TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

TAX UPDATES FROM MAY 16, 2025 TO JUNE 15, 2025

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DISCUSSION

COURT OF TAX APPEALS DECISION

1. **Filing of Petition for Review via electronic mail; Applicability of "next working day" extension to judicial proceedings; and BIR's failure to give due consideration to the taxpayer's arguments and evidence violates the latter's due process.**

   During the BIR's audit/examination of the taxpayer's accounting records for taxable year (TY) 2016, it issued a Preliminary Assessment Notice (PAN) on October 9, 2019. The taxpayer filed its reply to the PAN on October 24, 2019. Thereafter, on January 9, 2020, the taxpayer received the Formal Letter of Demand and Final Assessment Notice (FLD/FAN). Acting upon the FLD/FAN, the taxpayer filed a protest with a request for reinvestigation on February 7, 2020.

   On June 25, 2021, the taxpayer received the BIR's Final Decision on Disputed Assessment (FDDA). The taxpayer filed a petition for review with the CTA electronically on July 26, 2021, and submitted a physical copy on July 27, 2021. During the trial, the BIR contended that the CTA had no jurisdiction over the petition for review since the assessment was final and executory due to the belated filing of the petition on July 26, 2021—the 31st day from receipt. Moreover, the BIR argued that the "next working day" extension does not apply to electronic filings.

   CTA Decision

- **Filing of Petition for Review via electronic mail - "next working day" extension applies to legal proceedings covered by the Rules of Court and Administrative Code.**

  The Court acquired jurisdiction over the case. Unlike the BIR's arguments, the "next working day" extension applies to electronic filings of initiatory pleadings. In CTA *En Banc* Resolution No. 04-2021, in relation to Supreme Court Administrative Circular No. 45-2020, the CTA is authorized to receive petitions and pleadings electronically. Considering that the FDDA on June 25, 2021, the taxpayer had until July 26, 2021 (the following workday) to file a Petition for Review. Here, the Petition for Review was filed on July 26, 2021, via electronic mail and was physically filed on July 27, 2021. Hence, the Petition for Review was timely filed; therefore, the CTA has jurisdiction over the present case.

- **BIR's failure to give due consideration to the taxpayer's arguments and evidence violates the latter's due process**

  The BIR violated the taxpayer's right to due process when it issued the deficiency tax assessments without considering and addressing its arguments in the Reply to PAN and Protest with Request for Reinvestigation.

  Here, the taxpayer's Reply to PAN stated its factual and legal arguments against the proposed assessments. However, the FLD/FAN failed to provide any explanation as to why the BIR did not consider the taxpayer's explanation and evidence stated in the Reply to PAN. By doing so, the BIR violated the taxpayer's right to be heard since it can ignore the evidence presented without reason.

  (My Solid Technologies and Devices Corporation v. Commissioner of Internal Revenue, CTA Case No. 10598, May 15, 2025)

2. **In local business tax (LBT) cases, a payment under protest is not a jurisdictional requirement to file a judicial protest; A taxpayer's due process rights are violated when the assessment is issued without the factual and legal basis thereof; and the taxpayer must present official receipts to prove its payment of LBT.**

   The Regional Trial Court (RTC) of Makati dismissed the taxpayer's judicial protest. In the ruling, RTC Makati explained that the assessment enjoys a presumption of correctness, which the taxpayer failed to overcome. RTC Makati noted that the taxpayer failed to show the official receipts to show payment of local taxes for the years 2001, 2002, and 2003.

   On appeal, the taxpayer alleged that: (a) it has paid LBT for the years 2001, 2002, and 2003, (b) it is not required to retain official receipts, (c) assessment is void for violating its due process, and (d) payment under protest is not required before filing a judicial protest contrary to the provisions of the Revised Makati Revenue Code (RMRC).

   CTA Decision

- **Payment under protest is not required for judicial protests of LBT assessments**

  Payment of the alleged deficiency LBT is not required to file a judicial protest questioning the validity of the LBT assessment. In *City of Manila, et. al v. Cosmos Bottling Corporation* (G.R. No. 196681, June 27, 2018), the Supreme Court ruled that Section 195 of the Local Government Code (LGC) does not require payment under protest to question a local tax assessment.

  Furthermore, the Court ruled that Section 7B.14(c) of the RMRC is void for being inconsistent with Section 195, LGC.

- **The taxpayer's due process is violated when the assessment is issued without a factual and legal basis.**

  The City of Makati's failure to indicate the factual and statutory basis for the assessment in the Notice of Assessment (NOA) and worksheet renders the Local Business Tax (LBT)

assessment void. The Court ruled that the NOA, order of payment, and demand letter issued by the City of Makati only state the amount of the alleged deficiency without providing any statutory basis for the assessment. Without a clear factual and legal basis, the taxpayer is deprived of the opportunity to intelligently appeal the assessment. Therefore, the assessment is void.

- **The taxpayer must present official receipts to prove their payment of LBT.**

  Despite the taxpayer's claims that it paid LBT for the years 2001, 2002, and 2003, the Court ruled that the taxpayer failed to present sufficient evidence to prove such payment. Although the taxpayer argued that it was not required to retain official receipts as proof, the Court held that payment must be substantiated by the submission of official receipts.

  (Takenaka Corporation – Philippine Branch v. City of Makati and Hon. Jesusa E. Cuneta, in her official capacity as the City Treasurer of Makati, CTA AC No. 307, June 3, 2025)

3. Applicability of the extraordinary 10-year prescriptive period.

On April 11, 2014, the taxpayer received the BIR's FLD/FAN assessing the taxpayer the total amount of Php285,927,070.68, inclusive of interest and penalties for fiscal year (FY) 2007. In the Petition for Review before the Court in Division, the taxpayer argued that the BIR's right to issue the assessment has prescribed. Section 222, Tax Code, explicitly states that the BIR has 3 years from the last day prescribed by law to file a return or the date of actual filing to assess a taxpayer for internal revenue taxes. In contrast, the BIR argued that the 10-year extraordinary prescriptive period applies due to a substantial under-declaration of income premised on the Indemnity Agreement between the taxpayer and Yamaha Motors Company, Inc.

The Court in Division ruled in favor of the taxpayer and declared the BIR's period to assess for FY 2007 has prescribed. In the Decision, the Court in Division stated that the BIR did not formally offer the Indemnity Agreement as evidence. Therefore, it failed to prove that there is a substantial under-declaration of income that warrants the application of the 10-year prescriptive period.

The BIR filed an appeal with the Court *En Banc* contesting the Court in Division's Decision.

CTA *En Banc* Decision

The Court *En Banc* affirmed the Court in Division's Decision and ruled that the 10-year prescriptive period does not apply. The extraordinary 10-year prescriptive period applies only in cases where the taxpayer filed: (a) a false return; (b) a fraudulent return; or (c) failed to file a return.

In this case, the BIR failed to prove that the taxpayer's tax returns were false due to a substantial understatement of its income. The BIR based its argument that the tax returns were false on the alleged Indemnity Agreement between the taxpayer and Yamaha Motors Company, Inc. The Court *En Banc* affirmed the Court in Division's ruling, stating that the

Indemnity Agreement was not formally offered as evidence; hence, it was appropriately disregarded in deciding the case.

(Commissioner of Internal Revenue v. Norkis Trading Company, Inc., CTA EB No. 1766 (CTA Case No. 8862), June 13, 2025)

4. Services must be performed in the Philippines to qualify for VAT zero-rating

The taxpayer was assessed by the BIR for deficiency VAT and income tax for taxable year 2015. The assessment stemmed from, among others, the taxpayer's declaration of zero-rated sales to foreign clients, particularly Innodata, Inc., which the BIR found to be unsupported. The BIR then subjected the amount of ₱240,514,276.35 in zero-rated sales to the regular 12% VAT.

The taxpayer protested the assessments, arguing that the sales qualified for VAT zero-rating under Section 108(B)(2) of the NIRC, as the services were allegedly performed in the Philippines for a nonresident foreign corporation doing business outside the country. The Final Decision on Disputed Assessment ("FDDA") was issued on June 21, 2021. The Court of Tax Appeals ("CTA"), in its January 15, 2025 Decision ("Decision"), partially granted the petition. The income tax deficiency assessment was canceled but upheld the VAT assessment partially.

The taxpayer filed a Motion for Partial Reconsideration, claiming the Decision should be overturned because: 1) the deficiency tax assessments assessments were void for violation of due process; 2) the right to collect the deficiency taxes had already prescribed; 3) the CTA erred in finding that the services were not performed in the Philippines; and 4) even if not, the services should not be subject to VAT under the destination principle and cross-border doctrine. The Commissioner of Internal Revenue ("CIR") opposed, maintaining the validity of the VAT assessment and the timeliness of collection.

CTA Decision

The CTA reiterated that for sales of services to qualify for zero-rating under Section 108(B)(2) of the NIRC, certain elements must be met. It noted that the third element, that the services are performed in the Philippines by a VAT-registered person, was essential, but was not proven by the taxpayer in the Decision it was assailing.

The taxpayer failed to prove that the services rendered to Innodata, Inc. were performed in the Philippines. The Service Agreement between the parties did not specify the place of performance, nor did petitioner present clear and convincing evidence that the services were actually carried out locally. The Court rejected petitioner's reliance on its principal place of business, issuance of VAT zero-rated invoices and receipts in the Philippines, and withholding tax on employees, as these did not conclusively establish the situs of service performance.

The Court emphasized that mere allegations cannot substitute for proof. Since the burden rests on the taxpayer to substantiate entitlement to zero-rating, and tax assessments enjoy the presumption of correctness, petitioner's failure to prove local performance meant that the claimed zero-rated sales were unsupported. Consequently, the ₱240,514,276.35 in sales was correctly subjected to 12% VAT, and the deficiency VAT assessment was sustained.

(EBAR Abstracting Company Inc. v. Commissioner of Internal Revenue (Resolution), CTA Case No. 10681, May 28, 2025)

5. **Non-receipt of Preliminary Assessment Notice**

The taxpayer was assessed by the BIR for deficiency taxes for taxable year 2017 in the aggregate amount of ₱7,399,669.66, inclusive of interest. The FDDA was issued on November 12, 2021. The taxpayer contested the assessments before the CTA, arguing that the BIR failed to comply with due process requirements because the latter failed to prove that the PAN was served on and received by the taxpayer prior to the issuance of the Formal Letter of Demand and Assessment Notices.

On November 19, 2024, the CTA First Division rendered a decision granting the taxpayer's petition, cancelling the deficiency tax assessments, and enjoining the BIR from collecting the assessed amount. The Court held that the BIR failed to present sufficient proof that the PAN was properly served on and actually received by the taxpayer or its authorized representative. This violation of Section 228 of the NIRC and Revenue Regulations (RR) No. 12-99 rendered the assessment void.

The CIR filed a Motion for Reconsideration on December 10, 2024, insisting that the PAN was mailed to the taxpayer on December 16, 2020, as evidenced by a registry receipt. The CIR argued that this was sufficient to show that the taxpayer was notified and afforded the opportunity to respond to the assessment.

CTA Decision

The CTA denied the CIR's motion, finding that the arguments were merely a rehash of those already considered and resolved in its earlier decision. The Court quoted jurisprudence that the mere presentation of a registry receipt does not prove actual receipt of the PAN. Competent proof such as a signed registry return card or an official certification from the Bureau of Posts is required.

The CIR presented did not present such proof. The Affidavit of Service and internal service report were insufficient, particularly as the report did not even indicate the taxpayer's complete registered address. Without proof of valid service and actual receipt of the PAN, the issuance of the FAN was premature and violated the taxpayer's right to due process. The CTA stressed that the PAN requirement under Section 228 of the NIRC and RR No. 12-99 is mandatory, serving to give the taxpayer a fair opportunity to respond before a formal assessment is issued.

Accordingly, the deficiency tax assessments remained void and without legal effect. The Motion for Reconsideration was denied for lack of merit.

(Broadcast Enterprises & Affiliated Media (BEAM), Inc. v. Commissioner of Internal Revenue, CTA Case No. 10712, May 27, 2025)

6. **Failure to Provide Offsetting Arrangement as Proof of VAT Zero-rated Transactions**

A Regional Operating Headquarters (ROHQ) of a Swiss company filed an administrative claim for VAT refund with the BIR VAT Credit Audit Division (VCAD) to recoup its excess and unutilized input VAT arising from zero-rated sales during taxable year 2018. The BIR denied the claim for VAT refund and the taxpayer filed a Petition for Review with the CTA.

The taxpayer argues that its intercompany offsetting arrangement with its non-resident foreign corporation (NRFC) affiliates is equivalent to an "acceptable foreign currency payment" for purposes of VAT zero-rating. The taxpayer claims that, through the Short-Term Credit Facility Agreement (STCFA) with its head office, it receives a foreign currency "loan" which essentially constitutes a monthly funding from the head office for the ROHQ. The "loan" is credited to a group current account. And when the ROHQ renders services to its affiliates, the same group current account is debited or offset against the same account on a VAT zero-rated basis.

CTA Decision

The Court ruled that the taxpayer failed to prove that it was engaged in zero-rated or effectively zero-rated sales. The Court explained that the STCFA is an agreement between the ROHQ and its head office and does not extend to the ROHQ and its affiliates, which are distinct legal entities from the head office. The provisions of the STCFA does not expressly authorize offsetting arrangements between affiliates. The Court noted that the ROHQ was not able to submit as evidence separate agreements between the ROHQ and its affiliates to establish the right of set off between these entities. Moreover, the Court ruled that the taxpayer also failed to prove the actual details of the offsetting transactions between the ROHQ and its affiliates, as the only document submitted was a "Schedule of Offsetting of Receivables" that was in a foreign language not understood by the Court.

(Avaloq Philippines Operating Headquarters v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2897 (C.T.A. Case No. 10397), 3 June 2025)

7. VAT Refund Applications by Direct Exporters Must be Filed with the Correct Office (i.e., the VAT Credit Audit Division)

A domestic corporation, engaged in the export of services, filed a claim for refund of unutilized and unapplied VAT attributable to zero-rated sales for the taxable year 2018. The application for VAT refund claim was filed with Revenue District Office (RDO) No. 49 – North Makati. The BIR issued a letter to the taxpayer denying the administrative claim for refund citing, among others, that the administrative claim was filed with the wrong office of the BIR.

CTA Decision

The Court found that the administrative claim was filed with the wrong office. Under Section 4.112-1 (c) of BIR Revenue Regulations No. 13-2018, as a general rule, claims for VAT refund or credit shall be filed with the Large Taxpayers Service or the RDO of the taxpayer. But when the taxpayer is a direct exporter of goods or services, the claim shall be exclusively filed with the VCAD. Since the taxpayer is a direct exporter of services and its claim for VAT refund was not filed with the VCAD; it was as if no proper administrative claim was filed. The Court

stressed that the strict application of rules in relation to refund must be enforced as tax refunds are in the nature of tax exemptions which are construed strictly against the taxpayer.

(*BW Shipping Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 10317 (Resolution), 10 June 2025*)

8. **Constructive service of a LOA, without the required presence of two witnesses and a barangay official, does not constitute proper service, and thus renders the LOA void.**

The BIR served upon petitioner the electronic Letter of Authority (LOA) dated 29 August 2018 to examine petitioner's books of accounts and other accounting records on all internal revenue taxes for 1 January 2017 to 31 December 2017.

Said LOA was served in this manner: the CIR, through the assigned revenue officer (RO), resorted to substituted service of the LOA to a traffic enforcer of the barangay which the petitioner resides in, witnessed by a certain Judy Javier Columna. Said substituted service was resorted to when the revenue officer was refused by the security guard on duty or any of the petitioner's employees to receive the LOA.

Based on this LOA, the petitioner was assessed with deficiency taxes, and was eventually issued a Formal Letter of Demand and several warrants of garnishment. A Petition for Review was subsequently filed with the CTA to question the validity of said assessment.

CTA decision

The Tax Court agreed with the petitioner, in which it rendered the LOA void due to improper substituted services. According to Revenue Memorandum Order (RMO) No. 19-2015, in case personal service is not practicable, the notice shall be served by substituted service or by mail. Substituted service can be resorted to if, among other circumstances, no person is found in the party's registered or known address. In which case, the revenue officer shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The notice shall then be given to said barangay official. Such facts shall be contained in the bottom portion of the notice, as well as the names, official position and signature of the witnesses.

In this case, the requisites for a proper constructive service of the LOA were not met, as follows:

- The service was made to a traffic enforcer of the barangay, and not a barangay official;
- There was only one disinterested witness present, contrary to the two-witness requirement under the RMO; and
- The facts relating to the constructive notice was not properly described. It only stated that the LOA was "constructively served" by the RO, without indicating the required details such as the date of service, fact of refusal, and names, official position and signature of the witnesses.

The CTA ruled in favor of the Petitioner, stating that since the LOA was not properly constructively served, said LOA was considered void.

(Glovax Biotech Corp. v. Commissioner of Internal Revenue, CTA No. 10602, May 22, 2025)

9. **The assessment conducted by a revenue officer not properly authorized in the LOA is void.**

Respondent corporation filed an Application for Registration Information Update (BIR Form No. 1905) with the BIR, stating that it will cease its business operations in 2015. Petitioner CIR then issued an LOA to the respondent in connection with the mandatory audit on cessation of business. In 2016, a different RO issued a Memorandum of Assignment (MOA) to continue the audit/investigation, replacing the previously assigned ROs. An FLD/FAN was subsequently served through registered mail to the corporation's address, and after a year, a Warrant of Distraint and/or Levy (WDL) was issued for the collection of deficiency VAT.

Respondent subsequently filed a Petition for Review before the CTA division for the cancellation and withdrawal of the WDL due to non-compliance with due process, prescription of the right to assess, and that the assessment is without factual and legal bases. The Tax Court ruled in favor of the corporation, in which the Petitioner appealed, reasoning that a LOA was properly issued to the respondent.

CTA decision

While the BIR is correct as to the existence of an LOA, such letter did not, however, authorize the revenue officer who actually conducted the audit. The BIR cannot conveniently rely on an existing LOA which apparently authorized a different revenue officer or group supervisor. Moreover, the issuance of a subsequent MOA does not, in any way, cure the lack of a proper authority.

It bears stressing that the lack of a proper LOA is not a "mere error" that excuses revenue officers for their non-compliance with the requirements of the law. The absence of an LOA affects the rights of the taxpayer and the legality of the entire tax assessment process. It is not a mere technicality that can be set aside and ignored. For the reasons presented above, the Court finds no error in the CTA Divison's act of cancelling and setting aside the WDL and the assessments on which it is based, for being null and void. Hence, the petition is denied.

(Commissioner of Internal Revenue v. Sellery Phils. Enterprises, Inc, CTA EB No. 2837, May 20, 2025)

BIR ISSUANCES

1. **REVENUE MEMORANDUM CIRCULAR NO. 52-2025 (May 30, 2025) – Circularizing the availability of BIR Form No. 2550-DS [Value-Added Tax (VAT) Return for Nonresident Digital Service Providers] January 2025**

The BIR issued the new BIR Form No. 2550-DS [Value-Added Tax (VAT) Return for Nonresident Digital Service Providers] in relation to Republic Act (RA) No. 12023 and RR No. 3-2025.

2. **REVENUE MEMORANDUM CIRCULAR NO. 53-2025 (June 4, 2025) – Circularizing the implementing rules and regulations of Republic Act No. 12079, entitled "An Act Creating a VAT Refund Mechanism for Non-Resident Tourists, Adding a New Section 112-A to the National Internal Revenue Code of 1997, as Amended, for the Purpose"**

   The BIR issued the Implementing Rules and Regulations (IRR) of RA No. 12079, entitled "AN ACT CREATING A VAT REFUND MECHANISM FOR NON-RESIDENT TOURISTS, ADDING A NEW SECTION 112-A TO THE NATIONAL INTERNAL REVNUE CODE OF 1997, AS AMENDED, FOR THE PURPOSE."

3. **REVENUE MEMORANDUM NO. 58-2025 (June 11, 2025) – Further extending the deadline for registration of NRDSPs**

   The BIR extended the deadline for online or electronic registration of all nonresident digital service providers (NDRSPs) to July 1, 2025. This is due to the unavailability of the VAT on Digital Services portal and the Online Registration and Update System.

   Existing NRDSPs that are already registered with the BIR but are not yet classified under the NRDSP taxpayer type and/or do not have VAT in their registered tax or form type are advised to update their registration information accordingly.

   Failure to register for VAT does not exempt NRDSPs from their obligation to file the required tax return and pay the corresponding tax due, and buyers or customers engaged in business from filing the appropriate remittance return and to withhold and to remit the VAT due on their purchase of digital services, within the period prescribed under the NIRC and in accordance with the relevant rules and regulations issued by the BIR.

4. **REVENUE MEMORANDUM CIRCULAR NO. 60-2025 (June 11, 2025) – Circularizing RA No. 12214, otherwise known as the Capital Markets Efficiency Promotion Act, and the Veto Message of President Ferdinand R. Marcos Jr. thereto**

   The BIR circularized the copies of RA No. 12214, otherwise known as the Capital Markets Efficiency Promotion Act or CMEPA, and the veto message of President Ferdinand R. Marcos Jr., which were both signed on May 29, 2025. RA No. 12214 took effect on July 1, 2025.

5. **REVENUE MEMORANDUM ORDER NO. 26-2025 (May 20, 2025) – Modification of Alphanumeric Tax Code (ATC) of Selected Revenue Source under Republic Act (RA) No. 12066, otherwise known as Corporate Recovery and Tax Incentives for Enterprises Maximize Opportunities for Reinvigorating the Economy (CREATE MORE) Act**

The following ATCs are modified to facilitate proper identification and monitoring of payment for creditable withholding tax:

EXISTING (per ATC Handbook)			LEGAL BASIS	BIR FORM NO.	MODIFIED/NEW
ATC	Description	Tax Rate			Description
	On one-half (1/2) of the gross remittances by e-marketplace operators to the sellers/merchants for the goods or services sold/paid through their platform/facility	½%	R.A. No. 12066 / RR No. 5-2025	1601-EQ/2307	On the gross remittances by e-marketplace operators to the sellers/merchants for the goods or services sold/paid through their platform/facility
WI820	Individual				Individual
WC820	Corporate				Corporate
	On one-half (1/2) of the gross remittances by digital financial services to the sellers/merchants for the goods or services sold/paid through their platform/facility	½%	R.A. No. 12066 / RR No. 5-2025	1601-EQ/2307	On the gross remittances by digital financial services to the sellers/merchants for the goods or services sold/paid through their platform/facility
WI830	Individual				Individual
WC830	Corporate				Corporate

6. REVENUE MEMORANDUM ORDER NO. 27-2025 (May 20, 2025) – Creation of ATC for VAT on Local Sales of Registered Business Enterprises (RBEs)

The ATC WV110 was created to facilitate proper identification and monitoring of payment for VAT on local sales of RBEs.