Tax and Regulatory Bulletin

September 2025

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Executive Summary

Bureau of Internal Revenue (BIR)

1. Consolidated guidelines and procedures for the processing of claims for refund of excise tax paid on petroleum products released.

Bureau of Customs (BOC)

1. Inspection powers of the Department of Agriculture (DA) over all imported food shipments prior to the assessment by the Bureau of Customs, pursuant to the Food Safety Act of 2013 (Sec. 12 (b), RA No. 10611) reiterated.

Bangko Sentral ng Pilipinas (BSP)

1. Moratorium on issuance of new licenses for Virtual Asset Service Providers (VASP s) remains.
2. Stricter restrictions on large value cash transactions implemented.
3. The application window for establishment of digital banks closes on 1 December 2025.

Philippine Economic Zone Authority (PEZA)/Board of Investments (BOI)

1. Revised Application Form for Extension of Income Tax Holiday (ERD.2.F.002) and a revised Checklist of Documentary Requirements for Extension of Income Tax Holiday (ERD.2.I.003), effective 15 September 2025 available.
2. Amendment of the Import Substitution Criterion of the 2022 Strategic Investment Priority Plan (SIPP) Specific Guidelines (SG) on "All Qualified Manufacturing Activities including Agro-Processing."

Court of Tax Appeals (CTA)

1. The fourth and fifth requisites under VAT refund require that the taxpayer is engaged in zero-rated or effectively zero-rated sales, and that, for zero-rated sales under Sections 106 (A)(2)(1) and (2); 106 (B); and 108 (B)(1) and (2) of the Tax Code, as amended, the proceeds from such sales were paid in acceptable foreign currency and duly accounted for in accordance with BSP rules and regulations. While offsetting arrangements are recognized by the BIR as an alternative to actual inward remittance of foreign currency proceeds in export sales, as acknowledged in Revenue Memorandum Circular (RMC) No. 42-2003, the same must be proven with sufficient documentary evidence.
2. The key provisions of the Customs Modernization and Tariff Act (CMTA) clearly provides that the mere carrying of smuggled goods on board any vehicle, may cause the outright seizure of the latter and subject the same to forfeiture, save for some exceptions.
3. The law does not require direct attributability of the input VAT from the purchase of goods to the finished product whose sale is zero-rated. The law permits the proportionate allocation of input taxes to the zero-rated sales, exempt sales, and taxable sales.

Supreme Court

1. The rules and regulations issued to implement the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act are unconstitutional in so far as these apply the VAT zero-rating incentive on the local purchase of goods and services only to registered export enterprises.
2. The administrative remedies for tax collection, such as distraint, levy and garnishment may be invoked only when the taxes sought to be collected have already become delinquent, whether by the taxpayer's own admission or by virtue of a valid formal assessment.

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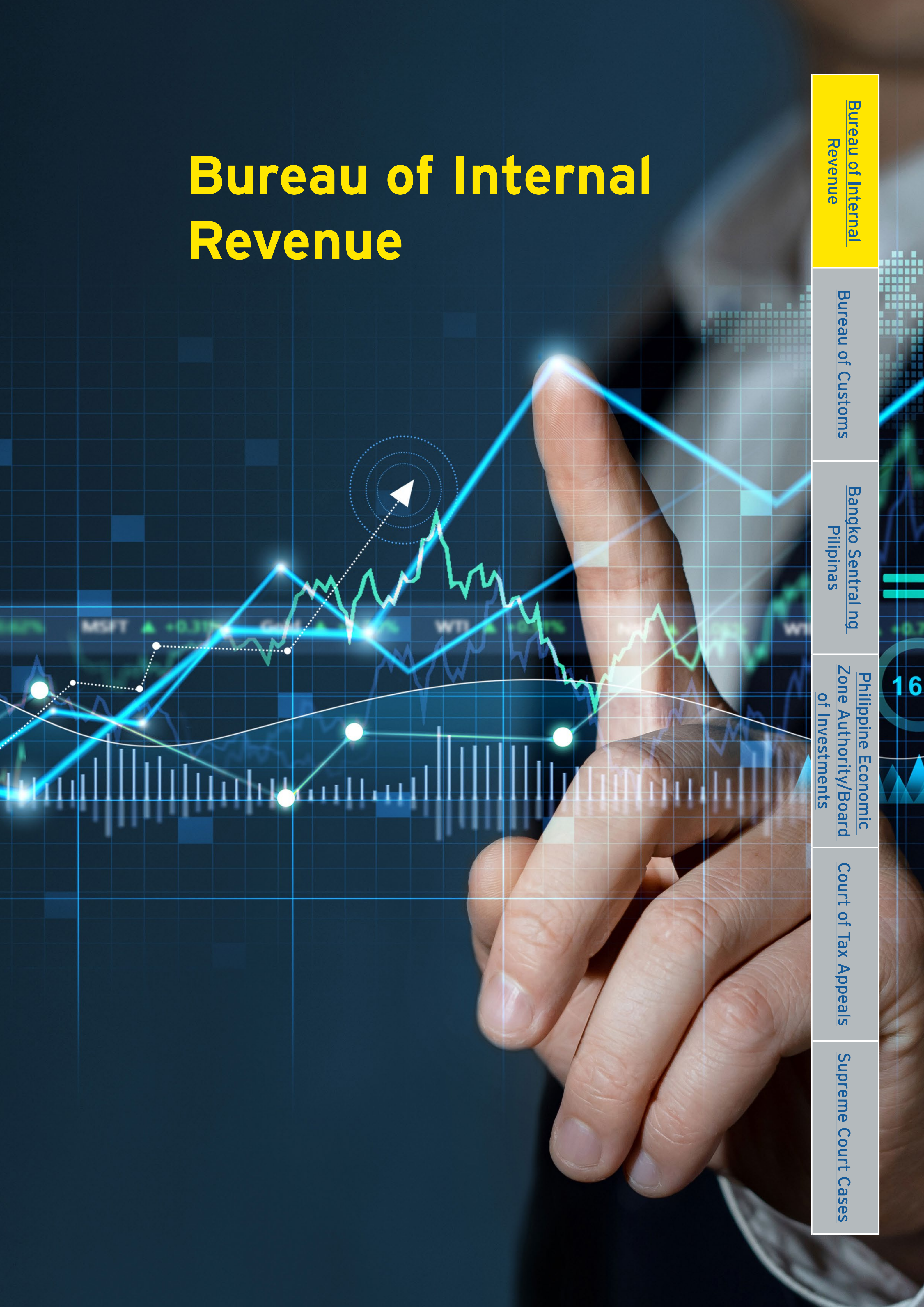
Bureau of Internal Revenue



Bureau of Internal Revenue
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RMO No. 38-2025 provides for the consolidated guidelines and procedures for the processing of claims for refund of excise tax paid on petroleum products, amending RMO No. 16-2024 and other related issuances.

Bureau of Internal Revenue

Revenue Memorandum Order (RMO) No. 38-2025 dated 8 September 2025

- The claims for excise tax refund pursuant to Sections 135 and 135-A of the Tax Code must conform with the following essential requisites:

  a. The refund shall pertain to claims under Section 135 of the Tax Code.
  b. Filing of a claim for refund shall be done within two years after payment of the tax or penalty.
  c. The claim must be supported with a copy of the duly filed written application together with the application for refund (BIR Form No. 1914) with the corresponding proof of payment remitted to the Bureau of Internal Revenue (BIR) and/or the Bureau of Customs (BOC).

- The processing offices authorized to receive the application for excise tax refunds are as follows:

  a. The Revenue District Office (RDO)
  b. The respective Large Taxpayer Audit Division (LTAD) or Large Taxpayer District Office (LTDO) under the Large Taxpayer Service (LTS)

In all cases, the Revenue Office (RO)-Assessment designated as Officer of the Day shall receive claims filed at the aforesaid authorized processing office with the taxpayer-claimant attestation that the documents submitted are complete.

The following offices shall be responsible for the processing, reviewing and approving the claims for refund filed by the taxpayer-claimant under their respective jurisdictions, regardless of the amount:

Processing Office	Reviewing Office	Approving Official
RDO	Assessment Division (AD)	Regional Director (RD)
LTAD/LTDO	Head Revenue Executive Assistant (HREA)-LTS	Assistant Commissioner (ACIR)-LTS

- Section 135-A of the Tax Code mandates that the timeframe to grant in full or in part the claims for refund is 90 days from the date of submission of complete documents in support of the application. Hence, the concerned offices shall strictly observe the 90-day timeframe to grant in full or in part the claims for refund, broken down as follows:

  a. Regional and LTS Claims

Particulars	Number of Days from Receipt of Application	
	Claims with BIR	Claims with BOC
Verification/Processing (RDO/LTAD)	62	60
Review (AD/HREA-LTS)	8	8
Approval by RD/ACIR-LTS	5	6
Approval by RD/CIR of BOC Endorsement	-	2
Total No. of Days	**75**	**76**

b. Time Frame to Process Payment of Approved Excise Tax Refund Claims

i. Claims Filed and Processed at the Regional Offices

Processing Office	No. of Days after Approval of the Issuance of Refund
Finance Service/Accounting Division	8
Finance Division	3
Administrative and Human Resource Management Division (AHRMD)	2
Office of the Regional Director	2
Total Number of Days	**15**

ii. Claims Filed and Processed at the LTS

Processing Office	No. of Days after Approval of the Issuance of Refund
Finance Service/Accounting Division	10
Administrative Service	5
Total Number of Days	**15**

- If upon filing or during the processing of the excise tax refund, the taxpayer-claimant has outstanding tax liabilities (final and executory) as defined under Section II (1) of RMO No. 11-2014, as evidenced by Certification on Outstanding Tax Liability/ies of Taxpayer which shall be valid for six months from time of issuance, the processing/reviewing/accounting Office, shall notify the Collection Section of the RDO and Collection Division of the Revenue Region or the LT-Collection Enforcement Division (LTCED), whichever has jurisdiction over the taxpayer-claimant, of the approved refund which may be used or garnished by the BIR to collect either fully or partially for the outstanding delinquent tax liability/ies of the taxpayer-claimant, subject to existing tax laws and revenue issuances on the enforcement and settlement of delinquent accounts.

- All claims for excise tax refund on petroleum products shall be made on a quarterly basis, aligned with the taxpayer's accounting period, whether calendar or fiscal.

RMO No. 39-2025 provides for the creation and dropping of Alphanumeric Tax Code (ATC) of selected revenue source under Revenue Regulations (RR) No. 2-1998.

RMO No. 39-2025 dated 17 September 2025

- To facilitate the proper identification and monitoring of payment for excise tax, the following ATCs are created and dropped:

Newly Created ATC

<table>
<tr><th>ATC</th><th>Description</th><th>Tax Rate</th><th>Legal Basis</th><th>BIR Form No.</th></tr>
<tr><td>XM021</td><td>Non-Metallic Minerals</td><td rowspan="2">4%</td><td rowspan="2">RR No. 2-98</td><td rowspan="2">2200-M</td></tr>
<tr><td>XM025</td><td>Quarry Resources</td></tr>
</table>

Dropped ATC

ATC	Description	Tax Rate	Legal Basis	BIR Form No.
XM020	Non-Metallic Minerals and Quarry Resources	4%	RR No. 2-98	2200-M

RMO No. 40-2025 provides for the creation and dropping of ATC of selected revenue source under Republic Act (RA) No. 12214 (Capital Markets Efficiency Promotion Act).

RMO No. 40-2025 dated 17 September 2025

- To facilitate the proper identification and monitoring of payment for excise tax, the following ATCs are created and dropped:

Newly Created ATC

ATC	Description	Tax Rate	Legal Basis	BIR Form No.
XG056 XG057 XG058 XG059	Pick-ups Up to Php600,000 Over Php600,000 to Php1,000,000 Over Php1,000,000 to Php4,000,000 Over Php4,000,000	4% 10% 20% 50%	RA No. 12214	2200-AN

Dropped ATC

ATC	Description	Tax Rate	Legal Basis	BIR Form No.
XG055	Pick-Ups	Exempt	RA No. 10963	2200-AN

RMC No. 81-2025 reiterates the criteria and guidelines on the deductibility of ordinary and necessary expenses under Section 34 (A) (1) (a) of the National Internal Revenue Code of 1997, as amended.

Revenue Memorandum Circular (RMC) No. 81-2025 dated 3 September 2025

- This Circular reiterates the criteria and guidelines regarding the deductibility of business expenses for tax purposes. It emphasizes the requirement that such expenses must be "ordinary" and "necessary" in accordance with Section 34 (A) (1) (a) of the Tax Code. The cited rulings and principles provide a comprehensive framework for determining the deductibility of business expenses, essential for accurately reflecting the taxable income of the organizations, trades or businesses.

- In order for a business expense to be allowed as deduction from gross income, the following conditions must be met:

  1. The expense must be ordinary and necessary

     - Taxpayers are allowed to deduct business expenses that are both "ordinary" (common and accepted in the trade or business) and "necessary" (appropriate and helpful for the business) from their gross income to determine their taxable income.

     - An "ordinary expense" is one that is normal, usual, and customary in the type of business conducted by the taxpayer. It does not need to be habitual or recurring but should be common in the context of the business. In determining whether a particular expense is ordinary, the size and relative proportion of expenses must be considered. This should meet the further test of reasonableness in amount.

     - A "necessary expense" is one that is appropriate and helpful for the development of the taxpayer's business. This implies that the expense should be directly connected and proximately resulting from carrying on the business and must contribute to the generation of income or profit or minimizing a loss.

  2. The expense must be paid or incurred within the taxable year

     - The deductible business expenses claimed must be for expenses that are paid or incurred within the taxable year when the corresponding revenue is earned.

3. The expense must have been paid or incurred in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business, or exercise of a profession

    - When a taxpayer incurs expenses related to both active and passive income, determining which expenses qualify as valid deductions under the "ordinary and necessary" provisions requires careful consideration of their direct connection to income generating activities.

    - Expenses directly tied to the development, management, operation, or conduct of active trade or business can be deducted as they meet the criteria of being ordinary and necessary. However, expenses related to managing investments that generate passive income, such as fees for financial advice, interest from loan to finance investments, or brokerage services, and other related expenses may not qualify under the same provision, as they do not relate directly to the taxpayer's active business operations.

    - Moreover, each income stream, whether subject to regular tax. preferential rates, tax-exempt, or final tax. should have its expenses correctly identified. Furthermore, Section 43 of the Tax Code demands that income be computed annually using a method that clearly reflects the income. Non-compliance with these rules may lead to reclassification of expenses and potential disallowance if they are not directly tied to the development, management, operation and/or business activities, ensuring fairness and transparency in tax reporting.

4. The expense must be supported by invoices, records, or other pertinent papers.

- Expenses solely incurred in relation to tax-exempt income are not deductible for regular income tax purposes. Business expenses related to tax-exempt income do not contribute to the generation of taxable income and therefore do not meet the criteria of being necessary for the conduct of the business in the pursuit of income.

- Income subject to final withholding tax is typically taxed at the source, and the tax withheld is considered the final tax liability on that income. Examples include interest from savings accounts or dividends from stocks, where the financial institution or the payor withholds a flat tax rate. The expenses solely related to generating this income are usually not deductible against other taxable income subject to regular income tax. Since this passive income has already been taxed at a final rate, allowing further deductions would distort the taxation principle that final withholding tax is comprehensive and conclusive. Thus, costs related to investment management do not qualify for deductions typically reserved for business operations.
  When expenses are directly attributable to income subject to a preferential tax rate due to specific incentives or under special laws, these expenses must be carefully segregated from those subject income. The primary reason for this segregation is to ensure that the expenses directly tied to the preferentially taxed income are not deducted from the regular taxable income, thereby preventing any reduction to regular taxable in the tax base of the regular income. This segregation helps in maintaining the integrity of the tax system and ensures that the benefits of preferential tax rates are not improperly extended to regular income.

RMC No. 82-2025 publishes the updated list of registered manufacturers/importers/exporters with the corresponding products/ brands/variants of cigarettes, heated tobacco products, vapor products, novel tobacco products, cigars and chewing tobacco products as of 30 August 2025.

RMC No. 82-2025 dated 10 September 2025

- Newly registered manufacturers/importers after 30 August 2025 shall be included in the updated list of entities in the BIR website.
- Manufacturers/importers/exporters must comply with the requisite registration of brands and variants thereof within six months from the date of release of this RMC to avoid penalties for non-compliance.
- Products must comply with the requirement on Graphic Health Warning and affixing of BIR Tax stamps except for novel tobacco products, cigars and chewing tobacco products for which Internal Revenue Stamps Integrated System (IRSIS) stamps are not yet available in the system.

RMC No. 84-2025 circularizes the Department of Finance (DOF) Department Order (DO) No. 012-2025 regarding the "Revised Schedule of Filing Fees Imposed on Applications for Tax Exemption Indorsements (TEIs) and Non-TEIs in the Revenue Office."

RMC No. 84-2025 dated 16 September 2025

- DOF DO No. 012-2025 covers all applications for the issuance of TEI or Non-TEI assigned to The Mabuhay Lane and the Customs and Tariff Division.
- The revised schedule of filing fees is presented in the table hereunder:

Value of Importation	Filing Fee
Php100,000 and below	Php300
From Php100,000.01 - Php400,000	Php500
From Php400,000.01 - Php600,000	Php700
From Php600,000.01 - Php800,000	Php900
From Php800,000.01 - Php1,000,000	Php1,100
From Php1,000,000.01 - Php5,000,000	Php2,100
From Php5,000,000.01 - Php10,000,000	Php3,100
From Php10,000,000.01 and above	Php4,100

- Requests for amendment of TEI for inadvertent mistakes made by the applicant shall be subject to a service fee of Php300, provided that the resulting amendment does not affect the substantial or material information in the said TEI.
- TEI applications for Philippine goods previously exported and subsequently rejected by the buyer abroad pursuant to Section 800 (u) of RA No. 10863 [Customs Modernization and Tariff Act (CMTA)] and other non-TEI requests (e.g., authority to import, payment of taxes and duties on previously authorized tax and duty-exempt motor vehicles, cancellation of TEI, among others) shall likewise be subject to a service fee of Php300.
- Requests for amendment of TEI that will result in a substantial or material change in the information provided therein shall not be granted. In such instances, the applicant may refile the application for TEI, subject to the corresponding filing fee as detailed in the revised schedule of filing fees.
- Requests for amendment of TEI due to inadvertent error committed by the Revenue Office shall not require payment for the correction. This exemption is intended to ensure that applicants are not subjected to further financial cost of not their doing.

- Processing time for applications with complete documentary requirements and necessary data needed in the encoding of the TEI or non-TEI shall be acted upon as follows, provided that the corresponding filing fees indicated in the revised schedule above are paid:

  1. An application for tax exemption shall be acted upon by The Mabuhay Lane within two working days upon receipt of complete documentary requirements for those delegated for signature to the Director IV of the Revenue Office. However, an application requiring the signature of the Revenue Operations Group Undersecretary shall be processed within three working days upon receipt of complete documentary requirements.

  2. An application for tax exemption shall be acted upon by the Customs and Tariff Division within five working days upon receipt of complete documentary requirements.

  3. Implementation of online digital payment of filing fees for faster turnaround time shall be incorporated as part of service improvement, consistent with RA No. 11032, otherwise known as the *"Ease of Doing Business and Efficient Government Service Delivery Act of 2018."*

- The Cash Section under the General Services Division of the Central Administration Office of this Department shall issue the required Official Receipt for every application for tax exemption, which shall serve as evidence that the corresponding filing fee, as herein provided, has been paid.

- The revised RO schedule of filing fees shall be reviewed by the Revision of Fees Committee of this Department every five years or as may be required by law, executive orders, regulations, or other related issuances.

- This Order supersedes DO No. 54-2000 and amends DO Nos. 010-2019 and 041-2022 insofar as the filing fee is concerned. All other Orders which are inconsistent are amended or repealed.

Bureau of Customs

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Bureau of Customs

Prior Inspection Rule of the Department of Agriculture for all Imported Food shipments

AOCG Memo No. 156-2025 refers to the letter dated 1 July 2025 from the Secretary of Agriculture, Francisco P. Tiu Laurel, Jr., reiterating the inspection powers of the Department of Agriculture (DA) over all imported food shipments prior to the assessment by the Bureau of Customs, pursuant to the Food Safety Act of 2013 (Sec. 12 (b), R.A. No. 10611).

Assessment and Operations Coordinating Group (AOCG) Memo No. 156-2025

- The DA brings to BOC's attention certain practices observed at port level regarding the incomplete observance of District Officials of the DA's authority to conduct prior inspections.
- The DA inspectors are mandated to sign a document that ostensibly serves as a form of clearance for the shipments. Thus, the Secretary of DA refrains all DA Officers from signing such documents to ensure consistent and proper implementation of DA's rules and regulation regarding clearances.
- In view thereof, the AOCG requests the Ports to submit their comments providing for current best practices in relation to the importation of food shipments.

Bangko Sentral ng Pilipinas

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Bangko Sentral ng Pilipinas

BSP Memorandum No. M-2025-031 reiterates the moratorium on issuance of new licenses for Virtual Asset Service Providers (VASPs).

BSP Memorandum No. M-2025-031, 29 August 2025

The Monetary Board, in its Resolution No. 848 dated 20 August 2025, approved the continued enforcement of the moratorium on the issuance of new licenses for VASPs. The BSP recognizes the advancements in financial services brought about by digital platforms and technologies. particularly on the use of distributed ledgers such as blockchain technology. However, ongoing assessments have determined continued concerns on consumer protection and increasing issues on cybercrime.

The Monetary Board provides stricter restrictions on large value cash transactions.

BSP Circular No. 1218, 18 September 2025, Regulation on Large Value Cash Transactions

Large value payouts such as withdrawals of more than Php5OO,OOO or its equivalent in foreign currency, shall only be made, facilitated, or transacted through check payment, fund transfer, direct credit to deposit accounts, and/or other form using the digital payment platform of the BSFI.

The Php500,000 limit maybe carried out in a single transaction or in series of transactions within one (l) banking day. BSFIs may, however, adopt lower cash transaction limits.

Cash transactions exceeding the set threshold shall be subject to the conduct of appropriate enhanced due diligence {EDD} measures.

BSFIs may, after the exercise of EDD, allow large value payouts in cash of more than Php500,000 or its equivalent in foreign currency, provided that the customer can submit additional identification information and/or proof of legitimate business purpose or transaction.

The application window for establishment of digital banks closes on 1 December 2025.

BSP Memorandum No. M-2025-032, 25 September 2025

Digital bank applications received by the BSP until 30 November 2025 will be processed on a first-come first-served basis.

Each application will be assessed for completeness and sufficiency of submitted documentation or information. as well as compliance with the licensing criteria on the establishment of digital banks.

Applicants are expected to ensure adherence with the documentary and chartering pre-qualification requirements of the BSP.

Applications received by 30 November 2025 with noted deficiencies in documentary requirements and/or licensing criteria will be returned and considered closed. After the said date. the BSP will no longer accept and process new or returned applications.

Philippine Economic Zone Authority/Board of Investments

Philippine Economic Zone Authority/Board of Investments

The Philippine Economic Zone Authority circularizes a revised Application Form for Extension of Income Tax Holiday (ERD.2.F.002) and a revised Checklist of Documentary Requirements for Extension of Income Tax Holiday (ERD.2.I.003), effective 15 September 2025.

PEZA Memorandum Circular No. 2025-048 dated 15 September 2025

Please refer to the link attached for the revised Application Form and Checklist of Requirements for Extension of Income Tax Holiday: PEZA Memorandum Circular No. 2025-048.pdf.

The BOI amends the Import Substitution Criterion of the 2022 Strategic Investment Priority Plan (SIPP) Specific Guidelines (SG) on "All Qualified Manufacturing Activities including Agro-Processing."

BOI Memorandum Circular No. 2025-007

To effectively carry out the intents and purposes of E.O. 226, as amended by R.A. No. 11534 and further amended by R.A. 12066, the Board, in its meeting on 10 July 2025, and by virtue of Board Resolution No. 09-04, Series of 2025, approved the following:

Amendments to the 2022 Strategic Investment Priority Plan (SIPP) General Policies and Specific Guidelines:

FROM	TO
D. SPECIFIC GUIDELINES	
I. PREFERRED ACTIVITIES	
3. All Qualified Manufacturing Activities including Agro-Processing xxx a) Will manufacture/process products, the importation of which grew by an annual average of at least 10% from 2017-2019, or the share of imports to total apparent demand is at least 60%; or xxx	3. All Qualified Manufacturing Activities including Agro-Processing xxx a) Will manufacture/process products, the importation of which grew by an annual average of at least 10% from the past five years from the date of application, or the share of imports to total apparent demand is at least 60%; or xxx

Court of Tax Appeals

Court of Tax Appeals

Company A vs. Commissioner of Internal Revenue

CTA Case No. 10922, promulgated 29 August 2025

The fourth and fifth requisites under VAT refund require that the taxpayer is engaged in zero-rated or effectively zero-rated sales, and that, for zero-rated sales under Sections 106 (A)(2)(1) and (2); 106 (B); and 108 (B)(1) and (2) of the Tax Code, as amended, the proceeds from such sales were paid in acceptable foreign currency and duly accounted for in accordance with BSP rules and regulations. While offsetting arrangements are recognized by the BIR as an alternative to actual inward remittance of foreign currency proceeds in export sales, as acknowledged in Revenue Memorandum Circular (RMC) No. 42-2003, the same must be proven with sufficient documentary evidence.

Facts:
On 31 March 2022, Company A, a Regional Operating Headquarters (ROHQ), filed an administrative claim for a refund of its accumulated excess input tax with the VAT Credit Audit Division of the BIR. Company A alleges that it received, on 16 June 2022, a Letter dated 6 June 2022 from the BIR denying its application for VAT refund for the period 1 January to 31 March 2020 (BIR Denial Letter) for lack of factual and legal basis. On 15 July 2022, Company A filed the present Petition for Review.

Issue:

Was Company A entitled to its claim for refund?

Ruling:

No.

A claim for refund or issuance of a tax credit certificate for unutilized or excess input VAT attributable to zero-rated or effectively zero-rated sales is governed by Section 112(A) and (C) of the Tax Code, as amended. In addition to the requirements under Section 112(A) and (C), the taxpayer-applicant must comply with the substantiation and invoicing requirements prescribed under the Tax Code, as amended, and its implementing rules and regulations. Such compliance is indispensable to a "valid claim for input taxes attributable to zero-rated sales," as it provides the necessary basis to "determine the veracity of the taxpayer's claims."

In this case, Company A filed to establish that it is engaged in zero-rated or effectively zero-rated sales, as it failed to prove that the services rendered to its non-resident foreign affiliates were paid for in acceptable foreign currency.

The fourth and fifth requisites require that the taxpayer is engaged in zero-rated or effectively zero-rated sales, and that, for zero-rated sales under Sections 106 (A)(2)(1) and (2); 106 (B); and 108 (B)(1) and (2) of the Tax Code, as amended, the proceeds from such sales were paid in acceptable foreign currency and duly accounted for in accordance with BSP rules and regulations.

In this case, Company A failed to sufficiently prove that the corresponding payments were inwardly remitted through the Philippine banking system arid duly accounted for in accordance with BSP rules arid regulations.

Company A alleges that the fees were settled through a centralized clearing/netting system or group current account.

Offsetting arrangements are recognized by the BIR as an alternative to actual inward delivery of foreign currency proceeds in export sales, as acknowledged in Revenue Memorandum Circular (RMC) No. 42- 2003.

In this case, Company A receives foreign currency funding from its head office, Group AG, which is recorded in its books as a loan payable to Group AG. From this loan, Company A offsets all receivables earned from services rendered to the affiliates of Group AG. To support this assertion, Company A presented documentary evidence, including Short Term Credit Facility Agreement (STCFA), which was executed between

Avaloq Group and its various affiliates, including Company A. However, while the STCFA and related documents confirm that Company A had loan transactions in foreign currency with Group AG, they fail to prove that such advances from Group AG can be the subject of set-off as payment for receivables earned by Company A from its sales of services to other affiliates. First, the STCFA is an undertaking between Group AG, as the primary party and lender, and each affiliate, as borrower. It does not include a loan agreement between one affiliate and another. Second, the STCFA does not provide for an offsetting arrangement between Group AG's advances to Company A and the latter's receivables from Group AG's affiliates. Set Off

Balances of the STCFA only refers to a set-off of credits between Group AG and an affiliate, not between one affiliate and another. Third, Group AG is a distinct legal entity from its affiliates. Thus, the right of offset between Company A and other affiliates cannot be presumed but must be established by evidence. Company A failed to adduce these documents or contracts, which would support a valid offsetting arrangement between Company A and Group AG's affiliates.

Assuming arguendo, that the STCFA is sufficient to prove that a valid offsetting arrangement between Company A and Group AG's affiliates was authorized, Company A must still establish the actual details of the offsetting that occurred between Company A's receivables from its sales of services to Group AG's affiliates and the advances made by Group AG. While a Schedule of Offsetting was submitted, a closer examination of the Schedule of Offsetting of Receivables reveals that it does not show the actual details of the offsetting between Company A's receivables from sales of services to Group AG's affiliates and the advances made by Group AG. Rather, it only shows additions and deductions to the "Group Account Balance." Moreover, the Court was not able to ascertain that such loan transactions were treated as payments for the services provided by Company B to Group AG's affiliates.

Company H vs Office of the Commissioner of Customs

CTA Case No. 10622, promulgated 28 August 2025

The key provisions of the CMTA clearly provides that the mere carrying of smuggled goods on board any vehicle, may cause the outright seizure of the latter and subject the same to forfeiture, save for some exceptions.

Facts:

On 18 February 2021, Company H, as the owner and operator of the Subject Vessel registered as a common carrier engaged in coastwise trading, entered into a Charter Party Agreement with Company A. As agreed upon by the parties, the Subject Vessel shall be used in the transportation of sacks of rice.

On 24 February 2021, on the basis of a Warrant of Seizure and Detention (WSD) issued by the District Collector, the Subject Vessel was seized. Such WSD was thereafter received by Company H on 2 March 2021.

On 12 March 2021, Company H filed a Motion to Intervene with Motion to Release LCT Yellow River before the Office of the District Collector, Port of Limay, BOC, Bataan.

On 14 July 2021, the Assailed Decision was issued by Atty. William B. Balayo as the Acting District Collector of the Port of Limay, Bataan, where it ruled that the Subject Vessel shall be forfeited in favor of the government for violation of Sections 1113 (a), (b), and (k) in relation to Section 117 of the CMTA, among others. The Assailed Decision emphasized that the Subject Vessel was found in violation of Section 1113 (k) of the CMTA when it was utilized for the transportation of illegally imported rice and cigarettes. Section 1113 (b) was likewise violated for having on board, goods of foreign origin in excess of the amount necessary for sea stores, and without being properly entered or legally imported.

A Resolution dated 16 August 2021 was issued by the Acting District Collector, informing Company H that upon their receipt of the latter's Notice of Appeal and the Memorandum of Appeal, they immediately transmitted the full and complete records of the case to the Legal Service via Company L and was received by the latter on 12 August 2021. Moreover, Company H was also informed that a 2nd transmittal was made, forwarding the case to the SOC-Appellate Division likewise via Company L. This was received by the latter on 16 August 2021. Thus, it had 30 days or until 15 September 2021 within which to act on the Notice of Appeal and Memorandum of Appeal. However, the period lapsed and Company H's appeal remained unacted upon. In effect, the Assailed Decision dated 14 July 2021 was deemed affirmed.

In view of such inaction, Company H elevated the matter before the CTA by filing a Petition for Review.

Issue:

Was the forfeiture of the subject vessel valid?

Ruling:

Yes.

It is fundamental to underscore that proceedings on the matter of forfeiture are in remand is therefore directed against the res or a specific property (as in this case, the Subject Vessel). This means that the action centers on the involvement of the vessel in the illegal act and finds no relevance whether or not the agent or the owner thereof has knowledge or participation, as the action is not after the personal liability of the owner, but against the vessel itself as utilized in the violation.

In the case at hand, the seizure and the eventual forfeiture of the Subject Vessel, LCT Yellow River as provided in the Assailed Decision, was due to the fact that it was found to be loaded with smuggled rice and cigarettes.

The key provisions of the CMTA clearly provides that the mere carrying of smuggled goods on board any vehicle, may cause the outright seizure of the latter and subject the same to forfeiture, save for some exceptions.

There is no doubt that on 24 February 2024, the Subject Vessel was seized, among other vehicles, as it were found to be loaded with master cases of smuggled cigarettes and rice. It is likewise worthy to note that in its Amended Petition, Company H does not even dispute that smuggled rice and cigarettes were indeed loaded in the Subject Vessel. It merely claims that it is exempted from forfeiture since while it had knowledge that rice will be loaded in the Subject Vessel, it claims that it did not know that such rice was smuggled. However, Company H fell short of its burden to establish that it has nothing to do and has no knowledge with the facilitation of such an illegal activity, as will be later discussed.

To emphasize, the degree of proof required in forfeiture proceedings is merely substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

As provided in Section 1123 of the CMTA, in all proceedings for the forfeiture, the burden of proof shall be borne by the claimant. Unfortunately, Company H, as the claimant for the release of the Subject Vessel, failed to prove the same.

Company H failed to sufficiently prove that it met the conditions to be exempt from forfeiture.

In the implementation of Section 1113 of the CMTA, CAO No.010-20 was issued providing for the conditions by which a property may be exempted from forfeiture. CAO No. 010-20 provides that any vehicle, vessel, or aircraft may be exempted from forfeiture despite the finding that it was utilized to carry smuggled goods, provided that all the following conditions have been met: a) that it is a common carrier; b) it has not been chartered; and c) that the owner or agent did not know nor participated in the unlawful act.

The records of the case indubitably show that on 18 February 2021, herein Company H is a common carrier which entered into a Charter Party Agreement with Company A. Therefore, the fact that Company H as a common carrier, entered into a Charter Party Agreement with Company A, already disqualifies it from invoking the exemption provided under Section 1113 (a) of the CMTA (as implemented by CAO No. 10-2020) as the same requires that all conditions must be present. The absence of any one of the conditions exposes the subject vessel "Yellow River" to the legal repercussions of carrying smuggled goods, including the penalty of forfeiture.

Commissioner of Internal Revenue vs. Company C

CTA EB Case No. 2913, promulgated 1 September 2025

The law does not require direct attributability of the input VAT from the purchase of goods to the finished product whose sale is zero-rated. The law permits the proportionate allocation of input taxes to the zero-rated sales, exempt sales, and taxable sales.

Facts

On 6 November 1998, NPC and IMPSA entered into an Accession Undertaking for the rehabilitation and operation of the Caliraya, Botocan, and Kalayaan hydroelectric power plant complex (otherwise known as the CBK Project) under a Build-Rehabilitate-Operate-Transfer (BROT) scheme. Pursuant to this undertaking, IMPSA, as the contractor, agreed to generate and supply electricity to NPC during the duration thereof. In tum, NPC shall pay IMPSA the necessary fees, including the capital recovery fee and operation and maintenance (O&M) fees.

Later, another Accession Undertaking was forged, and a Supplemental Agreement was likewise entered into wherein CBK Power Corporation (CBK Power) took part and agreed to manage the CBK Project.

On 20 September 2000, NPC, IMPSA, CBK Power, and Company S executed a Second Accession.

Undertaking wherein the latter became a party to the BROT agreement. There, Company C assumed CBK Power's rights and obligations to operate the hydroelectric power plants. In addition to the Second Accession Undertaking, Company C also earlier executed a Turnkey Contract with IMPSA Construction Corporation with the same objective of transferring the operation of the power plant facilities. Ultimately, Company C managed the operations of the CBK Project and supplied electricity to NPC according to the terms of the executed agreements. As a result, it was Company C who then billed NPC for the necessary fees.

In 2006, Company C requested for an opinion from the BIR on the taxable consequences of the billed fees to NPC; particularly, if the sale of electricity generated through hydropower is subject to 0% VAT pursuant to Section 108 (B) (7) of the Tax Code, as amended. In response thereto, the CIR issued BIR Ruling [DA-146-06] which affirmed that Company S's billings for its sale of electricity to NPC are subject to 0% VAT.

From the period of 1 April 2017 to 31 December 2017, Company C sold hydropower electricity to NPC. In the same period, it incurred creditable input taxes from the domestic purchases of goods and services other than capital goods, importation of goods other than capital goods, payment to services rendered by non-residents, and domestic purchases and importation, all of which are attributable to the sale of electricity to NPC.

On 31 May 2019, Company C filed an administrative claim before the BIR for the VAT refund or TCC of its unutilized or excess creditable input taxes. It based its claim on Section 108 (B) (7) of the Tax Code, as amended, and BIR Ruling [DA-146-06].

On 31 July 2019, Company C received the CIR's letter which partially approved its claim for VAT refund or TCC.

Company C filed the instant Petition before this Court on 30 August 2019.

Issue:

Was Company C entitled to its claim for refund?

Ruling:

Yes.

In the instant Petition for Review, the CIR maintains that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. Thus, the fact that no attributability was established, the input tax on purchases vis-a-vis zero-rated sales of Company C must be a sufficient reason to deny the claim for refund.

The law does not require direct attributability of the input VAT from the purchase of goods to the finished product whose sale is zero-rated. The law permits the proportionate allocation of input taxes to the zero-rated sales, exempt sales, and taxable sales.

One of the exceptions to the three-year prescriptive period under Section 203 is found in Section 222(a) of the Tax Code, as amended. Section 222(a) extends the BIR's right to assess internal revenue taxes to 10 years when the taxpayer's filing of a tax return is attended by: (1) intentional falsity; or (2) fraud, among others. To aid the BIR in establishing the presence of either circumstance, Section 248(B) of the same Code provides that substantial under-declaration of taxable sales, receipts, or income by more than 30% of the amount reported in the tax return constitutes prima facie evidence of falsity or fraud.

If the 30% threshold is satisfied, prima facie evidence of falsity or fraud arises, shifting the burden of proof to the taxpayer. If the taxpayer fails to overcome this presumption, the prima facie evidence is sufficient to justify the application of the 10-year period for assessment and collection. However, if the taxpayer successfully overturns the presumption by demonstrating that the misstatement as ascertained by the CIR was inadvertent or attributable to a mistake, the CIR cannot rely on the presumption to prove the taxpayer's intent to evade taxes.

Commissioner of Internal Revenue vs Company P

CTA EB Case No. 2857, promulgated 2 September 2025

Facts:

On 11 July 2006, Company P received a Letter of Authority (LOA) authorizing Revenue Officers (RO) Matias Fadri III, Rene De Veyra, Romualdo Plocios and Josephine Gaerlan, and Group Supervisor (GS) Juvy S. Dela Pena, to audit and examine Company P's books of accounts and other accounting records for all internal revenue taxes covering the period starting 1 January 2005 to 31 December 2005.

On 3 December 2008, the BIR issued a Notice of Informal Conference.

On 22 January 2009, Company P received the undated Preliminary Assessment Notice (PAN). Company P failed to file a reply to the PAN within the period prescribed.

On 23 June 2009, Company P received an undated Formal Letter of Demand/Final Assessment Notice (FAN). On 8 July 2009, Company P protested the FLD /FAN.

On 25 March 2013, Company P received the Final Demand on Disputed Assessment (FDDA).

On 24 April 2013, Company P filed a Motion for Reconsideration to the FDDA, which was denied by the Commissioner of Internal Revenue (CIR). Company P received the CIR's Decision on 3 December 2018.

On 28 December 2018, Company P filed a Petition for Review. The Court in Division ruled in favor of Company P.

Issue:

Did the Court in Division err in invalidating Company P's FDDA and assessments for taxable year 2005?

Ruling:

No.

The Court in Division applied the three-year prescriptive period under Section 203 of the Tax Code, as amended, which led to the finding that the BIR's right to assess Company P for deficiency VAT, EWT, and WTC for taxable year 2005 is barred by prescription. Yet, the CIR ascribes fault to said finding because: (1) the present circumstances warrant the application of the 10-year prescriptive period under Section 222(a) of the same Code with respect to the VAT assessment; and (2) the EWT and WTC assessments are imprescriptible.

The CIR is mistaken on both points.

Indeed, one of the exceptions to the three-year prescriptive period under Section 203 is found in Section 222(a) of the Tax Code, as amended. Section 222(a) extends the BIR's right to assess internal revenue taxes to ten (10) years when the taxpayer's filing of a tax return is attended by: (1) intentional falsity; or (2) fraud, among others. To aid the BIR in establishing the presence of either circumstance, Section 248(B) of the same Code provides that substantial under-declaration of taxable sales, receipts, or income by more than 30% of the amount reported in the tax return constitutes prima facie evidence of falsity or fraud.

Relevantly, Commissioner of Internal Revenue v. Person V (G.R. No. 249540, 28 February 2024) clarified the application of the 30% threshold in determining prima facie evidence of a false or fraudulent return. If the 30% threshold is satisfied, prima facie evidence of falsity or fraud arises, shifting the burden of proof to the taxpayer. If the taxpayer fails to overcome this presumption, the prima facie evidence is sufficient to justify the application of the 10-year period for assessment and collection. However, if the taxpayer successfully overturns the presumption by demonstrating that the misstatement as ascertained by the CIR was inadvertent or attributable to a mistake, the CIR cannot rely on the presumption to prove the taxpayer's intent to evade taxes.

Here, the CIR based his prima facie evidence of intentional falsity or fraud in Company P's filing of its Quarterly VAT Returns, after comparing the latter's taxable receipts per BIR audit, with the taxable receipts reported per its Quarterly VAT Returns. According to him, the resulting variance constitutes a 121% discrepancy, thereby warranting the application of the 10-year prescriptive period.

Company P is a corporation primarily engaged in the marketing and selling of securities such as educational plans, pension plans, life plans, and others. It was also licensed to sell pre-need products until 30 June 2006. Being so, it is classified as a pre-need company pursuant to Section 4(c) of Republic Act (RA) No. 9829.

Section 31(a)27 of RA No. 9829 expressly states that contributions to the trust fund shall not form part of the gross receipts of the pre-need company. Meanwhile, Section 108(A)28 of the Tax Code, as amended, imposes a 12% VAT on a taxpayer's gross receipts derived from the sales of services, among others. Since trust fund contributions are excluded from a pre-need company's gross receipts, they are not subject to VAT.

While the CIR aptly excluded the trust fund contributions from Company P's taxable receipts found under Note 12 of its 2005 AFS, he failed to account for the contributions to investments in trust funds, found on the same AFS, which likewise should have been excluded from its taxable receipts.

A comparison between Company P's unreported taxable receipts for 2005 and its declared taxable receipts per VAT Returns reveals an under-declaration rate of 19.75%. This percentage falls below the threshold for substantial under-declaration under Section 248(B) of the Tax Code, as amended. Therefore, there is no prima facie evidence of falsity or fraud in the filing of Company P's 2005 VAT Returns. Sans actual proof that there has been intentional falsity or fraud in the filing of Company P's 2005 VAT Returns, as it is here, the 10-year extraordinary prescriptive period for tax assessment under Section 222(a) does not apply.

Further, assessments for withholding taxes, such as his 2005 EWT and WTC assessments are likewise subject to the prescriptive periods provided under the Tax Code, as amended.

Under Section 112(C) of the Tax Code, as amended, the CIR or his or her authorized representative had 90 days to act upon the said claim. The controlling datum here is the date of the CIR's "action," not the date of the claimant's receipt, in order to attest whether there was inaction on the claim or not.

Company M vs. Commissioner of Internal Revenue

CTA EB No. 2903, promulgated 2 September 2025

Facts:

On 31 March 2023, Company M filed with the Value-Added Tax (VAT) Credit Audit Division (VCAD) of the BIR National Office its administrative claim for refund of excess and unutilized input VAT for the period covering 1 January 2021 to 31 December 2021 or calendar year (CY) 2021. On 4 July 2023, Company M received a VAT Refund Notice dated 5 June 2023 (VAT Refund Notice), issued by the Commissioner of Internal Revenue (CIR) through Assistant Commissioner (ACIR) B denying in full Company M's administrative claim for refund.

Company M filed on 3 August 2023 a Petition for Review before the CTA. The CTA Division denied the Petition for lack of jurisdiction. In dismissing the case, the Second Division observed and applied the 90-30 rule, reasoning that since Company M filed its administrative claim for refund on 31 March 2023, the CIR had 90 days or until 29 June 2023 to act on the claim. Company M, in turn, had 30 days from the expiration of that 90-day period, or until 29 July 2023, to file its judicial claim. In this case, however, Company M received the CIR's denial of its claim on 4 July 2023 and thus had until 3 August 2023 to file its petition. The Second Division, nonetheless, concluded that when Company M filed its Petition for Review on 3 August 2023, the claim was already time-barred and accordingly held that it no longer had jurisdiction over the case. The Division denied the Motion for Reconsideration filed by Company M.

Issue:

Did the CTA Division err in dismissing the Petition for lack of jurisdiction?

Ruling:

Yes.

Sections 7 and 11 of the RA 928237 provide that when the CIR or his or her authorized representative fails to act within the specific period prescribed by the Tax Code, as amended, such inaction is deemed a denial of the taxpayer's claim, that is already appealable before the CTA.

Section 86 of the Tax Reform for Acceleration and Inclusion (TRAIN) Law, which contains the lengthy enumeration of laws expressly repealed by the said law, did not mention RA 9282. Thus, considering that the TRAIN Law did not repeal the pertinent provisions of RA 9282, it cannot be said that the "deemed denial" rule, insofar as claims for refund of unutilized input taxes attributable to zero-rated sales, has already been abrogated. Truth is, the "deemed denial" rule still finds relevance even after the passage of the TRAIN Law and it could not be disregarded simply because a similar provision dealing with the same subject matter has been deleted.

However, the doctrine of deemed denial is not applicable in this case.

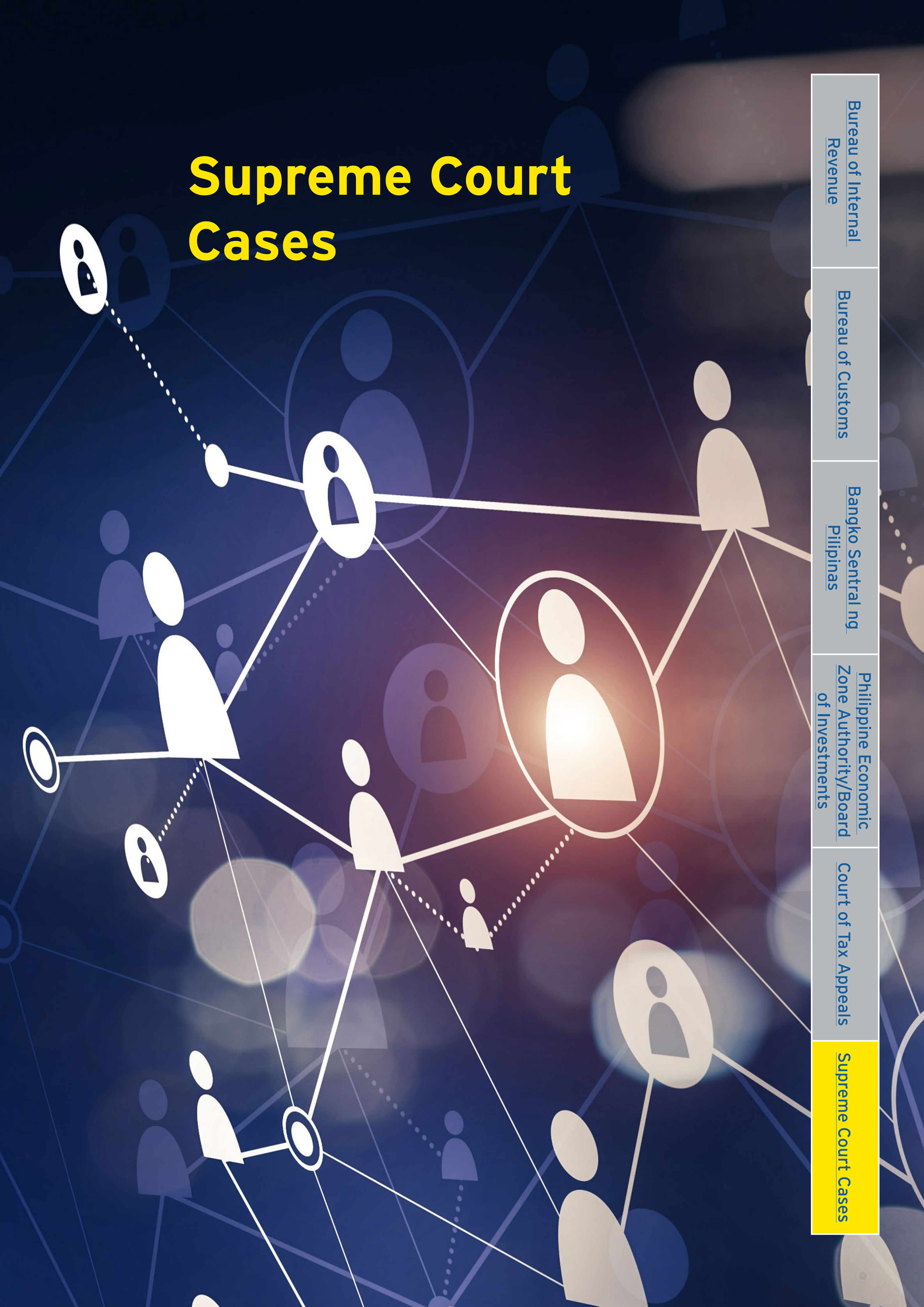
Here, Company M filed its administrative claim for refund on 31 March 2023. Under Section 112(C) of the Tax Code, as amended, the CIR or his or her authorized representative had 90 days, or until 29 June 2023, to act upon the said claim.

The controlling datum here is the date of the CIR's "action," not the date of Company M’s receipt. Revenue Memorandum Circular (RMC) No. 17-18, outlines that for claims not more than Php50 million, such as the present case, the 90-day period ends upon the Assistant CIR-Assessment Service's (ACIR-AS's) approval or disapproval of the claim.

In the present case, the VAT Refund Notice, which contains ACIR-AS B's full denial of Company M’s administrative claim for refund, was issued on 5 June 2023, i.e., within the 90-day period to act. Thus, there was no inaction and the doctrine of deemed denial does not apply. What exists is a categorical denial, received by Company M on 4 July 2023. As such, the reckoning of the 30-day period to appeal must commence, not from the expiration of the 90-day period, but from the date of actual receipt of the denial, i.e., 4 July 2023.

Resultantly, the Petition for Review, having been filed on 3 August 2023 and well within the 30-day reglementary period reckoned from 4 July 2023, was timely filed.

Supreme Court Cases



Bureau of Internal Revenue
Bureau of Customs
Bangko Sentral ng Pilipinas
Philippine Economic Zone Authority/Board of Investments
Court of Tax Appeals
Supreme Court Cases

Supreme Court Cases

The Chamber S and Person B III vs. Department of Finance, Department of Trade and Industry, Bureau of Internal Revenue Revenue District Office No. 19 of Subic Bay Freeport Zone and Subic Bay Metropolitan Authority
Supreme Court (*En Banc*), G.R. No. 266016, promulgated 4 February 2025

The rules and regulations issued to implement the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act are unconstitutional in so far as these apply the VAT zero-rating incentive on the local purchase of goods and services only to registered export enterprises.

Facts:

Section 12 of Republic Act No. 7227 or the Bases Conversion Development Act of 1992, created the Subic Special Economic Zone, which shall be operated and managed as a separate customs territory. The Subic Bay Metropolitan Authority (SBMA) served as an operating and implementing arm of the Bases Conversion and Development Authority. Pursuant to the law, the SBMA issued a Certificate of Registration and Tax Exemption to qualified enterprises, which were granted tax incentives and exemptions, subject to certain conditions.

With the enactment of the CREATE Act in 2021, which amended the Tax Code, registered business enterprises (RBEs) are entitled to VAT exemption on importation and VAT zero-rating on local purchases of goods and services directly and exclusively used in the registered project or activity of the RBEs [Sections 294 (E) and 295 (D)]. Under the law, an RBE may be a domestic market enterprise (DME) or a registered export enterprise (REE). A DME refers to any enterprise registered with the Investment Promotion Agency (IPA) other than export enterprise.

Subsequently, the Department of Trade and Industry (DTI) and the DOF issued Implementing Rules and Regulations of the CREATE Act (CREATE IRR). Rule 2, Sec. 5 of the CREATE IRR limited the entitlement on VAT zero-rating on local purchases to REEs.

On 2 December 2021, Rule 18, Sec. 5 of the CREATE IRR was amended, providing that REEs and DMEs may continue to enjoy duty exemption, VAT exemption on importation, and VAT zero-rating on local purchases provided that these incentives only apply to goods and services directly attributable to and exclusively used in the registered project or activity.

On 3 December 2021, the Secretary of Finance issued Revenue Regulations (RR) No. 21-2021. Thereafter, the BIR issued Revenue Memorandum Circular (RMC) No. 24-2022 and RMC No. 49-2022. These revenue issuances clarified that the VAT zero-rating incentive apples only to REEs excluding DMEs:

RR No. 21-2021

xxx
The following sales by VAT-registered persons shall be subject to 0% rate:

Sale of raw materials, inventories, supplies, equipment, packaging materials, and goods to a ***registered export enterprise****, to be used directly and exclusively in its registered project or activity*
xxx

RMC No. 24-2022

Q16: Are there RBEs not entitled to avail the VAT zero-rating on their purchases of goods and/or services?

A16: Yes. RBEs which are categorized as Domestic Market Enterprises are not entitled to VAT zero-rating on local purchases. Sale of goods or services to a registered domestic market enterprise shall be subject to VAT at 12%.

RMC No. 49-2022

Q17: What is the treatment on the sales by ***registered non-export locators or domestic market enterprises (DMEs)*** *located in Ecozones and Freeport Zones?*

A17: The following rules shall apply to the DME's sale of goods and services:
a. The seller is registered prior to CREATE:

1. If the non-export locator is under the 5% Gross Income Tax (GIT) regime, the locator is a VAT-exempt entity; hence, shall treat its sales, whether inside the Ecozones or Freeport Zones as well as from the customs territory, as VAT-exempt only to the extent of the registered activity. ***The VAT passed on by its VAT-registered local suppliers shall form part of its cost or expenses.***

Chamber S and Person B, as taxpayer, argued that Rule 18, Section 5 of the CREATE IRR, and the above stated revenue issuances, are unconstitutional because the DTI and the DOF performed a legislative act, and the BIR unjustly excluded DMEs from availing of tax incentives. Further, they alleged that these issuances effectively limited the application of VAT zero-rating for local purchases only to REEs, excluding DMEs.

Issues:

1. Was it proper for the petitioners to file the action with the courts without first exhausting administrative remedies?
2. Are Rule 18, Sec. 5 of the CREATE IRR, RR No. 21-2022, RMC No. 24-2022 and RMC No. 49-2022 unconstitutional, in so far as the VAT zero-rating on sale of goods and services applies only to REES?
3. Did the subsequent amendment of the CREATE IRR rendered moot the issue raised by the petitioners?

Ruling:

1. Yes, the case can be elevated directly to the courts as this falls within the exception to the exhaustion of administrative remedies.

   With respect to the challenge on the validity of RR No. 21-2022, RMC No. 24-2022, and RMC No. 49-2022, petitioners, generally, should have first elevated it to the Secretary of Finance before going to the courts. The Tax Code empowers the CIR to interpret tax laws, which may be in the form of implementing rules and revenue issuances, subject to review by the Secretary of Finance.

   However, the doctrine of exhaustion of administrative remedies is not without exception. The Supreme Court allows direct resort to it when strong public interest is involved, as in this case.

   Petitioners claim that the exclusion of DMEs on the VAT zero-rating incentive on local purchases of goods and services directly attributable to the registered project or activity by the CREATE IRR and the subsequent issuances by the BIR, and limiting it to export enterprises unduly caused irreparable injury to DMEs, including SBFCC, as they would absorb the VAT passed on to them by local suppliers as part of their cost or expenses. In addition, DMEs will not be issued VAT Zero-Rate Certificates, hence, their sales shall be subject to the regular 12% VAT rate. Indeed, the shift from zero-rate to the regular 12% VAT rate on local purchases made by DMEs triggers a strong public interest as it indisputably affects all DMEs registered with the SBMA as freeport enterprises.

2. Yes, the assailed regulations are unconstitutional.

   Sections 294(E) and 294(D) of the CREATE Act are clear – all RBEs, which include REEs and DMEs, are entitled to VAT zero-rating on their local purchases of goods and services directly and exclusively used in the registered project or activity. This rule is consistent with the nature of Subic Bay Freeport Zone (SBFZ) as a separate customs territory. Following the Philippine VAT system's adherence to the Cross-Border Doctrine and Destination Principle, the VAT implications are that no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Thus, the sales made by suppliers from a customs territory to a purchaser located within the freeport zone are considered exportations; hence, they are subject to zero percent VAT.

   The assailed regulations are ultra vires in so far as they limited the VAT zero-rating on local purchases of goods and services to REEs. They altered the provisions of the existing law – the CREATE Act – by carving out DMEs from those entitled to the VAT zero-rating incentive.

3. No, the amendment of the CREATE Act IRR and issuance of RR No. 13-2023 did not render moot the issue raised by the petitioners.

   The fact remains that Rule 18 Sec. 5 of the CREATE IRR, RR No. 21-2022, RMC No. 24-2022 and RMC No. 49-2022 unlawfully excluded DMEs from entities entitled to VAT zero-rating on local purchases of goods and services. The amendment only allows the transitory DMEs to register as VAT taxpayers, is just that and nothing more. Once registered for VAT, the transitory DME may charge output VAT on the domestic sale of goods or services and apply for refund or tax credit from the BIR on the input VAT directly attributable to their zero-rated sales. However, the fact remains that transitory DMEs local purchases of goods and services directly attributable to and exclusively used in their registered project or activity are not subject to VAT zero-rating.

Commissioner of Internal Revenue vs. Company S
Supreme Court (Third Division), G.R. No. 255520, promulgated 21 April 2025

The administrative remedies for tax collection, such as distraint, levy and garnishment may be invoked only when the taxes sought to be collected have already become delinquent, whether by the taxpayer's own admission or by virtue of a valid formal assessment.

Facts:

Company S filed its Annual Income Tax Return (AITR) for Tax Year (TY) 2011 declaring a net operating loss of Php157,200,588.60. Despite this, the Bureau of Internal Revenue (BIR) demanded payment of deficiency income taxes amounting to Php488,377,342.81, inclusive of interest. The BIR issued a Warrant of Distraint and/or Levy (WDL) and a Warrant of Garnishment (WOG) against Company S's bank account.

Company S contested, asserting that no Letter of Authority (LOA), Notice of Informal Conference (NIC), Preliminary Assessment Notice (PAN), or Final Assessment Notice (FAN) had been issued, therefore violating its right to due process. To lift the WDL and WOG, Company S paid the full amount of the alleged deficiency on 29 August 2013. It then filed an administrative claim for refund on 15 May 2015 in the total amount of Php325,381,412.81, representing allegedly erroneously collected tax and interest. Due to BIR's inaction on the administrative claim for refund, Company S filed a Petition for Review with the CTA Division on 25 August 2015.

The CTA Division and CTA En Banc (EB) ruled in favor of Company S, ordering a refund of PHP 325,381,412.81. The CIR elevated the case to the Supreme Court via Petition for Review.

Issue:

Is Company S entitled to the refund claim since there was no PAN and FAN issued?

Ruling:

Yes, Company S is entitled to the refund claim. The Supreme Court affirmed the decision of the CTA ordering the CIR to refund Php325,381,412.81 to Company S Corporation. The amount had been collected without proper assessment procedures, and the issuance of the WDL and WOG violated Company S's right to due process.

The summary administrative remedies like distraint and levy provided in the 1997 NIRC can only be availed of if the taxes to be collected have become delinquent. Delinquency arises only from the following circumstances:

1. A self-assessed tax that remains unpaid, or
2. A deficiency assessment that has become final and executory.

Neither of the conditions is present in this case. Company S's 2011 Annual Income Tax Return (AITR) declared a net operating loss of Php157,200,588.60.

The doctrine of self-assessment applies only when a taxpayer declares a tax due and fails to pay it. When the return reports no tax liability, as in the case of Company S, which declared a net operating loss, the principle does not give rise to an enforceable obligation.

The BIR failed to issue the required Letter of Authority (LOA), Notice of Informal Conference (NIC), Preliminary Assessment Notice (PAN), or Final Assessment Notice (FAN), violating Section 228 of the NIRC and Revenue Regulations No. 12-99. Without these, there was no valid assessment, making the collection efforts void. Tax collection without a valid assessment is void.

The BIR's actions contradicted its own issuances. Revenue Memorandum Order No. 39-07 provides that WDL/WOG may only be issued after a final decision on a disputed assessment. Meanwhile, Revenue Regulations (RR) No. 4-2019 defines delinquent accounts as arising from assessments that are final and executory. Since neither of these conditions was satisfied, the issuance of WDL and WOG was premature and unlawful.

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We welcome your comments, ideas and questions. Please contact Allenierey Allan V. Exclamador via e-mail at allenierey.v.exclamador@ph.ey.com or at telephone number (632) 8894-8398.

The deadlines and timelines mentioned in this Tax and Regulatory Bulletin are pursuant to our understanding of the existing administrative issuances of the BIR as of the date of writing.