

What's Inside...

INSIGHTS is a monthly publication of BDB LAW to inform, update and provide perspectives to our clients and readers on significant tax-related court decisions and regulatory issuances (includes BIR, SEC, BSP and various government agencies).

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HIGHLIGHTS

COURT OF TAX APPEALS DECISIONS

- **Billing statements are not considered as notice of assessment for purposes of LBT imposition.** (*Bohol Light Co., Inc. v. City Government of Tagbilaran, C.T.A. AC No. 288, September 10, 2024*)
- **Interest income arising from the Fixed Rate Notes, collectively known as "Bahay Bonds 2," is not subject to FWT.** (*Bahay Bonds 2 Special Purpose Trust v. Commissioner of Internal Revenue, C.T.A. Case No. 10475, September 13, 2024*)
- **The taxpayer is not required to pay the assessed LBT before it can validly file its protest with the LGU.** (*City Treasurer of Makati v. Fujifilm Business Innovation Philippines Corp., C.T.A. AC No. 284, September 19, 2024*)
- **The running of the prescriptive period for prosecuting criminal actions under the NIRC is interrupted by the filing of the Information before the CTA and not by the filing of the complaint before the DOJ.** (*People v. Tian, C.T.A. EB Crim. Case No. 105 (C.T.A. Crim. Case No. O-939), September 26, 2024*)
- **No deficiency VAT assessment should arise from an undeclared purchase.** (*Commissioner of Internal Revenue v. Steel Corporation of the Philippines, C.T.A. EB Case No. 2724 (C.T.A. Case No. 9866), September 30, 2024*)

BIR Issuances

- **Revenue Regulations No. 16-2024, September 16, 2024** – This prescribes the updated floor price of Cigarette, Heated Tobacco, and Vapor Products pursuant to Sections 144 (B) and (C) and 145 (C) of the NIRC.
- **Revenue Regulations No. 17-2024, September 17, 2024** – This prescribes the presentation of tax clearance prior to final settlement of government contracts.
- **Revenue Memorandum Circular No. 107-2024, September 16, 2024** – This clarifies the taxability of the medical allowance granted to qualified government civilian personnel under Executive Order No. 64, series of 2024.
- **Revenue Memorandum Circular No. 108-2024, September 18, 2024** – This clarifies the taxability of Microinsurance Mutual Benefit Associations with respect to income received by them.
- **Revenue Memorandum Circular No. 109-2024, September 24, 2024** – This clarifies the types of checks accepted for payment for One-Time Transaction-Related Internal Revenue Taxes.

COURT OF TAX APPEALS DECISION HIGHLIGHTS

Billing statements are not considered as notice of assessment for purposes of LBT imposition.

The taxpayer filed a Complaint with the RTC because the City Treasurer issued an LBT Billing Statement against it. The said LBT Billing Statement contained the taxpayer's alleged deficiency LBT for prior years.

The City Treasurer, on the other hand, argued that the said Complaint must be dismissed on the ground that the taxpayer should have filed a written protest within 60 days from receipt of the assessment before it filed the said Complaint with the RTC pursuant to the express provisions of Section 195 of the LGC of 1991.

The CTA held that Section 195 only finds application in cases where a notice of assessment is issued to the taxpayer, thereby presupposing the existence of a valid tax assessment.

A perusal of the subject Billing Statement reveals that although the nature of the tax, fee or charge, surcharges, and interests were indicated therein, it did not provide the facts and laws on which the billed amounts were based. Hence, it cannot be considered as a "notice of assessment" falling under Section 195.

Accordingly, there being no "notice of assessment" issued by the City Treasurer to the taxpayer, Section 195 is not applicable. Therefore, the taxpayer's direct filing with the RTC without any written protest with the City Treasurer is proper. (*Bohol Light Co., Inc. v. City Government of Tagbilaran, C.T.A. AC No. 288, September 10, 2024*)

Interest income arising from the Fixed Rate Notes, collectively known as "Bahay Bonds 2," is not subject to FWT.

The taxpayer filed a claim for refund or credit of FWT on interest income paid to bondholders. It alleges that the said FWT has been erroneously paid pursuant to Section 33 of RA 9267, otherwise known as "The Securitization Act of 2004."

The BIR, on the other hand, contended that the said bonds are deemed to be deposit substitutes within the meaning in Section 22 (Y) of the NIRC and thus, interests arising therefrom are subject to 20% FWT.

The CTA held that the provisions of the Securitization Plan, nature and purpose of the NHMFC, HUDCC's confirmatory statements, as well as the BIR's tacit recognition, support the conclusion that the subject Fixed Rate Notes, collectively known as "Bahay Bonds 2," are low-cost or socialized housing-related ABS. Thus, the interest income arising therefrom is tax-exempt, as expressly set out in Section 33 of RA No. 9267.

COURT OF TAX APPEALS

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Based on the foregoing, no tax shall be imposed on the bond interest income payments. Any amount collected or withheld from said interest income payments shall be erroneous/illegal for being in violation of the above-discussed tax exemption and, thus, subject to refund pursuant to Section 229 of the NIRC. (*Bahay Bonds 2 Special Purpose Trust v. Commissioner of Internal Revenue, C.T.A. Case No. 10475, September 13, 2024*)

The taxpayer is not required to pay the assessed LBT before it can validly file its protest with the LGU.

In 2016, the taxpayer applied for Retirement of Business before the Business Tax Division of Makati City, effective December 31, 2016.

Despite the taxpayer's Retirement of Business application, the City Treasurer of Makati still issued an Order of Payment requiring the taxpayer to pay the LBT due for the year 2017.

Aggrieved, the taxpayer protested the said assessment with the City Treasurer without paying the tax assessed.

However, the City Treasurer contended that the taxpayer's protest was invalid on the ground that it failed to pay the tax assessed pursuant to the express provision of Section 7B.14 (c) of the RMRC. Thus, the assessment already became conclusive and unappealable.

The CTA ruled that Section 7B.14 (c) of the RMRC is in conflict, or at least, not consistent, with Section 195 of the LGC of 1991. It is clear that the taxpayer is not required to pay the assessed tax before it can validly file its protest. Thus, Section 7B.14 (c) of the RMRC must be disregarded. Correspondingly, the taxpayer's protest stands even without prior payment of LBT as stated in the Order of Payment issued by the City Treasurer. (*City Treasurer of Makati v. Fujifilm Business Innovation Philippines Corp., C.T.A. AC No. 284, September 19, 2024*)

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

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The running of the prescriptive period for prosecuting criminal actions under the NIRC is interrupted by the filing of the Information before the CTA and not by the filing of the complaint before the DOJ.

On October 26, 2022, the BIR filed an Information with the CTA against the taxpayer.

The taxpayer, on the other hand, contended that the action instituted against him already prescribed since the counting of the prescriptive period of five (5) years should be reckoned from July 5, 2012, or at the date of the filing of the complaint with the DOJ.

However, the BIR argued that the running of the 5-year prescriptive period was tolled when it filed a complaint with the DOJ on July 5, 2012.

The CTA held that the right to prosecute the criminal action has indeed prescribed. Counting from the discovery of the violation of the NIRC of 1997 and the institution of the judicial proceeding for preliminary investigation (i.e., CIR's referral of the case to the DOJ) on July 5, 2012, the Information should have been filed before the CTA within five (5) years from July 5, 2012, or until July 5, 2017. Clearly, when the instant Information was filed before the CTA on October 26, 2022, more than five (5) years have passed since the government's right to institute a criminal action prescribed. (*People v. Tian, C.T.A. EB Crim. Case No. 105 (C.T.A. Crim. Case No. O-939), September 26, 2024*)

No deficiency VAT assessment should arise from an undeclared purchase.

The taxpayer was assessed by the BIR with deficiency VAT arising from the alleged undeclared imported purchases by the said taxpayer.

The BIR said that it is incumbent on the part of the taxpayer to prove that such undeclared importation did not translate to sales during the assessed period.

The CTA held that what is critical to be shown in the imposition or assessment of VAT in the sale of goods or properties is that the taxpayer is paid or ought to be paid in an amount of money or its equivalent in consideration of such sale, and not when said taxpayer purchases or disburses an amount of money to purchase goods or properties. Simply put, the VAT is imposed when one sells, not when one purchases.

In fine, the subject VAT assessment issued by the BIR must be struck down. (*Commissioner of Internal Revenue v. Steel Corporation of the Philippines, C.T.A. EB Case No. 2724 (C.T.A. Case No. 9866), September 30, 2024*)

Revenue Regulations No. 16-2024, September 16, 2024.

This prescribes the updated floor price of Cigarette, Heated Tobacco, and Vapor Products pursuant to Sections 144(B) and (C) and 145(C) of the NIRC.

Provided hereunder are the updated floor prices for the subject tobacco products:

A. Cigarettes

Packaging	Content per Packaging	Production Cost/ Total Landed Cost	Excise Tax (2024)	VAT (12%)	Total Tax	Floor Price
Pack	20 sticks	7.16	63.00	8.42	71.42	78.58
Ream	10 packs	71.60	630.00	84.20	714.20	785.80

B. Heated Tobacco Products

Packaging	Content per Packaging	Production Cost/ Total Landed Cost	Excise Tax (2024)	VAT (12%)	Total Tax	Floor Price
Pack	20 sticks	19.54	34.13	6.44	40.57	60.11

C. Vapor Products

1. Nicotine Salt or Salt Nicotine

Packaging	Pack/ Fill	Content per Packaging	Production Cost/Total Landed Cost	Excise Tax (2024)	VAT (12%)	Total Tax	Floor Price
Pod	1	2 ml	52.11	109.20	19.36	128.56	180.67
Bottle	1	10 ml	60.36	546.00	72.76	618.76	679.12

2. Conventional 'Freebase' or 'Classic' Nicotine

Packaging	Pack/ Fill	Content per Packaging	Production Cost/Total Landed Cost	Excise Tax (2024)	VAT (12%)	Total Tax	Floor Price
Bottle	1	10 ml	99.25	63.00	19.47	82.47	181.72
Bottle	1	30 ml	46.47	189.00	28.26	217.26	263.73

The above floor prices shall only be used as reference for taxation purposes in the absence of other documents/proof as to the actual price of the product that is higher than the identified floor price.

BIR ISSUANCES

**Revenue
Regulations No.
17-2024,
September 17,
2024.**

This prescribes the presentation of tax clearance prior to final settlement of government contracts.

All persons, natural or juridical, local or foreign, who have existing contracts with the government, its departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or controlled corporations, government financial institutions and local government units for the supply of goods and services, including infrastructure projects, to present updated tax clearance prior to the final settlement of their contracts with the government.

Failure to secure and present the prescribed BIR tax clearance shall entitle the government to suspend the final settlement for any goods or services, including infrastructure projects, delivered by the contractor.

**Revenue
Memorandum
Circular No.
107-2024,
September 16,
2024.**

This clarifies the taxability of the medical allowance granted to qualified government civilian personnel under Executive Order No. 64, series of 2024.

This clarifies that medical allowance benefit not exceeding P10,000.00 granted under EO No. 64, series of 2024, falls under the de minimis benefit contemplated under Section 2.78.1(A)(3) of RR No. 2-98, as amended.

However, medical allowance benefits given in excess of P10,000.00 (the maximum amount allowed as de minimis benefits for medical assistance) shall be included as part of "other benefits" which is subject to the PhP90,000.00 ceiling. Any amount in excess of the PhP90,000.00 threshold shall be subject to income tax, and, consequently, to the withholding tax on compensation.

Lastly, actual premium paid to HMO providers in compliance with EO No. 64, series of 2024, is exempt from income tax, and, consequently, to withholding tax pursuant to Section 2.78.1(A)(3) of RR No. 2-98, as amended.

**Revenue
Memorandum
Circular No.**

**108-2024,
September 18,
2024.**

This clarifies the taxability of Microinsurance Mutual Benefit Associations with respect to income received by them.

It was clarified that Mi-MBAs income shall not be subject to income tax as long as they are registered and actually operate as such pursuant to the provisions of RMO No. 38-2019 and secure a valid Certificate of Tax Exemption from the BIR.

**Revenue
Memorandum
Circular No.**

**109-2024,
September 24,
2024.**

This clarifies the types of checks accepted for payment for One-Time Transaction-Related Internal Revenue Taxes.

This clarifies that for ONETT-related taxes, taxpayers may make payments over the counter using either cash or check at any Authorized Agents Banks (AABs) or Authorized Revenue Collection Officers (RCO).

However, RCOs can only accept cash payments up to twenty thousand pesos (P20,000.00).

For payments by check, both AABs and RCOs are directed to accept only Manager's or Cashier's Check regardless of the amount to standardize the requirements and expedite the verification processes.

Published Articles

INSIGHTS

Business Mirror

Tax Law for Business



Taxation in Tech-Savvy PH

By

Jomel N. Manaig

The Philippines, in many ways, is a country of contrasts. Technology and its influence are no exception.

Despite lagging in internet connectivity and dropping a few spots when it comes to digital competitiveness, the country was still recognized with epithets like the “Selfie Capital of the World,” the “Facebook Capital of the World,” and the “BPO Capital of the World,” among others. This contrast became more apparent during and after the pandemic when transactions shifted drastically online.

This shift accelerated developments affecting day-to-day businesses. Services performed online was accepted as the new norm. Online selling and e-marketplaces became a staple of everyday lives. Financial technology helped the digital transformation of routine commerce.

As businesses and transactions transform to adapt to the digital age, the government is never far behind. Taxation, which is not traditionally a digital trailblazer, has donned a rocket and is now trying to reach new heights.

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INSIGHTS

At the closing days of 2023, the BIR gave a post-Christmas surprise to taxpayers by requiring the imposition of withholding tax on gross remittances to sellers/merchants made by e-marketplace operators and digital financial services providers (DFSP). The imposition is sweeping. For e-marketplace operators, it covers gross remittances relating to online shopping, food deliveries, bookings, and other similar online products and services. On the other hand, for DFSPs, it includes gross remittances made thru e-wallets, money transmissions, and other similar modes of payment.

In addition to the withholding tax requirement, the BIR charged e-marketplace operators and DFSPs with ensuring that online sellers/merchants are registered with the BIR.

These requirements, while resource intensive for e-marketplace operators and DFSPs, are seen by the BIR as necessary to plug the leaks from online sellers avoiding their obligation to pay their fair share in taxes. Yes, there will be birth pains, but it is for the common good. I do hope that the BIR be patient and reasonable during the transition. As the saying goes: Rome was not built in a day.

To complement the obligation placed on e-marketplace operators and DFSPs, the BIR released several revenue issuances providing the guidelines for mandatory registration of persons engaged in business. While not expressly issued for online sellers/merchants, the contents of these revenue issuances are clearly for them.

The registration guidelines leverage on the recent digital advancements in the BIR's services. Chief among these is the Online Registration and Update System (ORUS) which allows registrations and updates via electronic means.

Such digital advancements of the BIR echo the lofty goals and aspirations of the recently passed Ease of Paying Taxes (EOPT) Act. The EOPT brings our tax laws and tax administration into the 21st century by legislating online tax services and ushering in digital transformation.

Even after the EOPT, we are far from done in amending our tax laws. In the pipeline is the impending Digital Services Tax wherein a 12% VAT is to be imposed on nonresident digital service providers. By and

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large, digital services were once treated as the “wild west” of taxation since there is really very little that our then-tax laws could do to regulate and tax them.

However, with the Digital Services Tax in place, the Philippines will be joining the growing number of countries that are creating laws to regulate the businesses of nonresident digital services providers in their respective jurisdictions. Considering that Amount A of Pillar One still lacks a global consensus, the unilateral imposition of Digital Services Tax by countries is to be expected.

With all these developments, it is but fair to say that not all have been received with fanfare or general acceptance. Enter: the fairly recent revenue issuance clarifying the tax treatment of cross-border services.

The revenue issuance essentially listed several cross-border services that would now be subjected to income tax and VAT despite being performed outside the Philippines. Much of these cross-border services involve services that may be done electronically. Once considered as being beyond the grasp of Philippine taxation, these cross-border services are now in a tight grip by the BIR.

While a subsequent issuance further clarified that the new tax treatment does not automatically apply to cross-border service agreements, the realities on the ground are different. Examiners are starting to wantonly subject cross-border services to income tax and VAT. Perhaps the BIR may issue clearer guidance to its own examiners?

All of these developments may be a bit to take in all at once. But with the Philippines being one of the fastest-growing digital economies among major ASEAN member states, it pays to be acquainted with all of them.

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DISCLAIMER: The contents of this Insights are summaries of selected issuances from various government agencies, Court decisions and articles written by our experts. They are intended for guidance only and as such should not be regarded as a substitute for professional advice.

Glossary of Common Terms, Abbreviations, and Acronyms

ABS	-	Asset Backed Securities
AN	-	Assessment Notices
BIR	-	Bureau of Internal Revenue
CIR	-	Commissioner of Internal Revenue
CTA	-	Court of Tax Appeals
DOJ	-	Department of Justice
EB	-	<i>En Banc</i>
FWT	-	Final Withholding Tax
HUDCC	-	Housing and Urban Development Coordinating Counsel
LBT	-	Local Business Tax
LGC	-	Local Government Code
LGU	-	Local Government Unit
Mi-MBA	-	Microinsurance Mutual Benefit Associations
MR	-	Motion for Reconsideration
NHMFC	-	National Home Mortgage Finance Corporation
NIRC	-	National Internal Revenue Code
Protest	-	Protest to the Final Assessment Notice/Formal Letter of Demand
RA	-	Republic Act
RMC	-	Revenue Memorandum Circular
RMO	-	Revenue Memorandum Order
RMRC	-	Revised Makati Revenue Code
RR	-	Revenue Regulations
RTC	-	Regional Trial Court
VAT	-	Value-Added Tax