

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 for August 2025

HIGHLIGHTS

SUPREME COURT DECISIONS

- PEZA-registered enterprises are not absolute VAT-exempt entities and the VAT treatment on its transactions depend on whether the cross-border doctrine applies. (*Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 251333-34, March 5, 2025)
- Before the CIR can avail of the summary administrative collection remedies, it must first be established that the taxes sought to be collected have become “delinquent”. Without an assessment that has become final and executory, a tax cannot be deemed delinquent. (*Commissioner of Internal Revenue v. Stradcom Corporation*, G.R. No. 255520, April 21, 2025)

COURT OF TAX APPEALS DECISIONS

- The existence of apparent authority must be assessed based on the acts of the principal. There must be acquiescence on the part of taxpayer, through any overt act that a specific directive was given, authorizing a person to receive notice of assessment/s from the BIR. (*Commissioner of Internal Revenue v. Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao*, CTA EB No. 2737 (CTA Case No. 8683), August 18, 2025)

BIR ISSUANCES

- RR No. 19-2025, August 5, 2025 – This implements the Documentary Stamp Tax (“DST”) rate adjustments and amendments to the documents and papers not subject to DST under Republic Act No. 12214, otherwise known as the “Capital Markets Efficiency Promotion Act.”
- RR No. 20-2025, August 5, 2025 – This implements the rate adjustment of stock transaction tax (“STT”) and the imposition of the STT on the sale of exchange of domestic shares of stocks and other securities listed and traded through a foreign stock exchange under Section 17 of Republic Act No. 12214, otherwise known as the “Capital Markets Efficiency Promotion Act.”
- RR No. 21-2025, August 5, 2025 – This implements the amendments introduced by Republic Act No. 12214, otherwise known as the “Capital Markets Efficiency Promotion Act,” on Sections 22, 24, 25, 27, 28, 32, 34, 38, 39, and 42 of the National Internal Revenue Code of 1997, as amended

SUPREME COURT DECISION HIGHLIGHTS

UPDATES

PEZA-registered enterprises are not absolute VAT-exempt entities and the VAT treatment on its transactions depend on whether the cross-border doctrine applies.

This is a claim for refund filed before the BIR for the taxpayer's unutilized input VAT. The taxpayer recognized input VAT on its local purchases which prompted the said refund. However, the BIR is in the position that the purchases should have been zero-rated in the first place since the taxpayer is a PEZA-registered enterprise. Any input tax passed on to the taxpayer therefore is not the subject of a claim for refund with the BIR but one of recovery from the supplier.

Due to BIR's inaction, the taxpayer filed a petition for review before the CTA. The BIR argued that as a PEZA-registered enterprise, taxpayer's purchases of goods and services were effectively zero-rated. Hence, such purchases should not have carried a VAT component.

The Supreme Court emphasized that PEZA-registered enterprises are not absolute VAT-exempt entities and that the VAT treatment on its transactions depend on whether the cross-border doctrine applies. VAT is a tax on consumption. As such, the cross-border doctrine and destination principle apply. Indeed, the situs is determined by where goods are consumed or where services are rendered. Additionally, if PEZA-registered enterprises could enjoy VAT zero-rating on any of its purchases, regardless of whether the goods are consumed or services are rendered outside of the ecozone, it would be subject to abuse.

The Supreme Court further held that the CTA *En Banc* erred in treating the taxpayer as an absolute VAT-exempt entity and declaring that its purchases of services outside of the ecozone should likewise be subject to zero-rating. Having been consumed outside of the ecozone, the cross-border doctrine finds no application. The same could not have been deemed "exported" to the taxpayer. Having been rendered within the Philippines' customs territory, it is naturally subject to national internal revenue laws such as VAT. (*Coral Bay Nickel Corporation v. Commissioner of Internal Revenue, G.R. Nos. 251333-34, March 5, 2025*)

SUPREME COURT DECISION HIGHLIGHTS

UPDATES

Before the CIR can avail of the summary administrative collection remedies, it must first be established that the taxes sought to be collected have become “delinquent”. Without an assessment that has become final and executory, a tax cannot be deemed delinquent.

Without receiving an assessment from the BIR, the taxpayer received a letter from the BIR, demanding payment of deficiency income taxes. Subsequently, the BIR issued a WDL against taxpayer and a WOG over the taxpayer's bank account. In order to lift and cancel the WDL and WOG, taxpayer paid cash, representing the actual income tax liability and interest. The taxpayer then filed an administrative claim for refund or for the issuance of a TCC, representing allegedly erroneously collected basic tax and interest. Due to BIR's inaction on the administrative claim for refund, the taxpayer filed a Petition for Review with the CTA.

Before the CIR can avail of the summary administrative collection remedies, it must first be established that the taxes sought to be collected have become “delinquent”. Under RR No. 4-2019, a delinquent account is defined as a tax due from an assessment that has become final and executory. RR No. 4-2019 provides that a tax becomes delinquent in the following instances:

1. Failure to pay the tax due on the prescribed due date provided in the FAN/FLD and for which no valid Protest, whether a request for reconsideration or reinvestigation, has been filed within thirty (30) days from receipt thereof;
2. Failure to file an appeal to the CTA or an administrative appeal before CIR within thirty (30) days from receipt of the decision denying the request for reinvestigation or reconsideration; or
3. Failure to file an appeal to the CTA within thirty (30) days from receipt of the Decision of the CIR denying the taxpayer's administrative appeal to the FDDA.

Based on the foregoing, without an assessment that has gone through any of the above stages and has become final and executory, a tax cannot be deemed delinquent. (*Commissioner of Internal Revenue v. Stradcom Corporation, G.R. No. 255520, April 21, 2025*)

SUPREME COURT DECISION HIGHLIGHTS

UPDATES

The CTA Division should have acted on the BIR's Motion for Reconsideration and/or New Trial to allow the BIR to present LOA No. 2000-000158676, subject to the right of taxpayer to examine the same and raise objections as to its validity and authenticity.

This is an assessment case filed before the CTA. The CTA cancelled the assessment after finding no evidence to show that the examination of taxpayer's books was authorized through a LOA. The BIR filed a Motion for Reconsideration and/or New Trial arguing that the issuance of the Letter of Authority was never raised as an issue during trial. The CTA denied the Motion and held that the BIR effectively waived its right to present evidence when it manifested that it would no longer offer any evidence or witness during the trial.

The Supreme Court held that the CTA may consider arguments raised for the first time on appeal or on motion for reconsideration, respectively, only if two conditions concur:

- a) these arguments are related to the principal issue to be resolved by the court and is necessary to achieve an orderly disposition of the case; and
- b) the resolution of these new arguments would not require the presentation of additional evidence, and must rely solely on factual bases that are already matters of record in the case.

In this case, the parties never raised the existence of the LoA as an issue in their pleadings and during trial. Thus, we adhere to the principle that tax assessments are presumed correct and made in good faith. The CTA should not have ruled on this matter as it violates the right of the CIR to refute allegations as to its invalidity and "conjures up secondary issues and factual matters that need to be adjudicated upon based on evidence or lack thereof."

Accordingly, the CTA Division and En Banc erroneously passed upon the validity of the assessment based on the revenue officer's possession of the requisite LoA when the existence of a valid LoA was never put an issue.

At any rate, the BIR submitted Letter of Authority No. 2000-000158676, presumably as proof of authority of the revenue officers to conduct the audit investigation, in its Motion for Reconsideration and/or New Trial.

Hence, the Court of Tax Appeals should have acted on the BIR's Motion for Reconsideration and/or New Trial to allow the BIR to present LOA No. 2000-000158676, subject to the right of taxpayer to examine the same and raise objections as to its validity and authenticity. (*CIR vs. Marily Development Corporation, GR No. 263794, April 2, 2025*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

The existence of apparent authority must be assessed based on the acts of the principal. There must be acquiescence on the part of taxpayer, through any overt act that a specific directive was given, authorizing a person to receive notice of assessment/s from the BIR.

For the Court's resolution is CIR's Motion for Reconsideration, arguing that the FDDA was validly served on the taxpayer through his alleged authorized representative and receiving clerk ("Jamora"). The date of receipt of Jamora should be the reckoning point for the 30-day period to appeal to the CTA.

Assuming that Jamora who received the FDDA was not in fact authorized to receive documents from the BIR, the taxpayer is now estopped from questioning his authority, having previously accepted service through him without objection.

In this case, the existence of an implied agency authorizing Jamora to receive the FDDA on behalf of respondents was never sufficiently established. Even if it were argued that Jamora subsequently received the PCL, this does not make him an authorized representative for purposes of receiving the FDDA, as the circumstances surrounding the two (2) instances of service differ – the taxpayer was present at the premises when the PCL was served, but was not present when the FDDA was served.

The existence of apparent authority must be assessed based on the acts of the principal. Here, there was no acquiescence on the part of the taxpayer, as it was not sufficiently proven through any overt act that a specific directive was given authorizing Jamora to receive the FDDA.

In view of the foregoing, the reckoning point for the 30-day period to file an appeal before the CTA cannot be counted from the receipt of Jamora. The period should be counted from the date of the receipt of taxpayer's counsel, who is considered authorized representative. (*Commissioner of Internal Revenue v. Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao*, CTA EB No. 2737 (CTA Case No. 8683), August 18, 2025)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

DST is essentially a tax on the transaction as represented by the document and not on the document itself.

This is an assessment for alleged deficiency DST, among others.

The Court ruled that DST is essentially a tax on the transaction as represented by the document and not on the document itself. Nothing in the statutory text indicates that the nationality and/or residence of the contracting parties should be determinative of the situs for purposes of imposing the DST. The term sources in the phrase “when the obligation or right arises from Philippine sources” under Section 173 refers to the contract itself that the parties have entered into inasmuch as under Philippine law, contract is among the statutorily enumerated sources of obligation.

Taxpayer’s 2015 Audited Financial Statements is bereft of any categorical statement as to where the proceeds of the subject loans were released or used. Nonetheless, taxpayer’s witness testified in his Judicial Affidavit that the proceeds of the subject loans were used by the NRFC-affiliates in their operations within the Republic of Korea.

In view thereof, the loan proceeds were released, located, and/or used outside the Philippines. Accordingly, the loan agreements are deemed perfected outside the Philippines, specifically in Republic of Korea. Given that the situs of the subject transactions lies outside the Philippines jurisdiction, these transactions are not subject to DST. (*Commissioner of Internal Revenue v. Bloomberry Resorts Corporation*, CTA EB No. 2933, August 6, 2025)

RR No. 18-2025, August 5, 2025.
This implements the removal of pick-ups from the list of tax-exempt automobiles

I. General

- ☑ Starting **July 1, 2025** pick-ups are excluded from the list of automobiles exempt from excise tax.
- ☑ **Pick-ups** – shall refer to moto vehicles having enclosed cub and open bodies with low sides and tailgates.

II. Excise Tax on Electric Vehicles

Vehicle	Rate
Purely Electric Vehicle	Exempt
Hybrid Vehicles	Fifty percent (50%) of the applicable excise tax rates on automobiles

III. Tax credits/refunds

Tax exempt persons or entities who erroneously paid ad valorem tax on purchased automobiles may file a claim for refund or tax credits by submitting the following documents:

- 1) Authenticated copy of Certificate of Tax Exemption;
- 2) Original and duplicate copies of sales invoices; and
- 3) Certified photocopies of proof of payment of the ad valorem tax.

BIR ISSUANCE

RR No. 19-2025, August 5, 2025.
This implements the DST rate adjustments and amendments to the documents and papers not subject to DST under the “Capital Markets Efficiency Promotion Act.”

I. New Rates of Documentary Stamp Taxes

DST	DST Rates	
	Pre-CMEPA	CMEPA
Original Issue of Shares of Stock	P2.00 / P200 of the par value	75% of 1% of the par value
Bonds, Debentures, and Certificates of Stock or Indebtedness Issued in Foreign Countries	Rates on similar instruments issued, sold, or transferred in the Philippines	75% of 1% of the value of the transaction
All Debt Instruments	P1.50 / P200 of the issue price	75% of 1% of the issue price

Notes:

- ☑ If the loan agreement, promissory note, mortgage, security interest over personal property, and other similar contracts are simultaneously issued and executed, only one DST shall be imposed depending on which will yield a higher tax.
- ☑ If only one instrument is prepared to cover the loan agreement, promissory note, mortgage, security interest over personal property, and other similar contracts, the DST on mortgages, pledges, and deeds of trust (Section 195) shall be imposed on the full amount of the loan or credit.

II. Documents and Papers Not Subject to Documentary Stamp Tax

- ☑ Exemption of transactions involving listed shares of stock now includes:
 - Redemptions or other dispositions; and
 - Shares of stock listed and traded through a foreign stock exchange.
- ☑ Additional exemptions:
 - Original issuance, redemption, or other disposition of shares in a mutual fund company; and
 - Issuance of certificate or other evidence of participation in a mutual fund or unit investment trust fund.

BIR ISSUANCE

RR No. 20-2025, August 5, 2025.

This implements the rate adjustment of STT and the imposition of the STT on the sale of exchange of domestic shares of stocks and other securities listed and traded through a foreign stock exchange under the “Capital Markets Efficiency Promotion Act.”

I. New Rates of Stock Transaction Tax

Sale, exchange, or other disposition of shares of stock and other securities	STT Rates	
	Pre-CMEPA	CMEPA*
Listed and traded through the local stock exchange	6/10 of 1% (0.6%) of the gross selling price or gross value in money	1/10 of 1% (0.1%) of the gross selling price or gross value in money
Domestic corporation listed and traded through a foreign stock exchange	N/A	

**New rates effective starting July 1, 2025*

II. Taxation of Dealers in Securities

Any gain from sale of shares of stocks and other securities realized by a dealer in securities for its own account in the ordinary course of business shall be taxed as follows:

Type of Dealer in Securities	Tax Treatment of Gains Realized
Individual	Ordinary income subject to graduated rates
Corporation	Ordinary income subject to regular corporate income tax

III. Tax Payment and Reportorial Requirement

Transaction Type	Responsible Person	Payment and Reporting
Sale through the local stock exchange	Stock broker	<input checked="" type="checkbox"/> Remit the tax within 5 banking days from collection; and <input checked="" type="checkbox"/> Submit on Mondays of each week to the secretary of the stock exchange a true and complete return containing all the transactions effected during the preceding week.

Sale of shares of stock of a domestic corporation listed and traded in a foreign stock exchange	Selling shareholder (by himself or through his stock broker or authorized representative)	<input checked="" type="checkbox"/> Remit the tax within 10 banking days from collection; and <input checked="" type="checkbox"/> Submit on Mondays of each week to the secretary of the stock exchange a true and complete return containing all the transactions effected during the preceding week
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IV. Effect of Non-Payment of Tax

- The sale, exchange, transfer, or similar transaction shall not be registered in the books of the corporation UNLESS the receipts of the tax payment is filed with and recorded by the stock transfer agent or secretary of the corporation.
- The stock transfer agent or secretary of the corporation shall inform the BIR in case of non-payment of tax.
- Causing the registration of the transfer of ownership in violation of the above requirements shall be punished under Title X of the Tax Code.

BIR ISSUANCE

RR No. 21-2025, August 5, 2025.
 This implements the amendments introduced “Capital Markets Efficiency Promotion Act,” on income tax rates and tax treatments.

I. Uniform Rates of Tax on Certain Passive Income

INDIVIDUAL
 (Effective July 1, 2025)

A. Citizen, Resident Alien, and Non-Resident Alien Engaged in Trade or Business

Sections of the Tax Code	Particulars	Income Tax Rate
Sections 24 (B) (1) and 25 (A) (1), in relation to the last paragraph of Section 27 (D) (2)	Interest, yield, or any other monetary benefit earned from any currency bank deposit or deposit substitute, trust funds and other similar arrangements, regardless of their nature or tenure, except income of non-residents, whether individuals or corporations, from transactions with depository banks under the expanded system which shall be exempt from income tax	20%
Sections 24 (B) (1) and 25 (A) (1)	Prizes (except prizes amounting to P10,000 or less which shall be subject to graduated tax rates under Section 24 [A] of the Tax Code)	20%
Sections 24 (B) (1) and 25 (A) (1)	Other Winnings (except winnings amounting to P10,000 or less from Philippine Charity Sweepstakes and Lotto which shall be exempt)	20%
Sections 24 (B) (2) and 25 (A) (2)	Cash and/or Property Dividends	10% — except for Non-Resident Alien Engaged in Trade or Business which is subject to income tax rate of 20%

BIR ISSUANCE

UPDATES

Sections 24 (B) (3) and 25 (A) (1)	Capital Gains — Sale, exchange or other disposition of shares of stock in a domestic or foreign corporation <i>not traded</i> in a local or foreign stock exchange (Note: Shares of a domestic corporation sold or disposed of through a local or foreign stock exchange are subject to stock transaction tax, in lieu of capital gains tax, under Section 127 (A) and (B) of the Tax Code)	15%
Sections 24 (B) (4) and 25 (A) (1)	Capital Gains from Sale of Real Property	6% on gains presumed to have been realized from the sale, exchange, or other disposition of real property (capital assets)
Sections 24 (B) (5) and 25 (A) (1)	Royalties earned as Passive Income	20%
Sections 24 (B) (5) and 25 (A) (1)	Royalties on books, as well as other literary works and musical compositions	10%
Section 25 (A) (3), in relation to Section 28	Cinematographic films and similar works by a Non-Resident Cinematographic Film Owner, Lessor or Distributor	25%
Section 27 (D) (2)	Any income of non-residents from transactions with depositary banks under the expanded system	Exempt

BIR ISSUANCE

B. Non-Resident Alien Not Engaged in Trade or Business

Sections of the Tax Code	Particulars	Income Tax Rate
Section 25 (B), in relation to Section 27 (D) (2)	Interest, yield, or any other monetary benefit earned from any currency bank deposit or deposit substitute, trust funds and other similar arrangements, regardless of their nature or tenure, except income from transactions with depository banks under the expanded system which shall be exempt from income tax	25% (or the tax treaty rate)
Section 25 (B)	Cash and/or Property Dividends	25% (or the tax treaty rate)
Section 25 (B)	Rents, royalties, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodic or casual gains, profits, and income.	25% (or the tax treaty rate)
Section 25 (B), in relation to Section 24 (B) (3)	Capital Gains — Sale, exchange or other disposition of shares of stock- <i>not traded</i> in a local or foreign stock exchange (Note: Shares sold or disposed of through a local or foreign stock exchange are subject to stock transaction tax, in lieu of capital gains tax, under Section 127 (A) and (B) of the Tax Code)	15% (or the tax treaty rate)

BIR ISSUANCE

Section 25 (B), in relation to Section 24 (B) (4)	Sale of real property	6% on gains presumed to have been realized from the sale, exchange, or other disposition of real property (capital assets)
Section 27 (D) (2)	Any income of non-residents from transactions with depository banks under the expanded system	Exempt

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BIR ISSUANCE

UPDATES

CORPORATION (Effective July 1, 2025)

A. Domestic and Resident Foreign Corporations

Sections of the Tax Code	Particulars	Income Tax Rate
Sections 27 (D) (1) and 28 (A) (1)	Interest, yield, or any other monetary benefit earned from any currency bank deposit or deposit substitute, trust funds and other similar arrangements, regardless of their nature or tenure	20%
Sections 27 (D) (2) and 28 (A) (6)	Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with nonresidents, offshore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Bangko Sentral ng Pilipinas (BSP) to transact business with foreign currency deposit system units and other depository banks under the expanded foreign currency deposit system, <i>except net income from such transactions as may be specified by the Secretary of Finance, upon recommendation by the Monetary Board to be subject to the regular income tax payable by banks</i>	Exempt from all taxes

Sections 27 (D) (2) and 28 (A) (6)	Interest income from foreign currency loans granted by such depository banks under said expanded systems to residents other than offshore banking units in the Philippines or other depository banks under the expanded system	10%
Sections 27 (D) (3) and 28 (A) (1)	Intercorporate dividends received from a domestic corporation	Exempt
Section 27 (D) (4)	Capital Gains – Sale, exchange or other dispositions of shares of stock of a domestic or foreign corporation <u>not traded</u> in a local or foreign stock exchange (Note: shares sold or disposed of through a local or foreign stock exchange are subject to stock transaction tax, in lieu of capital gains tax, under Section 127 (A) and (B) of the Tax Code)	15%
Section 27 (D) (5)	Capital Gains Realized from the Sale, Exchange, or Disposition of Land and/or Buildings (for Domestic Corporations)	6% on the gain presumed to have been realized on the sale, exchange or disposition of lands and/or buildings (capital assets)
Sections 27 (D) (6) and 28 (A) (1)	Sections 27 (D) (6) and 28 (A) (1) Royalties earned as Passive Income	20%

BIR ISSUANCE

B. Non-Resident Foreign Corporations

Sections of the Tax Code	Particulars	Income Tax Rate
Section 28 (B) (1), in relation to Section 28 (A) (6)	Interest, yield, or any other monetary benefit earned from any currency bank deposit or deposit substitute, trust funds and other similar arrangements, regardless of their nature or tenure, except income from transactions with depository banks under the expanded system which shall be exempt from income tax	25% (or the tax treaty rate)
Section 28 (B) (5) (b)	Cash and/or Property Dividends received from a domestic corporation	15% subject to the condition that the country of residence of the corporate shareholder allows a credit of 10% tax deemed to have been paid in the Philippines or that the country of residence of the corporate shareholder does not impose any tax on the dividends (or the tax treaty rate)

BIR ISSUANCE

UPDATES

Section 28 (B) (1)	Rents, royalties, salaries, premiums (except reinsurance premiums) annuities, compensation, emoluments, fixed or determinable annual, periodic or casual gains, profits, and income, and capital gains, except capital gains subject to tax under Sec. 28 (A) (1)	25% (or the tax treaty rate)
Section 28 (B) (5) (c)	Capital Gains — Sale, exchange or other dispositions of shares of stock of a domestic corporation <u>not traded</u> in a local or foreign stock exchange (Note: Shares sold or disposed of through a local or foreign stock exchange are subject to stock transaction tax, in lieu of capital gains tax, under Section 127 (A) and (B) of the Tax Code)	15% (or the tax treaty rate)
Section 28 (A) (6) (b)	Any income of non-resident corporations from transactions with depository banks under the expanded system	Exempt

II. Inclusion in Gross Income

- ☑ Equity-based compensation, such as stock options, restricted stock units, stock appreciation rights, and similar items: Provided, that equity-based compensation
- ☑ Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness including those with a maturity period of more than five (5) years

III. Exclusion from Gross Income

- ☑ Interest income and gains from the sale, transfer, or disposition of project-specific bonds

- ☑ Gains from redemption of shares or units of participation in mutual fund and unit investment trust fund

IV. Additional Allowable Deductions

- ☑ Securities held by a dealer in securities or an entity licensed by the appropriate government regulatory agencies to buy and sell securities either for the entity's own account or for the account of others, including banks and other financial intermediaries, that are considered as ordinary assets and ascertained to be worthless
- ☑ Fifty percent (50%) of the employer's actual contribution made to Personal Equity and Retirement Accounts (PERA) under RA No. 9505

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DEDUCTIBILITY OF ORDINARY AND NECESSARY EXPENSES

By Atty. Rodel C. Unciano

Under the Tax Code, for the purpose of determining the taxable income subject to tax, there shall be allowed as deduction from gross income all the ordinary and necessary expenses paid or incurred in the development, management, operation and/or conduct of the trade, business or exercise of a profession of a taxpayer such as reasonable allowance for salaries and wages and other forms of compensation for personal services, reasonable allowance for travel expenses, reasonable allowance for entertainment and recreation expenses, and reasonable allowance for rentals and other payments which are required for the continued use or possession of the trade, business or profession of the taxpayer.

In Revenue Memorandum Circular 81-2025, the Bureau of Internal Revenue (BIR), citing existing court decisions, laid down the conditions for the deductibility of business expenses from gross income, as follows: 1) the expense must be ordinary and necessary; 2) the expense must be paid or incurred within the taxable year; 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; and 4) the expense must be supported by invoices, records or other pertinent papers.

Therefore, for an expense to be deductible, the same should be ordinary and necessary. And it must be reasonable, among other requirements. Except for a few items, there has been no exact formula under the Tax Code on what constitutes ordinary and necessary as well as what is considered reasonable as the operational needs of a particular business are heavily dependent upon the circumstances and the nature of the trade, business, or profession of the taxpayer.

So, what constitutes an ordinary expense? As defined in the circular, 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. Further, the expense must be typical and usual in relation to the business activities.

Citing existing court decisions on the matter, the circular further clarified that in determining whether a particular expense is ordinary, the size and relative proportion of expenses must be considered and should meet the further test of reasonableness in amount. Thus, an expense that is inordinately large cannot be considered as an ordinary expense even if it is necessary. And if an expense nearly equaled half of the total claimed expenses, it may be considered as inordinately large and, thus, could not be considered "ordinary," even if it might be "necessary" for the taxpayer's marketing strategy.

On the other hand, a "necessary expense" is one that is appropriate and helpful for the development of the taxpayer's business. 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. Thus, expenditures not directly related to the earnings of the business within the Philippines are not deductible. The expense must be necessary or integral to the income-generating activities of the business.

So, therefore, a luxury service vehicle may not be ordinary and necessary for a certain type of business, say a construction company, but may be ordinary and necessary for another type of business, say, a travel agency catering to high-end tourists. So also, bribes, kickbacks, and other similar payments may be necessary to accomplish a business purpose, but the same is not ordinary. So, it cannot be claimed as deduction for tax purposes even if the same was actually incurred in carrying out the taxpayer's business. Incidentally, by express provisions of the Tax Code, no deduction from gross income shall be allowed for any payment made, directly or indirectly, to an official or employee of the national government, any local government unit, government-owned or controlled corporation, representative of a foreign government, or to a private corporation, general professional partnership, or a similar entity, if the payment constitutes a bribe or kickback.

I hope the provisions of the circular would be implemented with caution and in accordance with the spirit of the cited court decisions. The decisions are anchored on the specific facts surrounding the case and therefore should only serve as mere guidelines and will not serve as absolute formula in the determination of what is considered ordinary and necessary as the need of a particular business is necessarily different from the need of the others.

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Glossary of Common Terms, Abbreviations, and Acronyms

AN	-	Assessment Notices
BIR	-	Bureau of Internal Revenue
BOC	-	Bureau of Customs
CIR	-	Commissioner of Internal Revenue
COC	-	Commissioner of Customs
CTA	-	Court of Tax Appeals
CWT	-	Creditable Withholding Tax
CY	-	Calendar Year
DST	-	Documentary Stamp Tax
EB	-	<i>En Banc</i>
ET	-	Excise Tax
EWT	-	Expanded Withholding Tax
FWT	-	Final Withholding Tax
FY	-	Fiscal Year
LGC	-	Local Government Code
LOA	-	Letter of Authority
FAN	-	Final Assessment Notice
FDDA	-	Formal Decision on Disputed Assessment
FLD	-	Formal Letter of Demand
IT	-	Income Tax
MR	-	Motion for Reconsideration
NIC	-	Notice of Informal Conference
NIRC	-	National Internal Revenue Code
NRFC	-	Non-Resident Foreign Corporation
PAN	-	Preliminary Assessment Notice
PCL	-	Preliminary Collection Letter
Petition	-	Petition for Review
PEZA	-	Philippine Economic Zone Authority
Protest	-	Protest to the Final Assessment Notice/Formal Letter of Demand
PD	-	Presidential Decree
PT	-	Percentage Tax
Reply	-	Reply to the Preliminary Assessment Notice
RA	-	Republic Act
RDO	-	Revenue District Office
RMC	-	Revenue Memorandum Circular
RMO	-	Revenue Memorandum Order
RR	-	Revenue Regulations
RTC	-	Regional Trial Court
STT	-	Stock Transaction Tax
SC	-	Supreme Court
TPI	-	Third Party Information
TY	-	Taxable Year
VAT	-	Value-Added Tax
WDL	-	Warrant of Distrainment and/or Levy
WOG	-	Warrant of Garnishment
WTC	-	Withholding Tax on Compensation