

## 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).

20/F Chatham House  
Valero cor. Rufino Sts.



Salcedo Village  
Makati 1227



www.bdblaw.com.ph  
info@bdblaw.com.ph



T: (632) 8403-2001



Copyright © 2025 by  
Du-Baladad and Associates  
(BDB Law). All rights reserved.  
No part of this issue covered by  
this copyright may be produced  
and/or used in any form or by  
any means – graphic, electronic  
and mechanical without the  
written permission of the  
publisher.

### PAGE NOS.

### Highlights for FEBRUARY 2025

1-2

### Significant Court Decisions

- Court of Tax Appeals

3-6

### Significant Regulatory Issuances

- Bureau of Internal Revenue
- Securities and Exchange Commission

7-22  
23

### Published Article

- CREATE MORE's Draft RR

24-26

### Our Experts

- THE PERSONALITIES

27

### Glossary

28

# HIGHLIGHTS for FEBRUARY 2025

# HIGHLIGHTS

## COURT OF TAX APPEALS DECISIONS

- PEZA Certificates contained in the BIR Records are considered as public records. (*Philippine Mining Service Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 10494, February 4, 2025)
- The assessment is final, executory, and unappealable due to the taxpayer's failure to timely elevate all its supporting documents for its Request for Reinvestigation within 60 days from filing the latter. (*My Solid Technologies & Devices Corporation v. Commissioner of Internal Revenue*, CTA Case No. 10293, February 6, 2025)
- Association dues, membership fees, and other association charges collected by homeowners' associations are VAT exempt, considering that when these fees are collected by homeowners' associations, there is no sale of services as contemplated under Section 105 of the NIRC which are subject to VAT. (*Pasig Green Park Village Homeowners Association, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 10149, February 6, 2025)
- The taxpayer is estopped from asserting that the LOAs and assessment notices were improperly served after the former categorically admitted receiving them and failed to raise any objection to the service of the LOAs and assessment notices at the earliest possible opportunity. (*Commissioner of Internal Revenue v. Yap*, CTA EB No. 2792, February 11, 2025)
- The Environmental Tax imposed under Article 17 of the Watershed Code is primarily regulatory in nature and not characterized as a local tax. (*Dole Philippines Inc. Stanfilco Division, vs. Sangguniang Panlungsod of the City of Davao*, CTA AC No. 306, February 17, 2025)
- The period for filing a Petition for Review with the CTA En Banc to appeal a Court in Division ruling should be counted from the DOJ's receipt of the adverse ruling. The date the BIR receives the ruling is immaterial. (*People of the Philippines vs. Ski Construction Gorup, Inc.*, CTA EB Crim No. 139, February 17, 2025)
- The FLD provides two distinct due dates and consequently lacks a single clear and precise due date for payment, violating the taxpayer's right to due process by failing to properly inform it of the factual and legal bases of the assessment. (*Commissioner of Internal Revenue v. Oceanagold (Philippines), Inc.*, CTA EB No. 2803, February 24, 2025)

## BIR ISSUANCES

- **RR No. 05-2025, February 27, 2025** – This provides for the amendments of RR No. 2-98 relative to the withholding tax rates on certain income payments subject to creditable withholding tax pursuant to CREATE MORE.
- **RR No. 6-2025, February 27, 2025** – This provides for the Refund of Excise Tax on Petroleum Products CREATE MORE.
- **RR No. 7-2025, February 27, 2025** – This provides for the implementation of the reduced income tax rates for domestic and resident foreign corporations and additional allowable deductions from gross income under CREATE MORE.
- **RR No. 8-2025, February 27, 2025** – This provides for the amendments on the Procedures in the Resolution of Requests for Reconsideration on the Denial of Claims for Refund under CREATE MORE.
- **RR No. 9-2025, February 27, 2025** – This provides for the Tax Treatment of Local Sales by Registered Business Enterprises (RBEs).
- **RR No. 10-2025, February 27, 2025** – This provides for the amendment of Pertinent Provisions on VAT under CREATE MORE.

# HIGHLIGHTS for FEBRUARY 2025

# HIGHLIGHTS

- **RR No. 11-2025, February 27, 2025** – This provides for the issuance of electronic invoices and the introduction of electronic sales reporting system under CREATE MORE.

## SEC ISSUANCES

- **SEC OGC Opinion No. 2025-01, February 10, 2025** - Considering air freight forwarders are not public utility, the prohibition on foreign participation in the governing boards are no longer imposed.
- **SEC OGC Opinion No. 2025-02, February 10, 2025** - Hospital consultants are not qualified to be an independent director of the corporation operating the same hospital.
- **SEC OGC Opinion No. 2025-03, February 17, 2025** - The sale of the products of the company through the E-Commerce platform which is directed to the general public already constitutes retailing.

Copyright © Du-Baladadipriya Associates

## COURT OF TAX APPEALS DECISION HIGHLIGHTS

**PEZA Certificates contained in the BIR Records are considered as public records.**

The taxpayer filed for a VAT refund for taxable 2019 due to its excess and unutilized input VAT from zero-rated sales to nonresident foreign corporations and entities registered with PEZA or BOI. The Court in Division initially decided partially in favor of the taxpayer's claim for a VAT refund. The taxpayer filed a Motion for Partial Reconsideration, providing documentary evidence that the companies involved were PEZA-registered and thus eligible for VAT-zero rating on local purchases. However, the Court initially didn't accept these documents as they were only scanned copies.

The Court ruled that PEZA Certificates within the BIR Records are considered public records under RA 9470, the National Archives of the Philippines Act of 2007.

In this case, the BIR VAT Credit Audit Division (VCAD) received and retained these PEZA Certificates as evidence. These Certificates were attested by Amelita A. Escobar, chief of the BIR VCAD, as Certified True Copies (CTCs) of the documents submitted to her office.

Given that the CTCs with the PEZA and the admitted scanned copies are exact copies of each other, the Court modifies its decision to recognize the refundable excess input VAT attributable to zero-rated sales and grant the Motion for Partial Reconsideration. (*Philippine Mining Service Corporation vs. Commissioner of Internal Revenue, CTA Case No. 10494, February 4, 2025*)

**The assessment is final, executory, and unappealable due to the taxpayer's failure to timely elevate all its supporting documents for its Request for Reinvestigation within 60 days from filing the latter.**

The taxpayer was assessed for deficiency. However, the taxpayer failed to elevate all its supporting documents for its Request for Reinvestigation within 60 days from filing the latter. Additional documents were only submitted on August 28, 2019. Consequently, on March 6, 2020, the taxpayer received an FDDA, denying its Request for Reinvestigation. Thus, the taxpayer filed a Petition in Court, arguing that it has jurisdiction over the case as failure to submit additional documents within the 60-day period provided in Section 228 of the NIRC does not render the assessment final.

The Court disagreed. It explained that Section 228 of the NIRC requires documents in support of an administrative protest to be submitted within 60 days from the filing of said protest. And such provision is clear. If the protesting taxpayer fails to submit "all relevant supporting documents" within 60 days from filing the administrative protest, the assessment becomes final. The assessment, in other words, can no longer be protested, whether administratively or judicially.

## COURT OF TAX APPEALS DECISION HIGHLIGHTS

Here, the taxpayer filed its Request for Reinvestigation on May 16, 2019. This gave it until July 15, 2019, within which to submit all relevant supporting documents. However, it only submitted such documents on August 28, 2019, 44 days after the last day for such submission. Since the taxpayer submitted additional documents after the lapse of the 60-day period, the Request for Reinvestigation was consequently invalid. There being no valid protest filed within the allowed period, the assailed assessment consequently became final, executory, and unappealable. (*My Solid Technologies & Devices Corporation v. Commissioner of Internal Revenue*, CTA Case No. 10293, February 6, 2025)

**Association dues, membership fees, and other association charges collected by homeowners' associations are VAT exempt, considering that when these fees are collected by homeowners' associations, there is no sale of services as contemplated under Section 105 of the NIRC which are subject to VAT.**

The taxpayer, a homeowner's association, was assessed for deficiency VAT. The taxpayer argued that it is not liable since association dues, membership fees, and other association charges are not profit or income. Consequently, the association dues, membership fees, and other association charges, not being considered as profit or income, are therefore not subject to VAT per Section 105 of the NIRC.

The Court agreed with the taxpayer.

Association dues, membership fees, and other charges collected by homeowners' associations are exempt from VAT. This is because these fees are not considered a sale of services under Section 105 of the NIRC, and there is no commercial activity involved. Instead, these fees are collected to cover maintenance, repair, improvement, reconstruction, and administrative expenses for services provided to homeowners. (*Pasig Green Park Village Homeowners Association, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 10149, February 6, 2025)

**The taxpayer is estopped from asserting that the LOAs and assessment notices were improperly served after the former.**

The BIR issued an LOA and then a PAN, to which the taxpayer filed its reply to PAN. Subsequently, the BIR issued a FAN/FLD. The taxpayer filed protests/requests for reinvestigation and later received a letter from the BIR informing him that the motion for reinvestigation was denied. The taxpayer then filed a Petition for Review, which the Court in Division granted, canceling the assessment.

The BIR claimed that the Court in Division erred in ruling that the BIR violated the taxpayer's right to due process due to improper service of the LOAs and FLDs when the taxpayer explicitly acknowledged receipt of the PANs and FLDs in his Reply to PAN and Protest.

## COURT OF TAX APPEALS DECISION HIGHLIGHTS

***categorically admitted receiving them and failed to raise any objection to the service of the LOAs and assessment notices at the earliest possible opportunity***

The Court *En Banc* agreed with the BIR and found that the taxpayer explicitly and repeatedly admitted in his LPNs filed with the BIR to having received the assessment notices. These admissions confirm that the taxpayer received the assessment notices as required, relieving the BIR of any obligation to prove the fact of receipt.

Furthermore, the taxpayer is estopped from questioning the propriety of the service of the LOAs and assessment notices. The principle of estoppel applies here, as the taxpayer failed to object to the propriety of the service of the LOAs and assessment notices at the earliest opportunity. As aptly noted by PJ Del Rosario, the taxpayer's failure to timely raise the issue of improper service at the administrative level is fatal to his claim. (*Commissioner of Internal Revenue v. Yap, CTA EB No. 2792, February 11, 2025*)

***The Environmental Tax imposed under Article 17 of the Watershed Code is primarily regulatory in nature and not characterized as a local tax.***

The taxpayer received assessments for the years 2015 and 2016 from the Office of the City Treasurer for an Environmental Tax under Article 17 of the Watershed Code. Thereafter, the taxpayer filed its written protests for both years. The taxpayer's protests were denied because the Watershed Code has not been declared invalid or unconstitutional, so the Environmental Tax will still be assessed and collected. After the taxpayer's appeal with the Regional Trial Court was denied, a Petition for Review was filed with the Court of Tax Appeals.

The primary purpose of the Watershed Code is to protect, conserve, and manage watershed areas for the general welfare. The Watershed Code was enacted specifically for the protection and conservation of watershed areas in Davao City, and not as a revenue-raising measure. Consequently, the Environmental Tax imposed under Article 17 of the Watershed Code is regulatory in nature, not a local tax. Therefore, the Court ruled that it lacks jurisdiction over the matter and can only dismiss the action. (*Dole Philippines Inc. Stanfilco Division vs. Sangguniang Panlungsod of the City of Davao, CTA AC No. 306, February 17, 2025*)

***The period for filing a Petition for Review with the CTA En Banc to appeal a Court in Division ruling should be counted from the DOJ's receipt of the adverse ruling. The date the BIR receives***

The DOJ recommended filing an Information against the taxpayer for willful failure to pay tax and proceeded to file it with the RTC. However, the RTC dismissed the Information. Aggrieved, the DOJ appealed to the CTA in Division, but the appeal was denied through the assailed Decision and Resolution. The DOJ received the assailed Resolution on December 29, 2023, and the BIR received it on January 11, 2024. The DOJ then filed a Motion for Extension of Time to File Petition for Review

The CTA *En Banc* granted said Motion on the condition that the Motion was actually filed on time. The accused argued that the complaint was prescribed.

The DOJ argue, however, that the complaint had not prescribed since it was filed well within 15 days from receipt of the BIR of the adverse resolution

# COURT OF TAX APPEALS

## DECISION HIGHLIGHTS

# UPDATES

***the ruling is immaterial.***

The CTA ruled that the public prosecutor in a criminal case continues to be the principal counsel even if private or special prosecutors are deputized. The period for filing a Petition for Review with the CTA En Banc to appeal a Court in Division ruling should be counted from the DOJ's receipt of the adverse ruling. The date the BIR receives the ruling is immaterial.

Since the DOJ received the Resolution on December 29, 2023, the People had only until January 15, 2024, within which to file the Petition for Review. They filed their Motion only on January 24, 2024. (People of the Philippines vs. Ski Construction Group, Inc., CTA EB Crim No. 139, February 17, 2025)

***The FLD provides two distinct due dates and consequently lacks a single clear and precise due date for payment, violating the taxpayer's right to due process by failing to properly inform it of the factual and legal bases of the assessment.***

The taxpayer protested the FLD, arguing, among others, that the FLD lacks a definite amount and due date for payment, and for failure of the Commissioner to consider the taxpayer's arguments.

The FLD set the due date to 15 days from the taxpayer's receipt. Since the taxpayer received the FAN on January 28, 2020, it had until February 12, 2020, within which to pay its deficiency tax liabilities. However, the due date for payment is given as February 29, 2020, on the attached notices.

The CTA ruled that the FLD provides two distinct due dates and consequently lacks a single clear and precise due date for payment, violating the taxpayer's right to due process by failing to properly inform it of the factual and legal bases of the assessment.

In any event, for including two distinct due dates for payment, one of which directly contradicts the law, and for thus being violative of the taxpayer's right to due process, the FLD is invalid and void.

## BIR ISSUANCES

### HIGHLIGHTS

**RR No. 5-2025, February 27, 2025 -**

*This provides for the amendments of RR No. 2-98 relative to the withholding tax rates on certain income payments subject to creditable withholding tax pursuant to CREATE MORE.*

This provides for the amendments on creditable withholding tax rates under CREATE MORE.

**Income payment made by credit card companies**

Subject	Original	Amendment
On the basis of the CWT	On $\frac{1}{2}$ of the gross amount	On the <b>gross</b> amount
On the withholding tax rate	1%	$\frac{1}{2}$ %

**Remittances of E-Marketplace Operators and Digital Financial Services Providers**

Subject	Original	
On the basis of the CWT	On $\frac{1}{2}$ of the gross remittances	On the
On the withholding tax rate	1%	

**Note:** While the withholding tax rates were reduced, the tax base was increased. Consequently, the amount to be withheld should be the same.

**RR No. 6-2025, February 27, 2025 -**

*This provides for the Refund of Excise Tax on Petroleum Products under CREATE MORE.*

This provides for the refund of excise tax on petroleum products under CREATE MORE.

**Exemption from Excise Tax**

Petroleum products sold to the following are exempt from excise tax:

- International carriers of Philippine or foreign registry directly importing petroleum products, on their use or consumption outside the Philippines

*Note: Suppliers of petroleum products to international carriers shall also be allowed to file a claim for refund*



## BIR ISSUANCES HIGHLIGHTS

- ☑ Exempt entities or agencies covered by tax treaties, conventions, and other international agreements for their use of consumption
- ☑ Entities which are by law exempt from direct and indirect taxes

### *Procedure for Excise Tax Refund on Petroleum Products*

Claims for refund of excise tax on petroleum products filed starting April 1, 2025, shall follow the following procedures:

- ☑ File a written claim for refund with the CIR or his duly authorized representative within two (2) years after the payment of excise tax. However, the return filed showing an overpayment shall be considered a written claim for refund.
- ☑ The CIR or his duly authorized representative shall process, and decide on, the claim for refund within ninety (90) days from submission of complete documents supporting the application filed. The denial must be in writing and communicated to the taxpayer, and the legal and factual basis must be stated.
- ☑ In case of full or partial denial on the application for refund, file a request for reconsideration within fifteen (15) days from receipt of the denial, raising only questions of law. Otherwise, the decision is final.
- ☑ The CIR or his duly authorized representative shall decide on the request for reconsideration within fifteen (15) days from actual receipt thereof.
- ☑ In case of denial on the request for reconsideration or inaction on the application for refund or request for reconsideration, the taxpayer may appeal to the CTA within thirty (30) days from:
  - Expiration of the ninety (90)-day period to decide on the application for refund
  - Receipt of the decision denying the request for reconsideration
  - Lapse of the fifteen (15)-day period to decide on the request for reconsideration

# BIR ISSUANCES HIGHLIGHTS

# UPDATES

- ☑ Approved refunds shall be subject to post-audit by COA. In case of disallowance by COA:
  - Only the taxpayer shall be liable for the disallowed amount;
  - BIR employee who may be found to be grossly negligent in the grant of refund may become administratively liable.
- ☑ BIR officials, agents, and employees causing deliberate delay in the processing of the refund may be subjected to penalties.

**RR No. 7-2025, February 27, 2025** - This provides for the implementation of the reduced income tax rates for domestic and resident foreign corporations and additional allowable deductions from gross income under CREATE MORE.

This provides for the implementation of the following:

- (1) reduced income tax rates for domestic and resident foreign corporations classified as Registered Business Enterprises (RBEs) under the Enhanced Deductions Regime (EDR) as provided in Section 294(C) of the Tax Code; and
- (2) additional allowable deductions from gross income under Section 34(C)(8) of the same Code.

#### I. Corporate Income Tax Rates

##### A. Domestic Corporations

Particulars	Income Tax Rate	Effectivity
Domestic corporations, in general	25%	July 1, 2020
Domestic corporations with net taxable income not exceeding (P5,000,000.00) and with total assets not exceeding (P100,000,000:00), excluding land on which the particular business entity's office, plant, and equipment are situated, during the taxable year for which tax is imposed	20%	July 1, 2020
Domestic corporations classified as RBEs under the EDR	20%	November 28, 2024

# BIR ISSUANCES HIGHLIGHTS

# UPDATES

## B. Resident Foreign Corporations

Particulars	Income Tax Rate	Effectivity
Resident Foreign Corporations, in general	25%	July 1, 2020
Resident Foreign Corporations classified as RBEs under the EDR	20%	November 28, 2024

## II. Deductibility of Input Tax Attributable to VAT Exempt Sales

- ☑ Input tax paid on local purchases attributable to VAT-exempt sales shall be deductible from the gross income of the taxpayer in accordance with Section 34(C)(8) of the Tax Code.

## III. Transitory Provisions

- ☑ For RBEs who availed of the EDR and have already filed their Annual Income Tax Return covering calendar year 2024 or fiscal year ending on or before the effectivity of these Regulations, the excess income tax payments as a result of the reduction of tax rate from 25% to 20% upon the effectivity of RA No. 12066 may be carried forward to the succeeding taxable quarter/year.

**RR No. 8-2025, February 27, 2025 - This provides for the amendments on the Procedures in the Resolution of Requests for Reconsideration on the Denial of Claims for Refund under CREATE MORE.**

This provides for the amendments on the procedures in the resolution of requests for reconsideration on the denial of claims for refund under CREATE MORE.

### Coverage

The rules on the filing of Request for Reconsideration<sup>1</sup> is available for claims for refund filed on or after April 1, 2025, involving:

- ☑ Creditable input taxes under Section 112(A) and (B); and
- ☑ Excise tax paid on petroleum products under Section 135-A.

<sup>1</sup> A request for reconsideration is a plea for reevaluation of pure question of law on a given set of facts or circumstances based on previously submitted documents and arguments without the need for the introduction of new or additional documents.

## BIR ISSUANCES HIGHLIGHTS

### General Policies

- ☑ The notice of full or partial denial of the claim for refund shall cite the factual and legal basis on which the denial is based.
- ☑ All requests for reconsideration should be limited only to questions of law. Any question of law already addressed in the denial and/or any question of fact /factual issue raised shall not be entertained.
- ☑ Only the documents previously attached to the application for refund relevant to the issues raised may be submitted. New evidence is not allowed.
- ☑ The processing time to act on the request for reconsideration shall be within 15 days from the date of the actual receipt of the request for reconsideration by the concerned Processing Office.
- ☑ No supplemental or amended appeal, or any other pleading of similar import, or a second request for reconsideration shall be allowed.

### Filing of Request for Reconsideration

Requests for reconsideration shall be filed with the following offices

	Processing office	Approving Office
For denials within the National Office, including those signed by Assistant Commissioner of the Large Taxpayers' Service	Appellate Division	Office of the CIR
For denials signed by the Regional Director	Legal Division of the Revenue Region concerned	RD Concerned

### Form and Contents

The request for reconsideration shall contain:

## BIR ISSUANCES HIGHLIGHTS

- ☑ Title in all capital letters and bold-faced:

Claims under Section 112(A) and (B)	Claims under Section 135-A
<b>REQUEST FOR RECONSIDERATION OF THE PARTIAL/FULL DENIAL OF CLAIMS FOR VAT REFUND</b>	<b>REQUEST FOR RECONSIDERATION OF THE PARTIAL/FULL DENIAL OF CLAIMS FOR REFUND ON EXCISE TAX PAID ON PETROLEUM PRODUCTS</b>

- ☑ Description of the claim, indicating:
  - ✓ Name of taxpayer-claimant;
  - ✓ Tax Verification Notice number;
  - ✓ Amount of the original claim and amount denied; and
  - ✓ Taxable period/s covered.
- ☑ Date of receipt of partial/full denial
- ☑ Statement of facts, assignment of errors of law, and legal citations
- ☑ One set of documentary requirements:
  - ✓ Original Secretary Certificate (for corporations) or Special Power of Attorney (for individuals) for the authority to file the request for reconsideration;
  - ✓ Certified true copies of:
    - Notice of denial, and its attachments, with proof of date of receipt;
    - Checklist of mandatory requirements prepared by the processing office and acknowledged by the taxpayer-claimant; and

➤ Other documents relevant to the legal issue.

## Actions on a Request of Reconsideration

Actions	Effects
Failure to comply with requirements	Outright denial of the request for reconsideration
Grant of request for reconsideration	Processing of the refund claim shall be within 20 days from the date the decision is issued
Withdrawal of the Requests for Reconsideration	<ul style="list-style-type: none"> <li>✓ Taxpayer-claimant may withdraw anytime before the request has been resolved</li> <li>✓ Full or partial denial shall stand and be deemed final upon the lapse of the 15-day period from the date of receipt of the notice full or partial denial of the claim for refund</li> </ul>

## Appeal to the Court of Tax Appeals

In relation to requests for reconsideration, the taxpayer-claimant may appeal to the Court of Tax Appeals (CTA) within 30 days from:

- ☑ Receipt of the decision denying the request for reconsideration; or
- ☑ Lapse of the 15-day period to decide on the request for reconsideration.

*Note: Under RR No. 6-2025, taxpayer-claimants may likewise appeal to the CTA upon the expiration of the 90-day period to process the application for refund.*

## BIR ISSUANCES HIGHLIGHTS

**RR No. 9-2025, February 27, 2025 - This provides for the Tax Treatment of Local Sales of by Registered Business Enterprises (RBEs).**

This provides for the tax treatment of local sales by registered business entities under CREATE MORE.

### I. Tax Treatment of Local Sales

- ☑ Local sales include sales of goods and/or services to domestic market enterprises and non-RBEs<sup>2</sup>, regardless of location
- ☑ Subject to 12% VAT regardless of income tax regime of the seller, unless otherwise exempt or zero-rated
- ☑ Location of the transaction and the RBE are no longer the determining factor for the tax treatment

### II. Invoicing, Filing, Payment, and Remittance

Buyer is engaged in Business / Business-to-Business (B2B)

Activity	Particulars
Invoicing by Seller	RBE-seller shall bill inclusive of VAT
Payment by Buyer	Payment of purchase price by the buyer to the seller shall be exclusive of VAT
Filing and Payment of VAT	<p>General Rule: Buyer is liable to file the return and pay/remittance the corresponding VAT</p> <p>Specific Rules:</p> <ul style="list-style-type: none"> <li>☑ For purchase of goods from economic zones/freeport</li> <li>✓ Filing and payment is on a per transaction basis</li> <li>✓ New BIR Form to be prescribed</li> <li>✓ In the meantime, BIR Form No. 0605 shall be used and will be transmitted to the RBE-seller as part of documentary requirements for release of goods</li> </ul>

<sup>2</sup> RBE stands for Registered Business Entities

## BIR ISSUANCES

### HIGHLIGHTS

	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> For purchase of services from economic zones/freeport</li> <li>✓ Filing and payment is on a monthly basis</li> <li>✓ New BIR Form to be prescribed</li> <li>✓ In the meantime, BIR Form No. 1600-VT shall be used. The buyer shall also issue BIR Form No. 2307 on a quarterly basis or upon demand by the RBE-seller</li> </ul>
Filing and Payment of VAT	<p>Specific Rules:</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> For purchase of goods and/or services from BOI-registered enterprises</li> <li>✓ Filing and payment is on a monthly basis</li> <li>✓ New BIR Form to be prescribed</li> <li>✓ In the meantime, BIR Form No. 1600-VT shall be used. The buyer shall also issue BIR Form No. 2307 on a quarterly basis or upon demand by the RBE-seller</li> </ul>
Compliance Requirements	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Non-VAT RBEs<sup>3</sup> are not required to file quarterly VAT returns but are required to submit a quarterly summary list of local sales to the relevant BIR RDO</li> <li><input checked="" type="checkbox"/> VAT-registered RBEs<sup>4</sup> are required to: (i) file quarterly VAT returns with the corresponding BIR Form No. 2307/0605; and (ii) submit summary list of sales and purchases</li> <li><input checked="" type="checkbox"/> RBE with mixed activities<sup>5</sup> are required to file quarterly VAT returns with the corresponding BIR Form No. 2307/0605</li> </ul>

Buyer/consumer is NOT enqaged in Business / Business-to-Consumer (B2C)

Activity	Particulars
Invoicing by Seller	RBE-seller shall bill inclusive of VAT

<sup>3</sup> Those enjoying 5% on Gross Income Earned (GIE)/Special Corporate Income Tax (SCIT)

<sup>4</sup> Those enjoying Income Tax Holiday (ITH), under Enhanced Deduction Regime (EDR), or Regular Corporate Income Tax (RCIT)

<sup>5</sup> Those with two or more registered projects/activities under different income tax regimes



## BIR ISSUANCES HIGHLIGHTS

Payment by Buyer	Payment of purchase price by the buyer to the seller shall be inclusive of VAT
Filing and Payment of VAT	<p>General Rule: RBE-seller is liable to file the return and pay/remittance the corresponding VAT</p> <p>Specific Rules:</p> <ul style="list-style-type: none"> <li>☑ If registered activity of RBE-seller is under 5% GIE/SCIT</li> <li>✓ New BIR Form to be prescribed</li> <li>✓ In the meantime, BIR Form No. 0605 shall be used</li> </ul>
Filing and Payment of VAT	<p>Specific Rules:</p> <ul style="list-style-type: none"> <li>☑ If registered activity of RBE-seller is under 5% GIE/SCIT but with other registered activities/projects not under 5% GIE/SCIT <ul style="list-style-type: none"> <li>✓ Required to be VAT-registered</li> <li>✓ Local sales shall be reported as VATable sales in the quarterly VAT returns</li> <li>✓ VAT paid in the first 2 months of each quarter shall be through BIR Form No. 0605 and shall be reflected as VAT credit in the quarterly VAT return</li> </ul> </li> <li>☑ If registered activity of RBE-seller is under ITH/EDR or RCIT <ul style="list-style-type: none"> <li>✓ Required to be VAT-registered</li> <li>✓ Local sales shall be reported as VATable sales in the quarterly VAT returns</li> </ul> </li> </ul>

### III. Optional VAT Registration

Eligibility	<p>Available if:</p> <ul style="list-style-type: none"> <li>☑ The RBE is under the 5% GIE/SCIT; and</li> <li>☑ All registered projects/activities fall under the same income tax regime</li> </ul>
Effect on incentives	Will not affect the fiscal and non-fiscal incentives
Cancellation of Registration	No cancellation of registration for the next 3 years

## BIR ISSUANCES HIGHLIGHTS

### IV. Claim of Input Tax by VAT-Registered Buyers

The following documents are required for the claim of input tax by local buyers of RBEs:

- Sales invoice showing amount of VAT on local sales; and
- BIR Form No. 1600VT or BIR Form No. 0605, whichever is applicable

Non-VAT registered buyers shall report the VAT as part of the cost/charged to expense.

### V. Withholding of VAT on Government Money Payments

- Rate of creditable withholding VAT shall be 12%

### VI. Transitory Provisions

Scenario	Transitory Rules
RBEs with remaining manual invoices with the term "VAT/VAT Amount" in the breakdown of sales	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> May be stamped with "VAT on Local Sales" without need for BIR approval</li> <li><input checked="" type="checkbox"/> May be used until fully consumed</li> </ul>
VAT-exempt invoices with no "VAT/VAT Amount"	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Subsequent applications shall replace "VAT/VAT Amount" with "VAT on Local Sales"</li> </ul>
Registered Cash Registered Machines/Point-of-Sales, Computerized Accounting Software, Computerized Books of Accounts, or other systems/software	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Reconfigure the system to change "VAT/VAT Amount" to "VAT on Local Sales" or add the same term</li> <li><input checked="" type="checkbox"/> Reconfiguration may be done until December 31, 2025</li> <li><input checked="" type="checkbox"/> Subject to post-verification</li> </ul>

**RR No. 10-2025, February 27, 025 - This provides for the amendment of Pertinent Provisions on VAT under CREATE MORE.**

This provides for the amendment of pertinent provisions on VAT under CREATE MORE.

#### I. VAT zero-rating under Section 106(A)(2) for sale of goods;

The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

- Export sales
- Sales to persons or entities whose exemption from direct and indirect taxes under special laws or international

## BIR ISSUANCES HIGHLIGHTS

- agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.
- Sale of raw materials, inventories, supplies, equipment, packaging materials, and goods, to RBEs qualified for VAT zero rating on their local purchases.

### II. VAT zero-rating under Section 108(B) for sale of services

#### Transactions Subject to Zero Percent (0%) VAT Rate

- Processing, manufacturing, or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported
- Services other than processing, manufacturing, or repacking rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines
- Services rendered to persons or entities whose exemption from direct and indirect taxes under special laws or international agreements to which the Philippines is a signatory
- Services rendered to persons engaged in international shipping or air transport operations, including leases of property for use thereof;
- Services performed for an export-oriented enterprise.

To qualify for VAT zero-rating under this provision, the following conditions shall be necessary:

- Export sales of the export-oriented enterprise is at least seventy percent (70%) of the total annual production of the preceding taxable year.
- Such services are directly attributable to the export activity of the export-oriented enterprise.
- The EMB of the DTI shall determine compliance with the aforementioned threshold through the issuance of a certification.
- Transport of passengers and cargo by domestic air or sea vessels from the Philippines to a foreign country.
- Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels.
- Services, including provision of basic infrastructure, utilities, and maintenance, repair, and overhaul of equipment, rendered to qualified RBEs

## BIR ISSUANCES

### HIGHLIGHTS

#### III. VAT-exempt transactions under Sections 109(u) and 109(dd)

Exempt transactions

(u) Importation of fuel, goods, and supplies used for international shipping or air transport operations.

xxx

(dd) Importation of goods by an export-oriented enterprise whose export sales is at least seventy percent (70%) of the total annual production or sales of the preceding taxable year:

#### IV. VAT refund/credit under Section 12(C).

- ☑ A VAT-registered person whose sales of goods, properties, or services are zero-rated or effectively zero-rated may apply for the issuance of a cash refund of input tax attributable to such sales.

Period to file	☑ Within two (2) years after the close of the taxable quarter when such sales were made.
Where to file	☑ <b>Claims for tax credits/refunds shall be within the appropriate BIR Office</b>
Period to act on the claim for refund	The CIR shall grant the refund within 90 days from the date of the submission of CTCs of invoices and other documents. ☑ The 90-day period to process and decide shall start from the filing of the claim up to the release of the payment of the approved VAT refund.
Taxpayer's remedy in case of full or partial denial of the claim for refund	The taxpayer shall have fifteen (15) days from receipt of the denial to file a request for reconsideration which shall be limited only to questions of law.
Period to act on the Request for Reconsideration	The CIR or his duly authorized representative shall decide on the request for reconsideration within fifteen (15) days from receipt thereof. Failure to file a request for reconsideration within the fifteen (15)-day period shall render the decision final.
Taxpayer's remedy in case of full or partial denial of the Request for Reconsideration	The taxpayer may appeal with the CTA within 30 days: ✓ after the expiration of the ninety (90)-day period to decide on the

## BIR ISSUANCES HIGHLIGHTS

	<ul style="list-style-type: none"> <li>✓ application for refund, in cases where no action is made by the CIR on the application for refund; or</li> <li>✓ from the receipt of the decision denying the request for reconsideration; or</li> </ul> <p>after the lapse of the fifteen (15)-day period to decide on the request for reconsideration in cases where no action is made by the CIR on the request for reconsideration.</p>
Punishable acts	Failure on the part of any official, agent, or employee of the BIR to act on the application for VAT refund within the ninety (90)-day period and on the request for reconsideration within the fifteen (15)- day period shall be punishable under Section 269(J) of the Tax Code.
Manner of giving refund	Refund shall be made upon warrants drawn by the CIR or by his duly authorized representative.

### Cancellation of VAT Registration

- ☑ A VAT-registered person may within (2) years from the date of cancellation, apply for the issuance of tax credit certificate or cash refund for any unused input tax which he may use in payment of his other internal revenue taxes or apply for refund for any unused input tax:

### Risk-based approach in the verification and processing of VAT refund claims

- ☑ VAT refund claims shall be classified into low, medium-, and high-risk, with the risk classification based on the amount of VAT refund claim, tax compliance history, and frequency of filing VAT refund claims, among others.

### V. TRANSITORY PROVISIONS

- ☑ For VAT credit/refund claims pursuant to Section 112(A) and 112(B) of the Tax Code, these Regulations shall apply to VAT credit/refund claims that are filed starting April 1, 2025, onwards.

## BIR ISSUANCES

### HIGHLIGHTS

**RR No. 11-2025, February 27, 025 -**

*This provides for the issuance of electronic invoices and the introduction of electronic sales reporting system under CREATE MORE.*

This provides for the issuance of electronic invoices and the introduction of electronic sales reporting system under CREATE MORE.

*Taxpayers Mandated to Issue Electronic Invoice and Covered by the Electronic Sales Reporting System*

The following taxpayers are mandated to issue electronic invoices and are covered by the Electronic Sales Reporting System requirement under Section 237-A of the Tax Code, as amended:

- ☑ Taxpayers engaged in e-commerce or internet transactions. Taxpayers engaged in e-commerce shall cover persons, whether natural or juridical, who are engaged in the following trade or business in the Philippines, including but not limited to:
  - E-commerce or online businesses, whether formal or informal, including sale, procurement, or availment of physical or digital goods, digital content/products, digital financial services, entertainment services, social commerce, on-demand labor and repair services, and property and space rentals;
  - Operation of digital platforms, including e-marketplace platforms;
  - Sale and/or lease of goods and services through digital platforms;
  - Digital content creation and streaming that are income generating including online advertising, blogging/vlogging, subscription, or commission;
  - E-retailing of goods and services;
  - Sale of creative or professional services, on-demand or freelance services, or digital services supplied over the internet;
  - On-demand services over the internet, available whenever a customer requests them, rather than being provided on a fixed schedule;
  - Transport and delivery services contracted through an online platform, application, website, webpage, or other similar platform operated by the provider; and
  - Other form of businesses other than those mentioned above which are conducted online.
- ☑ Taxpayers under the jurisdiction of the Large Taxpayers Service
- ☑ Taxpayers classified as Large Taxpayers under EOPT and RR No. 8-2024

## BIR ISSUANCES HIGHLIGHTS

- ✔ Taxpayers using Computerized Accounting System and Computerized Books of Accounts with Accounting Records (with electronic invoicing) and other invoicing software
- ✔ Taxpayers engaged in the export of goods and services pursuant to Sections 106 and 108 of the Tax Code
- ✔ Registered Business Enterprises availing of Tax Incentives under Section 304(D) of the Tax Code, as amended
- ✔ Taxpayers using Point-of-Sales System
- ✔ Other taxpayers as may be required by the CIR

Micro Taxpayers shall be exempted from the mandatory requirements to use and issue electronic invoice. However, this does not preclude Micro Taxpayers who are already using electronic invoices or those who choose to voluntarily use them.

*Additional Allowable Deductions for Taxpayers Using Both Electronic Invoices and Electronic Sales Reporting System*

Taxpayer Classification	Allowed Additional Deductions from Taxable Income
Micro and Small Taxpayers	100% of the total cost for setting up an electronic sales reporting system
Medium and Large Taxpayers	50% of the total cost for setting up an electronic sales reporting system

This may be availed of only once within the taxable year the electronic sales reporting system has been completed or final payment has been made. The importation of such electronic sales reporting system shall also be exempt from taxes.

## SEC ISSUANCES

### HIGHLIGHTS

***SEC OGC Opinion No. 2025-1, February 10, 2025 - Considering air freight forwarders are not public utility, the prohibition on foreign participation in the governing boards is no longer imposed.***

One of the stockholders of the air freight forwarding company inquired whether he could sit as president of the said company considering he is a foreigner.

While the RCC and relevant SEC issuances do not expressly contain citizenship nor residency for president of a corporation, such requirements may be prescribed for certain corporations under other applicable laws.

Based on the nature of the business of the company, it is the CAB who has provided the rules on nationality requirements. Under the CAB Guidelines, the prohibition on foreign participation in the governing boards is no longer imposed.

However, said opinion of the SEC is only for purposes of information as it does not render opinions on matters which involve interpretation of administrative rules and issuances of other government agencies.

***SEC OGC Opinion No. 2025-2, February 10, 2025 - Hospital consultants are not qualified to be an independent director of the corporation operating the same hospital***

The corporation inquired on whether a hospital consultant in a private hospital is qualified to be an independent director of a corporation operating in a said hospital.

Under MC 24, an independent director is ideally one who is not engaged or has engaged in any transaction with the covered company other than transactions that are conducted at arm's length and are immaterial.

However, considering the functions of a hospital consultant, the SEC is of the opinion that these are not transactions which are conducted at arm's length or immaterial. Hence, they cannot qualify as director.

***SEC OGC Opinion No. 2025-3, February 17, 2025 - The sale of the products of the company through the E-Commerce platform which is directed to the general public already constitutes retailing***

The company requested the opinion of the SEC on the following matters:

- a. whether its engagement in E-Commerce for the sale of its Power Assist Bicycles constitutes as retail trade; and
- b. whether the Company is permitted to engage in E-Commerce without amending its AOI

As to the first opinion, the SEC opined that placing orders and payment arrangements by potential customers through an E-Commerce platform that complements the single outlet already constitutes retail trade. The use of an E-Commerce platform to augment the single outlet significantly broadens the reach to potential customers in the general public.

For the second opinion, since the company's primary purpose involves wholesale, its engagement in sales through E-Commerce platforms will necessitate the amendment of its AOI.



## Published Articles

Business Mirror

Tax Law for Business

INSIGHTS



### CREATE MORE'S DRAFT RR

By

Irwin C. Nidea, Jr.

**C**REATE MORE's implementing rules and regulations have been passed. But more importantly, drafts of the Bureau of Internal Revenue's (BIR) Revenue Regulations (RR) have been released. Some questions have been answered, but some answers have sparked more questions. I hope the BIR is keen on making sure that the RRs are airtight.

First, the draft RRs emphasized that there are two distinct categories of businesses that operate under different regulatory frameworks and tax incentives, i.e., Registered Business Enterprises (RBEs) and Export-Oriented Enterprises (EOEs). RBEs are entities that are registered with the Board of Investments (BOI) or other Investment Promotion Agencies (IPAs) and are engaged in activities that qualify for fiscal and non-fiscal incentives. RBEs can operate under various income tax regimes, such as the Gross Income Earned (GIE)/Special Corporate Income Tax (SCIT), and Enhanced Deduction Regime (EDR). On the other hand, EOEs are businesses primarily engaged in the sale and actual shipment of goods or services from the Philippines to foreign countries. To qualify as an EOE, a business must meet the export sales threshold, which is at least 70% of its total annual production or sales from the preceding taxable year. EOEs benefit from VAT zero-rating on their local purchases, provided they secure the necessary certification from the Export Marketing Bureau (EMB) of the Department of Trade and Industry (DTI).

## CREATE MORE'S DRAFT RR

By

Irwin C. Nidea Jr.

One area of concern is the vagueness of the definition of "total annual production" in EOE's, which is crucial in determining the 70% threshold. For goods, it refers to the volume or value of production that is manufactured and sold, including mark-up, by the export-oriented enterprise during the taxable year. For services, it refers to the value of services rendered by the export-oriented enterprise during the taxable year.

The vagueness in this definition arises when the BIR in an audit asks how the goods manufactured in one year but sold in the subsequent year were treated. Is it correct to include it in computing the 70% threshold? In other words, the definition of "total annual production" is only focused on the volume or value of production that is manufactured and sold within the same taxable year. It is silent on the treatment of goods that were manufactured in a particular year but sold in another.

Second, the draft regulations specified in detail the procedure in claiming for VAT refund. The BIR is required to process and decide on the VAT refund claim within 90 days from the date of submission of the complete documents. If the BIR finds that the grant of the refund is not proper, it must state the legal and factual basis for the denial in writing. If the claim is denied, the taxpayer has 15 days from receipt of the denial to file a request for reconsideration. This request must be limited to questions of law and cannot introduce new evidence or documents that were not part of the original claim. The request for reconsideration must include specific documents, such as the authority to file the request, a copy of the original application for refund, the notice of denial, and pertinent documents relevant to the legal issues raised. The BIR must decide on the request for reconsideration within 15 days from receipt. If the BIR fails to act within this period, the taxpayer may appeal the decision to the Court of Tax Appeals within 30 days. At this point in the process, the draft RRs are consistent with the law. But the next steps seem to veer away from what the law intends.

The draft RRs state that the decision on the request for reconsideration, if granted, restarts the 90-day period for processing the refund claim. My concern is that the "restart" procedure that is being introduced by the BIR cannot be found in the law. The law also did not limit the ground for an MR to only questions of law. The law is clear that an MR must be denied or granted within 15 days. If an MR is granted but is effectively remanded to the first step, the taxpayer might find

## CREATE MORE'S DRAFT RR

By

Irwin C. Nidea Jr.

itself losing its right to appeal to the Court of Tax Appeals. It must be recalled that the CREATE MORE Act is categorical in saying that the BIR has 15 days to grant or deny an MR, which means that the BIR must release the tax refund within the 15-day period if the decision is to grant the same. The fresh 90-day period that is being floated cannot be found in the law.

There are other issues that must be addressed. Unfortunately, this space can only accommodate so many words. Again, what was released last week were just drafts of the RRs that will govern us for years. The final version may be released this week. I hope that the final version of the revenue regulations will be categorical in defining terms and careful in introducing new ones. Again, as I said before, I do not want to see the word MOST after CREATE.

\*\*\*\*\*

For inquiries on the article, you may call or email

**ATTY. IRWIN C. NIDEA, JR**

*Senior Partner*

T: +63 2 8403 2001 loc. 330

irwin.c.nideajr@bdbl.com.ph

## THE BDB TEAM

## OUR EXPERTS



**BENEDICTA DU-BALADAD**

Founding Partner, Chair & CEO  
T: +63 2 8403 2001 loc. 300  
dick.du-baladad@bdblaw.com.ph



**FULVIO D. DAWILAN**

Managing Partner  
T: +63 2 8403 2001 loc. 310  
fulvio.dawilan@bdblaw.com.ph



**IRWIN C. NIDEA, JR.**

Senior Partner  
T: +63 2 8403 2001 loc. 330  
irwin.c.nideajr@bdblaw.com.ph



**RODEL C. UNCIANO**

Partner  
T: +63 2 8403 2001 loc. 380  
rodel.unciano@bdblaw.com.ph



**MABEL L. BUTED**

Junior Partner  
T: +63 2 8403 2001 loc. 160  
mabel.buted@bdblaw.com.ph



**JOMEL N. MANAIG**

Junior Partner  
T: +63 2 8403 2001 loc. 140  
jomel.manaig@bdblaw.com.ph

**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

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
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
PAN	-	Preliminary Assessment Notice
Petition	-	Petition for Review
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
SC	-	Supreme Court
TPI	-	Third Party Information
TY	-	Taxable Year
VAT	-	Value-Added Tax
WDL	-	Warrant of Dstraint and/or Levy
WG	-	Warrant of Garnishment
WTC	-	Withholding Tax on Compensation