REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

FMC SWITZERLAND II GMBH, doing business under the name FMC SWITZERLAND II GMBH, MANILA ROHQ,	**CTA EB NO. 3198** **(CTA CASE NO. 10727)**
Petitioner,	**Members:**
-versus-	**Present:** **Ringpis-Liban,** *P.J.,* **Bacorro-Villena, Modesto-San Pedro, Reyes-Fajardo, Cui-David, Ferrer-Flores,** ***and*** **Angeles,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JUN 17 2026

x--x

DECISION

RINGPIS-LIBAN, P.J.:

Before this Court is the Petition for Review filed by petitioner within the extended period on August 27, 2025[1] assailing the Decision dated April 3, 2025[2] and Resolution dated July 30, 2025,[3] promulgated by the Third Division of this Court in CTA Case No. 10727 entitled *FMC Switzerland II GMBH, doing business under the name FMC Switzerland II GMBH, Manila ROHQ vs. Commissioner of Internal Revenue.*

The dispositive portion of the Decision reads:

> "**WHEREFORE**, premises considered, the present Petition for Review is **DISMISSED** for lack of jurisdiction.

[1] Rollo, CTA EB No. 3198, pp.9-50, with Annexes.
[2] Ibid., pp. 52-67.
[3] Ibid., pp. 70-75.

SO ORDERED."

The dispositive portion of the Resolution dated July 30, 2025 reads:

"**WHEREFORE,** premises considered, petitioner's Motion for Reconsideration *[on the Decision promulgated on April 3, 2025]* is **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES

Petitioner is the regional operating headquarters in the Philippines of FMC Switzerland II GMBH, a foreign corporation duly registered and existing under the laws of Switzerland. It was issued a License to Transact Business in the Philippines by the Securities and Exchange Commission (SEC) under Company Registration No. FS201735590 on October 20, 2017. It is also registered with the Bureau of Internal Revenue (BIR), as a VAT taxpayer, under Taxpayer's Identification Number (TIN) 009-862-335-000, with address at 10/F Net Lima, The Net Metropolis, 5th Ave. cor. 26th St., Bonifacio Global City, Fort Bonifacio, Taguig City.

Respondent Commissioner of Internal Revenue (CIR) is empowered to perform the duties of his office, including acting upon protests and approval of claims for refund or tax credit as provided by law and implementing regulations.[4]

THE FACTS

The facts of the case as found by the Court in Division are as follows:[5]

"On June 30, 2021, petitioner filed before the BIR – VAT Credit Audit Division (VCAD), an administrative claim for VAT refund in the total amount of ₱10,497,680.23, representing the unutilized input taxes that are allocable and directly attributable to its VAT zero-rated transactions as declared in its Quarterly VAT Returns for the period April 1, 2019 to December 31, 2019.

A Tax Verification Notice No. TVN 201800143186 dated June 30, 2021 was issued to petitioner, authorizing Revenue Officer (RO) Jonathan G. Simon to verify petitioner's supporting documents and/or pertinent records relative to the claim for VAT

[4] Decision, pp. 1-2.
[5] Decision, pp. 53-56, citations omitted.

refund covering the taxable period April 1, 2019 to December 31, 2019.

On October 20, 2021, petitioner received a letter from the BIR signed by Ms. Maria Luisa I. Belen, Assistant Commissioner - Assessment Service, denying its administrative claim for refund in the amount of ₱10,497,680.26.

On February 2, 2022, petitioner filed the present Petition for Review.

On May 4, 2022, respondent filed his Answer to the Petition for Review.

On July 25, 2022, respondent transmitted to this Court the BIR Records of this case, consisting of 551 pages in one (1) folder.

The Pre-Trial Conference was set and held on July 28, 2022. Prior thereto, petitioner's Pre-Trial Brief was filed on June 27, 2022, while Respondent's Pre-Trial Brief was submitted on July 25, 2022.

On August 16, 2022, the parties submitted their Joint Stipulation of Facts and Issues, which was approved by the Court in its resolution dated September 7, 2022, thereby deeming the termination of the Pre-Trial. The Pre-Trial Order was then issued on October 4, 2022.

Trial then ensued, with the parties presenting and offering their respective testimonial and documentary evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Zhyra Mae I. Sabado, petitioner's Finance and Accounting Lead; and (2) Ms. Elaine E. De Guzman, the Court-commissioned Independent Certified Public Accountant.

The Report of the ICPA was submitted on October 28, 2022.

On November 25, 2022, petitioner filed its Formal Offer of Evidence, to which respondent filed his Comment (to Petitioner's Formal Offer of Evidence) on December 5, 2022. In the Resolution dated February 10, 2023, the Court admitted petitioner's offered exhibits, except the following:

1. Exhibit "P-18", for failure to present the original for comparison;

2. Exhibit "P-20", for failure of the exhibit formally offered and identified to correspond with the document actually marked;

3. Exhibits "P-43.2", "P-43.6", "P-43.11", "P-43.13" and "P-43.17", for being written in an unofficial language not accompanied with a translation in to English or Filipino, pursuant to Section 33, Rule 132 of the Rules of Court; and

4. Exhibits "P-49.2.74" to "P-49.2.75", for not being found in the records of the case.

On March 6, 2023, petitioner filed its Motion for Partial Reconsideration to the Resolution dated February 10, 2023 with Motion to Set Commissioner's Hearing. Respondent failed to file its comment thereto. In the Resolution dated May 23, 2023, the Court granted petitioner's Motion to Set Commissioner's Hearing for the purpose of comparison and marking of Exhibits "P-43.2", "P-43.6", "P-43.11", "P-43.11", "P-43.13" and "P-43.17", while holding in abeyance the resolution of the said Motion for Partial Reconsideration. However, it is noted that no additional documents were marked for the petitioner during the scheduled commissioner's hearing.

For his part, respondent offered the testimony of RO Jonathan G. Simon.

On August 17, 2023, respondent filed his Formal Offer of Evidence, to which petitioner filed its Comment/Opposition (To the Respondent's Formal Offer of Evidence) on August 22, 2023.

In the Resolution dated October 13, 2023, the Court admitted all of respondent's exhibits; and partially granted petitioner's Motion for Partial Reconsideration to the Resolution dated February 10, 2023. The Court admitted Exhibits "P-49.2.74 to "P-49.2.75", but still denied Exhibits "P-43.2", "P-43.17", for being written in an unofficial language not accompanied with a translation into English or Filipino, pursuant to Section 33, Rule 132 of the Rules of Court.

On November 14, 2023, petitioner filed its Motion to Admit Documentary Exhibits, to which respondent filed his Manifestation (in lieu of Comment) on December 11, 2023. In the Resolution dated February 15, 2024, the Court admitted Exhibits "P-43.2", "P-43.11", "P-43.13" and "P-43.17", but still denied the admission of Exhibit "P-43.6".

xxx xxx xxx

The case was submitted for decision on April 12, 2024."

On April 3, 2025, the Court in Division issued the assailed Decision.

On April 14, 2025, petitioner filed its Motion for Reconsideration *[on the Decision promulgated on April 3, 2025]*[6] seeking reconsideration of the Decision dated April 3, 2025.

On May 6, 2025, respondent filed its Motion to Admit *(Attached Comment dated May 5, 2025 Re: Petitioner's Motion for Reconsideration).*[7]

On May 16, 2025, the Court in Division issued a Minute Resolution[8] granting the Motion to Admit, and ordered the same submitted for resolution.

On April 30, 2025, the Court in Division issued the assailed Resolution.

On May 15, 2025, the Court *En Banc* received petitioner's "Motion for Extension of Time to File Petition for Review,"[9] praying for an extension of fifteen (15) days from August 16, 2025 or until September 1, 2025, within which to file the Petition for Review.

On August 27, 2025, petitioner filed the instant Petition for Review.[10]

On September 17, 2025, the Court *En Banc* issued a Minute Resolution[11] ordering respondent to file Comment on the Petition for Review, not a Motion to Dismiss, within ten (10) days from notice.

On October 3, 2025, the Court *En Banc* received respondent's "Comment (Re: Petitioner's Petition for Review dated 20 August 2025)."[12]

[6] Docket, CTA Case No. 10727, pp. 70-75.
[7] Ibid., pp. 656-667.
[8] Ibid., p. 669.
[9] CTA EB NO. 3198, pp. 1-5.
[10] Ibid., pp. 9-50, with Annexes.
[11] Ibid., p. 78.
[12] Ibid., pp. 79-88.

On October 16, 2025, the Court *En Banc* issued a Minute Resolution[13] which noted respondent's "Comment (Re: Petitioner's Petition for Review dated 20 August 2025), and ordered the case submitted for Decision.

THE ISSUE

"Whether or not the Court in Division erred in dismissing the case for lack of jurisdiction."

THE ARGUMENTS

Petitioner states that it filed its refund claim on June 30, 2021 after the TRAIN Law took effect on January 1, 2018. Thus, the relevant provisions of the TRAIN Law on VAT refund should govern in the determination of the timeliness of the judicial claim.

Petitioner claims that the BIR issued its decision on the administrative claim on October 20, 2021 or ninety-five (95) days from the filing of the VAT refund application on June 30, 2021. The said decision was received by petitioner on December 14, 2021. Petitioner has until January 13, 2022 within which to file an appeal before this Court.

Petitioner submits that Section 7(a)(2) of Republic Act (RA) No. 1125, as amended, is a general provision on modes of appeal which must give way to Section 112(c), a special law.

Hence, petitioner insists that taxpayers are allowed to wait for the decision of the BIR on its VAT refund claims, and in case of an adverse decision by the BIR, the taxpayer is accorded with the 30-day period within which to file its appeal with this Court.

Conversely, respondent states that upon the filing of the administrative claim, petitioner is given a period of 90 days within which to (1) grant to refund or issue the tax credit certificate for creditable input taxes; or (2) make a full or partial denial of the claim for a tax refund or tax credit. The failure on the part of respondent to act on the application within the ninety (90)-day period shall be deemed a denial of the protest.

Respondents asserts that judicial claim shall be filed within a period of thirty (30) days after receipt of respondent's decision or after the expiration of the ninety (90)-day period, whichever is sooner.

---

[13] Ibid., p. 78.

Thus, any claim filed less than or beyond the 90+30 days period provided by the Tax Code is outside the jurisdiction of this Court.

THE RULING OF THE COURT *EN BANC*

Timeliness of the Petition for Review

On April 8, 2025, the petitioner received the Decision of the Court in Division. On April 14, 2025, petitioner filed a Motion for Reconsideration of the said Decision. On July 30, 2025, the Court in Division issued the assailed Resolution denying petitioner's motion. Said Resolution was received by petitioner on August 1, 2025.

From receipt of the said Resolution on August 1, 2025, petitioner had until August 16, 2025 within which to file the Petition for Review before the Court *En Banc*.

On August 15, 2025, petitioner filed a "Motion for Extension of Time to File Petition for Review," praying that petitioner be given an additional period of fifteen (15) days from August 16, 2025, or until September 1, 2025 within which to file its Petition for Review. The Motion was granted in the Minute Resolution dated August 20, 2025.[14] Hence, petitioner was granted until August 31, 2025, within which to file its Petition for Review.

The "Petition for Review" was filed on August 27, 2025. Hence, this Petition for Review was timely filed.

The Court in Division correctly ruled that it has no jurisdiction to entertain petitioner's appeal.

After due consideration of the facts, issues and arguments raised by the parties, the Court *En Banc* finds no reason to reverse the assailed Decision and Resolution of the Court in Division. The Court *En Banc* notes that the arguments presented herein are a mere rehash of the arguments offered by petitioner in its Motion for Reconsideration before the Court in Division. Nonetheless, the Court *En Banc* shall pass upon petitioner's arguments.

Sections 7 and 11 of RA No. 1125,[15] as amended by RA No. 9282,[16] provide, in part, as follows, to wit:

---

[14] Rollo, CTA EB No. 3151, p. 6.
[15] AN ACT CREATING THE COURT OF TAX APPEALS.
[16] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125,

"SEC. 7. *Jurisdiction.* – **The CTA shall exercise:**

(a) **Exclusive appellate jurisdiction to review by appeal, as herein provided:**

(1) **Decisions of the Commissioner of Internal Revenue** in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) **Inaction by the Commissioner of Internal Revenue** in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;**

xxx xxx xxx

SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – **Any party adversely affected by a decision, ruling** or **inaction of the Commissioner of Internal Revenue, the Commissioner of Customs** xxx **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.**

xxx xxx xxx." *(Emphases and underscoring added)*

Section 112 of the National Internal Revenue Code (NIRC) of 1997, as last amended by Republic Act No. 10963,[17] provides, in part, as follows:

"SEC. 112. *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-

---

AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[17] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

> rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> xxx xxx xxx
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, **the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof**: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> **In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals:** *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code."

Jurisdiction over the subject matter or nature of an action is fundamental for a court to act on a given controversy, and is conferred only by law and not by the consent or waiver upon a court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties. If the court

rv

has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[18]

A review of the records of the case discloses that petitioner timely filed its administrative claim for VAT refund in the amount of ₱10,497,680.23, for the period April 1, 2019 to December 31, 2019, with the BIR's VCAD on June 30, 2021. Then, from the filing of the administrative claim on June 30, 2021, **respondent had ninety (90) days or until September 28, 2021 to act on the administrative claim.** In the interim, respondent issued Revenue Memorandum Circular (RMC) No. 101-2021 dated September 17, 2021,[19] in relation to Revenue Regulations (RR) No. 27-2020,[20] which suspended the ninety (90)-day period of processing of all VAT refund claims pending with VCAD during temporary closure until October 3, 2021. Accordingly, **the period from September 17, 2021 to October 3, 2021 shall be excluded from the counting of the ninety (90)-day period** for the processing of refund claim. The remaining days from September 17, 2021 to the original deadline of September 28, 2021 is twelve (12) days. Thus, respondent still had twelve (12) days from **October 4, 2021 or until October 15, 2021 to act on the refund claim**. However, **respondent issued the denial letter on October 20, 2021.** There is already an inaction on the part of respondent to act on the administrative claim within the ninety (90)-day period. Thus, petitioner should have filed the petition before the Court in Division within a period of thirty (30) days from October 15, 2021, or until November 15, 2021.

Meanwhile, the Supreme Court issued several administrative circulars[21] ordering the physical closure of courts and **suspending the time for filing of petitions and appeals, motion, pleadings or other court submissions in the National Capital Region (NCR) and nearby provinces due to the surge of Covid-19 cases from September 16, 2021 and shall resume seven (7) days from October 20, 2021 or until October 27, 2021.**

Based on the foregoing incidents, the thirty (30)-day reglementary period to file an appeal on respondent's inaction before the Court in Division was suspended from September 16, 2021 and resumed on October 27, 2021. Thus, **the counting of the thirty (30)-day period within which to appeal the refund claim was reckoned from October 27, 2021 or until November 26, 2021. Considering that petitioner's judicial claim[22] was filed before the Court in Division only on February 2, 2022, the same was already filed out of time.**

---

[18] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 185666, February 4, 2015.
[19] (Extension of the Deadline for the Filing of Applications and Suspension of the Ninety (90) Day Processing of Value Added Tax (VAT) Refund Claims Pursuant to Section 112 of the Tax Code of 1997, As Amended by the R.A. No. 10963 (TRAIN Law) with the VAT Credit Audit Division (VCAD)
[20] (Regulations Suspending the Filing and Ninety (90)-Day Processing of Value-Added Tax (VAT) Refund Claims Anchored Under Section 112 of the TAX Code of 1997, as amended, in Relation to Section 4(tt) of Republic Act (R.A.) No. 11494, Otherwise Known as the "Bayanihan to Recover as One Act".
[21] AC No. 71-2021 issued on September 15, 2021, AC No. 75-2021 issued on October 1, 2021, AC No. 83-2021 October 18, 2021, and AC No. 85-2021 issued on October 27, 2021.
[22] Petition for Review, Docket, CTA Case No. 10727, pp. 6-38.

The ruling of the Supreme Court in *Taihei Alltech Construction (Phil.) Inc. vs. Commissioner of Internal Revenue*[23] with regard to the mandatory and jurisdictional periods is relevant to the instant case, *viz:*

> In *Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue,* the Court ruled that a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is with the 120+30-day[24] mandatory and jurisdictional periods. Thus, strict compliance with the 120+30-day periods is necessary for such a claim to prosper.

Moreover, this Court *En Banc* agrees with the findings of the Court in Division that the TRAIN Law did not repeal the provisions of RA No. 1125 as regards the jurisdiction of the CTA over the "inaction of the CIR as being deemed a denial", thus appealable to the Court of Tax Appeals.

We quote with approval the pertinent portions of the assailed Resolution:[25]

> The amendments introduced by the TRAIN law should be read in conjunction with the provisions of RA No. 1125, as amended by RA No. 9282 specifically defining the jurisdiction of the CTA. The Supreme Court had the occasion to rule on the nature of RA No. 1125 as a special law in the case of *Philippine National Oil Company vs. The Honorable Court of Appeals,* and we quote, to wit:
>
> > **Republic Act No. 1125 is a special law dealing with a specific subject matter** – the creation of the CTA, which shall exercise exclusive appellate jurisdiction over the tax disputes and controversies enumerated therein. *(Emphasis supplied)*
>
> Being a special law, RA No. 11125 as amended by RA No. 9282, could not have been repealed by the TRAIN Law (which is a general law), unless there is an express provision to that effect. Basic in statutory construction is the rule that the enactment of a later legislation which is a general law cannot be construed to have repealed a special law unless expressly so stated. As a rule, repeal by implication is frowned upon, unless there is a clear showing that the latter statute is so irreconcilably inconsistent and repugnant to the existing law that they cannot be reconciled and made to stand

---

[23] G.R. No. 258791, December 07, 2022.
[24] Now 90+30-day.
[25] Resolution, pp. 4-5, citations omitted.

together. The provisions of Section 112 (C), as amended by the TRAIN Law, can stand together with the provisions of RA No. 1125, as amended by RA NO. 9282, and there is nothing inconsistent and repugnant in both laws. Be it noted that the TRAIN Law did not expressly repeal the provisions of RA No. 1125 as regards the jurisdiction of the CTA over the "inaction" of the CIR as being "deemed a denial", hence appealable to this Court.

The Repealing Clause of Section 86 of the TRAIN Law contains laws/transactions that were expressly repealed upon its enactment and readily reveals that Section 7(a)(2) of RA No. 1125 is not included in the list.

The jurisdiction of the CTA over inaction of the BIR in the matter of claims for refund remains amidst changes introduced by the TRAIN Law especially when it comes to judicial appeal. Significant is the provision found in Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, which specifically states that "where the NIRC provides a specific period of action, in which case the inaction shall be deemed a denial". **The TRAIN Law reduced the period of action by revenue officials on VAT refund claims from one hundred twenty (120) days to ninety (90) days, deeming it a denial if no action is done within the said period, in which case, judicial appeal is already available and necessary.** *(Emphasis supplied)*

Therefore, petitioner's failure to timely file the Petition for Review before the Court in Division within the thirty (30)-day period, that is from *October 27, 2021 or until November 26, 2021,* rendered the "deemed a denial" decision of respondent, final and unappealable. The Court in Division correctly dismissed the case for lack of jurisdiction.

In view of the foregoing, since there are no new matters or issues raised in the Petition for Review before the Court *En Banc* and there being no reversible error committed by the Court in Division, the Court *En Banc* finds no cogent reason to disturb the assailed Decision and Resolution.

ACCORDINGLY, the Petition for Review is **DENIED for lack of merit.**

SO ORDERED.

Ma. Belen M.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, I dissent)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

(I concur in the result- see Separate Opinion)
LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

FMC SWITZERLAND II GMBH, doing business under the name FMC SWITZERLAND II GMBH, MANILA ROHQ, *Petitioner,*	**CTA *EB* NO. 3198** *(CTA Case No. 10727)*
	Present:
- versus -	**RINGPIS-LIBAN,** *PJ,* **BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES, ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 17 2026 3:00

x - x

DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

With due respect, I dissent with the majority opinion that the Court in Division lacked jurisdiction over this case.

I am of the opinion that under the amendments made by *Republic Act No. 10963* ("*TRAIN*") to the *National Internal Revenue Code of 1997, as amended* ("*NIRC*"), taxpayers were *not* allowed to elevate a judicial claim for refund from the *inaction* of the Commissioner of Internal Revenue ("CIR"). My reasons for such have been elucidated in detail elsewhere.[1] Here, however, I simply observe that the present Decision is silent on the Petition's quotation of the transcripts for (1) the December 1, 2017 meeting of the Bicameral

---

[1] See, for example, *Citco International Support Services Limited – Philippines ROHQ v. Commissioner of Internal Revenue*, CTA EB No. 2900, August 7, 2025.

Conference Committee; (2) the December 5, 2017 meeting of said committee; and (3) the November 27, 2017 Second Reading for *TRAIN*.

To my mind, these clearly show that the removal of the "deemed denied" provision was part and parcel of the legislative intent behind *TRAIN*'s amendments to *Section 112(c) of the NIRC*. The legislators behind *TRAIN* explicitly identified the parts about inaction as portions of the law *to be deleted*. Put another way, the provision on inaction was *deliberately* removed by the framers of the law. To rule that taxpayers could still elevate appeals from inaction while *TRAIN* was in effect, then, is to ignore the stated intent of the legislation and their deliberate act on exclusion.

Considering that petitioner could not have raised an appeal from the CIR's inaction on its administrative claim, considering that *neither the text of TRAIN itself nor the statements of the legislators behind the law* supports treating inaction as a claim "deemed denied," I believe the Court in Division properly acquired jurisdiction over the judicial claim before it and should have ruled on the case's merits, rather than dismiss it.

All told, I vote to, at the very least, **PARTIALLY GRANT** the instant Petition and either remand it to the Court in Division or directly rule on the refund claim's merits.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

FMC SWITZERLAND II GMBH., doing business under the name FMC SWITZERLAND II GMBH, MANILA ROHQ,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* No. 3198
(CTA Case No. 10727)

Members:

RINGPIS-LIBAN, *P.J.*,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
JUN 17 2026 3:00 PM

x- -x

SEPARATE OPINION

CUI-DAVID, J.:

I concur in the denial of the present *Petition for Review* for lack of merit. I likewise agree with the *ponencia*'s view that, under the TRAIN Law, a taxpayer may file a judicial claim before the CTA based on the CIR's inaction after the lapse of the 90-day period. Despite the amendments introduced by the TRAIN Law, the CTA's appellate jurisdiction over the CIR's inaction remains valid under Section 7(a)(2),[1] in relation to Section 11[2]

[1] SEC. 7. *Jurisdiction.* - The CTA shall exercise:
a. Exclusive appellate jurisdiction to review by appeal. as herein provided:
...
2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments. refunds of internal revenue taxes. fees or other charges. penalties in relations thereto. or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue. where the National Internal Revenue Code provides a specific period of action. in which case the inaction shall be deemed a denial[.]

[2] SEC. 11. *Who May Appeal: Mode of Appeal: Effect of Appeal.* - Any party adversely affected by a decision. ruling or inaction of the Commissioner of Internal Revenue ... may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

x---x

of Republic Act (RA) No. 1125,[3] as amended by RA No. 9282.[4] These provisions expressly grant the CTA jurisdiction not only over decisions of the CIR but also over his inaction in cases where the law prescribes a specific period for action.

However, with due respect, I take a different view regarding the CTA's jurisdiction over judicial claims for VAT refund under Section 112 of the NIRC of 1997, as amended, particularly with respect to **decisions of the CIR rendered beyond the 90-day period**. In my view, the law does not require that the CIR's decision be received within the 90-day period. Thus, a judicial claim filed within thirty (30) days from receipt of the CIR's decision remains valid, even if such decision was issued after the expiration of the 90-day period.

A timeline of the relevant events is as follows:

Date	Event
June 30, 2021	Petitioner filed its administrative claim for VAT refund with the BIR VAT Credit Audit Division (VCAD).
September 16, 2021	Court Operations suspended due to COVID-19 surge.[5]
September 28, 2021	Original date of expiration of the 90-day period for the BIR to act.
October 15, 2021	Extended date of expiration of the 90-day period.[6]
October 20, 2021	Petitioner received a denial from the BIR.[7]
October 27, 2021	Court operations resumed (e.g. filing and service of pleadings and motions in courts) in the National Capital Region.[8]
December 14, 2021	Petitioner received a denial from the BIR.[9]
February 2, 2022	Petitioner filed its Petition for Review before the Court in Division.

---

[3] AN ACT CREATING THE COURT OF TAX APPEALS.

[4] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

[5] SC Administrative Circular (AC) No. 72-2021 dated September 15, 2021.

[6] On September 17, 2021, the BIR issued RMC No. 101-2021, which suspended the 90-day period of processing of all VAT refund claims pending with VCAD during temporary closure until October 3, 2021. Accordingly, the period from September 17, 2021 to October 3, 2021 is excluded from the counting of the 90-day period. The remaining days from September 17, 2021 to the original deadline of September 28, 2021 is 12 days; thus, the BIR had 12 days from October 4, 2021, or until October 15, 2021 to act on the refund claim.

[7] *En Banc* (EB) Docket, p. 53. Decision dated April 3, 2025, The Facts, par. 3.

[8] SC AC No. 85-2021 dated October 27, 2021.

[9] EB Docket, p. 17, Petition for Review, IV. Statement of Facts, par. 33.

As the records show, the *Petition for Review* was filed on February 2, 2022, beyond the 90+30-day period. The extended 90-day period for respondent to act on the refund claim expired on October 15, 2021. Petitioner neither received a decision by that date nor filed a judicial claim within the subsequent 30-day period, which ended on November 26, 2021. [10] Consequently, the Court in Division dismissed the *Petition for Review* for lack of jurisdiction.

Under the pre-TRAIN version of Section 112 (C) of the NIRC of 1997, as amended, the filing of a judicial claim for refund or tax credit of input VAT states:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* — ...
>
> . . . .
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within **one hundred twenty (120) days** from the date of submission of complete documents in support of the application filed in accordance with Subsection (A).
>
> In case of full or partial denial of the claim for tax refund or tax credit, **or the failure on the part of the Commissioner to act on the application within the period prescribed above**, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim **or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals." (Emphasis supplied)

In construing the afore-quoted provision, the Supreme Court, in *Taihei Alltech Construction (Phil.), Inc. v. Commissioner of Internal Revenue*[11] (*Taihei*), opined that a taxpayer can file an appeal in one of **two (2) ways**: (1) file the judicial claim within 30 days after the Commissioner denies the claim within the 120-day period, **or** (2) file the judicial claim within 30 days from the expiration of the 120-day period if the Commissioner does not act within the 120 days.

[10] 30 days from the resumption of court operations on October 27, 2021, as per SC AC No. 85-2021.
[11] G.R. No. 258791, December 7, 2022 [Per J. Lazaro-Javier, Second Division].

In other words, a taxpayer whose claim for VAT refund is either denied or left unresolved by the Commissioner of Internal Revenue (CIR) may pursue judicial remedies under either of the **two (2) scenarios**:

1. If the CIR issues a decision within 120 days denying the claim, the taxpayer has 30 days from receipt of the decision to file a judicial claim with the CTA; or

2. If the CIR fails to act within the 120-day period, such inaction is deemed a denial, and the taxpayer must file a judicial claim within 30 days from the expiration of the 120-day period.

In *Taihei*, taxpayers were reminded that once the 120-day period lapses without any action from the CIR, they should no longer wait for a decision. The CIR's inaction within this period is deemed a denial of the administrative claim for refund. If the taxpayer fails to file a timely appeal, this "deemed denial" becomes final and unappealable.[12] Thus, the taxpayer **must** file an appeal within 30 days from the lapse of the 120-day waiting period.[13]

In the case of *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*[14] (*Silicon*) cited in the *Taihei* case, the Supreme Court emphasized that the judicial claim for refund must be filed within thirty (30) days after receipt of the CIR's decision **or** after the expiration of the 120-day period, "**whichever is <u>sooner</u>**."[15]

After the enactment of the TRAIN Law, Section 112(C) of the NIRC was amended to read as follows:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* — ....
>
> . . . .
>
> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within **ninety (90) days**

---

[12] *Id.*

[13] *Taihei Alltech Construction (Phil.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 258791, December 7, 2022 [Per J. Lazaro-Javier, Second Division], citing *Rohm Apollo Semiconductor Phils. v. Commissioner of Internal Revenue* G.R. No. 168950, January 14, 2015 [Per C.J. Sereno, First Division].

[14] G.R. No. 182737, March 2, 2016 [Per C.J. Sereno, First Division].

[15] *Taihei Alltech Construction (Phil.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 258791, December 7, 2022 [Per J. Lazaro-Javier, Second Division], citing *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016 [Per C.J. Sereno, First Division].

> **from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.**
>
> In case of full or partial denial of the claim for tax refund, **the taxpayer affected may, within thirty (30) days from the <u>receipt of the decision</u> denying the claim, appeal the decision with the Court of Tax Appeals**: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code. (Emphasis supplied)

By way of comparison, the phraseology of Section 112(C) of the NIRC of 1997, as amended, before and after the effectivity of TRAIN Law, is presented below:

NIRC	TRAIN
In case of full or partial denial of the claim for tax refund or tax credit, or **the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer** affected **may, within thirty (30) days** from the receipt of the decision denying the claim or **after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.**	In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That **failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.**

With the enactment of the TRAIN Law, Section 112(C) was amended to shorten the CIR's period to act on VAT refund claims from 120 days to 90 days. Notably, the amended provision no longer includes specific phrases recognizing the CIR's inaction as a "deemed denial" that could be appealed within a 30-day period, such as "*or the failure on the part of the Commissioner to act on the application within the period prescribed above*" and "*or after the expiration of the one hundred twenty day-period.*" The deletion of these phrases suggests a departure from the previous "deemed denial" doctrine.

hr

Instead, the amended Section 112(C) appears to contemplate that the judicial recourse or appeal to the CTA, pursuant to the TRAIN Law, may be availed of in **only <u>one</u> scenario: within 30 days after the receipt of the CIR's decision/ruling denying the refund claim—whether the receipt was <u>before</u> or <u>after</u> the lapse of the 90-day waiting period.**

The implementing rules support this reading. Section 4.112-1(d) of Revenue Regulations (RR) No. 16-2005,[16] as amended by RR No. 26-2018,[17] explicitly provides that a taxpayer may appeal to the CTA within 30 days from receipt of the decision denying the refund claim. The regulation also **allows the BIR to continue processing claims beyond the 90-day period,** implicitly recognizing that a decision may be rendered even after the lapse of said period. The pertinent provision of Section 4.112-1(d) states:

> SEC. 4.112-1. *Claims for Refund/Credit of Input Tax.* —
>
> . . . .
>
> (d) Period within which refund/credit of input taxes shall be made
>
> . . . .
>
> The 90-day period to process and decide shall start from the filing of the claim up to the release of the payment of the VAT refund: Provided, That, the claim/application is considered to have been filed only upon submission of the official receipts or invoices and other documents in support of the application as prescribed under pertinent revenue issuances.
>
> In case of full or partial denial of the claim for tax refund, **the taxpayer affected, may, within <u>thirty (30) days from the receipt of the decision</u> denying the claim, appeal the decision with the Court of Tax Appeals (CTA)**: Provided, that failure on the part of any official, agent or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of the Tax Code, as amended. Provided, further, That, **in the event that the 90-day period has lapsed without having the refund released to the taxpayer-claimant, <u>the VAT refund claim may still</u>**

---
[16] Consolidated Value-Added Tax Regulations of 2005.
[17] Amends Certain Provisions of RR No. 13-2018 to Implement the 90-Day Processing of Claim for VAT Refund under Section 112 (C) of the Tax Code of 1997, as Amended by Republic Act (R.A.) No. 10963, Otherwise Known as the Tax Reform for Acceleration and Inclusion or TRAIN.

> **continue to be processed administratively.** Provided however, That the BIR official, agent or employee who was found to have deliberately caused the delay in the processing of the VAT refund claim may be subjected to penalties imposed under said section. (Emphasis supplied)

The Court must therefore recognize that a judicial claim filed within 30 days from receipt of a denial—**regardless of whether the decision was rendered before or after the lapse of the 90-day period**—is valid. To hold otherwise would unduly prejudice taxpayers by depriving them of one of the judicial remedies available under existing law. The failure of the BIR to act within the prescribed period should not operate to the taxpayer's detriment. It is the BIR officials responsible for the delay—not the taxpayer—who are subject to the penalties imposed by law. Taxpayers should not be penalized for relying on the provisions of the law that establish and expand the jurisdiction of the very court to which they seek recourse.

Applying the foregoing, even assuming that petitioner received the CIR's denial only on December 14, 2021, the Petition for Review filed on February 2, 2022, was nevertheless filed out of time, as the 30-day period expired on **January 13, 2022**.

In fine, under Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law, in relation to Sections 7(a)(2) and 11 of RA No. 1125, as amended by RA No. 9282, and as reiterated in the Revised Rules of the Court of Tax Appeals (RRCTA), a taxpayer adversely affected by a decision, ruling or inaction of the CIR may appeal to the CTA as follows:

1. **If the CIR denies the claim within the 90-day period**, the affected taxpayer may appeal to the CTA within 30 days from receipt of the decision denying the claim.

2. **If the CIR fails to act within the 90-day period**, the affected taxpayer may, under Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, treat the inaction as a denial and may appeal to the CTA within 30 days from the lapse of the 90-day "specific period of action."

3. **If the taxpayer chooses to wait and receives a denial after the 90-day period**, the affected taxpayer may still appeal to the CTA within 30 days from receipt of the

hr

decision, pursuant to Section 112(C) of the NIRC of 1997, as amended by the TRAIN Law.

These remedies are not inconsistent or irreconcilable. The TRAIN Law's amendment of Section 112(C) of the NIRC does not repeal Section 7(a)(2) of RA No. 1125, as amended by RA No. 9282, particularly with respect to claims for refund of input VAT attributable to zero-rated sales.

As a rule of statutory construction, courts must strive to harmonize laws so that each may be given effect. Repeals by implication are not favored, as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject, the congruent application of which the courts must generally presume.[18] In order that one law may operate to repeal another law, the two laws must actually be inconsistent. The former must be so repugnant as to be irreconcilable with the latter act. Merely because a later enactment may relate to the same subject matter as that of an earlier statute is not of itself sufficient to cause an implied repeal of the latter, since the new law may be cumulative or a continuation of the old one.[19]

All told, I concur in the result and vote to deny the *Petition for Review* for lack of merit.

LANEE S. CUI-DAVID
Associate Justice

---

[18] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, June 22, 2010 [Per J. Perez, *En Banc*], citing *Recaña, Jr. v. Court of Appeals*, G.R. No. 123850, January 5, 2001 [Per J. Quisimbing, Second Division] & *Republic v. Marcopper Mining Corporation*, G.R. No. 137174, July 10, 2000 [Per J. Gonzaga-Reyes, Third Division].

[19] *Valera v. Tuason, Jr.*, G.R. No. L-1276, April 30, 1948 [Per J. Tuason, Second Division].