



Tax Briefing: New Customs Audit Rules

February 2019

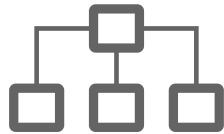
Customs Modernization and Tariff Act (CMTA)

Provisions governing the conduct of PCA



Section
1000

**Audit
of Records**



Section
1001

**Scope of
the audit**



Section
1002

**Access to
records**



Section
1003

**Record-
keeping**



Section
1004

**Power to
Obtain
Information
and Issue
Summons**



Section
1005

**Failure to pay
correct
duties and
taxes**



Section
1006

**Records to be
kept by the
BOC**

Customs Administrative Order (CAO) No. 01-2019

Post Clearance Audit and Prior Disclosure Program



Objectives of the CAO



Implements Sections 1000 to 1006 of the CMTA



Prescribes the principles, purposes and methodology of the PCA system, record keeping requirement and audit periods



Provides policies and guidance in the application and availment of the PDP

Requirement to keep records pertaining to import activity

Section 1003, CMTA



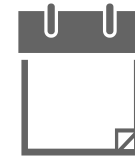
Who are required

- ▶ Importers
- ▶ Customs brokers and other parties engaged in customs clearance and processing
- ▶ Locators*



Place

Principal place of business**



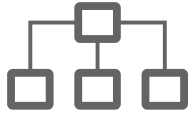
Period

Three (3) years from the date of final payment of duties and taxes or customs clearance, as the case may be

*Locators shall refer to persons authorized to bring imported goods into Free Zones, such as special economic zones and free ports

**Principal place of business refers to the headquarters that holds the senior executive of a firm and is usually the center from where other locations are controlled. It also refers to a place where a corporation's officers direct, control and coordinate the corporation's activities and where the books and records are kept.

Records required to be kept



Entity organization and structure

(e.g., Articles of Incorporation, Capital composition, General Information Sheet)



Orders and purchases

(e.g., sales and other related agreements, product description or specifications, brochures, manuals, catalogues)



Shipping, importation, exportation and transport

(e.g. Goods declarations, Import and/or export licenses or permits)



Manufacturing, stock and resale

(e.g., Inward goods register, Production record, Costing record)



Financial documents

(e.g., Cash receipts and disbursements books, Check records, Bank reconciliation records)



Other related records including information or records that are electronically recorded or stored

(e.g., Accounting records, shipping information, orders and purchases)

Locators are required to maintain evidence of entitlement to tax incentives on importation and keep records of all transactions and activities relating to the admission and withdrawal of goods from Free Zones into the customs territory

Penalties failure to keep records

The following penalties may be imposed on importers/brokers who fail to keep and maintain records of importation:

1

Suspension or **cancellation of accreditation** as Importer or Broker with the BOC

2

Surcharge of 20% on dutiable value of the goods which is subject of the importation for which no records were kept or maintained

3

Hold delivery or release of subsequent imported articles to answer for the fine and any revised assessment

4

Criminal prosecution punishable with imprisonment of not less than 3 years and 1 day but not more than 6 years and/or a **fine of PHP 1M**

5

Waiver of the right to contest the results of the audit based on records kept by the BOC

Post Clearance Audit (PCA)

Definition and purpose of PCA

What is PCA?

PCA is an audit examination, inspection, verification, and investigation of records of importation conducted by the BOC after the imported goods have been cleared from customs or after final payment of duties and taxes or customs clearance.

Purpose of PCA



Ascertain the correctness of the goods declaration



Determine the liability of the importer for duties, taxes and other charges, including any fine or penalty



Ensure compliance with the CMTA provisions

PCAG

- ▶ Post Clearance Audit Group (PCAG) is an office created under EO No. 160 (s. 2003), as amended by EO No. 46 (s. 2017)
- ▶ Mandated to conduct audit of importers, locators and all parties engaged in customs clearance processing

Post Clearance Audit

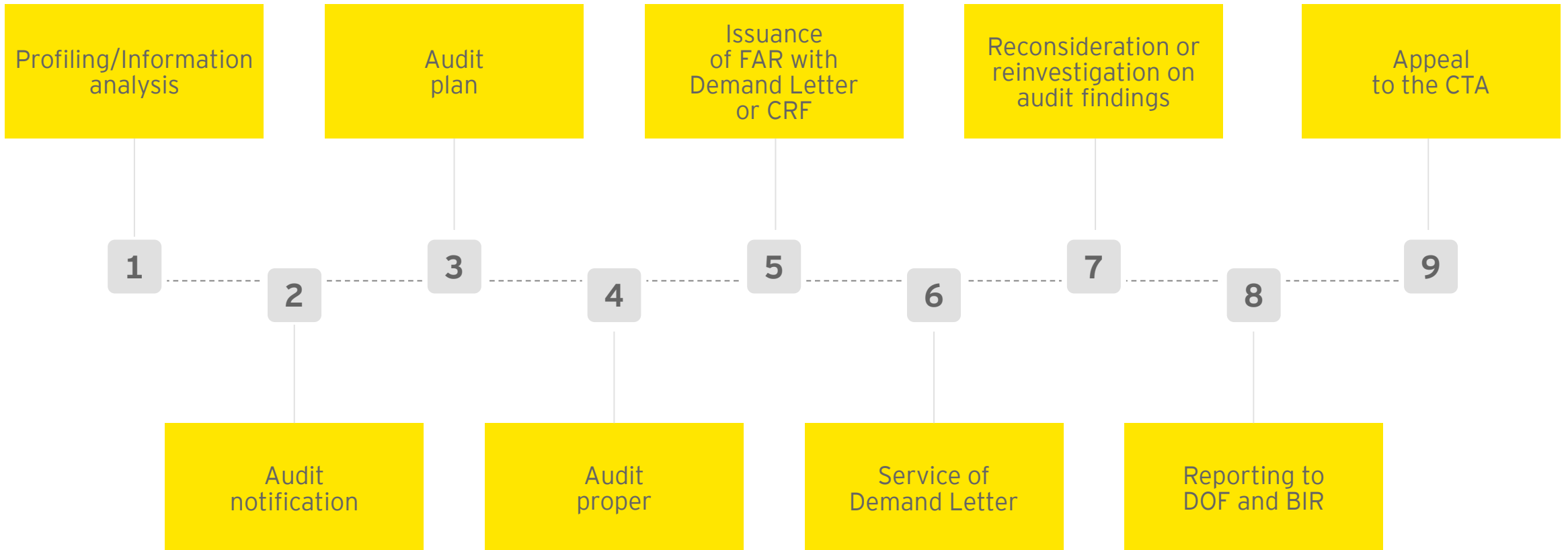
Who may be subject to PCA?

Importers which shall refer to or include the following:

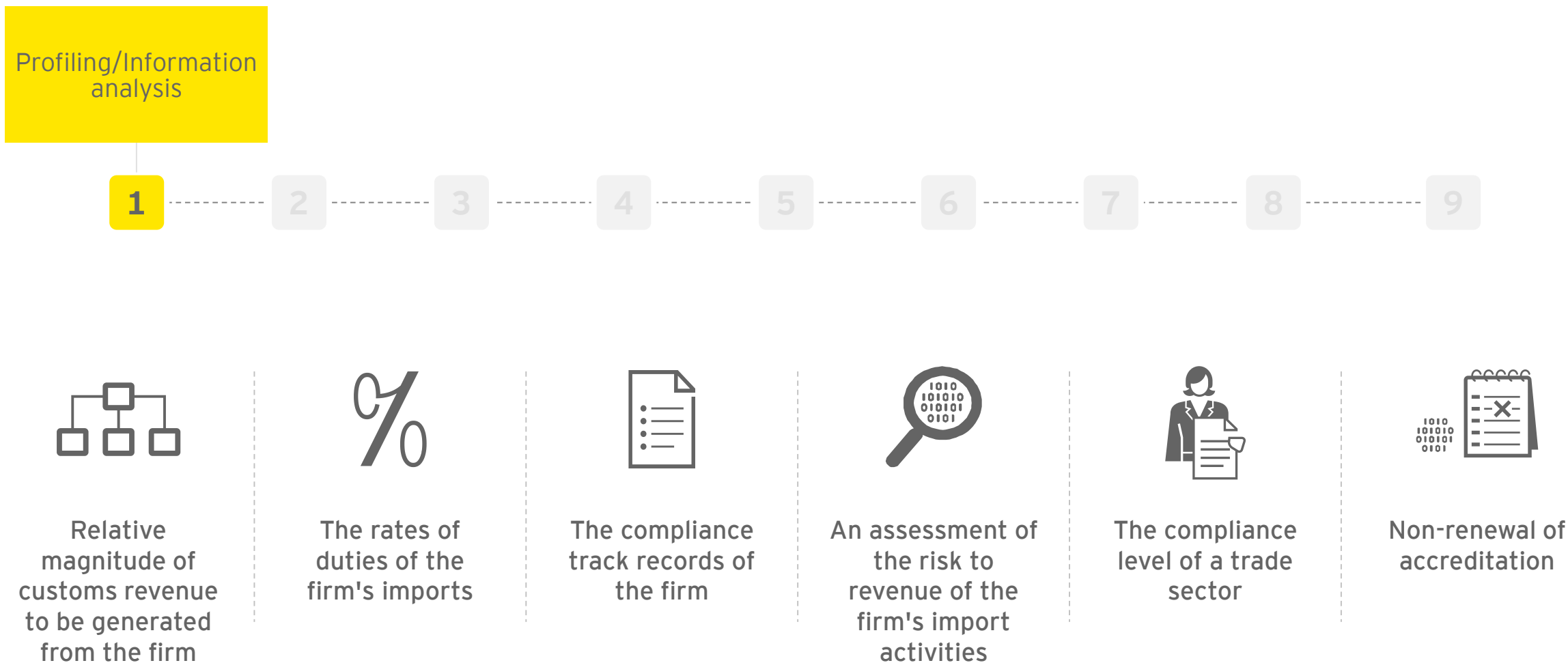
1. Importer-of-record or consignee, owner or declarant, or a party who imports goods into the Philippine territory
2. A person whose activities require the filing of a goods declaration
3. An agent of the importer
4. A person ordering imported goods from a local importer or supplier if:
 - ▶ the person ordering controls is considered as the beneficial or true owner of the imported goods; or
 - ▶ controls the material terms and conditions of the importation; or
 - ▶ furnished the importer or exporter with technical data, tools, or equipment, which will be used in the making of imported goods.

CAO No. 01-2019 covers the PCA of all records required to be kept by all importers, beneficial true owners of imported goods, customs brokers, agents and locators.

Post Clearance Audit Process



Clearance Audit Process



Post Clearance Audit Process

Audit notification

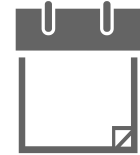


The Commissioner of Customs (CoC) shall issue an Audit Notification Letter (ANL)



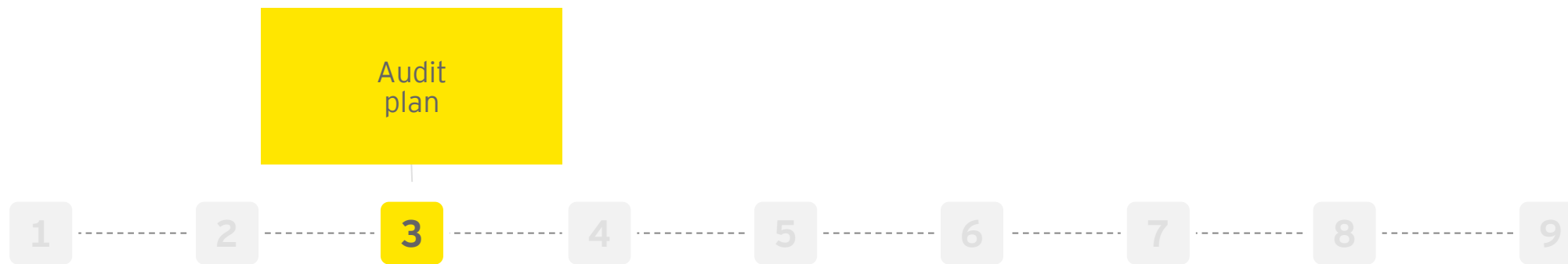
The ANL may be served by the following:

- ▶ personal service
- ▶ registered mail or
- ▶ electronic mail sent to the registered official email of the importer.



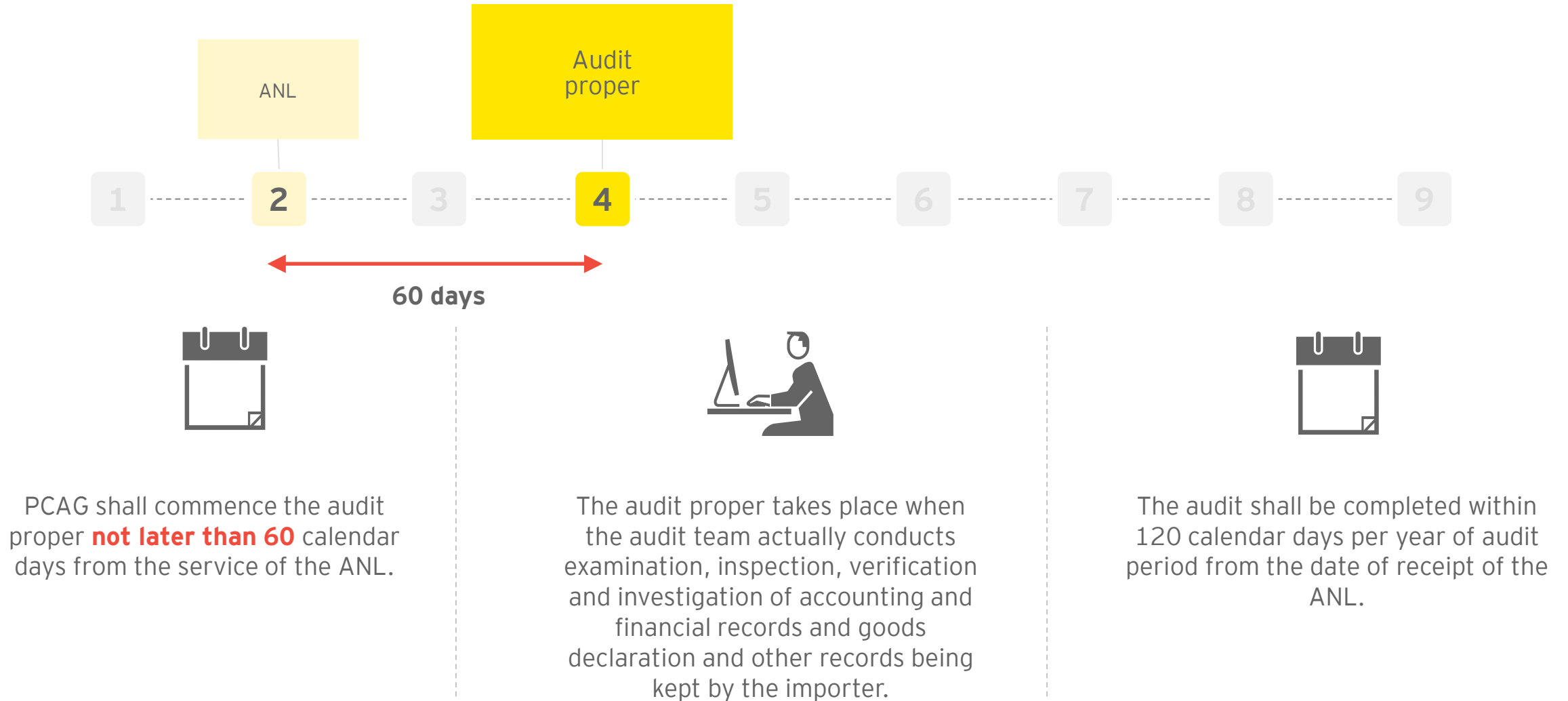
The ANL shall be valid for 30 days subject to revalidation.

Conduct of Post Clearance Audit



PCAG will prepare a plan that fits the circumstances of the importer.

Conduct of Post Clearance Audit



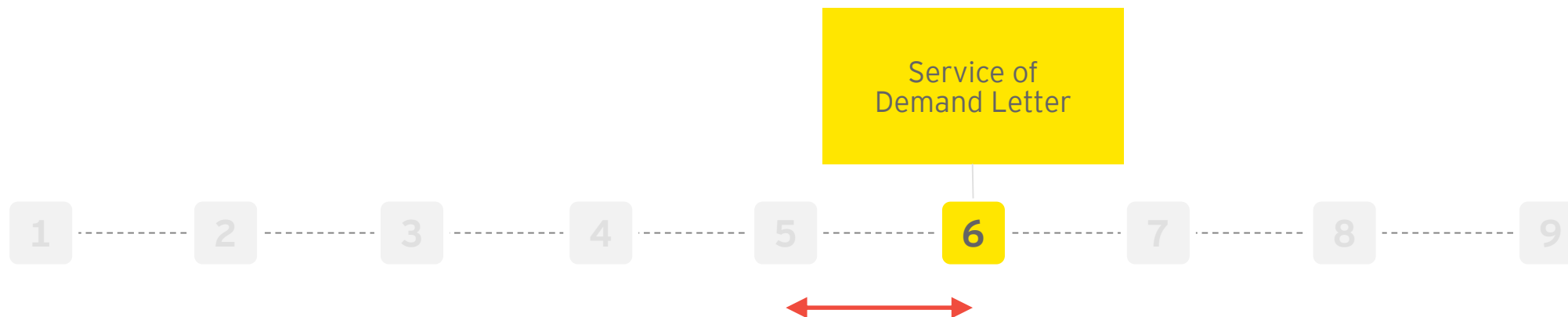
Post Clearance Audit



The audit shall be completed within **120 calendar days per year of audit** period from the date of receipt of the ANL. The audit is considered completed when the FAR or CRF has been approved by the CoC.

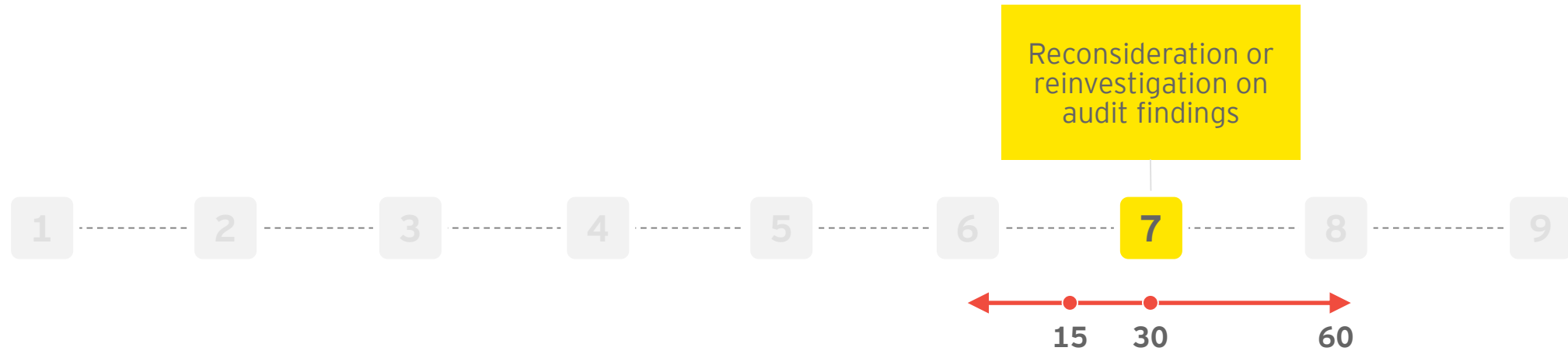
A Final Audit Report (FAR) or a Clean Report of Findings (CRF) will be drafted by the audit team, reviewed and endorsed by the Assistant Commissioner of the PCAG and submitted for approval of the Commissioner.

Post Clearance Audit



PCAG should serve the Demand Letter (DL) to the importer within 5 days from the receipt of the signed copy.

Post Clearance Audit



The importer adversely affected by the deficiency assessment issued by the BOC may file a request for reconsideration or reinvestigation to the CoC within **15 days** from the receipt of the DL.

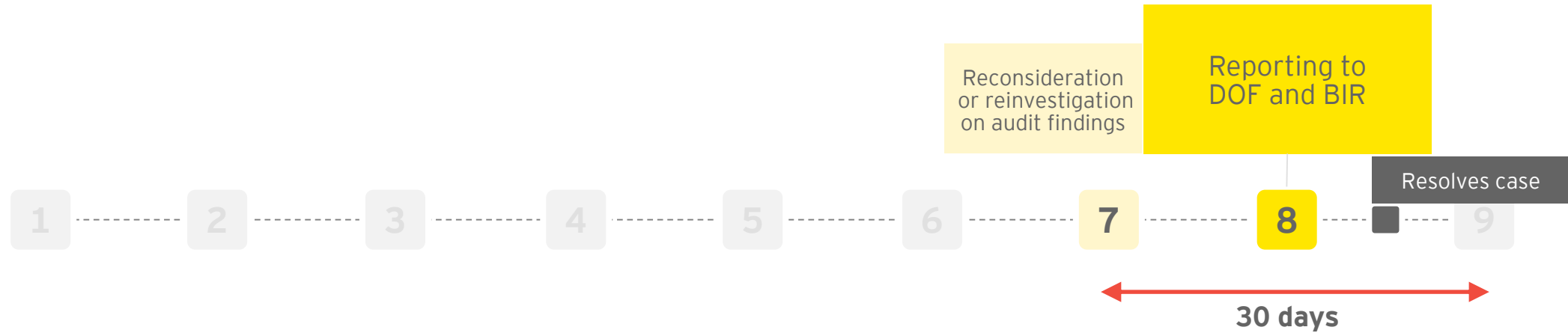


For requests for reinvestigation, the importer shall submit supporting documents within **30 days** from the date of filing thereof otherwise the request shall be denied.



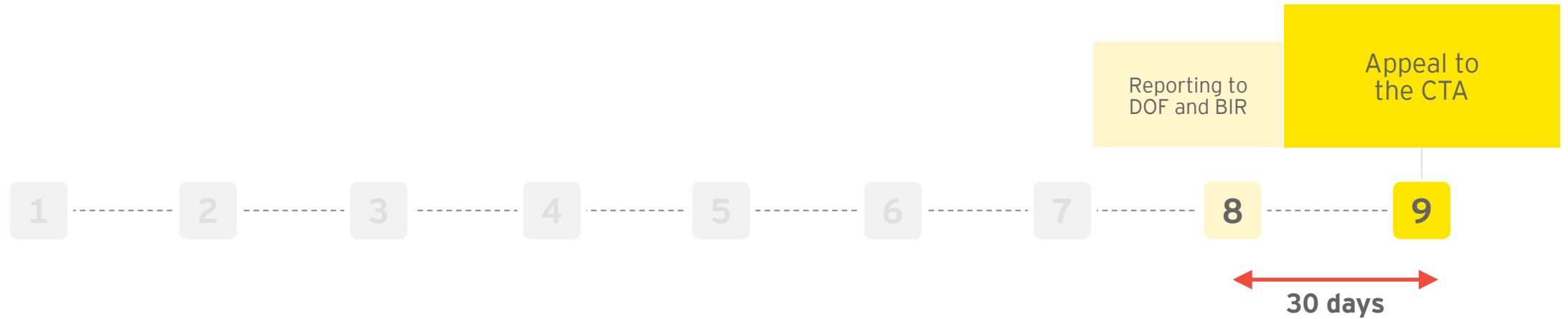
The BoC should resolve the request within **60 days** from submission of complete documents.

Post Clearance Audit



The BOC will furnish the DOF and BIR of the final audit results within 30 days from the issuance thereof including the amount paid by the importer.

Post Clearance Audit



When the request for reinvestigation or reinvestigation is denied by the CoC, the importer may appeal the denial to the CTA within 30 days from the receipt of the adverse ruling or decision.

Penalties and interests

The following penalties shall be imposed on any deficiency duties and taxes determined through a PCA.



Inadvertent error or simple negligence

25%

of the revenue loss

2 Degrees of Culpability



Negligence

125%

of the revenue loss



Fraud

600%

of the revenue loss
and/or
Imprisonment



Interest

20%

per annum

shall be imposed on deficiency duties, taxes and other charges plus fine or penalty counted from the date of final assessment

Prior Disclosure Program (PDP)

Definition

What is a PDP?

PDP is a program designed to allow importers to voluntarily correct erroneous, inaccurate, or insufficient information declared to the BoC arising from sheer mistake, inadvertence or negligence.

Importers receive certain benefits which include a waiver or reduced penalties for proactively disclosing deficiency duties and taxes.

Prior Disclosure Program

Benefits under CAO No. 01-19

Those who avail of the PDP by voluntarily disclosing and paying deficiency duties and taxes shall be subject to the following penalties instead of the general penalties under the CMTA (25% or 125%):

Importer with audit notification letter?	
Y	N
20% interest + 10% penalty	20% interest
May avail within 90 calendar days from the receipt of ANL	May avail of the PDP anytime

Importers who made disclosures on royalties or subsequent adjustment to price shall not be subject to penalties and interest provided that the applicant filed the PDP within 30 calendar days from the date of payment or accrual of the royalties of price adjustment.

Prior Disclosure Program

Availment of the PDP

How to avail of the PDP?



Submit a duly accomplished application form stating the errors in goods declaration

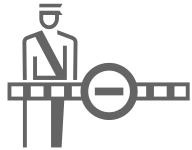


Paying the deficiency duties, taxes and penalties

In case of adjustments to the original application or when new issues are discovered that need to be disclosed, importers may amend the PDP application and pay additional duties, taxes and penalties within 30 days (which is not extendible) from the filing of the PDP.

Exclusions from the PDP

The following goods declaration shall not be qualified for PDP



Importations subject of pending cases with any other Customs office

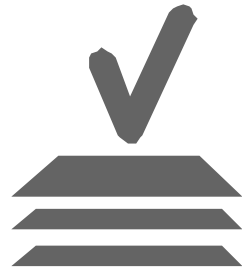


Importations covered by cases already filed and pending in courts

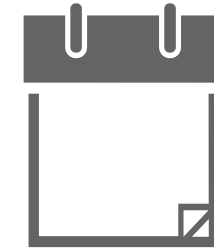


Importations involving fraud

Verification process for PDP



PCAG shall conduct a verification on the completeness and accuracy of the PDP application, amount paid and documents submitted.



The verification and approval or denial of the PDP application shall be completed within 90 days from submission of complete documents.

What should importers expect and what should they do?

Intensified audit of importers through the issuance of new ANLs

Increase in the amount of payable to the BOC due to steep penalties and interests

Surcharge may be imposed on non-compliance with customs regulations

BOC will encourage importers to avail of PDP



- ▶ Immediately conduct a Customs Health Check or a Customs Compliance Review (CCR)
- ▶ Identify risk areas and potential exposures prior to a PCA
- ▶ Check and ensure records of importation are complete
- ▶ Determine the issues and amount that may be submitted for PDP
- ▶ Be audit ready

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Summary of Qualifications

Has been with the firm for over fifteen (15) years of professional experience in providing Philippine tax and customs advisory and advocacy services to local and multinational companies, including:

- ▶ General Tax Advisory
- ▶ Cross-border Transactions
- ▶ Corporate Organization and Re-organization
- ▶ Incentives Registration
- ▶ Tax Advocacy and Tax Planning
- ▶ Indirect Tax and Global Trade

Stef is also the Market Lead for Tax and Customs Advisory and Advocacy in the Philippines. She has handled tax and corporate issues of various companies from different industry groups such as power, mining, consumer, manufacturing, real estate, IT, semiconductor, etc. and is extensively involved in handling various clients before Bureau of Customs (BOC) and Bureau of Internal Revenue (BIR).

Professional Experience

- ▶ Customs - Represents clients before the Bureau of Customs (BOC) in handling request for customs rulings on methods of valuation, and other customs issues, refund of customs duties and taxes, post entry audit, voluntary disclosure program, securing bonded warehouse licenses and accreditation of importers.
- ▶ Tax - Provides tax advisory services (i.e., rendered international and domestic tax advisory services, developed planning and implementation strategies to legally minimize tax liabilities for foreign and local investments, reviewed various types of contracts with emphasis on its tax implications, etc.) Successfully represented clients before the Bureau of Internal Revenue (BIR), Department of Finance, local government units, in handling huge assessments, request for rulings, etc. involving national and local taxes.

Educational Background

- ▶ Management Development Program, Asian Institute of Management, Makati City, 2010
- ▶ Bachelor of Laws, San Beda College of Law, 1999
- ▶ Bachelor of Arts Major in Philosophy, University of Santo Tomas, Manila, 1994

Professional Affiliation

- ▶ Integrated Bar of the Philippines