



# TMAP TAX UPDATES

MAY 16, 2019 TO JUNE 15, 2019

Prepared by:



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## Contents

BIR Rulings and Issuances	2-11
Court of Tax Appeals Decisions	11-13

**TMAP Tax Updates for 16 May – 15 June 2019**  
Prepared by Navarro Amper & Co. (Deloitte Philippines)

**BIR Issuances**

**IRR of Estate Tax Amnesty**

The estate tax amnesty shall cover estate of decedents who died on or before 31 December 2017, whose estate taxes have remained unpaid or have accrued as of 31 December 2017.

An estate tax amnesty rate of 6% shall be imposed on each decedent's total net taxable estate at the time of death without penalties at every stage of transfer of property in cognizance with the rules of succession under the Civil Code of the Philippines on the transmission of properties, interests, rights and obligations of the decedent, with the minimum estate amnesty tax for the transfer of the estate of each decedent at P5,000.00. The provisions of the National Internal Revenue Code of 1997, as amended (Tax Code), or the applicable estate/inheritance tax laws prevailing at the time of death of the decedent with respect to valuation, manner of computation, and other related matters shall apply suppletorily.

**Inclusion of gross estate**

Residents and citizens shall include all properties, real and personal, tangible and intangible, wherever situated in the composition of gross estate. Nonresident aliens shall only include real and personal properties situated in the Philippines, valued as follows:

1. Generally, the properties comprising the gross estate of the decedent shall be valued based on the fair market value as of the time of death of the decedent.
2. If the property is a real property, the fair market value shall be the higher value between the zonal value as determined by the Commissioner of Internal Revenue (CIR) and the fair market value as shown in the schedule of values fixed by the provincial and city assessors.
3. In the case of shares of stock, the fair market value shall be:
  - a. Listed and traded in the stock exchange – The price at the time of death or the arithmetic mean between the highest and lowest quotation at a date nearest the date of death, if none is available on the date of death itself.
  - b. Non-listed shares – The book value for common shares and par value for preferred shares as shown in the audited financial statement (AFS) of the issuing corporation nearest to the date of death of the decedent. The valuation of these shares shall be exempt from the provisions of Revenue Regulations (RR) No. 6-2013, as amended.
4. Proprietary shares in any association, recreation, or amusement club (such as golf, polo, or similar clubs) shall be valued using the bid price on the date of death or nearest to the date of death, if none is available on the date of death itself, as published in the newspaper of general circulation.

5. Cash in bank in local and foreign currency shall be based on the peso value of the balance at the date of death.

The gross estate shall be reduced by deductions allowed by the estate tax law applicable at the time of the decedent's death in order to arrive at the net estate, which shall be the basis for the imposition of the 6% estate tax amnesty rate.

### **Manner of availment**

The taxpayer shall submit the following:

1. The Estate Tax Amnesty Return (ETAR) (BIR Form No. 2118-EA) shall be filed by the executor or administrator, legal heirs, transferees, or beneficiaries within two years from the effectivity of these regulations with the Revenue District Office (RDO) having jurisdiction over the last residence of the decedent.

In case of a nonresident decedent, with executor or administrator in the Philippines, the return shall be filed with the RDO where such executor/administrator is registered or if not yet registered, at the executor/administrator's legal residence.

In case of a nonresident decedent with no executor or administrator in the Philippines, the return shall be filed with RDO 39 – South Quezon City.

The foregoing provisions notwithstanding, the CIR may exercise his power to allow a different venue/place for filing of tax returns.

2. The duly accomplished and sworn ETAR and Acceptance Payment Form (APF) (BIR Form No. 0621-EA), together with the complete documents as enumerated in the ETAR, shall be presented to the concerned RDO for endorsement of the APF prior to the payment of the estate amnesty tax with the authorized agent bank (AAB) or Revenue Collection Officer (RCO). However, only the duly endorsed APF shall be presented to and received by the AAB or RCO.
3. After payment, the duly accomplished and sworn ETAR and APF with proof of payment, together with the complete documentary requirements, shall be immediately submitted to the RDO in triplicate copies. Failure to submit the same within the two-year period from the effectivity of these regulations is tantamount to non-availment of the Estate Tax Amnesty, and any payment made may be applied against the total regular estate tax due, inclusive of penalties.
4. The Certificate of Availment of the Estate Tax Amnesty shall be issued by the concerned RDO within 15 calendar days from the receipt of the application for estate tax amnesty, together with duly validated APF and complete documentary requirements enumerated in BIR Form No. 211B-EA.

### **Immunities and privileges**

Estates covered by the Estate Tax Amnesty that have fully complied with all the conditions set forth, including the payment of estate tax amnesty, shall be immune from payment of all estate taxes as well as any increments and additions thereto, arising from the failure to pay any and all estate taxes for taxable year 2017 and prior years, and from all appurtenant civil, criminal, and administrative cases, and penalties under the Tax Code.

The availment of the Estate Tax Amnesty herein provided and the issuance of the corresponding APF do not imply any admission of criminal, civil, or administrative liability on the part of the availing estate.

### **Others**

1. In case the estate has properties that were not declared in the previously filed return, the legal heirs/executors/administrators can file an ETAR or an amended ETAR, whichever is applicable, and pay the estate amnesty tax without penalties, based on the net taxable value of the Net Undeclared Estate as defined in these regulations within two years from the effectivity of these regulations. Properties that remain undeclared after the lapse of the two-year period from the effectivity of these regulations shall be subject to the applicable estate tax rate prevailing at the time of death, including interest and penalties due thereon.
2. Properties included in the Estate Tax Amnesty availment that are likewise the subject of taxable donation/sale shall be assessed for the corresponding donor's/capital gains/or other applicable taxes at the time of donation/sale including penalties, if applicable.
3. One Electronic Certificate Authorizing Registration (eCAR) shall be issued per real property including the improvements, if any, covered by Original Certificate of Title/Transfer Certificate of Title/Condominium Certificate of Title or Tax Declaration for untitled properties. For personal properties included in the estate, a separate eCAR shall be issued.

*(Revenue Regulations No. 6-2019 issued on 31 May 2019, effective on 15 June 2019)*

### **Policies and guidelines in the registration requirements of foreign nationals**

The Department of Labor and Employment (DOLE), the Department of Justice (DOJ), the Bureau of Immigration (BI), and the Bureau of Internal Revenue (BIR) signed the Joint Guidelines on the issuance of work and employment permits to foreign nationals.

Foreign nationals who will engage in work outside of an employment arrangement are required to secure a Special Working Permit (SWP) with the BI. In addition, those who will practice a regulated profession are required to secure a Special Temporary Permit (STP) with the Professional Regulatory Commission (PRC). SWP allows a foreign national to work under a tourist visa (9A) if the validity of the contract is up to only three months, extendible for another three months.

Foreign nationals who intend to engage in gainful employment shall apply for an Alien Employment Permit (AEP) with DOLE. Pending issuance of their AEP or with valid AEP but pending approval of Commonwealth Act 613, Section 9(g) work visa, foreign nationals shall secure a Provisional Work Permit (PWP) with the BI.

AEP authorizes a foreign national to engage in gainful employment in the Philippines, though not an exclusive authority for a foreign national to work in the Philippines. AEP is also a requirement in the issuance of a work visa (9g). Foreign nationals exempted from securing AEP are required to secure a Certificate of Exclusions from DOLE.

The Department of Environment and Natural Resources (DENR) likewise issues working permits to foreign workers for geoscience and mining industry, while the Department of Justice (DOJ) issues permits for nationalized or partly nationalized industries.

### **Registration with the BIR**

Foreign nationals planning to work in the Philippines are required to secure a Taxpayer Identification Number (TIN) from the BIR.

Nonresident aliens not engaged in trade or business shall be issued a TIN for withholding taxes on their income from sources within the Philippines. The withholding agent shall apply for the TIN on behalf of the nonresident alien not engaged in trade or business under Executive Order (EO) No. 98 with the following RDOs prior to or at the time of the filing of their monthly withholding tax return:

<b>Purpose of TIN Application</b>	<b>Place of Registration</b>	<b>TIN</b>	<b>Requirements</b>
<b>PWP / AEP</b>	<p>RDO having jurisdiction over the physical address of the employer</p> <p>No alien individuals shall be registered with Large Taxpayers Audit Division (LTAD)/Excise LT Regulatory Division (ELTRD)/Large Taxpayers Division (LTD)-Cebu/LTD-Davao.</p> <p>Large Taxpayer (LT)-employer shall go to the RDO having jurisdiction over the physical address of the LT-employer.</p> <p>The TIN will be secured manually without the use of the BIR's eREG System.</p>	EO 98	<ol style="list-style-type: none"> <li>1. BIR Form 1904</li> <li>2. Photocopy of passport</li> <li>3. Employment contract or equivalent document indicating duration of employment, compensation and other benefits, and scope of duties</li> </ol>
<b>SWP**</b>	RDO 39 – South Quezon City	EO 98	<ol style="list-style-type: none"> <li>1. BIR Form 1904</li> <li>2. Photocopy of passport</li> </ol>
<b>STP**</b>	RDO 39 – South Quezon City	EO 98	<ol style="list-style-type: none"> <li>1. BIR Form 1904</li> <li>2. Photocopy of passport</li> </ol>
<b>Other purposes**</b>	RDO 39 – South Quezon City	EO 98	<ol style="list-style-type: none"> <li>1. BIR Form 1904</li> <li>2. Photocopy of passport</li> </ol>

Authorization letter indicating the name of the withholding agent and authorized representative and a photocopy of the government ID of the authorized person are also required, in case of authorized representative.

\*\*Foreign nationals who intend to work, engage in specific activities, or render services outside of an employment arrangement as enumerated below, shall secure their TINs with RDO No. 39 — Quezon City:

- a. Professional athletes, coaches, trainers, and assistants

- b. International performers with excellent abilities
- c. Artists, performers and their staff, who perform before an audience for a fee, subject to compliance with the requirements of concerned agency, office, or body
- d. Service suppliers coming primarily to perform temporary services and who do not receive salary or other remuneration from a Philippine source other than expenses incidental to their temporary stay
- e. Treasure hunters authorized to search for hidden treasure with permit from the concerned government agencies and instrumentalities
- f. Movie and television crews authorized to film in the country by the relevant regulatory office, body, or agency
- g. Foreign journalists practicing their profession or covering a specific event in the country
- h. Trainee/s assigned in government institutions, government-owned and -controlled corporations (GOCC), and private entities
- i. Lecturers, researchers, trainers, and others pursuing academic work who are assigned in schools, universities, educational and research institutions, government agencies, and other entities (with or without compensation)
- j. Religious missionaries and preachers
- k. Commercial models and talents
- l. Culinary specialists/chef
- m. Professionals
- n. Consultants or specialists

#### **Foreign national with working visa (9g)**

Foreign nationals who hold an AEP or a working visa (9g) upon arrival shall be registered by their employer with the RDO having jurisdiction over the physical address of the said employer under the taxpayer type category of the employee.

Foreign nationals who intend to work or engage in trade or business and have been issued a working visa (9g) upon arrival shall be registered with the RDO having jurisdiction over the place of business or with the RDO having jurisdiction over the place of local residence in the case of practice of regulated profession, under the applicable taxpayer type.

#### **Registration update**

Employers of foreign nationals with PWP who have been registered under EO 98 and later on were issued an AEP or working visa (9g), with proper authorization, shall update their registration information -- from EO 98 to Employee -- with the RDO where they are registered. In case of termination of employment, foreign nationals registered as Employee shall update their registration with the BIR.

Foreign nationals with SWP who have been registered under EO 98 and later on were issued a working visa (9g) shall apply for transfer of their registration information from RDO 39, where they were initially registered, to the new RDO having jurisdiction over the place of business if engaged in trade or business, or local residence in the case of practice of regulated profession. They shall update their registration and apply for business registration, if applicable.

#### **Tax treaty**

Registered foreign nationals can avail of preferential tax rates under effective Philippine tax treaties. The Philippines has 43 effective tax treaties posted in the BIR website. Foreign nationals in the Philippines who are residents of countries with which the Philippines has

effective tax treaties may opt to file a Tax Treaty Relief Application (TTRA) with the International Tax Affairs Division (ITAD) following the requirements set forth under Revenue Memorandum Order (RMO) No. 72-2010 to avail of the benefits under the tax treaty. However, the tax liability of foreign nationals engaged in trade or business or are gainfully employed in the Philippines will depend on the provisions of the applicable tax treaty. Moreover, the entitlement to tax treaty relief is handled on a case-to-case basis depending on facts as represented by the foreign national applicant.

*(Revenue Memorandum Order No. 28-2019, 31 May 2019)*

## **BIR Issuances**

### **Revised criteria for determining Top Withholding Agents**

The BIR revised the criteria in identifying taxpayers as top withholding agents which shall have additional responsibility to withhold 1% or 2% on purchases of goods and services, respectively, from regular suppliers and on casual purchases worth P10,000 and above.

A top withholding agent is a taxpayer whose gross sales/receipts or gross purchases or claimed itemized deduction, as the case may be, amounted to P12 million during the preceding taxable year. Under Revenue Memorandum Order (RMO) No. 26-2018, TWA shall include the following:

- a. Existing top taxpayers that were classified and duly notified by the Commissioner of Internal Revenue (CIR) as any of the following unless previously de-classified as such or had already ceased business operations:
  - A large taxpayer under RR 1-98, as amended
  - Top 20,000 private corporations under RR 6-2009
  - Top 5,000 individual taxpayers under RR 6-2009
- b. Taxpayers newly identified and included as Medium Taxpayers, and those under the Taxpayer Account Management Program (TAMP)

As part of the transition rule, taxpayers which were classified as TWAs prior to the effectivity of the Revenue Regulations (RR) No. 7-2019 shall remain as TWAs until it is determined that they failed to satisfy the aforesaid criteria and duly published as delisted from the existing list of TWAs.

*(Revenue Regulations No. 7-2019 issued on 13 June 2019, effective on 29 June 2019)*

### **Release of revised BIR Forms 1800 and 1801**

The BIR has released the revised donor's tax return (BIR Form 1800) and estate tax return (BIR Form 1801) which are available in the BIR website.

The revised BIR Forms No. 1800 and 1801, are not yet available in eBIRForms. Thus, manual and eBIRForms filers shall file manually and pay the tax due thereon in accordance with the prescribed modes of manual and online payments by the BIR.

In case of nil return or "No Payment Return", the taxpayer shall file as follows:

<b>BIR Form</b>	<b>Place of Filing</b>
1800	To the RDO having jurisdiction over the place of domicile of the donor at the time of donation or at the Office of the Commissioner at RDO 39 (South Quezon City) if there is no legal residence in the Philippines
1801	To the RDO having jurisdiction over the place of domicile of the decedent at the time of death or at the Office of the Commissioner at RDO 39 (South Quezon City) if there is no legal residence in the Philippines

*(Revenue Memorandum Circular No. 54-2019, 21 May 2019)*

#### **Clarification on the meaning of "business style" on invoices and official receipts**

The BIR has clarified that the term "business style", which should be indicated on invoices and official receipts, refers to the business name registered with the regulatory body that is used by the taxpayer, other than its registered name or company name.

By way of example, if XYZ Entertainment, which is the corporate name registered with the Securities and Exchange Commission (SEC), operates under the business name of "Bozo the Clown", the business style is the business name, i.e., "Bozo the Clown". In the case of a single proprietor, if an individual named Juanita M. Ricafrente registers her business name with the Department of Trade and Industry as "JMR Trading", the same shall serve as the business style.

*(Revenue Memorandum Circular No. 55-2019, 22 May 2019)*

#### **Reckoning period for the payment of DST on original issue of shares of stocks**

The BIR clarified that the documentary stamp tax (DST) on the original issuance of shares for new corporations should be filed using the DST declaration/return (BIR Form 2000), with the DST due thereon should be paid within 5 days after the close of the month of the date of registration with the SEC as indicated in the Certificate of Incorporation, Certificate of Recording, or License to Do Business in the Philippines.

In case of failure to file and pay the DST on the due date, penalty for late payment -- which includes 25% surcharge, 12% interest per annum, plus compromise fee -- shall be imposed.

*(Revenue Memorandum Circular No. 56-2019, 29 May 2019)*

#### **Clarifications on the coverage of Tax Amnesty on Delinquencies**

The BIR issued the following clarifications on the coverage and procedures on availment of the tax amnesty on delinquencies (TAD).

##### *1. On the amount of TAD for assessment notices involving penalties only*

The taxpayer can avail of the amnesty following the procedures specified under Revenue Regulations (RR) No. 4-2019 even if the assessment notices only pertain to penalties, i.e. without basic tax assessed, provided that: (1) the penalties pertain to taxable year 2017 and prior years, and (2) the assessment notices have become final and executory on or before 24 April 2019. There will be no amount due for payment since the tax amnesty amount is based on the basic tax assessed.

##### *2. On the manner of computing the 40% TAD of taxpayers with pending compromise settlement*



The basis for computing the tax amnesty rate of 40% is the difference of the basic tax assessed less the amount paid as offered in the compromise settlement application. For example, a taxpayer that qualifies for TAD with basic tax liability of P1 million pays 50% of the same has to pay 40% on the remaining unpaid tax amount (i.e., 40% on the difference between P1 million and P500,000). The taxpayer cannot apply the TAD on the whole basic tax liability of P1 million and subsequently refund the supposed excess tax payment of 10% (i.e., 50% payment less 40% TAD rate).

*3. On the availability of TAD to taxpayers with ongoing tax investigation cases*

Ongoing tax investigation cases cannot be the subject of TAD since they are not considered delinquent accounts, except failure to remit withheld taxes by withholding agents for taxable year 2017 and prior years at any stage/time of investigation for as long the amount of tax liabilities are properly determined by the BIR.

*4. On applicability of TAD on tax assessments under informal conference stage*

Tax deficiencies arising from audit covering 2017 and prior years that were agreed during the informal conference are not yet considered delinquent, thus, cannot be subject to TAD.

*5. On cases covered by TAD without FAN/FLD/FDDA*

TAD can be availed of even if there is no Final Assessment Notice (FAN)/Formal Letter of Demand (FLD)/Final Decision on Disputed Assessment (FDDA) that has become final and executory if the tax liabilities fall under any of the following instances:

1. The tax liabilities are related to the pending criminal cases with the Department of Justice (DOJ)/Prosecutor's Office or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 of the National Internal Revenue Code of 1997, as amended (Tax Code); and
2. The tax liabilities pertain to unremitted tax withheld by withholding agents

*6. On the applicable TAD rate for unremitted withheld taxes*

The prescribed rate shall be 100% of the basic tax assessed for all instances of unremitted withheld taxes for taxable year 2017 and prior years, even if the same are the subject of pending or final and executory judgment by the court or not yet considered delinquent accounts but may properly be determined by the BIR.

*7. On number of tax amnesty returns required to be filed for applications covering various tax types and taxable years*

Only **one Tax Amnesty Return (TAR)** should be filed for tax amnesty application for all tax types and taxable years covered. However, depending on the taxpayer's financial capacity and priorities, the taxpayer may choose to settle the tax liabilities on a per tax type and per taxable year basis within the one-year availment period. The immunities will apply only on those tax types/taxable periods with valid tax amnesty availment.

*8. On payment/settlement of TAD on installment basis*

Tax amnesty payment cannot be made on installment basis.

*9. On the eligibility of taxpayers who withdrew their protest to FAN on or prior to 24 April 2019*

If the protest to FAN was withdrawn on or before 24 April 2019, the tax liabilities shall be considered delinquent from the date of lapse of the period to protest, as if there is no protest filed. The taxpayer shall be qualified to avail of the TAD provided the delinquent accounts pertain to taxable year 2017 and prior years and the period to protest lapsed on or before 24 April 2019.

*10. On amended return with resulting tax payable*

An amended tax return with resulting tax payable cannot be settled through availment of the TAD.

*11. On delinquent accounts with ongoing collection enforcement proceedings*

Taxpayers with delinquent accounts that are the subject of ongoing collection enforcement proceedings, i.e., warrants of garnishment, notice of tax levy, notice of tax lien, notice of encumbrance, etc., are covered by the TAD.

*12. On availment of TAD with garnished/seized properties*

The taxpayer may avail of TAD when the garnished/seized properties of the delinquent taxpayer is not sufficient to fully settle the delinquent tax liabilities.

*13. On the computation of amnesty tax with garnished/seized properties*

The tax amnesty amount shall be determined in accordance with the following rules for cases with garnished amount or seized property/ies resulting from the collection enforcement activities done prior to the effectivity of RR 4-2019:

- A. In case of garnishment, the garnished amount shall first be applied to penalties before the same shall be applied to basic tax per FAN/FLD/FDDA.
- B. In case of seized property/ies:
  - 1. If there is no public auction conducted yet, the value of seized property shall not be deducted from the taxpayer's tax liabilities and the amount of tax amnesty shall still be based on the basic tax assessed per FAN/FLD/FDDA.
  - 2. In case there is a public auction
    - a. With winning bidder – The proceeds of auction sale less administrative cost incurred in the conduct of public auction shall be applied first to the penalties before the excess shall be applied to the basic tax per FAN/FLD/FDDA.
    - b. Failure of bidding and property was forfeited in favor of the government – The value of the property seized shall not be deducted from the taxpayer's outstanding tax liabilities.

*(Revenue Memorandum Circular No. 57-2019, 31 May 2019)*

## **Clarification on the documentary requirements for the processing of eCAR**

The BIR clarified the liability to documentary stamp tax of PEZA enterprises on the transfer of real properties in the economic zone as well as the documentary requirements for the processing of eCAR (Electronic Certificate Authorizing Registration) under Revenue Memorandum Circular (RMC) No. 9-2018.

According to the BIR, in case of a sale of real property located within an ecozone by a PEZA-registered ecozone developer/operator enjoying the 5% final tax on gross income to another PEZA-registered enterprise likewise enjoying the 5% final tax incentive, both parties are exempt from DST under Section 196 of the National Internal Revenue Code of 1997, as amended (Tax Code). This is pursuant to the Supreme Court decision which confirmed the rule under RA 7916 that the 5% preferential tax rate on gross income earned under RA 7916 is in lieu of all taxes, which includes DST.

For purposes of issuing the eCAR, , the following documents shall be required from all parties to support the tax-exempt transaction:

1. Certified true copy of the latest PEZA Certificate of Registration of the PEZA ecozone developer/operator and the parties to the transaction;
2. Certified true copy of PEZA Registration Agreement; and
3. Certified true copy of the following PEZA certificate of available tax incentives as of the time of the transaction:
  - a. PEZA Form No. 00-00-01 – Certification on Entitlement of 5% Gross Income Tax; and
  - b. PEZA Form No. 00-03-01 – Certification on Available Incentives

*(Revenue Memorandum Circular No. 60-2019, 7 June 2019)*

## **Court of Tax Appeals Decisions**

### **Withholding tax is not imprescriptible**

Under Section 203 of the Tax Code, all internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

In the instant case, the taxpayer was assessed for deficiency income tax, VAT, expanded withholding tax (EWT), withholding tax on compensation (WTC), DST, and fringe benefits tax (FBT) for taxable year 2009. The FLD/FAN was issued and received on 21 February 2014 which is beyond the three-year prescriptive period for assessing taxable year 2009. While the taxpayer executed a waiver, the Court of Tax Appeals (CTA) held that the assessments for VAT for the 1<sup>st</sup> to 3<sup>rd</sup> quarters of 2009, WTC for January to November 2009, and EWT for January to December 2009 have already prescribed even prior to the execution and acceptance of the 1<sup>st</sup> waiver. In other words, the 1<sup>st</sup> waiver can validly extend the period of assessment for income tax, VAT 4<sup>th</sup> quarter, and WTC for December 2009 only.

Further, the BIR claimed that the assessments for deficiency EWT and deficiency WTC have not prescribed. The BIR's theory is that assessments for deficiency EWT and WTC are imprescriptible. It contends that withholding tax assessments are not in the nature of personal income tax liabilities but are in the nature of penalties for failure to duly withhold

and remit the taxes to the government. As such, they are not covered by the prescriptive period provided under the Tax Code.

It argued that withholding taxes are not contemplated under Section 203 of the Tax Code considering that they are not internal revenue taxes but are penalties imposed on the withholding agent should it fail to remit the proper amount of tax withheld.

The CTA ruled as follows:

1. Under the Tax Code, the withholding agent who is '*required to deduct and withhold any tax*' is made '*personally liable for such tax*'. A '*person liable for tax*' has been held to be a 'person subject to tax' and properly considered a 'taxpayer'.
2. The terms 'liable for tax' and 'subject to tax' both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made 'liable for tax' as *not* 'subject to tax'. By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.
3. The withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes. The aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory duty. A holistic reading of the Tax Code reveals that the Commissioner of Internal Revenue's (CIR) interpretation of Section 203 is erroneous. The provisions of the Tax Code itself recognize that the tax assessment for withholding tax deficiency is different and independent from possible penalties that may be imposed for the failure of withholding agents to withhold and remit taxes.

*(First Philippine Electrical Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9199, 4 June 2019)*

### **Submission of proof of RPT exemption**

Under Section 206 of the Local Government Code (LGC), every person by or for whom real property is declared, who shall claim tax exemption for such property shall file with the provincial, city, or municipal assessor within 30 days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, bylaws, contracts, affidavits, certifications and mortgage deeds, and similar documents. If the required evidence is not submitted within the period prescribed, the property shall be listed as taxable in the assessment roll.

In the instant case, the local government unit (LGU) assessed a petroleum company for deficiency real property tax on its production equipment and machineries due to its failure to submit proof of exemption from real property tax (RPT) pursuant to Section 206 of the LGC. The taxpayer argued that under Section 9 of Republic Act (RA) No. 8479, it should be exempt from RPT on production equipment and machineries which are part of its new investments in its refining, storage, marketing and distribution of petroleum products. It argued that its RPT exemption under Section 9 of RA 8479 is automatically binding upon the LGU without need of compliance with Section 206 of the LGC.

According to the CTA, Section 9 of RA 8479 is not irreconcilably inconsistent and repugnant to Section 6 of the LGC. Section 6 of the LGC seeks to assist concerned LGUs in the orderly discharge of their administrative duties, i.e., RPT assessments.

Section 206 of the LGC merely requires the presentation of documentary evidence in support of a claim for RPT exemption, within thirty (30) days from the date of the declaration of real property, in order for the subject property not to be listed in the assessment roll.

Should the taxpayer fail to do so, the same law affords the taxpayer an opportunity to still claim for exemption by providing proof in support thereof. It does not remove the exempt nature of the subject properties as granted by Section 9 of RA 8479.

The taxpayer's omission to perform its correlative duty, i.e., presentation of proof of RPT exemption, is penalized under Section 206 of the LGC by including the subject properties in the assessment roll. At any rate, under the same law, petitioner simply needs to present proof of exemption from RPT so that the subject properties may be dropped therefrom.

*(Jetti Petroleum, Inc. vs. Provincial Treasurer of Bataan, CTA AC 211, 3 June 2019)*

### **Treatment of denied VAT refund claims**

The taxpayer-refund claimant is an international container shipping company which renders back office tasks, documentation, and other processes (e.g., export documentation, import documentation, agency operations, logistics export handling, finance and accounting, systems processes, value added services) to its foreign affiliates and clients. Its claim for refund of its excess unutilized input VAT attributable to zero-rated sales was denied by the Department of Finance for failure to comply with the invoicing requirements.

Due to the DOF's denial of its claim, the taxpayer wrote off the same in its books and claimed it as a deduction from gross income. The BIR then assessed the taxpayer for deficiency income tax and disallowed the deduction.

The CTA En Banc held that the denied claim may be treated as a deductible loss.

There is no explicit rule as to the treatment of disallowed/denied application for refund or issuance of tax credit certificate on input VAT attributable to zero-rated sales under the Tax Code. While the Tax Code specifically mentions refund or tax credit as modes to recover unutilized input taxes attributable to zero-rated sales, it does not categorically prohibit the use of any other mode for its recovery.

There is no transgression of any law or rule when the taxpayer treated its denied VAT refund claim as an expense or a loss, because when it treated the same as such and deducted it from its gross income, the taxpayer therefore opted not to fully recover its excess input tax to the extent that such input tax has not been applied against its output tax. Thus, the taxpayer merely chose to claim it as a deductible expense or loss leading to a partial recovery of its excess input VAT, instead of fully recovering it by pursuing its refund claim.

*[Commissioner of Internal Revenue v. Maersk Global Service Centres (Philippines), Ltd., CTA EB No. 1786, 13 June 2019]*