SyCip Salazar Hernandez & Gatmaitan 80 Years

SyCipLaw TIPS

Tax Issues and Practical Solutions

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1. Are renewable energy ("*RE*") developers required to obtain a Certificate of Endorsement from the Department of Energy before they can avail of the value-added tax ("*VAT*") zero-rating incentive under Republic Act No. 9513, or the Renewable Energy Law ("*RE Law*")?

No. In *Maibarara Geothermal, Inc. ("MGI") v. Commissioner of Internal Revenue ("CIR")*, G.R. No. 256720, August 7, 2024, the Supreme Court ruled that the Department of Energy ("*DOE*") could not validly impose a Certificate of Endorsement ("*COE*") as a requirement for RE developers to enjoy VAT zero-rating on their sale of fuel or power generated from renewable sources of energy. RE developers are automatically qualified to avail of the incentives under Republic Act No. 9513, or the Renewable Energy Law ("*RE Law*"), after securing a Certificate of Registration from the DOE, with the exception of duty-free importation of RE machinery, equipment, and materials.

In the proceedings before the lower court, the Court of Tax Appeals ("*CTA*") *En Banc* held that MGI failed to establish that it is engaged in zero-rated sales. In so ruling, the CTA *En Banc* found that there is no showing that MGI was issued a COE by the DOE on a per-transaction basis. The CTA *En Banc* cited Part III, Rule 5, Section 13 (G) of the Implementing Rules and Regulations ("*IRR*") of the RE Law in holding that three documents are required from an RE developer in order for it to qualify for VAT zero-rating, *i.e.*, (1) DOE Certificate of Registration; (2) Board of Investments ("*BOI*") Certificate of Registration; and (3) COE from the DOE.

On appeal, the Supreme Court ruled that Section 26 of the RE Law gives the DOE the authority to impose additional requirements to avail of the incentives under said law. However, the Supreme Court clarified that the added certification requirement is inapplicable to the VAT zero-rating incentive in Section 15(g) of the RE Law.

The Supreme Court delved into the legislative history of the RE Law. The precursor of now Section 26 of the RE Law is Section 27 of Senate Bill No. 2046. In the proposed provision, the Senate enumerated the fiscal incentives found in now Section 15 of the RE Law, the availment of which requires the certification of the DOE. Notably, the VAT zero-rating incentive for the sale of fuel or power generated from renewable sources of energy was not among the enumeration found in the proposed provision. The Senate introduced the certification provision and took great pains to enumerate every other incentive under Section 15, but left out the VAT zero-rating provision.

One of the fundamental statutory construction principles is that a person, object, or thing omitted from an enumeration must be held to have been omitted intentionally — *casus omisus pro omisso habendus est*. The Supreme Court held that errors are not presumed, and it should accord respect to the deliberateness exhibited by Congress. Applying this principle, the Supreme Court ruled that while the DOE may impose further requirements before it can qualify the RE Developer or their transactions to the other fiscal incentives under Section 15, it cannot impose other certification requirements, such as a COE, to the VAT zero-rating incentive. Thus, as it stands, the only other requirement for VAT zero-rating qualification, aside from the conditions imposed by the

National Internal Revenue Code of 1997, as amended ("*Tax Code*"), is the RE Developer's registration with the DOE.

The Supreme Court also noted that on December 24, 2021, the DOE issued Department Circular No. DC2021-12-0042, which amended the IRR of the RE Law. The amendment removed the requirement under the IRR for RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment to secure a COE from the DOE on a per-transaction basis to avail of the incentives provided under the RE Law. Under DC2021-12-0042, RE Developers are automatically qualified to avail of the incentives under the RE Law after securing a Certificate of Registration from the DOE, with the exception of duty-free importation of RE machinery, equipment, and materials. ■

SyCipLaw Tip No. 1

RE Developers are not required to secure a Certificate of Endorsement from the DOE to qualify for the VAT zero-rating incentive under the RE Law, whether before or after the issuance of DOE Department Circular No. DC2021-12-0042. RE developers are automatically qualified to avail of the incentives under the RE Law after securing a Certificate of Registration from the DOE, with the exception of duty-free importation of RE machinery, equipment, and materials.

2. Does serving the Letter of Authority ("*LOA*"), Preliminary Assessment Notice ("*PAN*"), and Final Assessment Notice ("*FAN*") at the taxpayer's registered address, which is no longer their current address, constitute a violation of their right to due process?

No. As a rule, taxpayers are bound by their registered address with the Bureau of Internal Revenue ("*BIR*") unless the BIR is otherwise deemed notified. In the absence of the taxpayer's formal notification to the BIR regarding an address change, the BIR's service of notices at the registered address is valid.

In *Commissioner of Internal Revenue v. Fort 1 Global City Center Inc. ("FGCCI")*, G.R. No. 263811 November 26, 2024, the Court held that under Revenue Regulation ("*RR*") No. 07-12, the taxpayer must inform the BIR district office where he is registered of such change of address by filing the prescribed BIR form specifying therein the complete address where he intends to transfer. Thus, it was incumbent upon FGCCI to inform the BIR of any change in its address. The BIR is not expected to refer to the taxpayer's General Information Sheet ("*GIS*") to determine the correct address for sending tax assessments and BIR notices. As far as the BIR is concerned, the address in its BIR-Integrated Tax System ("*ITS*") remains true and correct until FGCCI informs it of the new address by complying with the requirements of RR No. 07-12. Since FGCCI failed to do so, its address in the BIR-ITS shall be deemed the correct address. Consequently, the notices served at this address shall be valid, and FGCCI, thus, cannot rely on the address in its 2016 GIS and insist that the BIR should have sent the notices to that address. ■

SyCipLaw Tip No. 2

Taxpayers should properly notify the BIR of any change in their registered address to ensure receipt of BIR notices requiring prompt action and attention. Failure to update the registered address may prevent the taxpayer from questioning the validity of service of a BIR assessment notice.

3. Is a taxpayer's right to due process violated if the BIR revenue officers failed to comply with the procedural requirements under RR No. 12-99 in ascertaining the authority of the persons who received the said notices on behalf of the taxpayer?

Yes, the BIR's non-compliance with the relevant rules on proper service renders the tax assessments void for violation of the taxpayer's right to due process.

In FGCCI, the Court ruled that there was improper service in this case because the revenue officers who personally served the notices failed to ascertain the authority of the persons who received the notices on behalf of FGCCI.

RR No. 12-99 explicitly requires that notices served through personal delivery must be acknowledged by the taxpayer or his duly authorized representative. Moreover, RR No. 18-13 outlines the procedure to be followed if no person can be found at the taxpayer's known address, which involves bringing a barangay official and two disinterested witnesses to personally observe and attest to such act of refusal.

The fact that FGCCI subsequently filed protests and responses does not preclude it from raising the issue of due process. The BIR's negligence in complying with its own rules should not allow it to benefit from the doctrine of estoppel.

Essentially, an assessment that fails to strictly comply with the due process requirements outlined in Section 228 of the Tax Code and its implementing rules is void and produces no effect. ■

SyCipLaw Tip No. 3

Taxpayers should be mindful of how BIR notices are served and who receives them. If the BIR does not follow its own rules on proper service, the taxpayer may raise this as a ground to challenge the validity of the tax assessment.

4. Are official receipts, which indicate that payments were received from a non-resident foreign corporation, but which do not specify the services paid for, sufficient on their own to substantiate that the amounts received pertain to zero-rated sales of services for purposes of claiming a refund or credit of unutilized input VAT?

No. In *PPD Pharmaceutical Development Philippines Corp. v. Commissioner of Internal Revenue*, CTA Case No. 10466, February 6, 2025, the CTA Third Division ruled that official receipts, which do not specifically state or describe the services for which payments from a non-resident foreign corporation ("*NRFC*") were received, are by themselves insufficient to establish that such amounts pertain to services actually rendered to the NRFC. Accordingly, a claim for refund of unutilized VAT under Section 108(B)(2) of the Tax Code, based solely on such official receipts, cannot be sustained.

In this case, the taxpayer filed its VAT returns for the third and fourth quarters of the calendar year 2018, declaring zero-rated sales of services amounting to PhP411,171,346.70. For these quarters, the taxpayer also reported purchases of goods and services that included VAT passed on by its suppliers in the aggregate amount of PhP12,515,965.52. On September 30, 2020, the taxpayer filed an Application for Tax Credits/Refunds, requesting a VAT refund or credit amounting to PhP12,030,491.36, representing excess input tax relative to the period from July 1 to December 31, 2018. In a VAT Refund Notice dated December 3, 2020, the CIR granted the administrative claim to the extent of PhP2,317,881.93 only.

The taxpayer questioned the CIR's decision and filed a petition for review with the CTA, arguing that it is entitled to the full refund of its unutilized input VAT in the amount of PhP12,030,491.36, primarily because: [a] it reported zero-rated sales in the amount of PhP411,171,346.70, which consisted of clinical research services rendered to the NRFC, and [b] in the course of rendering such services, the taxpayer purchased goods and services from which it aggregated input VAT credits amounting to PhP12,030,491.36.

The CIR, on the other hand, asserted that the taxpayer failed to prove the zero-rated character of its sales of services. It argued that while the taxpayer presented inward remittances in foreign currency, the documents it submitted failed to show that the said remittances were indeed made as payments for the alleged zero-rated sale of services.

The CTA agreed with the CIR and found that the taxpayer's documentary evidence was insufficient to

demonstrate the zero-rated character of its sales of services to the NRFC. Citing *Chevron Holdings Inc v. Commissioner of Internal Revenue*, G.R. No. 215159, July 5, 2022, the CTA reiterated the requisites for a grant of refund or credit for unutilized input VAT attributed to zero-rated sales: [a] the taxpayer is VAT-registered; [b] the taxpayer is engaged in zero-rated or effectively zero-rated sales; [c] the claim must be filed within two years after the close of the taxable quarter when such sales were made; and [d] creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against output tax. The CTA found that the second requirement was absent. While the taxpayer claims that its supply of clinical research services to the NRFC qualifies as a sale of other services for consumption or use outside the Philippines under Section 108(B)(2) of the Tax Code, the CTA found that the taxpayer failed to prove that the amounts it received from the NRFC actually pertained to its supply of clinical research services.

Pursuant to *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020, the following conditions must be present for a sale of service to qualify under Section 108(B)(2) of the Tax Code: [a] the seller is VAT-registered; [b] the services are rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed; and [c] the services are paid for in acceptable foreign currency and accounted for in accordance with the Bangko Sentral ng Pilipinas ("*BSP*") rules and regulations. Here, although the first and second requisites are not contested, the CTA ruled that the third requisite was absent. The CTA found that the taxpayer's official receipts, showing inward foreign currency remittances from the NRFC, did not sufficiently demonstrate that such remittances represented actual payments made in acceptable foreign currency and accounted for in accordance with BSP rules for services rendered to the taxpayer. These receipts only show that the taxpayer received dollar remittances from the NRFC, and do not necessarily prove that these payments were specifically for services rendered by the taxpayer. Notably, the taxpayer's receipts only generally state that they were issued "for services covered by Billing Statement Number(s) indicated below." However, the Billing Statements themselves were not presented in evidence. The CTA explained that it cannot verify the specific nature of the services charged without the billing statements.

The CTA ruled that without sufficient proof of the connection between the amounts received and the supply of services for which the payments were made, the taxpayer cannot validly claim a full refund of its unutilized input VAT for services supposedly rendered to the NRFC. ■

SyCipLaw Tip No. 4

An entity claiming a refund or credit of unutilized input VAT on zero-rated sales of services must establish that the amounts received from a non-resident foreign corporation are payments specifically for such services. Supporting documents must clearly state the nature of the services rendered to enable the Bureau of Internal Revenue to assess whether the transactions qualify for zero-rating under the Tax Code.

A motion for reconsideration of the decision is currently pending.

CTA decisions, while persuasive, do not become part of the law of the land, unlike decisions of the Supreme Court. They only bind the parties to the dispute.

5. Can a taxpayer still question the validity of the CIR's service of notices and assessments after having responded to them and actively participated in the administrative proceedings?

No. In *CIR v. Joselito B. Yap*, CTA EB Case No. 2792, February 11, 2025, the CTA *En Banc* ruled that a taxpayer is estopped from questioning the propriety of the CIR's service of notices and assessments if the issue was not raised at the administrative level, and the taxpayer actively participated in the administrative proceedings.

On January 15, 2015, the CIR issued PANs to the taxpayer for the taxable years 2011 to 2013, assessing deficiency taxes, inclusive of interest and surcharges, amounting to PhP171,778,755.60. In response, the taxpayer filed a Legal Petition Notice ("*LPN*") on January 23, 2015, serving as his reply to the PANs. Subsequently, on June 22, 2015, the CIR issued FANs and Formal Letters of Demand for the same periods, increasing the assessed deficiency taxes to PhP179,993,081.03.

The taxpayer protested the assessments and requested a reinvestigation through another LPN. However, the taxpayer failed to submit supporting documents within the prescribed 60-day period. As a result, on September 8, 2018, the CIR ruled that the assessments had become final, executory, and subject to collection.

On April 4, 2019, the taxpayer received Preliminary Collection Letters ("*PCLs*") for the deficiency taxes. Thereafter, on April 11, 2019, the taxpayer filed a petition for review before the CTA, seeking to nullify the assessments and the PCLs. He argued that the PANs and FANs were improperly served on individuals who were neither his employees nor authorized representatives, thereby violating his right to due process.

The CTA, First Division, ruled in favor of the taxpayer, finding that the CIR failed to prove proper service of the PANs and FANs.

The CIR appealed the decision to the CTA En Banc, asserting that there was no violation of the taxpayer's right to due process, and that the taxpayer had effectively acknowledged receipt of the PANs and FANs through the LPNs. The CIR argued that the taxpayer never questioned the authority of the recipients of the notices and assessments at the administrative level, and that the taxpayer fully participated in the proceedings, thereby waiving any objections to the supposed improper service.

The CTA En Banc granted the CIR's appeal, noting that the taxpayer himself, in the LPNs, admitted receiving the disputed PANs and FANs. The CTA held that the taxpayer was estopped from belatedly challenging the propriety of service, having [a] failed to raise the issue at the earliest opportunity, and [b] responded to the notices, thereby affirming receipt of such notices. The CTA En Banc concluded that the taxpayer's failure to question the supposed improper service at the administrative level was fatal to his claim. ■

SyCipLaw Tip No. 5

If there are irregularities in the CIR's service of notices and assessments, the taxpayer must raise the issue at the earliest opportunity, specifically during the administrative proceedings. Otherwise, the taxpayer may be estopped from challenging the propriety of the service in subsequent judicial proceedings. But see SyCipLaw Tip No. 3.

A motion for reconsideration of the decision is currently pending.

CTA decisions, while persuasive, do not become part of the law of the land, unlike decisions of the Supreme Court. They only bind the parties to the dispute.

6. In a claim for tax refund, may the Court of Tax Appeals also determine the proper tax liability of the taxpayer, which may be different from the amount subject of the claim for refund?

Yes. In *ING Bank N.V. Manila Branch v. Commissioner of Internal Revenue*, CTA Case No. 10520, March 19, 2020, the CTA ruled that it may determine the proper tax liability of a taxpayer, which may be different from the amount subject of the claim for refund. This is because the determination of the taxpayer's liability is intertwined with the resolution of the claim for refund of erroneously or illegally collected taxes under Section 229 of the Tax Code.

In this case, a deed of sale was executed for the sale of a Manila Polo Club share owned by the taxpayer, even

though the share was registered in the name of the taxpayer's officer. The corresponding capital gains tax ("*CGT*") and documentary stamp tax ("*DST*") were paid in connection with the deed of sale. Subsequently, a second deed of sale was executed to emphasize that the share was registered in the officer's name merely in a representative capacity, in order to secure a certificate authorizing registration from the appropriate revenue district office that has jurisdiction over the taxpayer. CGT and DST were again paid for the second deed of sale. The taxpayer then filed an administrative claim for refund or credit for overpayment of the CGT and DST.

The CTA ruled that the taxpayer was not entitled to a refund of the DST, as it failed to provide sufficient evidence that it paid the same. As to the claim for refund of CGT, the CTA ruled that the taxpayer was entitled to a partial refund of the amount claimed. The CTA noted that the taxpayer had erroneously computed the CGT using the old rates under Section 27(D)(2) of the Tax Code, which provides that the final tax on net capital gains derived from the sale of shares of stock in a domestic corporation not traded on a local stock exchange, was 5% on the first PhP100,000 and 10% on the excess. Since the transaction in this case occurred on April 2, 2019 — after the effectivity of Republic Act No. 10963 on January 1, 2018 — the applicable rate is 15% final tax on net capital gains derived from the sale of shares of stock in a domestic corporation not traded on a local stock exchange.

In recomputing the refundable amount, the CTA emphasized that when a tax refund claim is based on the illegal, erroneous, or excessive collection of taxes under Section 229 of the Tax Code, the CTA is authorized to determine the proper tax liability, which may be different from the amount subject of the claim for refund. This is because the correctness of the tax return is in question, and the taxpayer's actual liability is central to resolving the refund claim. ■

SyCipLaw Tip No. 6

A taxpayer claiming a refund must first present sufficient proof that the tax in question was actually paid. Also, to avoid being assessed deficiency taxes and penalties, the taxpayer should ensure that its tax liabilities are computed using the correct rates. In order to do this, the taxpayer should stay informed of the latest tax laws and regulations.

A motion for reconsideration of the decision is currently pending.

CTA decisions, while persuasive, do not become part of the law of the land, unlike decisions of the Supreme Court. They only bind the parties to the dispute.

7. When does the prescriptive period commence for violations of the Tax Code, and how is the period interrupted?

In *People v. Bernardo*, CTA EB Crim. No. 108, March 4, 2025, the CTA held that, under Section 281 of the Tax Code and Section 2, Rule 9 of the Revised Rules of CTA ("*RRCTA*"), the prescriptive period for violations of the Tax Code begins to run either: (a) from the day of the commission of the violation; or (b) if the violation was not known at that time, from its discovery and the institution of judicial proceedings for its investigation and punishment. Further, the RRCTA provides that the prescriptive period is interrupted by the filing of an Information with the CTA.

In this case, an *Information* was filed against the accused, on September 6, 2022, before the CTA for filing an inaccurate return, in violation of Section 255 of the Tax Code. Finding that there was no probable cause to issue a warrant of arrest due to prescription, the CTA did not only refuse to issue a warrant, but it also dismissed the Information. The CTA held that the *Information* was filed beyond the five-year prescriptive period, reckoned from February 18, 2016—the date when the BIR filed a complaint-affidavit with the Department of Justice ("*DOJ*") for preliminary investigation.

Citing *Lim v. Court of Appeals*, G.R. Nos. L-48134-37, October 18, 1990, the CTA reiterated that if the commission of the tax violation is not known, the prescriptive period to institute a criminal action commences from the discovery of the violation and indorsement of the case to the prosecutor's office for preliminary investigation. However, the period of discovery and indorsement for preliminary investigation until the filing of the charges in court should not exceed five years. Here, since the complaint-affidavit was filed on February 18, 2016, the BIR only had until February 18, 2021 to file the *Information*. Thus, when the BIR filed the *Information* on September 6, 2022, the case was already barred by prescription.

However, in *People v. Consebido*, G.R. No. 258563, April 2, 2025, the Supreme Court abandoned its rulings in the 2023 cases of *Republic v. Desierto*, G.R. No. 136506, January 16, 2023, and *Corpus, Jr. v. People*, G.R. No. 255740, August 16, 2023, which previously held that the prescriptive period for crimes covered by the 1991 Revised Rules on Summary Procedure stops only when the *Information* is filed in court. The Supreme Court clarified that the prescriptive period for crimes is tolled upon the filing of a complaint with the prosecution and the start of the preliminary investigation. The Supreme Court also clarified that under Section 281 of the Tax Code, the prescriptive period for criminal tax offenses that are not immediately known starts from the time the violation is discovered. The prescriptive period is then interrupted after a preliminary investigation begins. In view of the ruling in *Consebido*, it is likely that the ruling in this case will be reversed. ■

SyCipLaw Tip No. 7

In order to determine whether a crime arising from a violation of the Tax Code has prescribed, the following dates are crucial: (a) the date the violation was discovered; (b) the date the complaint was filed with the DOJ for preliminary investigation; and (c) the date the Information was filed with the CTA. The first date marks the reckoning point of the prescriptive period. The second date indicates when the prescriptive period was interrupted. The third date will determine whether the Information was filed within the five-year prescriptive period.

A motion for reconsideration of the decision is currently pending.

CTA decisions, while persuasive, do not become part of the law of the land, unlike decisions of the Supreme Court. They only bind the parties to the dispute.

8. What is the rule on requests for reconsideration after the denial of a claim for refund of creditable input taxes and excise tax on petroleum products filed on or after 1 April 2025?

Under RR No. 8-2025, all requests for reconsideration after the denial of a claim for refund should be limited to questions of law. Any issue relating to the factual issue raised in the request for reconsideration will no longer be entertained. The scope of the regulations is limited to denials of (i) applications for refund of creditable input taxes under Section 112(A) and (B) of the Tax Code; and (ii) excise tax paid on petroleum products under Section 135-A of the Tax Code.

The following information should be included in the request for reconsideration:

(a) Description of subject claim (i.e., name, Tax Verification Notice number, amount of original claim, and amount denied, taxable periods);
(b) Date of receipt of notice of denial of claim;
(c) Factual and legal bases; and
(d) Documents attached as annexes:
    i. Secretary's Certificate or Special Power of Attorney authorizing the filing of a request for reconsideration;

ii. Application for refund;
iii. Denial of claim for refund;
iv. Checklist of mandatory requirements; and
v. Other relevant documents.

Only the documents attached to the taxpayer's application for refund relevant to the issues raised in the request for reconsideration may be submitted with the request. The period to file a request for reconsideration is within 15 days from the date of receipt of notice of denial of claim. It should be filed with the BIR's Appellate Division or Legal Division of the Revenue Region, as applicable. Failure to comply with the requirements on the form, period, and manner of filing of the request for reconsideration may result in the outright denial of the request.

The decision on the request for consideration shall be issued by the BIR within 15 days from actual receipt of the request. In case of full or partial denial of the request for consideration, or in case of inaction, the taxpayer may appeal to the CTA within thirty (30) days from receipt of the denial or the lapse of the 15-day period for the BIR to act on the request. ■

SyCipLaw Tip No. 8

Taxpayers requesting reconsideration of the denial of their claims for refund of taxes covered by RR No. 8-2025 should make sure that they strictly follow the guidelines under the regulations for the filing of their requests. Otherwise, the request may be denied outright notwithstanding the merits of their request.

9. What are the new rules on VAT invoicing and payment on the local sales of goods/services of registered business enterprises ("*RBE*s")?

Pursuant to Republic Act No. 12066 (Corporate Recovery and Tax Incentives for Enterprises to Maximize Opportunities for Reinvigorating the Economy Act or "*CREATE MORE*"), local sales of goods and services by an RBE, regardless of its income tax incentive regime and location, are subject to the 12% VAT, unless the sale is VAT-exempt or VAT zero-rated. RR No. 9-2025 provides the new rules on VAT invoicing and payment for such sales, which will depend on the type of buyer involved.

(a) If the buyer is engaged in business or Business-to-Business transactions, the RBE-seller shall bill/invoice the transaction inclusive of VAT as "VAT on Local Sales." The buyer shall pay the purchase price exclusive of VAT on local sales. The liability to file and pay VAT is on the buyer.

(b) If the buyer is not engaged in business or in Business-to-Consumer transactions, the RBE-seller shall bill/invoice the transaction inclusive of VAT as "VAT on Local Sales." The buyer shall pay the purchase price, inclusive of VAT on local sales. The liability to pay the VAT is on the buyer, and the liability to remit the VAT is on the RBE-seller.

VAT-registered buyers of the RBEs may claim input VAT only after the corresponding VAT has been paid on the purchase from the RBE-seller. ■

SyCipLaw Tip No. 9

Local buyers of goods and/or services from RBEs should be aware that their purchases from the RBEs are subject to 12% VAT and that such buyers may have obligations to remit and pay to the BIR the VAT on their purchases. The RBEs should also be aware of their invoicing and VAT reporting compliance obligations under the regulations which depends on their tax incentive regime.

10. How will input VAT refund claims filed on or after 1 April 2025 be processed?

Pursuant to the law and regulations, taxpayers must submit certified true copies of invoices and other documents in support of the application as prescribed under BIR regulations. The refund application will be considered to have been filed only upon submission of such certified copies of the documents.

The BIR will undertake a risk-based approach in the verification and processing of VAT refund claims. A risk classification sorted into low-, medium-, and high-risk shall be based on the amount of the claim, tax compliance history of the taxpayer-claimant, and frequency of filing tax claims, among others. After approval or grant by the Commissioner of Internal Revenue or his duly authorized representative, medium and high-risk claims may be subject to post audit by the Commission on Audit.

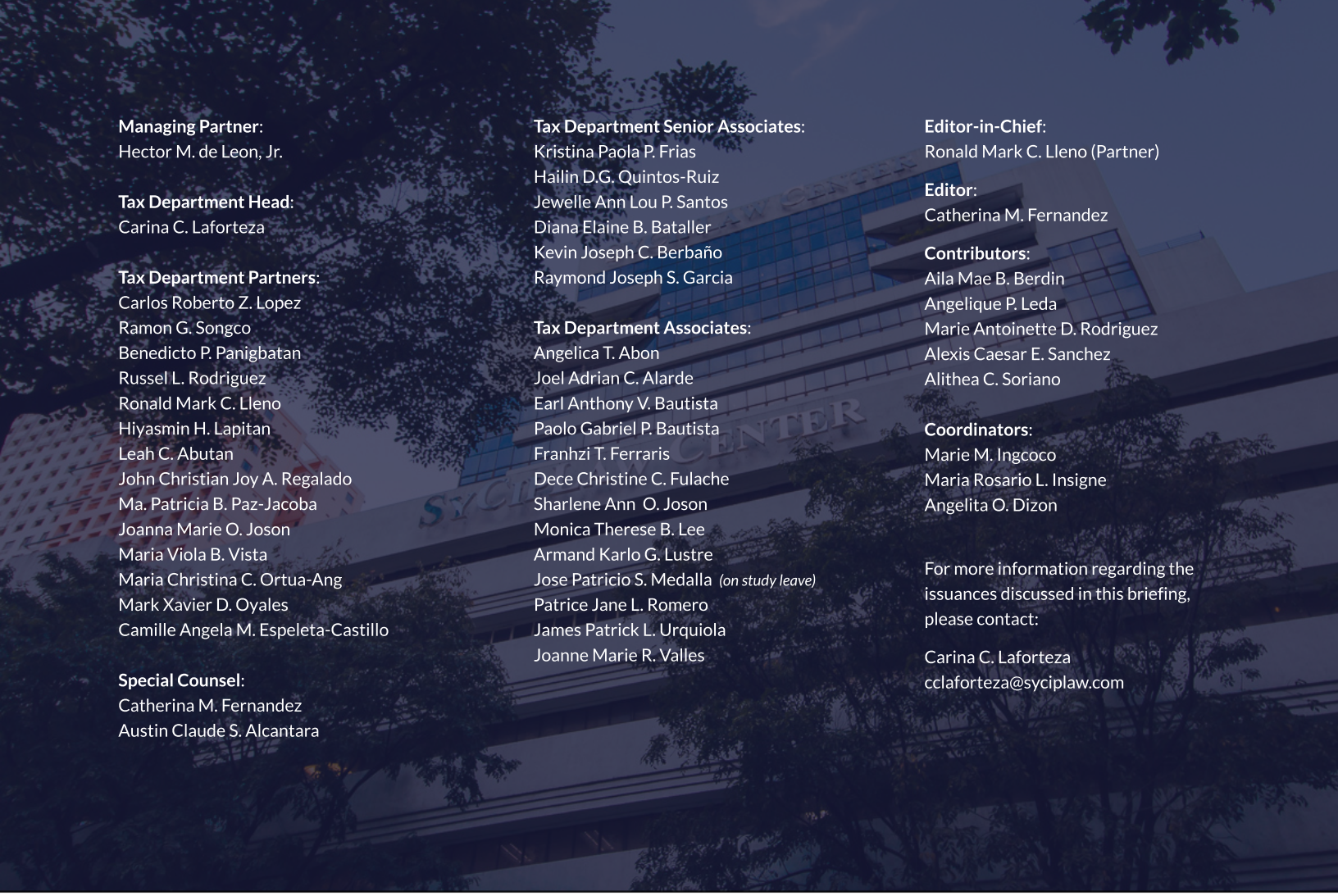
The BIR has ninety (90) days from the date of the submission of the certified true copies of the invoices and supporting documents to decide on the refund application. The 90-day period will be counted from the date of the filing of the refund application up to the release of the payment of an approved VAT refund. In case the application is denied, the BIR must expressly communicate the legal and factual basis for the denial, including the deficiencies of the VAT refund claim. The taxpayer-claimant then has 15 days from receipt of the denial to file a request a reconsideration.

Please note that even if the 90-day period to process the claim has lapsed without the refund being released to the taxpayer-claimant, the VAT refund claim may still be processed administratively. However, the BIR officer or employee who is found to have deliberately caused the delay in the processing may be subject to administrative penalties.

The Department of Finance is set to establish a VAT refund center for the electronic processing and granting of cash refunds. ■

SyCipLaw Tip No. 10

Taxpayer-claimants should remember to submit certified true copies of the invoices and supporting documents with their refund application given that (i) the application will only be considered filed upon the submission of such certified true copies; and (ii) the 90-day period to process the application will be reckoned from the filing of the claim.



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