023-00 provided the only one type of logistics service that will qualify to be registered as ELSE are those undertaking both:

1. Establishing of a warehouse storage facility; and
2. Importation or procurement from local sources and/or from other registered enterprises of goods for resale, or for packing/covering, cutting or altering to customer’s specification, mounting and/or packaging into kits or marketable lots thereof for subsequent sale, transfer or disposition for export.

* ELSEs that render at least 70% of their output/services to another registered export enterprise are covered by the definition of “export enterprise” under the Tax Code, as amended by the Corporate Recovery and Tax Incentives for Enterprises Act.
* Purchases of registered ELSEs that are considered export enterprises from VAT-registered suppliers are subject to VAT at zero-rate but shall only apply to goods and/or services directly and exclusively used in the registered project or activity.
* The guidelines and documentary requirements for the availment of VAT zero-rating on their local purchases that are directly and exclusively used in the registered projects or activities are provided for in Sec. V or RMC No. 24-2022.

**COURT DECISIONS**

**SUPREME COURT DECISIONS**

**[Aces Philippines Cellular Satellite Corporation Vs. The Commissioner of Internal Revenue](https://sc.judiciary.gov.ph/wp-content/uploads/2023/02/226680.pdf)**

G.R. No. 226680, promulgated on August 30, 2022 [Date Uploaded: 02/01/2023]

*(Satellite air-time fee payments [by a Domestic Corporation to Non-resident], constitute income from sources*

*within the Philippines. The income-generating activity (i.e.,accrual of satellite airtime fee payments and*

*completion of the principal undertaking) coincides with the receipt of the routed call by gateways located*

*within Philippine territory. That income generation is dependent on the operations of facilities situated*

*in the Philippines contributes to the income's Philippine situs.)*

*Facts:*

The Philippine Long Distance Telephone Company ("PLDT”) entered into a Gateway Agreement with PT Asia Cellular Satellite (“Aces Indonesia”) for the supply of certain equipment, software, data and documentation to allow PLDT to construct, own and operate gateways in the Philippines. Aces Philippines was incorporated as PLDT’s subsidiary to operate telecommunication gateways and equipment. Subsequently, PLDT entered into another agreement with Aces Indonesia denominated as Air Time Purchase Agreement which allowed Aces Indonesia to sell satellite communications line to PLDT. Aces Indonesia and PLDT sold its rights and obligation in the contract to Aces Bermunda and Aces Philippines, respectively.

In 2007, the Bureau of Internal Revenue (“BIR”) found that Aces Philippines paid Aces Bermuda satellite air time fees amounting to PhP199,312,169.00 in 2006 but did not withhold the proper amount of tax. According to the BIR, these satellite airtime fees income payments to a non-resident foreign corporation (“NRFC”) that are subject to 35% Final Witholding Tax (“FWT”) [Now 25%].

*Issue:*

Are the satellite air time fee payments to Aces Bermuda, in consideration for services rendered using the Aces System, subject to FWT?

*Ruling:*

Yes.

A NRFC is subject to a 35% final tax on its "gross income received during each taxable year from all sources within the Philippines." In ruling that the satellite air time fee payments to Aces Bermuda are sources within the Philippines, the Supreme Court (“SC“) explained that the income producing activity is within the Philippines.

The SC reasoned that the source of income is the gateways' receipt of the call as routed by the satellite and the income-generating activity is directly associated with the gateways located within Philippine territory. That income generation is dependent on the operations of facilities situated in the Philippines contributes to the income's Philippine situs. Lastly, Aces Philippines failed to establish that the satellite air time fee payments are foreign-sourced.

[**Philippine Stock Exchange vs. Secretary of Finance**](https://sc.judiciary.gov.ph/wp-content/uploads/2023/03/213860.pdf)

G.R. No. 213860, July 5, 2022 [Date Uploaded: 02/17/2023]

*(The collection of information pursuant to the questioned regulations is not necessary for the BIR to carry out its functions.)*

*Facts:*

Philippine Stock Exchange, Inc. (“PSE”) et al. filed a Petition for *Certiorari* assailing the constitutionality of the following regulations for being violative of their rights to privacy and to due process:

* Revenue Regulations (“RR”) No. 1-14 which required businesses to submit an alphabetical list of payees and prohibits the lumping into a single amount and account various income payments and taxes withheld such as “PCD nominee,” “Various Payees,” or “Others.”
* RMC No. 5-14, which required withholding agents to indicate in the alphalist the tax identification numbers, complete names, income amount, and tax withheld from the payees.
* Securities and Exchange Commission (“SEC”) Memorandum Circular (“MC”) No. 10-14 supplements the provisions of RR No. 1-14 by directing Philippine Depository and Trust Corporation (“PDTC”), broker dealers, and other depository participants to provide listed companies with the information needed to enable the latter to comply with RR No. 1-14.

*Issues:*

1. Did the regulations violate PSE et al.’s right to due process?
2. Did the regulations violate PSE et al.’s right to privacy?

*Ruling:*

1. Yes.

The questioned regulations are not mere interpretative issuances; they are legislative in nature that change, if not increase, the burden of those governed. Notice and hearing are thus required for their validity. The questioned regulations, particularly SEC MC 10-2014, substantially changed the procedure currently observed by the market participants by imposing a new obligation to transmit the alphalist of payees to the listed companies. This means that data previously not available to the listed companies will be made available to them and eventually to the BIR. In this regard, there is a significant change in the expectation of privacy regarding the data.

1. Yes.

The SC holds that the collection of information pursuant to the questioned regulations is not necessary for the BIR to carry out its functions. To reiterate, there was no showing that there was a problem or inefficacy with the system prior to the issuance of the questioned regulations. There may be abuses as a result of the enforcement of the questioned regulations: there is no assurance that the information gathered and submitted to the listed companies pursuant to the questioned regulations will be protected, and not be used for any other purposes outside the stated purpose. The investors provided their information to the brokers presumably without the intention of sharing such with any other entity, including the investee companies and the BIR.

[**People of the Philippines v. Court of Tax Appeals Third Division, L.M. Camus Engineering Corporation and Lino M. Mendoza**](https://sc.judiciary.gov.ph/wp-content/uploads/2023/02/251270.pdf)

G.R. Nos. 251270 and 251291-30. September 5, 2022 [Date Uploaded: 02/01/2023]

*(The BIR is the primary agency tasked to administer and enforce the Tax Code. However, this authority should be tempered by Republic Act No. 10071 (or the Prosecution Service Act of 2010), which provides that the National Prosecution Service under the Department of Justice [“DOJ”] “shall be primarily responsible for the preliminary investigation and prosecution of all cases involving violations of penal laws.” Undoubtedly, the prosecution of criminal tax cases necessitates coordination between the two bodies.)*

*Facts:*

The BIR filed a Petition for *Certiorari* under Rule 65 (“Petition”) against the Court of Tax (“CTA”) alleging that the CTA abused its discretion when it granted the Demurrer to Evidence filed by the private respondents (who were the accused in several Informations filed by the BIR for violations of Secs. 254 and 255 of the Tax Code with respect to deficiency income tax and VAT for taxable years 1997 to 1999). According to the BIR, the CTA had a misappreciation of evidence resulting in an acquittal. Instead of the Office of the Solicitor General (“OSG”), the Prosecution Division of the BIR elevated the case to the Supreme Court. Apparently, the OSG declined to institute the present action because it was of the opinion that the CTA did not commit grave abuse of discretion in rendering the assailed resolutions. The BIR insisted.

*Issue:*

Should the BIR’s Petition be dismissed?

*Ruling:*

Yes.

The BIR is the primary agency tasked to administer and enforce the Tax Code, including its penal provisions. However, this authority should be tempered by other laws that find equal application, such as provisions of RA No. 10071 (or the Prosecution Service Act of 2010), which provides that the National Prosecution Service under the DOJ “shall be primarily responsible for the preliminary investigation and prosecution of all cases involving violations of penal laws.” Here, it was noted that the OSG cited the absence of a favorable endorsement from the DOJ as a ground to deny the BIR’s request for representation. The Supreme Court said that on this ground alone, the petition must be dismissed.

[**Chevron Holdings, Inc. (formerly Caltex Asia Limited) v. Commissioner of Internal Revenue**](https://sc.judiciary.gov.ph/32583/)

G.R. No. 215159. July 5, 2022 [Date Uploaded: 01/25/2023]

*(The request for a refund of unutilized input VAT from zero-rated sales shall not be denied on the basis that the taxpayer does not have “excess” input VAT from the output VAT because the law does not require such requirement in a refund.)*

*Facts:*

Chevron Holdings, Inc. (“Chevron”) filed a request for refund of unutilized input taxes arising from zero-rated sales. After determining that the sales of Chevron are zero-rated, the CTA charged those substantiated and validated input taxes against the output taxes. Subsequently, the CTA required Chevron to substantiate the prior quarters’ excess input taxes so that there would be a sufficient amount to cover its output tax liability.

*Issue:*

Is Chevron required to substantiate its excess input tax carried-over from the previous quarters to be entitled to refund or credit of unutilized input taxes arising from zero-rated sales?

*Ruling:*

No.

The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of “excess” creditable input taxes, which includes the input taxes carried over from the previous period from the output taxes. Under the Tax Code, the taxpayer only needs to prove non-application or non-charging of the input VAT subject of the claim. Requiring taxpayers to prove that they did not charge the input tax claimed for refund against the output tax is different from requiring them to prove that they have “excess” input tax after offsetting it from output tax.

**CTA EN BANC DECISIONS**

[**Taguig City Government v. Serendra Condominium Corporation**](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/5524f7ab4a0717a9102e6f9e86ce373b)

CTA EB No. 2404, January 30, 2023

*(The general rule is that condominium corporations are generally exempt from local business taxes [“LBT”] under the local government code [“LGC”], regardless of any local ordinance that seeks to declare otherwise. The exception to the rule is when the condominium corporation is established to be engaged in activities for profit.)*

*Facts:*

Serendra Condominium Corporation (“Serendra”) is a condominium corporation. The City of Taguig assessed LBT against Serendra, avering that it is subject to LBT considering that under its Articles of Incorporation (“AOI”), it is not restricted from engaging in profit-making activities.

*Issue:*

Is Serendra subject to LBT?

*Ruling:*

No.

The *Yamane case* sets the general rule that condominium corporations are generally exempt from LBT under the LGC regardless of any local ordinance that seeks to declare otherwise. The exception to this rule is when the condominium corporation is established to be engaged in activities for profit.

Here, the City of Taguig failed to establish the fact that Serendra actually engaged in business activities to apply the exception in the *Yamane* case. Nowhere in the Serendra’s AOI does it expressly allow nor show that Serendra is engaged in profit-making activities. Thus, Serendra is exempt from LBT.

[**Commissioner of Internal Revenue v. Henryville, Inc.**](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/d92272d91f7c5c9b1805fd3981fe44b6)

CTA EB No. 2531, February 1, 2023

*(All amounts of compromise penalties incident to violations must be itemized in a separate assessment*

*notice/demand letter.)*

*Facts:*

Henryville, Inc. (“Henryville”) received a copy of Mission Order ordering revenue officers to apprehend violators of revenue laws and regulations and to check compliance on new invoicing requirements and bookkeeping requirements. After examination, CIR issued BIR Form No. 0605 (“Payment Form”) directing Henryville to pay compromise penalties. Henryville paid the same. Within the two-year reglementary period under the Tax Code, Henryville filed an administrative request for refund and a subsequent judicial request for refund questioning the collection of the compromise penalties for not observing the requirements of RMO No. 19-2007.

*Issue:*

Did the CIR fail to strictly observe RMO No. 19-2007 making the collection of compromise penalty of Henryville illegal?

*Ruling:*

Yes.

RMO No. 19-2007 mandates that all amounts of compromise penalties incident to violations must be itemized in a separate assessment notice/demand letter. Here, a careful scrutiny of the records show that the CIR did not issue any separate assessment notice/demand letter after his investigation of Henryville’s alleged violations. Instead, the CIR immediately proceeded to issue BIR Form No. 0605 with no itemized amounts of compromise penalties relative to its violations.

[**Adelc Trading/Ryan Dominique L. Tanjutco v. The Honorable Rey Leonardo B. Guerrero, in his capacity as Commissioner of Bureau of Customs**](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/7fb11312835bb89db15eca285291590d)

CTA EB No. 2469, February 2, 2023

*(The exercise of the CTA’s jurisdiction to rule on the decision of the Commissioner of Customs [“COC”] is conditioned on the timeliness of the filing of the appeal. Sec. 11 of RA No. 1125, as amended, provides that, “Any party adversely affected by a decision or ruling of the COC may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling after the expiration of the period fixed by law.”)*

*Facts:*

The District Collector - Port of Davao (“POD”) issued a warrant of seizure and detention against the container shipment which contains one (1) unit Rolls Royce motor vehicle (“subject shipment”) for violation of Executive Order No. 156 in relation to Sec. 105 or the No Dollar Importation of Personality Owned Used Vehicle of Tariff and Customs Code of the Philippines (“TCCP”).

Tanjutco offered to pay settlement value and fine. The Acting District Collector of the POD issued an order accepting the offer, and the subject shipment was released. The decision was forwarded to BIR for review pursuant to Section 2307 of TCCP. BIR reversed the decision of Acting District Collector - POD and ordered forfeiture of subject shipment. Tanjutco filed MR but was denied. Thereafter, Tanjutco filed Petition for Review. BIR filed a Motion to Dismiss, which was granted. Aldec Trading/Tanjutco filed a motion for reconsideration with CTA Division, which the latter denied.

*Issue:*

Should the CTA Division grant the appeal filed by Tanjutco?

*Ruling:*

No.

The exercise of the CTA’s jurisdiction to rule on the decision of the COC is conditioned on the timeliness of the filing of the appeal. Section 11 of RA No. 1125, as amended, provides that “Any party adversely affected by a decision or ruling of the COC may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling after the expiration of the period fixed by law”.

Here, it must be noted that as of January 8, 2018, Tanjutco has not yet received the physical copy of the August 26, 2016 decision but rather the copy received through electronic mail on February, 2017. Verily, the August 16, 2016 decision referred by Tanjutco in its Letter for Reconsideration dated January 8, 2018 pertains to the decision it received by electronic mail on February 28, 2017. Tanjutco disavows the receipt of the August 26, 2016 decision on February 28, 2017 through electronic mail. Yet, at the same time, it proffers that the counting of the reglementary period to file an appeal is from its physical receipt of BIR’s May 28, 2019 Resolution. The May 28, 2019 Resolution resolved Tanjutco’s Letter Reconsideration assailing the August 26, 2016 Decision, the very same decision, the electronic receipt of which it rejects. The date it received BIR’s May 18, 2019 Resolution, the Court in Division has already ruled that the appeal was filed out of time in its Resolution dated January 31, 2020. Thus, the Court in Division should not grant the appeal.

[**Vestas Services Philippines, Inc. v. Commissioner of Internal Revenue**](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/7b3970a48c661aeaccfbe031c9322d44)

CTA EB No. 2459, February 7, 2023

*(The application for VAT credit/refund must be filed within two [2] years from the close of the taxable quarter when the sales were made. The application for VAT credit/refund shall be filed in the RDO having jurisdiction over the taxpayer's principal place of business.)*

*Facts:*

On December 29, 2016, Vestas Services Philippines, Inc. (“VSPI”) filed an application with the BIR RDO No. 50 for the refund of its excess and unutilized input VAT attributable to its zero-rated sales for the 4th quarter of 2014. On January 6, 2017, Revenue Officer Ilagan advised VSPI that its claim should be forwarded to BIR RDO 51 since VSPI’s complete records was transferred therein since December 12, 2016 (due to a transfer of principal place of business). VSPI forwarded its new application with RDO 51 on January 9, 2017. RDO 51 denied VSPI’s claim for refund due to its alleged belated filing beyond the two (2) year prescriptive period from the close of taxable quarter.

In its Petition for Review with the CTA Division, VSPI claims that its claim for refund was made within the prescriptive period because although RDO 51 received its claim for refund on January 9 2017, VSPI initially filed the said claim before RDO 50 on December 29, 2016 upon being notified of the transfer of its records to RDO 51. VSPI immediately forwarded its claim for refund to the latter office. Nonetheless, since RDO 50 received the claim for refund, it was already given due course.

*Issue:*

Did VSPI file its claim for refund within the prescriptive period or on or before December 31, 2016?

*Ruling:*

No.

According to Sec. 112(A) of the Tax Code, the application for VAT credit/refund must be filed within two (2) years from the close of the taxable quarter when the sales were made. The application for VAT credit/refund shall be filed in the RDO having jurisdiction over the taxpayer's principal place of business.

Here, VSPI transferred its principal place of business and thus also transferred its BIR Registration to RDO 51. Hence, the RDO that has jurisdiction over petitioner's principal place of business is RDO 51. VSPI was issued a new Certificate of Registration dated December 12, 2016 from RDO 51. VSPI filed its application for VAT credit/refund before RDO 50 on December 29, 2016. VSPI filed its application for VAT credit/refund before RDO 51 only on January 9, 2017. Certainly, VSPI filed its administrative claim beyond the 2-year prescriptive period. VSPI was indeed informed of the completion of transfer of its registration to RDO 51 prior to the filing of its application for VAT credit/refund. However, VSPI deliberately filed its application for VAT credit/refund in the wrong venue.

[**Commissioner of Internal Revenue v. McKinsey & Co. (Phils)**](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/4c22bb8fea01a100098c74d586ed2ac7)

CTA EB No. 2540, February 7, 2023

(*It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates. The certificate of creditable tax withheld at source is the competent proof to establish that taxes are withheld.)*

*Facts:*

McKinsey & Co. (Phils.) (“McKinsey”) filed with the BIR an administrative claim for refund or issuance of tax credit certificate (“TCC”) for excess and unutilized creditable taxes (“CWTs”) for calendar years 2015 and 2016.

Thereafter, McKinsey filed a Petition for Review before the CTA. The CIR argued that the Petition for Review should be dismissed for failure to exhaust administrative remedy and that McKinsey’s claim for refund or issuance of tax credit were not fully substantiated by proper documents.  CIR further insists that the certificates of creditable tax withheld do not constitute conclusive evidence of payment and remittance to the BIR and that the testimonies of the various payors and withholding agents are required to prove remittance.

*Issue:*

Is McKinsey’s excess and unutilized CWT duly substantiated by documentary evidence?

*Ruling:*

Yes.

In *CIR vs. Philippine National Bank*, the Supreme Court held that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. Under Secs. 57 and 58 of the Tax Code, it is the payor-withholding agent, and not the payee-refund claimant, who is vested with the responsibility of withholding and remitting income taxes.

The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment by McKinsey to the government itself through said agents. The CTA stressed that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to prove actual remittance by the withholding agent (payor) to the BIR. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates. The certificate of creditable tax withheld at source is the competent proof to establish that taxes are withheld.

[**Nippon Express Philippines Corporation v. Commissioner of Internal R**](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/3fd93a71fac07eacfd96e5f5397c8fc3)**evenue**

CTA EB No. 2506, February 15, 2023

*(The BIR has ninety (90) days from date of submission of the official receipts or invoices and other supporting documents, to decide on the taxpayer's administrative claim for input VAT refund. To validly seek redress before the CTA Division, the taxpayer must file a Petition for Review, within thirty (30) days from the receipt of an adverse decision rendered within said ninety (90)-day period, or within thirty (30) days after the lapse of such ninety (90)-day period, whichever comes earlier. The CIR's decision received outside said 90-day period to decide an administrative claim for input VAT refund, is not the adverse decision appealable to the CTA Division.)*

*Facts:*

On March 29, 2019, Nippon Philippines Corporation (“Nippon”) filed an administrative claim for VAT refund representing the alleged unutilized input taxes attributable to its VAT zero-rated sales, covering the four (4) quarters of Taxable Year (TY) 2017.

On June 11, 2019, Nippon received a letter dated May 30, 2019 denying the request issued by Teresita M. Dizon, OIC – Assistant Commissioner Large Taxpayers Service (“OIC ACIR-LTS”). On July 10, 2019, Nippon filed a request for reconsideration of such denial with the CIR. On December 11, 2019, Nippon received CIR’s Letter dated September 19, 2019 denying its request for reconsideration with finality. Thus, Nippon filed a Petition for Review with the CTA Division on January 10, 2020. The CTA Division denied the Petition for lack of jurisdiction for being untimely filed.

*Issue:*

Did Nippon file its Petition for Review out of time?

*Ruling:*

Yes.

The BIR has ninety (90) days from date of submission of the official receipts or invoices and other supporting documents, to decide on the taxpayer’s administrative claim for input VAT refund. To validly seek redress before the CTA Division, the taxpayer must file a Petition for Review, within thirty (30) days from the receipt of an adverse decision rendered within said ninety (90)-day period, or within thirty (30) days after the lapse of such ninety (90)-day period, whichever comes earlier.

Nippon filed its administrative claim for input VAT refund covering the four (4) quarters of TY 2017, as well as its supporting documents on March 29, 2019. Counting 90 days therefrom, BIR had until June 27, 2019 to decide on said administrative claim. On June 11, 2019, Nippon received OIC ACIR-LTS Dizon's Letter-Denial dated May 30, 2019. Counting 30 days from June 11, 2019, Nippon had until July 11, 2019 to file a Petition for Review before the CTA Division. Nippon's belated filing of its Petition for Review on January 10, 2020 justifies the dismissal of the case. The CIR's decision received on December 11, 2019, or one received outside said 90-day period to decide an administrative claim for input VAT refund, is not the adverse decision appealable to the CTA Division.

[**Commissioner of Internal Revenue v. Tullet Prebon (Philippines), Inc.**](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/c5a604ef4941bbacfaad73f740368b6c)

CTA EB No. 2576, February 16, 2023

*(The certificates of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld; hence, proof of actual remittance of withheld taxes is not an indispensable requirement in claims for refund/credit of CWTs.)*

*Facts:*

Tullet Prebon (Philippines) Inc. (“Tullet”) filed with the BIR an administrative claim for refund and an Application for Tax Credits/Refunds, requesting for the issuance of a tax credit certificate representing excess CWTs for 2014. Due to inaction, Tullet elevated the case to the CTA. The CTA granted the petition. BIR moved for reconsideration, but the same was denied.

*Issue:*

Is Tullet entitled to its claim for refund?

*Ruling:*

Yes.

Tullet was able to show proof that the income upon which the subject taxes were withheld was included and reported in its annual ITR. The Independent CPA ("ICPA”) was able to verify that the income payments per Certificates of Creditable Tax Withheld at Source (BIR Forms 2307) indeed formed part of the declared income per annual ITR by tracing the same in Tullet’s revenue general ledger.

The examination of Tullet’s Schedule of Creditable Withholding Tax, its pertinent BIR Forms 2307 for 2014 and the uncontroverted testimony of the ICPA proves that the income payments relative to the claimed CWTs were indeed declared as part of Tullet’s gross income in its AITR. Moreover, Tullet need not prove actual remittance of tax for its claim for refund or credit of excess CWT to prosper because the presentation of CWT certificates is prima facie proof of payment of taxes.

[**Commissioner of Internal Revenue v. First Philec, Inc.**](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/d661a381cdd662b38737b5b350ee0837)

CTA EB No. 2438 promulgated on February 15, 2023

*(A waiver to suspend the operation of statute of limitations must faithfully comply with the provisions of RMO No. 20-90 and Revenue Delegation of Authority Orders (“RDAO”) No. 05-01 in order to be valid and binding.)*

*Facts:*

First Philec, Inc. (“FPI”) received a copy of a Letter of Authority (“LOA”) issued by the BIR, authorizing the conduct of an audit of its accounting records for all internal revenue taxes for the TY 2009. The said LOA authorized Revenue Officers to conduct the audit and/or investigation.

During the investigation, Alejandra Marquez (“Marquez”), FPI’s Assistant Vice President for Finance Controller (“Comptroller”) and Ariel Ong (“Ong”), FPI’s President, executed a series of waivers of defense of prescription under the statute of limitations in the Tax Code.

On January 3, 2013, Marquez executed a waiver (first waiver) to suspend the operation of Statute of Limitations until June 30, 2012, which was accepted by the OIC ACIR-LTS Misajon on January 4, 2013. On April 12, 2013, Marquez executed another waiver (second waiver) to extend the agreed period of suspension until December 31, 2013.

On September 19, 2013, Ong executed a subsequent waiver (third waiver) that further extended the period of suspension until June 30, 2014. OIC ACIR-LTS Misajon accepted the third waiver on September 23, 2013. CIR issued a Memorandum of Assignment replacing the previously assigned revenue officers to continue to audit and/or investigation of FPI’s books of account. On May 19, 2014, FPI received a copy of the Preliminary Assessment Notice (“PAN”) of even date which CIR signed. The PAN stated that after investigation, FPI was found liable for deficiency income tax, VAT, withholding tax on compensation, expanded withholding tax and documentary stamp tax for TY 2009. FPI opposed the PAN. FPI received a copy of the Final Assessment Notice and Formal Letter of Demand (“FAN/FLD”) and Final Decision of Disputed Assessment (“FDDA”).

*Issue:*

Are the subject waivers validly extended the period to assess FPI?

*Ruling:*

Yes.

The subject waivers were valid and compliant with the necessary requirements.

The requirements for the proper execution of a waiver are as follows:

1. The waiver must be in the proper form prescribed by RMO No. 20-90 (Annex A of RDAO No. 05-01). The phrase “but not after \_\_\_\_\_\_19\_\_”, which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
2. The waiver must be signed by the taxpayer himself or herself, or his or her duly authorized representative. In the case of corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
3. The waiver should be duly notarized.
4. The CIR, or his or her duly authorized revenue official must sign the waiver indicating that the BIR has accepted and agreed to the waiver. However, before signing the waiver, the CIR or authorized revenue official must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.
5. Both the date of the taxpayer’s execution of the waiver and date of BIR’s acceptance thereof should be before the expiration of the period agreed upon (in case a subsequent agreement is executed).
6. The waiver must be executed in triplicate, the original of which to be attached to the docket case; the second copy for the taxpayer; and the third copy for the Office accepting the waiver. The fact of receipt of the taxpayer’s copy must be indicated in the original copy to show that the said taxpayer was notified by the BIR’s acceptance and the perfection of the agreement.

Here, an examination of the subject waivers reveals that they have duly complied with the said requirements.

[**Commissioner of Internal Revenue v. Western Mindanao Power Corporation**](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/54efa9dbeabffbe33b6a58993ed800e7)

CTA EB No. 2449, February 20, 2023

*(The power of the CTA to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the BIR.)*

*Facts:*

Western Mindanao Power Corporation (“WMPC”) was issued a LOA on May 8, 2014 covering the TY 2012. Thereafter, WMPC executed two Waivers of the Statute of Limitations. WMPC was subsequently issued a PAN, FAN/FLD, and the FDDA for deficiency income tax, VAT, creditable withholding tax, expanded withholding tax, final tax, documentary stamp tax, inclusive of penalties and surcharges.

WMPC filed a Petition for Review before the CTA Division. Meanwhile, it made partial payments for the deficiency taxes. The CTA Division partially cancelled the assessed deficiency taxes. The CIR now argues that the CTA Division erred in ruling on matters that were not substantiated at the administrative level, and that since an FDDA was rendered, the jurisdiction of the CTA becomes strictly appellate in nature. On the other hand, WMPC argues that the FLD is void for lacking a definite amount of tax liability, since it contains a statement that the total amount due will be adjusted if paid beyond the date specified and asserts that the basis for the assessment was different in the FDDA, compared to the previous findings in the PAN and FAN.

*Issue:*

Did the CTA Division err in ruling on matters that were not substantiated in the administrative level?

*Ruling:*

No.

The power of the CTA to exercise its appellate jurisdiction does not preclude it from considering evidence that was not presented in the administrative claim in the BIR. As such, parties are expected to litigate and prove every aspect of their case anew and formally offer all their evidence. Thus, the review of the CTA is not limited to whether or not the CIR committed gross abuse of discretion, fraud, or error of law.

[**Commissioner of Internal Revenue v. Clark Water Corporation**](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/cd586d9f16e81a0200b39220bb113f4e)

CTA EB No. 2379, February 17, 2023

*(Export processing zones are to be managed as a separate customs territory from the rest of the Philippines, and thus, for tax purposes, are effectively considered as foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the Ecozone shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the Ecozone to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.)*

*Facts:*

Clark Water Corporation (“CWC”) received the LOA for TY 2014. On October 5, 2016, CWC received FAN/FLD dated September 19, 2016, assessing CWC of deficiency VAT for TY 2014 in the total amount of PhP4,406,648.49.

CWC contends that the deficiency VAT should be cancelled because as duly registered Clark Special Economic Zone (“CSEZ”), CWC’s sales transaction within the Customs Territory are covered by a preferential rate of 5% tax on its gross income, in lieu of all national and local taxes pursuant to RA No. 7227, as amended, and are therefore not subject to 12% VAT.

*Issues:*

Are CWC’s sale of services outside the Ecozone or Freezone or within the Customs Territory, subject to 12% VAT and considered importation by the buyer?

*Ruling:*

Yes.

CWC is not exempted from the payment of VAT from its sales of services within the customs territory.

Section 8 of Department Order No. 003-08, issued by the Department of Finance, provides for the following scenarios:

1. If the Ecozone or Freeport Enterprise wants to avail of the incentives under the 5% special tax regime, it may generate income from sources outside the Ecozone or Freeport Zone or within the Customs territory of up to thirty percent (30%) of its total income from all sources; and

1. If the income of an Ecozone or Freeport Enterprise exceeds said thirty percent (30%) threshold, then all of its income whether from the Zone or the Customs Territory shall be subject to the relevant internal revenue taxes under the National Internal Revenue Code of 1997, as amended.

The above provision should not be applied in isolation, but rather applied in harmony with the other provisions of the said Department Order No. 003-08.

The CTA also agreed with the CIR that the sales of services rendered by CWC outside the Ecozone are technically considered as importation by the buyers from the Custom Territory and are subject to VAT.

One of the important principles of the Philippine VAT system is the Destination Principle. According to the Destination Principle, goods and services are taxed only in the country where these are consumed.

In connection with the said principle, it is well-settled that export processing zones are to be managed as a separate customs territory from the rest of the Philippines, and thus, for tax purposes, are effectively considered as foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the Ecozone shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the Ecozone to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory. As such, CWC’s sales of services that were destined for consumption within the customs territory or outside its place of jurisdiction should be considered as importations by the buyer and exportation on the part of respondent that is subject to 12% VAT.

**CTA DIVISION DECISIONS**

[**Grand Geo Spheres Construction Corp. v. Commissioner of Internal Revenue**](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/7b76bdbc08ddc35cd2b0de96e418d42c)

CTA Case No. 10207, February 6, 2023

*(When a taxpayer denies having received the notices mailed by the BIR, the latter is required to identify and authenticate the signatures appearing on the registry receipt to determine whether the signatories thereon is the authorized representative of the taxpayer.*)

*Facts:*

Grand Geo Spheres Construction Corp. (“Grand Geo”), a domestic corporation received a Letter Notice (“LN”) stating that it had underdeclared sales, that this figure was the result of a discrepancy between sales per its tax returns and the purchasers of a certain MTD Construction (Philippines) Inc. (“MTD Inc.”) from it.

Grand Geo argues that the person to whom RO Trazona served the LOA, Jasmin Mendioro (“Mendioro”) had no authority to receive it, hence, there was an invalid service of the LOA. It also disclaims receipt of the PAN and FAN/FLD. Likewise, it asserts that the deficiency is without factual and legal basis since the deficiency tax assessments stemmed from the discrepancy between sales declared per its tax returns and the purchases of its alleged customers. That under RMO Nos. 4-2003 and 46-2004 the BIR must obtain sworn statements from third party information (“TPI”) sources, attesting on the veracity of such TPI, otherwise, the TPI may not be considered for assessment purposes. Lastly, Grand Geo contends that the FAN/FLD were issued beyond the three-year prescriptive period under the Tax Code.

*Issues:*

Was Grand Geo’s right to due process violated?

*Ruling:*

Yes.

While it was ruled that there was no improper service of LOA, since there was an implied recognition by Grand Geo of Mendioro’s authority to receive the LOA on its behalf since Grand Geo requested additional time to submit the required documents and partially submitted its tax returns with the BIR as required in such LOA, there was still a violation of Grand Geo’s right to due process.

When a taxpayer denies having received the notices mailed by the BIR, the latter is required to identify and authenticate the signatures appearing on the registry receipt to determine whether the signatories thereon is the authorized representative of the taxpayer. Since Grand Geo disclaimed the receipt of the PAN and FLD/FAN, actual receipt must be established by the CIR. The CIR presented registry receipts and affidavit of service of FAN/FLD but these do not demonstrate that Grand Geo or its duly authorized representative actually received the PAN and FAN/FLD. During the trial, RO Trazona also confirmed that BIR has no document to prove Grand Geo’s actual receipt of the PAN and FAN/FLD. Since no valid PAN and FAN/FLD were issued, this violated Grand Geo’s right to due process.

[**Pacific Plaza Condominium Corporation v. Commissioner of Internal Revenue**](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/dd35733490b4a0e59a7d9102876bc586)

CTA Case No. 10199, February 10, 2023

*(In a claim for tax refund or credit of erroneously or excessively paid tax, the applicant must prove not only entitlement to the claim but also the fact of erroneous payment to the BIR.)*

*Facts:*

BIR issued RMC No. 65-2012 clarifying that association dues, membership fees, and other assessments/charges collected by a condominium corporation are subject to VAT since they constitute income payment or compensation for the beneficial services it provides to its members and tenants.

On October 23, 2019, Pacific Plaza Condominium Corporation (“Pacific Plaza”) filed both an administrative claim for refund for its erroneously paid VAT before the BIR and a Petition for Review before the CTA.

*Issues:*

1. Are condominium association dues collected by condominium associations from its members subject to VAT?
2. Is Pacific Plaza entitled to its claim for refund?

*Ruling:*

1. No.

In *BIR v. First E-Bank Tower Condominium Corporation* the Supreme Court emphasized that a condominium corporation's collection of association dues is not subject to VAT. Moreover, in the same case, the Supreme Court struck down RMC No. 65-2012 as void.

Association dues are the incidental consequence of a condominium corporation's responsibility to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance.  Association dues do not involve a sale, barter or exchange of goods or properties, or sale of a service; hence, they are not subject to VAT under Section 105 of the Tax Code.

1. No.

However, although Pacific Plaza was able to prove that it was entitled to the claim, it failed to substantiate the same through VAT invoices (in cases of domestic purchases of goods) or official receipts (in cases of domestic purchases of services) pursuant to Section 110 in relation to Section 113 of the Tax Code. In the absence of proof of wrongful payment, the Court has no other recourse but to deny petitioner's claim for refund of erroneously paid VAT.

[**City of Manila v. Marina Square Properties**](https://cta.judiciary.gov.ph/pdfv/web/viewer.html?file=https://cta.judiciary.gov.ph/home/download/d3ee39e90a1ba7678531a316dc0b09cc)

CTA AC No. 252, February 20, 2023

(*Without a valid assessment, no valid collection of the alleged deficiency taxes should arise.*)

*Facts:*

The City Treasurer of Manila City issued a statement of account requiring Marina Square Properties (“MSP”) to pay LBT and local fees and charges. MSP paid the LBT on February 16, 2016 and thereafter requested for the refund of the excess payment of LBT on November 3, 2017. On February 1, 2018, MSP filed its complaint with the Regional Trial Court (“RTC”) of Manila praying that judgment be rendered ordering the City of Manila to refund MSP.

The City of Manila argued and interposed by way of counterclaim that MSP’s claim for refund should be denied because MSP is liable for deficiency taxes for TYs 2014, 2017, and 2018.

*Issue:*

1. Did MSP timely file its administrative and judicial claim in accordance with Section 196 of the LGC?
2. Can MSP be held liable for deficiency taxes for TYs 2014, 2017, and 2018?

*Ruling:*

1. Yes.

Under Section 196 of the LGC, to be entitled to a claim for refund or tax credit, the taxpayer must first file a written claim for refund or credit with the local treasurer; and subsequently file a judicial case for refund, both of which must be filed within two (2) years from the payment of the tax, fee, or charge, or from the date when the taxpayer is entitled to a refund or credit.

The Supreme Court, in one case, explained that under Section 196, the taxpayer need not wait for the local treasurer to act on the refund claim as long as both the administrative and judicial claims for refund were filed within the two-year period. In this case, MSP’s payment date was on February 12, 2016. On November 3, 2017, MSP wrote a letter to the Office of the City Treasurer of Manila for the refund of taxes, and it instituted its judicial claim for refund on February 1, 2018. Since its payment date was on February 12, 2016, MSP had until February 12, 2018 to file both the administrative and judicial claim. Hence, MSP timely filed both claims.

1. No.

The City of Manila’s collection of MSP’s alleged deficiency LBTs for TYs 2014, 2017, and 2018 by way of counterclaim is not allowed as it is contrary to the provisions of Section 195 of the LGC. Whenever the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, the local treasurer is mandated to issue a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties. No notice of assessment was issued against MSP for the alleged deficiency taxes for TYs 2014, 2017 and 2018, except for a Data and Assessment Form that was only presented during trial before the lower court. The Data and Assessment Form is not tantamount to the Notice of Assessment mandated under Section 195 of the LGC. Consequently, without a valid assessment, no valid collection of the alleged deficiency taxes should arise.

**SECURITIES AND EXCHANGE COMMISSION ISSUANCES**

[**Salient Features of SEC Memorandum Circular No. 10**](https://www.sec.gov.ph/notices/salient-features-of-sec-memorandum-circular-no-10-series-of-2022/%22%20/l%20%22gsc.tab=0)

Series of 2022, February 9, 2023

Increased the penalties and imposed additional non-financial penalties in SEC MC No. 15 S. 2019. (disclosure if beneficial ownership)

**For all stock corporation (domestic and foreign)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| RETAINED EARNINGS | PENALTIES | | | |
| First Violation | Second Violation | Third Violation | Fourth and Subsequent Violation |
| Less than  PhP500,000.00 | PhP50,000.00 | PhP100,000.00 | Php250,000.00 | PhP500,000.00 |
| PhP500,000.00 or more but less than PhP5,000,000.00 | PhP100,000.00 | PhP200,000.00 | PhP500,000.00 | PhP1,000,000.00 |
| PhP5,000,000.00 or more but less than PhP10,000,000.00 | PhP150,000.00 | PhP300,000.00 | PhP750,000.00 | PhP1,500.000.00 |
| PhP10,000,000.00 or more | PhP200,000.00 | PhP400,000.00 | PhP1,000,000.00 | PhP2,000,000.00 |
|  | Additional fine of PhP1,000.00 for each day of delay in the submission of beneficial ownership information as a continuing violation, but shall not exceed PhP2,000,000.00 | | | |

**All non-stock corporation (domestic and foreign)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| RETAINED EARNINGS | PENALTIES | | | |
| First Violation | Second Violation | Third Violation | Fourth and Subsequent Violation |
| Less than  PhP500,000.00 | PhP25,000.00 | PhP50,000.00 | PhP100,000.00 | Php250,000.00 |
| PhP500,000.00 or more but less than PhP5,000,000.00 | PhP50,000.00 | PhP100,000.00 | PhP200,000.00 | PhP500,000.00 |
| PhP5,000,000.00 or more but less than PhP10,000,000.00 | PhP75,000.00 | PhP150,000.00 | PhP300,000.00 | PhP750,000.00 |
| PhP10,000,000.00 or more | PhP100,000.00 | PhP200,000.00 | PhP400,000.00 | PhP1,000,000.00 |
|  | Additional fine of PhP1,000.00 for each day of delay in the submission of beneficial ownership information as a continuing violation, but shall not exceed PhP2,000,000.00 | | | |

**False declaration**

|  |  |  |
| --- | --- | --- |
|  | Fines | Other Penalties |
| For the Corporation | Up to PhP2,000,000.00 | Revocation of Certificate of Incorporation |
| For Directors/Trustees/Officers | Up to PhP200,000.00 | Disqualification to be a Director/Officer/Trustee for up to five years |

**Liability of directors/trustees and officers of the corporation**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Violation | PENALTIES | | | |
| First Violation | Second Violation | Third Violation | Fourth and Subsequent Violation |
| Non-disclosure/late disclosure | PhP10,000.00 | PhP20,000.00 | PhP50,000.00 | PhP100,000.00 |
|  | Up to PhP200,000.00 plus disqualification to be a Director/Officer/Trustee for up to five years | | | |

**Other imposable penalties**

If after notice and hearing, the commission finds that there is:

* Willful violation of this Circular or related orders of the Commission; or
* That any person has refused to permit any lawful examination into the corporation’s affairs.

The Commission may impose the penalty of suspension or revocation of the Certificate of Incorporation of the reporting corporation along the other penalties that are within the power of the Commission to impose.

[**SEC EB Case No. 03-22-494**](https://www.sec.gov.ph/decision-2023/sec-eb-case-no-03-22-494/#gsc.tab=0)

Babel Holdings, Inc., et al. v. Dindo A. Espeleta and Karen M. Espeleta

*(Fraud as a ground for the revocation of a certificate of registration refers to fraud attendant in the registration and must be contained or connected with the documents or papers presented to the SEC, for purposes of registration.)*

*Facts:*

Dindo Espeleta, Karen Espeleta, Manuel Lazaro, Michelle Lazaro, Rommel Santiago and Philipe Aquino agreed to form Babel Holdings, Inc. (the “Corporation”) for the purpose of acquiring Mausonon Island in Palawan (the “Island”). They purchased the island, where they opened an Escrow Agreement Account with Eastwest Bank for PhP126 Million, which was paid. Dindo Espeleta and Karen Espeleta filed with the Company Registration and Monitoring Department (“CRMD”) a petition for revocation of Company Registration for having been allegedly obtained through fraud, alleging forgery of Karen’s signature in the Treasurer’s Affidavit, and that there is representation in the AOI since they did not pay for the shares that they subscribed to.

*Issue:*

Is the revocation of the Certificate of Incorporation on the ground of fraud in its procurement correct?

*Ruling:*

No.

Fraud as a ground for the revocation of a certificate of registration refers to fraud attendant in the registration. It must be contained or connected with the documents or papers presented to the SEC, for purposes of registration. For an information or declaration in the AOI to be considered fraudulent that would justify the revocation of the primary franchise  of the corporation, the same must be false and/or calculated to misrepresent, because the same can clearly constitute fraud upon the public.

The Corporation Code provides that an applicant must be compliant with the prescribed minimum capitalization, subscription and paid-up requirement, not only at the time of the filing of the application for incorporation but also at the time of the issuance of the certificate of incorporation.

Here, the incorporators complied with all the requirements. The AOI was properly notarized, and they all admitted having personally signed it. There is nothing in the foregoing which is supported by evidence that will place the authenticity of the AOI under a cloud of doubt. There is nothing therein that will show that the Corporation failed to fully comply with the subscription and paid-up requirements.

**NATIONAL PRIVACY COMMISSION ISSUANCE**

[**NPC Advisory Opinion No. 2023-004**](https://www.privacy.gov.ph/wp-content/uploads/2023/02/Advisory-Opinion-No.-2023-004.pdf)

Disclosure of Subscribers’ Data Pursuant to Revenue Regulation No. 09-2022

*Highlights:*

* This advisory opinion deals with the implications of the BIR request for disclosure of the registered addresses and email addresses of Globe’s subscribers under RR No. 09-2022.
* The TRAIN Law mandates the e-Invoicing and e-Sales reporting system to be implemented on or before January 01, 2023. Thus, taxpayers are required to electronically report its sales date to the BIR as implemented by RR No. 09-2022 thru the Electronic Invoicing/Receipting and Sales Reporting System (“EIS”).
* The BIR EIS would require Globe to provide the following details:
  + Buyer Information
  + Buyer TIN
  + Branch Code
  + Registered Name
  + Business Name/Trade Name
  + E-mail Address
  + Registered Address
* The BIR’s request for information, including the registered address and email address of Globe’s buyers/subscribers, is necessary to comply with the requirements of RR 09-2022 and, ultimately, the TRAIN Law.
* Requiring the registered address and email address of buyers/subscribers who are natural persons, is not disproportionate per se to the purpose of the tax law and BIR regulation especially since no sensitive personal information is involved.
* The email address serves as the taxpayer’s contact information that is reasonably necessary since the BIR shifted to a digital platform.
* The DPA itself recognizes the necessity of personal data processing to carry out the functions of public authority.

**DEPARTMENT OF JUSTICE ISSUANCE**

[**DOJ Opinion No. 05-2023**](https://www.doj.gov.ph/files/2023/Legal%20Opinions/DOJ%20Legal%20Opinion%20No.%2005%20series%202023_0001.pdf) **issued on February 2, 2023**

Clarification of the Fiscal Incentives Review Board (FIRB) Secretariat in response to the Department of Trade and Industry (DTI)-Board of Investments ((BOI) query on the procedure and requirements to secure FIRB’s approval to grant a Tax Expenditure Subsidy for the Comprehensive Automotive Resurgence Strategy (CARS) Program.

* The Comprehensive Automotive Resurgence Strategy Program (“CARS Program”) was established by Executive Order (“EO”) No. 182 s.2015 to improve the country’s automotive industry.
* In Section 13 of EO 182, the fiscal support for registered and eligible participants shall be evidenced by a Tax Payment Certificate (“TPC”) which shall be used to defray tax and duty obligations of the participants to the National Government, specifically: (1) excise tax; (2) income tax; (3) import duties; and (4) Value Added Tax
* In Section 11 of EO 182, it was provided that the DBM in coordination with the BOI shall propose the inclusion of an Automotive Development Fund (“ADF”) in the General Appropriations Act (“GAA”) to fund the fiscal support for the CARS program, however, the funding for the ADF had never been included since the EO’s issuance.
* Since there is a scarcity of funds, Secretary Pangandaman of the Department of Budget and Management posits that:
* The CARS program’s financial needs may be solved by charging it against the tax Expenditure Subsidy (“TES”) Funds under the GAA which is an automatic appropriation that may be used to support the various government agencies and Government Owned and Controlled Corporations (“GOCCs”).
  + That the TPC of the CARS program is eligible for the grant of a TES since the same may be considered as both expenditures and revenue of the government, subject to the approval of the FIRB as mentioned in the current Sec.15(c) of the General Appropriations Act. Under this section, TES approved by the FIRB are deemed automatically appropriated.
  + That the FIRB has maintained its power to approve or disapprove the grant of tax incentives and the power to approve applications for tax subsidies to GOCCs, government instrumentalities, government commissaries, and state universities
  + The participants of the CARS program may be considered for the grant of TES since the ultimate beneficiary is the Philippine automotive industry
* Secretary Pangandaman sought the DOJ opinion on the matter.
* The DOJ is of the opinion that the TPCs cannot be granted by the FIRB as a TES under Sec. 15(c) of the GAA, since it is beyond the FIRB’s power provided by the law. Likewise, the CARS program is incompatible with the CREATE Act in terms of operation and the incentives given.
* Under Sec. 15(c) of the GAA TES approved by the FIRB are deemed automatically appropriated, the FIRB, however, must approve a TES in accordance with the CREATE Act.
* Sec. 292 of the Tax Code, as amended by the CREATE Act provides that the FIRB may grant tax incentives to registered business enterprises to the extent of their approved registered project or activity under the Strategic Investment Priority Plan.
* On the other hand, Sec. 294 of the Tax Code, as amended by the CREATE Act provides for only five types of tax incentives which may be granted by the FIRB to registered projects or activities, these are: (1) Income Tax Holiday; (2) Special Corporate Income Tax Rate; (3) Enhanced Deductions; (4) Duty Exemption on importation of capital equipment, raw materials, spare parts, or accessories; and (5) VAT exemption on importation and VAT zero-rating on local purchases.
* However, under the CARS program there are two kinds of fiscal support, that is Fixed Investment Support (“FIS”); and Production Volume Incentive (“PVI"). The FIS and PVI shall be evidenced by the TPC which shall then be used to defray the tax and duty obligations to the National Government which is limited to excise tax, income tax, import duties, and VAT.
* Since ‘FIRB may only grant incentives, it is authorized to do so, it is only authorized to grant incentives provided under Section 294 of the Tax Code and not the FIS and PVI under the CARS Program.

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