TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

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

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DISCUSSION

SUPREME COURT DECISIONS

1. **Transactions by a VAT-exempt entity's with its suppliers or customers are not considered zero-rated or effectively zero-rated sales under Section 112 (A) of the Tax Code and any input tax passed on to it by its suppliers cannot be the subject of a claim for refund.**

   Neither is the passed-on VAT an erroneous or illegal tax as such payment represented and formed part of the purchase price paid by the VAT-exempt entity to its suppliers.

Claims for refund under Section 112 of the Tax Code involves unutilized creditable input VAT attributable to zero-rated or effectively zero-rated sales. On other hand, refund claims based on Section 229 of the Tax Code cover erroneously, illegally, or excessively collected taxes.

In the case of a VAT-exempt entity, its transactions with its suppliers or customers are not considered as zero-rated sales or effectively zero-rated sales. Being exempt from VAT, the input taxes that may have been passed on to its by its suppliers cannot be the subject of a claim for refund.

An "erroneous or illegal tax" contemplates a levy without statutory authority, or upon property not subject to taxation or by some officer without authority to levy the tax, or one which in

some other similar respect is illegal. In this case, the VAT-exempt entity's payment of the input VAT was neither erroneous nor illegal (hence, not refundable) as such payment formed part of the purchase price paid to its suppliers. *(Melco Resorts Leisure (PHP) Corporation v. Commissioner of Internal Revenue, G.R. No. 271261, April 2, 2025)*

CTA *EN BANC* DECISIONS

1. **The tax base of the annual local business tax (LBT) due from contractors and other independent contractors is the gross sales or receipts of the preceding calendar year following the sworn statement submitted by the taxpayer.**

It is clear from Sections 143(e) and (h) of the Local Government Code of 1991 (LGC) and Section 75(e) of the Taguig Revenue Code that the tax base of the annual LBT is the gross sales or receipts of the preceding calendar year. To enable the Taguig City Government to determine the amount of LBT due for the present year, taxpayers are required to submit, among others, a sworn statement of gross sales or receipts of the preceding calendar year.

The Taguig Revenue Code does not require the submission of the audited financial statements (AFS) of the preceding year simply because at the time of the renewal of business permits, which is set during the first few weeks of January of each year, the AFS of the preceding year is not yet available; hence, the sufficiency of the said sworn statement as basis for the local business tax computation. The best evidence obtainable (*e.g.*, the latest available AFS) may be availed of only if the taxpayer was not able to submit the sworn statement of gross sales/receipts of the preceding calendar year.

In this case involving the taxpayer's application for business permit renewal for the year 2016, it submitted a sworn statement of its gross sales for the preceding year 2015. Accordingly, the City Treasurer had no legal basis to use the taxpayer's gross sales reported in the AFS for the year 2014 as basis for the LBT assessment for the year 2016. *(The City of Taguig v. Hanjinphil Corporation, CTA EB No. 2902, July 11, 2025)*

CTA DIVISION DECISIONS

1. **Electronic mail (email) is not one of the valid modes of serving assessment notices under Revenue Regulations (RR) No. 18-2013. Sending assessment notices through registered mail is only allowed when there is an adequate reason why the personal service is not practicable.**

Where the taxpayer claims he has not received the assessments, the burden of proof lies with the Commissioner of Internal Revenue (CIR) to prove that the assessment notices were duly served to and delivered to the taxpayer. Sending assessment notices via electronic mail is not one of the prescribed modes of serving assessment notices under RR No. 18-2013. Sending assessment notices through registered mail is only allowed where the CIR can justify why personal service is not practicable.

No less than the Supreme Court has held that the issuance of a Warrant of Distraint and/or Levy (WDL) without a valid assessment violates a taxpayer's right to due process. The lack of a

valid assessment prior to tax collection is vital to provide the taxpayer the opportunity to protest the alleged liability. The absence of proper service of the assessment notices renders the WDL void for violating the due process requirement.

The CTA Division clarified that its appellate jurisdiction extends to any case that could arise from the Tax Code, as amended, or any other laws in relation to the BIR. This means that the CTA has the power to exercise its appellate jurisdiction over cases not limited to matters of assessments and refunds. For instance, the CTA has the jurisdiction to determine the validity of the issuance of the WDL. (*Diageo Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10452, June 19, 2025*)

2. **A group supervisor (GS), being a revenue officer (RO), is not exempt from the requirement of a valid letter of authority (LOA) when participating in audit activities.**

GSs, being ROs themselves, are not exempt from the requirement of a valid LOA when they participate in audit activities. Their designation as supervisors does not negate their classification as ROs; it merely defines their added responsibility to oversee and review the work and audit reports of their subordinate ROs. Whether their involvement in the audit is direct or supervisory, a GS must be expressly named in a valid LOA, just like any other RO. Accordingly, any audit activity or assessment undertaken by a GS without an LOA is void.

RMO No. 43-9071 requires the issuance of a new LOA when an RO originally named in the LOA is replaced or reassigned. The practice of reassigning or transferring ROs originally named in the LOA and substituting or replacing them with new ROs to continue the audit or investigation without a separate or amended LOA: (1) violates the taxpayer's right to due process in tax audit or investigation; (2) usurps the statutory power of the CIR or his duly authorized representatives to grant the power to examine the books of accounts of a taxpayer; and (3) fails to comply with existing Bureau of Internal Revenue (BIR) rules and regulations. *(Brilliant Creations Publishing, Inc. v. Commissioner of Internal Revenue, CTA Case No. 11043, June 20, 2025)*

3. **A Certificate of Tax Exemption/Ruling is not necessary for duly registered cooperatives to be entitled to the tax incentives or exemptions granted under the Philippine Cooperative Code of 2008.**

It is the law (Section 60 and 61 of Republic Act No. 6938, as amended by Republic Act No. 9520) which grants tax incentives or exemptions to cooperatives – not the BIR. The BIR Certificate of Tax Exemption/Ruling is akin to or in the nature of a BIR Ruling that is not required for a taxpayer to be entitled to tax incentives or exemptions. (*CCT Multi-Purpose Cooperative v. Commissioner of Internal Revenue, CTA Case No. 10351, June 24, 2025*)

4. **In relation to the requirement that the taxpayer must be engaged in zero-rated sales in order to claim refund of input VAT, the taxpayer must prove that the recipient is a foreign corporation. In which case, the claim must be supported by both a Certification of Non-Registration of Corporation/ Partnership and proof of incorporation/ registration in a foreign country.**

One of the requirements to claim refund of input VAT is that the taxpayer is engaged in zero-rated or effectively zero-rated sales. Anent this requirement, the following essential elements must be complied with for a sale or supply of services to qualify for zero-rating (0%) under Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services are performed;

2. The services fall under any of the categories under Section 108(8)(2), or simply, the services rendered should be other than "processing, manufacturing or repacking goods";

3. The service must be performed in the Philippines by a VAT-registered person; and

4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.

For the first element, in order to be considered as a non-resident foreign corporation (NRFC) doing business outside the Philippines, each entity must be supported, at the very least, by both a Certification of Non-Registration of Corporation/Partnership issued by the SEC, and proof of incorporation/registration in a foreign country (*e.g.*, Articles/Certificate of Incorporation/Registration and/or Tax Residence Certificate). The former establishes that the recipient of the service has no registered business in the Philippines, and that it is not engaged in trade or business within the Philippines; while the latter proves that the said recipient of the service is indeed foreign. *(Stefanini Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 11039, June 27, 2025)*

5. **Section 195 of the LGC requires the notice of assessment to state the nature of the tax, fee, or charge and the amount of deficiency, surcharges, interests, and penalties. Failure to comply with this requirement will render the assessment void.**

The CTA Division found that the *Notice of Assessment*, *Reply*, and *Letter of the City Treasurer* sent by the City Treasurer's Office of Quezon City failed to meet the requirements of a valid notice of assessment as contemplated by Section 195 of the LGC and cannot serve as basis for the collection of the deficiency taxes. As such, the 60-day period to protest in accordance with Section 195 did not run from the receipt of the taxpayer of such documents.

The *Notice of Assessment* was neither signed by the city treasurer nor did it provide any basis for the computation of amusement tax, surcharges, and interest; the *Reply* to the respondent's request for exemption also failed to provide the amount of tax, surcharges, and interests demanded to be paid; and the attached alleged assessments/computation to the *Letter of the City Treasurer*, which stated that the amounts assessed should first be paid before the administrative protest could be acted upon, were not signed by the city treasurer and also failed to indicate the basis of the amounts indicated therein.

The CTA Division also held that Section 3 of the Quezon City Revenue Code unduly broadens or expands the definition of amusement places as "establishments devoted to pleasurable diversion and entertainment and include places of recreation, relaxation, avocation, pastime and fun", contrary to the definition as provided under Section 131 (c) of LGC referring to "places of amusement where one seeks admission to entertain oneself by seeing or viewing the show or performances." *(Quezon City Government and Hon. Edgar T. Villanueva, in his capacity as the City Treasurer v. Aeon Fantasy Group Philippines, Inc., CTA AC No. 317, June 20, 2025)*

6. **A taxpayer who originally chose the refund or tax credit certificate option may subsequently opt to carry-over the excess creditable taxes to the taxable quarters of the succeeding taxable years. However, once the taxpayer avails of the carry-over option, it may no longer revert to its original choice due to the irrevocability rule.**

Two options are available to a taxpayer that has excess creditable withholding tax (CWT) for the taxable year, either: (1) carry-over and apply the overpayment as tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (also known as automatic tax credit) until fully utilized (meaning, there is no prescriptive period); or (2) to apply for a cash refund or issuance of a Tax Credit Certificate (TCC) within the prescribed period. In exercising its option, the taxpayer must signify, in its income tax return, the option it intends to avail.

Once the option to carry-over is chosen, it becomes irrevocable. However, the principle of irrevocability only applies when the option to carry-over is elected – the other choice, *i.e.*, cash refund or TCC, is not irrevocable.

Here, the taxpayer marked the box corresponding to the option "To be refunded", clearly manifesting its intention to claim for refund its excess and unutilized CWTs for the calendar year (CY) 2019. However, the taxpayer, in its amended Annual Income Tax Return for CY 2020, carried over an amount which included the subject of the claim for a refund. The taxpayer's initial decision to avail of the refund option was effectively negated by its very act of carrying over the same amount to the subsequent CY 2020, as part of the prior year's excess credits. The taxpayer cannot now renege on its choice to carry-over its excess and unutilized CWTs and seek its refund or the issuance of a TCC. *(Norconsult Management Services Phils., Inc. v. Commissioner of Internal Revenue, CTA Case No. 10835, June 30, 2025)*

7. **Proper service of Letter of Authority (LOA) to the taxpayer is part and parcel of the latter's right to due process.**

Service of the LOA should be to the taxpayer or their duly authorized representative to meet the due process requirement. In this case, the LOA was served to an employee (Suguitan) of a corporation in which the individual taxpayer allegedly owned 80-90% of the shares of stock.

The CTA Division held that the individual taxpayer and the corporation are distinct personalities and refused to pierce the veil of corporate fiction in the absence of proof that the corporation was used as a vehicle for the individual taxpayer solely to perpetuate actual fraud

regarding his alleged deficiency internal revenue taxes. Additionally, the Court held that even assuming that Suguitan was an employee of individual taxpayer, the BIR failed to show that Suguitan received the LOA under express or implied authority from the individual taxpayer. *(Enrico John Olivares v. Commissioner of Internal Revenue, CTA Case No. 10704, July 3, 2025)*

8. **It is unnecessary for the taxpayer to file a separate administrative claim for refund of the amount garnished by the BIR during the pendency of the case.**

The CTA Division, after considering the circumstances of the case (*i.e.*, garnishment by and release of the fund to the BIR during the pendency of the case and the filing of a Supplemental Petition for Review by the taxpayer to seek the refund of the garnished and released amount), held that a prior administrative claim for refund is unnecessary and that it was proper to take cognizance of the Supplemental Petition for Review that prayed for the refund of the garnished/released amount.

The filing of an administrative claim for refund would have been an exercise in futility, as it would in effect require the taxpayer to go through a useless and needless ceremony that would only delay the disposition of the case, for the BIR would certainly disallow the refund claim, as allowing the refund would contradict the very action of denying the protest against the assessment and ordering the payment/release of the garnished amount. Furthermore, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment be resolved jointly with a tax refund claim – to determine once and for all in a single proceeding the true and correct amount of tax due or refundable. (*The Philippine Stock Exchange, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10781, July 4, 2025*).

9. **The due process requirement in the issuance of tax assessments grants the taxpayer fifteen (15) days from receipt of the Preliminary Assessment Notice (PAN) to file a protest before the BIR. Only after the lapse of such can the BIR issue a Formal Letter of Demand/Final Assessment Notice (FLD/FAN).**

As part of due process in the issuance of tax assessments, a taxpayer is given fifteen (15) days from receipt of the PAN to file a protest or response thereto with the BIR. It is only upon the lapse of the prescribed 15-day period, without such protest or response being filed by the taxpayer within such period, that respondent may issue the corresponding FLD or FAN.

The BIR is mandated to perform its assessment functions in accordance with law, and strict adherence thereto, with their own rules of procedure, and always with regard to the basic tenets of due process. Moreover, part of administrative due process requirement is the right of the taxpayer to submit comments or arguments with supporting documents/evidence at each stage of the assessment process. If the BIR fails to observe due process, it shall have the effect of rendering the deficiency tax assessment void with no force or effect.

While the taxpayer filed a letter after the issuance of the PAN, the CTA Division held that it cannot be considered as a response to the PAN since the letter merely contained a request for an additional thirty (30) days to respond – and does not state any comment or argument against

it. Simply put, the taxpayer was not able to exhaust the 15-day period to respond to the PAN prior to the issuance of the FLD/FAN. (*Pampanga Rural Electric Service Cooperative, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10996, July 7, 2025*)

10. **To successfully prosecute a violation of Section 255, it must be shown that: (1) the taxpayer is required to pay any tax, make or file a return, keep any record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; (2) the taxpayer failed to do so; and (3) the act is willful.**

To successfully prosecute a violation of Section 255 (*Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Rund Excess Taxes Withheld on Compensation*), it must be shown that: (1) the taxpayer is required to pay any tax, make or file a return, keep any record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; (2) the taxpayer failed to do so; and (3) the act is willful.

The term "willful" means voluntary and intentional, but not necessarily malicious. The term willfully was also construed as voluntary, intentional violation of a known legal duty. The prosecution must prove that the taxpayer knew his legal duty to file an income tax return, yet, the taxpayer knowingly, voluntarily, and intentionally neglected to do so. Willful neglect to file the required tax return cannot be presumed. It must be established fully as a fact and cannot be attributed to a mere inadvertent or negligent act.

The CTA Division took note of the taxpayer's financial constraints and eventual incapacity as well as its earnest attempts to settle its tax liabilities and held that there is reasonable doubt on the alleged willfulness of the accused Corporation in its failure to remit its Withholding Tax on Compensation (WTC). Instead, its efforts to settle its unpaid WTC returns with what its remaining funds can muster as acts contrary to willfulness, intentional or just sheer indifference on the natural consequences of non-payment. *(People of the Philippines v. Reynaldo Y. Dia & Fritz and Macziol Asia, Inc., CTA Crim. Case No. O-1002, July 8, 2025)*

11. **Where applications or claims for a VAT refund are filed with a Revenue District Office, the appealable decision to the CTA is that of the Regional Director, not the one issued by the Revenue District Officer.**

On 11 November 2021, the taxpayer filed an administrative refund claim with the Revenue District Office in connection with its excess and unutilized creditable input VAT for the fourth quarter of taxable year 2019. On 5 January 2022, the taxpayer received a letter dated 15 December 2021 issued by the Revenue District Officer denying said refund claim. On 4 February 2022, the taxpayer filed a Petition for Review to the CTA.

The CTA Division explained that it is the decision, ruling, or inaction of the Commissioner—or duly authorized official—that is appealable to this Court. Under RMC No. 17-2018, the Regional Director is the duly authorized official for VAT refund claims within the jurisdiction of a BIR Region.

The Court dismissed the Petition for Review and held that only the decision rendered by the Regional Director on a claim for refund of input VAT falls within the appellate jurisdiction of the CTA. *(Sankyu-Ats Consortium - B v. Commissioner of Internal Revenue, CTA Case No. 10768, July 11, 2025)*

REVENUE REGULATIONS

1. Revenue Regulations No. 16-2025

Amending Certain Provisions of Revenue Regulations No. 6-2019, as amended by Revenue Regulations No. 10-2023 and 17-2021, to Provide Extension on the Period of Submission of Documentary Requirements for Estate Tax Availment Pursuant to the Tax Amnesty Act

The amendment provides that after payment, the duly accomplished and sworn Estate Tax Amnesty Return (ETAR) and Acceptance Payment Form (APF) with proof of payment, together with the complete documentary requirements, shall be immediately submitted to the concerned RDO in triplicate copies. Failure to submit the same until June 30, 2025 is tantamount to non-availment.

REVENUE MEMORANDUM ORDERS (RMO)

1. Revenue Memorandum Order No. 34-2025

Guidelines and Procedures Regarding Requests for Issuance of a Certified True Copy of the Commissioner of Internal Revenue's Decision on an Administrative Appeal Against a Final Decision on Disputed Assessment and on a Denial of the Claims for Refund of Value-Added Tax and Excise Tax under Sections 112 (C) and 135-A of the National Internal Revenue Code of 1997, as amended by Republic Act No. 12066, under the Jurisdiction of the Appellate Division

RMO No. 34-2025 provides the following documentary requirements for requests for certified true copies (CTC) of the Commissioner of Internal Revenue's Decision on an administrative appeal against a Final Decision on Disputed Assessment (FDDA) and on the denial of the claims for refund of value-added tax (VAT) and excise tax (ET):

1. Written request for a CTC, including the taxpayer's name and the taxable year involved, and signed by the taxpayer or the taxpayer's authorized representative;

2. Proof of payment of Certification Fee;

3. Payment of documentary stamp tax; and

4. Respective requirements for individual and corporate/non-individual taxpayers, respectively.

It also provides for the procedures for the said requests:

1. Submit a written request for a CTC with the aforementioned documents to the Administrative Officer of the Appellate Division;

2. Pay the applicable fee;

3. Present proof of payment and the loose documentary stamp tax to the Appellate Division; and

4. Receive the CTC.

REVENUE MEMORANDUM CIRCULARS

1. Revenue Memorandum Circular No. 65-2025

Clarification on the Registration of Books of Accounts for New Business Registrants

New business registrants with no exiting tax identification number (TIN) or who already have an existing TIN, can registered any of the following types of Books of Accounts:

1. Manual Books of Accounts;

2. Loose-lead Books of Accounts (LLBA); or

3. Computerized Books of Accounts (CBA).

Taxpayers who opt to use LLBA and CBA are not required to registered Manual Books of Accounts but are required to secure a Pemit to Use LLBA or Acknowledgment Certificate for CBA or Computerized Accounting System before use – which permits may only be issued after a TIN has been issued.

Taxpayers who opt to use LLBA or CBA shall be liable for failure to make entries or recordings upon commencement of business operations, without approved PTU or AC.

2. Revenue Memorandum Circular No. 66-2025

Clarification on Certain Issues Pertaining to Compliance with the Documentary Requirements in Availing VAT Zero-Rating on Local Purchases of Duly-Registered Business Enterprises (RBE)

The VAT Zero-Rate Certificate issued by the concerned Investment Promotion Agency shall serve as the primary document basis for the availment of zero percent (0%) VAT rate – it is no longer necessary to submit a sworn-declaration from the RBE buyer. This is without prejudice to the BIR's authority to conduct post-audit verification to ensure that the purchases are directly attributable to the registered project or activity of the qualified RBE.

3. Revenue Memorandum Circular No. 67-2025

Circularizing Customs Memorandum Circular No. 113-2025, entitled "Implementation of Revenue Regulations No. 09-2025 which implemented Section 295(D) of the National Internal Revenue Code of 1997 (Tax Code), as amended by Section 18 of Republic Act No. 12066 or the Corporate Recovery and Tax Initiatives for Enterprises to Maximize Opportunities for Reinvigorating the Economy (Create More Act)"

The Bureau of Customs shall allow the release of goods sold locally by RBEs upon the presentation of BIR Form No. 0605. The BOC officers shall also collect the appropriate duties, applicable taxes other than VAT, and other fees whose collection were suspended at the time of importation by the RBE.

4. Revenue Memorandum Circular No. 72-2025

Clarification on the Expiration of Certificates of Accreditation of Cash Register Machines (CRMs), Point of Sale (POS) and Other Similar Sales Machines/Software Generating Invoices/Receipts Including Electronic Invoicing or Electronic Receipting System/Software Used under a Subscription-Based Agreement

Developers, dealers, suppliers, or pseudo-supplies of "Sales Machines/ Software" whose Certificates of Accreditation ("Certificate") are valid until July 31, 2025 and onwards must apply for a new accreditation. Permits to Use CRMs, POS, and other similar sales machines/software do not expire and do not need to be cancelled upon expiry of the Certificate of the software that was used during the application of the sales machine/software's Permit to Use.