TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

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

Prepared by:
ISLA LIPANA & CO./PWC PHILIPPINES

DISCUSSION

COURT OF TAX APPEALS DECISION

1. Proving Excess and Unutilized CWT

In order to be entitled to the refund of excess and unutilized creditable withholding taxes (CWTs), the income upon which the CWTs were withheld must have been declared as part of the reported sales in the income tax return (ITR) of the taxpayer-claimant.

In the instant case, the taxpayer-claimant tried to prove this by presenting its General Ledger (GL) which reflected various revenue accounts and their respective balances constituting a breakdown of sales per annual ITR. However, the Court of Tax Appeals (CTA) found such evidence insufficient because it could not trace such balances to the income payments associated with the CWTs. According to the CTA, the taxpayer-claimant must submit an expanded GL or any other detailed documentation that would link the specific income payments subjected to CWT directly to the amounts reported in the ITR.

(*Ford Group Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 10877, April 15, 2025*)

2. Income Tax Exempt Business League

Section 30(F) of the Tax Code provides that business leagues that are not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual shall be exempt from income tax.

In invoking income tax exemption under this provision, the Independent Electricity Market Operator of the Philippines, Inc. (IEMOP) argues that it is akin to a 'business league' because it is composed of various electric power industry participants which are all mandated to transact in the Wholesale Electricity Spot Market (WESM). IEMOP further argues that its operation of the WESM is in furtherance of the common interests of said industry participants without which they would be unable to effectively deliver electricity to the grid or to the power system.

However, the Court of Tax Appeals (CTA) ruled that IEMOP is not a 'business league', hence, not exempt from income tax under Section 30(F) of the Tax Code. Section 31 of Revenue Regulations No. 2-1940 and Revenue Memorandum Order No. 38-2019 define and characterize a 'business league' as:

1. Organized as a business league, chamber of commerce or board of trade;
2. Operated as an association of persons having some common business interest, which limits its activities to work for such common interest;
3. It does not engage in a regular business of a kind ordinarily carried on for profit;
4. It is non-profit; and
5. No part of its net income or asset shall belong to or inures to the benefit of any member, organizer, officer or any specific person.

According to the CTA, IEMOP is not a 'business league' based on the following reasons:

- Although IEMOP claims that WESM is akin to a business league composed of various electric power industry participants, IEMOP is not the WESM itself. The CTA clarified that WESM is the market and that IEMOP is the market operator.
- IEMOP does not satisfy the requirement of being "operated as an association of persons having some common business interest, which limits its activities to work for such common interest."
- IEMOP does not satisfy the requirement that "no part of its net income or asset shall belong to or inures to the benefit of any member, organizer, officer or any specific person" because under its by-laws, it may be authorized to pay compensation to directors, officers or third parties.
- Mere registration as a non-stock, non-profit corporation does not automatically confer tax exemption under Section 30 of the Tax Code.

(*Independent Electricity Market Operator of the Philippines, Inc. vs. Commissioner of Internal Revenue and Secretary of Finance, CTA Case No. 10885, April 30, 2025*)

BIR ISSUANCES

1. **Revenue Regulations No. 15-2025 (April 29, 2025) – Revised Private Retirement Benefit Plan Regulations**

The Commissioner of Internal Revenue (CIR) issued the Revised Private Retirement Benefit Plan Regulations ("Regulations") implementing Section 32(B)(6)(a) of the Tax Code which exempts from income tax retirement benefits received by officials and employees of private employers in accordance with a reasonable private benefit plan.

Under these Regulations, the term "reasonable private retirement benefit plan" means a plan maintained by an employer for the benefit of some or all of its officials or employees, wherein contributions are made by such employer for the officials or employees, or both, for the purpose of distributing to such officials and employees the earnings and principal of the fund thus accumulated, and wherein it is provided in said plan that at no time shall any part of the corpus of income of the fund be used for, or be diverted to, any purpose other than for the exclusive benefit of said officials or employees.

Here are the salient provisions of the Regulations:

- A private retirement benefit plan is an agreement whereby an employer provides benefits to its officials and employees upon the latter's retirement.

- A retirement plan may consist of a pension, gratuity, provident fund, stock bonus or profit-sharing plan, or any other similar plan maintained by an employer for the benefit of some or all of its officials and employees, wherein contributions are made by such employer or officials and employees, of both.

- The phrase "at no time shall any part of the corpus of income of the fund be used for, or diverted to, any purpose other than for the exclusive benefit of the said officials and

employees" includes all objects or aims not solely designed for the proper satisfaction of all liabilities to employees covered by the trust.

- A retirement plan duly approved by the BIR and issued a certificate of qualification for tax exemption ("Tax Qualified Plan") is entitled to the following tax incentives:

  a. Exemption from income tax and, consequently, from withholding tax, of the retirement benefits and all amounts received by officials and employees of private firms on account of their retirement.

  b. Exemption from income tax and, consequently, from withholding tax on income, of trust income from various investments made by the trustee of an employees' trust under Section 60(b) of the Tax Code. This exemption does not include the stock transaction tax, if applicable, which is a type of percentage tax.

  c. Tax deductibility of the following contributions made by employers from their gross income pursuant to Section 34(J) of the Tax Code:

     1) Contributions to the trust during the taxable year to cover the pension liability accrued during that year ("Normal Cost"); and
     2) Contributions to the trust during the taxable year in excess of the Normal Cost but only if such amount (1) has not theretofore been allowed as a deduction, and (2) is apportioned in equal parts over a period of 10 consecutive years beginning in the year when the transfer or payment is made.

- To avail of the foregoing incentives with respect to retirement benefits received by qualified employees, the following must be complied with:

  a. The retirement plan must be reasonable as determined by the CIR or his/her duly authorized representative;
  b. The retiring official or employee must have been in the service of the same employer for at least 10 years and is not less than 50 years old at the time of retirement; and
  c. The retiring official or employee did not previously avail of the privilege under the retirement benefit plan of the same or another employer.

  If employees are transferred from one participating company to another participating company within a multi-employer plan due to a valid merger, the aggregate years of service to the said companies shall be considered in computing the prescribed 10-year period, provided, that the employees did not receive their respective separation pay from their previous employer (*i.e.*, absorbed company).

  A "multi-employer plan" refers to a retirement plan to which two or more related reporting entities contribute for the benefit of their retiring officials and employees.

- The tax incentives or privileges under a Tax Qualified Plan shall retroact to the date of the effectivity of the retirement plan.

- Here are the requisites of a reasonable retirement plan:

a. It must be a definite written program setting forth all provisions essential for qualification;
b. It must be a permanent and continuing program unless sooner terminated by virtue of a valid business reason;
c. The coverage should be either under the Percentage Basis or Classification Basis as defined in the Regulations;
d. The employer or the officials and employees, or both, shall contribute to a trust fund for the purpose of distributing to the officials and employees or their beneficiaries, the corpus and income of the fund accumulated by the trust in accordance with the plan.
e. The corpus or income of the trust fund must at no time be used for, or diverted to, any purpose other than for the exclusive benefit of the said officials and employees.
f. There must be no discrimination in contributions or benefits in favor of officials and employees who are officers, shareholders, supervisors or highly compensated.
g. It must provide for non-forfeitable rights in case of termination of the plan or complete discontinuance of contributions under the plan.
h. The plan must expressly provide that forfeitures arising from severance of employment, death or any other reason must not be applied to increase the benefits any employee would otherwise received under the plan at any time prior to the termination of the plan or complete discontinuance of contributions under the plan.

- The employer shall apply with the Legal and Legislative Division in the BIR National Office for the issuance of a certificate of qualification for tax exemption of the employment retirement benefit plan ("Certificate of Qualification") within 30 days from the effectivity of the retirement benefit plan. Otherwise, a penalty shall be imposed by the BIR.

- The Certificate of Qualification shall be valid until revoked by the BIR.

- The Regulations enumerate the documentary requirements for applications for Certificates of Qualification, depending on whether the retirement plan is trusteed or non-trusteed /insured.

- A trusteed retirement plan is a retirement plan wherein the assets/funds are being held, managed and administered by a separate entity or group of individuals designated or appointed as trustee by an employer for the benefit of employees. Retirement plans that are not trusteed as defined above are classified as non-trusteed retirement plans.

- Pending the application for a Certificate of Qualification with the BIR, the retirement benefits received by qualified retiring employees or investment income received by the retirement fund shall be exempt from income tax and, consequently, from withholding tax pursuant to Republic Act No. 4917 and Section 60(B) of the Tax Code, respectively.

  However, if the application is denied, the employer/trust shall be directly and solely liable for any deficiency income taxes due.

- Amendments to the retirement plan should be submitted for certification to the effect that the amendments do not affect the qualification of the retirement plan.

- The law does not specifically limit the investments which may be made by the trustees of an employee's trust. In this regard, the fund may be used to purchase any investment permitted by the trust agreement.

  However, the income tax exemption of the trust may be denied if the trust:

  a. lends its income or corpus without adequate security and a reasonable rate of interest;
  b. pays compensation in excess of a reasonable allowance for salaries and other compensation for personal services actually rendered;
  c. makes any part of its services available on a preferential basis;
  d. makes any substantial purchase of securities or any other property for more than adequate consideration in money or money's worth;
  e. sells any substantial part of its securities or any other property for less than adequate consideration in money or money's worth; or
  f. engages in a transaction which results in a substantial diversion of its income or corpus

  to or from the employer (if the employer is an individual), to or from a member of the family of the employer, or to or from a corporation controlled by the employer through the ownership of 50% or more of the total combined voting power of all classes of stock.

- The retirement fund shall not be used to invest/deposit in any of the employer's business ventures in order to maintain the separation of the employees' trust fund from that of the employer's trust.

2. **Revenue Regulations No. 14-2025 (April 25, 2025) – Amending Section 14 of Revenue Regulations No. 3-2025 on the prescribed policies and guidelines for the implementation of Republic Act No. 12023, titled "An Act Amending Sections 105, 108, 109, 110, 113, 114, 115, 128, 236 and 288 and Adding New Sections 108-A and 108-B of the National Internal Revenue Code of 1997, as Amended," imposing the Value-Added Tax on Digital Services**

   The Secretary of Finance amended the Transitory Provision (Section 14) of Revenue Regulations (RR) No. 3-2025 to provide that all Non-Resident Digital Service Providers (NRDSPs) who are required to register shall register or update with the Bureau of Internal Revenue (BIR) within 120 days from the effectivity of RR No. 3-2025 through the VDS Portal or the Online Registration and Update System (ORUS). Hence, NRDSPs have until June 1, 2025 to register and shall be subject to VAT starting June 2, 2025. The Commissioner of Internal Revenue may extend the deadline as may be deemed necessary.

3. **Revenue Memorandum Circular No. 49-2025 (May 9, 2025) – Availability of Offline Electronic Bureau of Internal Revenue Forms (eBIRForms) Package Version 7.9.5**

   Offline eBIRForms Package Version 7.9.5 is already available for download at www.bir.gov.ph. This new version now includes BIR Form No. 1702Q January 2018 (ENCS) and BIR Form No. 2550Q April 2024 (ENCS).

   It also contains the following enhancements:

   a. Inclusion of all Alphanumeric Tax Codes of BIR Form No. 2551Q;

b. A new Treaty Code, BN, for Brunei was added to BIR Form No. 1601-FQ;
c. Bug fixes for BIR Form Nos. 0619-E, 1800v2018, 1801v2018 and 2000-OTv2018; and
d. New ATCs were added in BIR Form Nos. 0605, 1600-VT, 1601-EQ and 1601-FQ.

4. **Revenue Memorandum Circular No. 48-2025 (May 8, 2025) – Clarification on the Computation of Excise Tax on Mineral Products**

The Commissioner of Internal Revenue clarified certain provisions of Revenue Regulations No. 3-2018 with respect to the computation of excise taxes on mineral products. Said clarifications provide guidance on the applicable exchange rate and the taxpayer's remedy in case of excess excise tax payments. Here are the clarifications:

- The applicable exchange rate for both provisional and final excise tax computations shall be based on the official reference rates as published by the Bankers Association of the Philippines (BAP).

- The provisional computation of excise tax required for export permit application shall be based on the spot foreign exchange rate as published by the BAP as of the date of the export permit application.

  On the other hand, the final computation of excise tax on exported mineral products, as adjusted upon issuance of the final assay report and final invoice, shall be based on the weighted average foreign exchange rate as of the date of shipment as published by the BAP.

- A mineral is deemed shipped upon issuance of the bill of lading.

- The final invoice for exported mineral products shall be issued within 90 days from the date of actual exportation as indicated in the bill of lading, based on actual market value.

- The provisional computation of excise tax on mineral products sold domestically shall be based on the spot foreign exchange rate published by the BAP as of the date of application for permit to transport.

- The provisional computation of excise tax on mineral products sold domestically shall be based on the spot foreign exchange rate published by the BAP as of the date of application for permit to transport.

  On the other hand, the final computation of excise tax on mineral products sold domestically, as adjusted upon issuance of the final assay report, shall be based on the weighted average foreign exchange rate as of the final sales invoice date as published by the BAP.

- In case of overpaid excise taxes due to foreign exchange fluctuations (*i.e.*, when the provisional exceeds the final computation), the taxpayer may claim for refund pursuant to Section 229 of the Tax Code and applicable tax regulations. Such claim must be filed within 2 years from the date of payment.

5. **Revenue Memorandum Circular No. 47-2025 (May 8, 2025) – Clarifying the provisions of Revenue Regulations No. 3-2025, implementing Republic Act No. 12023 entitled "An Act Amending Sections 105, 108, 109, 110, 113, 114, 115, 128, 236 and 288 and Adding New Sections 108-A and 108-B of the National Internal Revenue Code of 1997, as Amended," imposing the value-added tax on digital services**

   The Commissioner of Internal Revenue issued the following clarifications with respect to the provisions of Revenue Regulations (RR) No. 3-2025 and the implementation of the value-added tax (VAT) on digital services:

   - All Non-Resident Digital Service Providers (NRDSPs) are required to register or update their registration with the Bureau of Internal Revenue (BIR) regardless of whether their transactions are Business-to-Business (B2B) or Business-to-Consumer (B2C).

     They shall register through the VAT on Digital Services (VDS) Portal once it is available. In the meantime, NRDSPs or their appointed resident third party service providers shall register through the Online Registration and Update System (ORUS) which may be accessed in the BIR website.

     The deadline for registration is **June 1, 2025**.

   - For purposes of registration via ORUS, the following information are required:

     1. Name of business entity and trade name;
     2. If there is a local authorized representative responsible for tax administration, name of authorized representative and Taxpayer Identification Number (TIN);
     3. Registered foreign address; and
     4. Contact information of the NRDSP.

     Any official registration document issued by an authorized government agency regulatory body in the country where the NRDSP was incorporated or organized shall be sufficient for registration.

   - NRDSPs with purely B2B transactions are still required to file returns with the BIR to report such B2B transactions.

   - NRDSPs do not need to have a local representative in the Philippines to register with the BIR. However, they may appoint a resident third party service provider for purposes of registration, tax filing and payment, receiving of notices, record-keeping and other reporting obligations.

     Nevertheless, such appointment shall not classify the NRDSP as a resident foreign corporation doing business in the Philippines.

   - NRDSPs with local representatives may manually register with BIR Revenue District Office No. 39 – South Quezon City.

- A BIR Certificate of Registration (BIR Form No. 2303) shall be issued to an NRDSP as proof of registration. This shall reflect the assigned TIN and other registration details that must be used in the accomplishment of VAT returns.

- NRDSPs shall be registered as VAT taxpayers liable to pay the 12% VAT on their gross sales from the supply and delivery of digital services consumed or used in the Philippines.

- NRDSPs which fail to register with the BIR for VAT shall be subjected to penalties under Section 13 of RR No. 3-2025 and to suspension of business activities under Section 12.

- In B2B transactions, the Philippine consumer/buyer will account for the VAT using the reverse charge mechanism. Accordingly, said Philippine consumer/buyer shall be required to withhold the 12% VAT due on the purchase and remit the same to the BIR by electronically filing the appropriate remittance return.

- In B2C transactions where the consumer/buyer is not engaged in business, the NRDSP shall be liable to electronically file the VAT return and pay the VAT.

- For a DSP acting as an online marketplace or e-marketplace on the transactions of resident and non-resident sellers or suppliers that go through its platform, the mechanisms shown in Illustrations 1, 2 and 3 of Revenue Memorandum Circular No. 47-2025 shall be observed, provided, that it controls the key aspects of the supply and performs any of the following:

  1. It sets directly or indirectly any of the terms and conditions under which the supply of digital services is made; or
  2. It is involved in the ordering or delivery of digital services whether directly or indirectly.

- There is no prescribed form for the invoice to be issued by NRDSPs as long as the following mandatory information are present:

  1. Date of the transaction;
  2. Transaction reference number;
  3. Identification of the consumer (including TIN for the B2B);
  4. Brief description of the transaction; and
  5. Total amount with the indication that such amount includes the VAT.

  For B2B transactions, the VAT amount must be clearly stated in the invoice. However, if the NRDSP is unable to include the VAT amount in the invoice, it must include a footnote/annotation in the invoice indicating that the Philippine business consumer/buyer is responsible for accounting and remitting the 12% VAT to the BIR.

- NRDSPs shall be subject to VAT starting **June 3, 2025**.

- In the filing of VAT returns and/or remittance of the VAT, NRDSPs shall use BIR Form No. 2550-DS which shall be available in the VDS Portal.

- NRDSPs are not allowed to claim creditable input tax.

- If the NRDSP paid the VAT to the BIR but subsequently discovers that the Philippine consumer/buyer is engaged in business, hence, already withheld and remitted VAT to the BIR, the NRDSP is not allowed to file a claim for refund. However, it may amend its VAT return to reflect the overpayment which may be carried over and utilized to the succeeding quarter/s.

- When an NRDSP supplies digital services via an e-marketplace but the payment is made directly to the account of the NRDSP, said e-marketplace is not liable to pay the VAT. However, the service fee charged by the e-marketplace to the consumer/buyer located in the Philippines shall be subject to VAT.

- When digital services are utilized by a consumer/buyer located in the Philippines to purchase physical goods through an online marketplace, only the separate fee charged for using the online platform or marketplace is subject to VAT.

- Only digital services as defined under Republic Act No. 12023 shall be subject to VAT under said law.

- Digital services subject to VAT include services provided through a teleconsultation platform where appointments are booked through a website, an application or an e-marketplace. These include virtual meetings via video or conference calls allowing doctors and their patients to engage in real-time discussions, providing and receiving medical assessments, diagnoses, treatments and support.

- In order to avail the VAT exemption of the sale of online subscription-based services to educational institutions, the latter shall only present to the DSP the accreditation/recognition from the DepEd, CHED or TESDA, as the case may be.

- The sale of digital services by NRDSPs to Registered Business Enterprises (RBEs) with certifications issued by the concerned Investment Promotion Agencies, or to export-oriented enterprises (EOE) covered by Sections 106 and 108 of the Tax Code are eligible for VAT exemption if is said digital services are directly attributable to the registered project or activity of the RBE or to the export activity of the EOE.

- To verify if a buyer is engaged in business, the NRDSP may:

  a. Obtain the buyer's TIN and provide a questionnaire or a tick box in their websites/platforms for buyers to confirm is they are engaged in business in the Philippines; or
  b. Request business registration documents such as the BIR Certificate of Registration.

- VAT-registered Philippine customers engaged in business shall use BIR Form No. 1600-VT to support their claim for input VAT arising from purchases of digital services from NRDSPs.

- Digital services provided from June 2, 2025 onward are subject to the 12% VAT. If the buyer already paid in advance without including the VAT the NRDSP shall still be liable for the

12% VAT with respect to the portion of services provided from June 2, 2025 and onwards. Since the buyer already paid, the NRDSP shall be liable for remitting the 12% VAT.

- In cases where the NRDSP contracts with a foreign entity which shares the cost of the digital services to its Philippine subsidiary, such shared costs shall be subject to the 12% VAT to be withheld and remitted to the BIR by the Philippine subsidiary.

6. **Revenue Memorandum Circular No. 47-2025 (April 25, 2025) - Circularizing the Implementing Rules and Regulations of Title XIII of Republic Act No. 8424, otherwise known as the National Internal Revenue Code of 1997, as amended by Republic Act No. 12066**

   The Commissioner of Internal Revenue disseminated the Implementing Rules and Regulations (IRR) of Title XIII of the Tax Code, as amended by Republic Act (RA) No. 12066, otherwise known as the CREATE MORE Act. Said IRR were promulgated by the Secretary of Finance and the Secretary of Trade and Industry and apply to the following:

   1. All existing Investment Promotion Agencies (IPAs) with respect to the administration and grant of tax incentives;

   2. All newly registered projects or activities, including qualified expansion projects or activities of export enterprises and domestic market enterprises under the Strategic Investment Priority Plan (SIPP);

   3. Registered enterprises, projects or activities currently registered with IPAs and enjoying incentives prior to the effectivity of RA No. 11534 (CREATE Act) and RA No. 12066;

   4. Other government agencies administering tax incentives with respect to the administration and grant of tax incentives and other registered enterprises availing of tax incentives; and

   5. Government-owned and/or -controlled corporations, government instrumentalities, government commissaries and state universities and colleges that were granted tax subsidies under the Tax Expenditure Fund of the Annual General Appropriations Act.

7. **Revenue Memorandum Circular No. 40-2025 (April 24, 2025) - Clarification on the submission of proof of settlement of estate pursuant to Revenue Regulations No. 10-2023.**

   For purposes of availing the estate tax amnesty, Section 2 of Revenue Regulations No. 10-2023 requires the submission of proof of judicial or extra-judicial settlement of the estate. In this regard, the Commissioner of Internal Revenue clarified that if the proof of settlement of the estate is not yet available, it is not required to accompany the Estate Tax Amnesty Return (ETAR) – BIR Form No. 2118-EA at the time of filing and payment of the taxes. Hence, the non-submission thereof on or before June 14, 2025 shall not invalidate the estate tax amnesty application.

   Nevertheless, proof of settlement shall be required during the processing and issuance of the Electronic Certificate Authorizing Registration (eCAR).