TAX Insights

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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

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COURT OF TAX APPEALS DECISIONS

- **"Buyer in good faith" is not a valid defense in a forfeiture proceeding instituted by the BOC.** (*Briones v. Commissioner of Customs, C.T.A. EB Case No. 2946 (C.T.A. Case No. 10355), February 02, 2026*)
- **For the 10-year extraordinary prescriptive period to apply, the taxpayer must also be informed of its application in the assessment notices that it received.** *(Commissioner of Internal Revenue v. TYC Trading & Manufacturing Philippines, Inc., C.T.A. EB Case` No. 2973 (C.T.A. Case No. 10247), February 03, 2026)*
- **Under the BOT agreement with the government, the tollway operator is the one liable to pay the LBT pursuant to the beneficial owner rule.** (*Star Tollway Corp. v. City Treasurer, C.T.A. EB Case No. 2943 (CBAA Case No. L-145-2020), February 04, 2026*)
- **Registration with the DOE and BOI are mandatory conditions for the RE developers' entitlement to VAT-zero rating.** (*YH Green Energy, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2995 (C.T.A. Case No. 9784) , February 10, 2026*)
- **The proper basis for computing the reglementary period to file an appeal and for determining whether a decision had attained finality is service on the OSG, and not service on the deputized lawyer or the BIR.** (*Commissioner of Internal Revenue v. MSCI Hong Kong Limited, C.T.A. EB Case No. 3047 (C.T.A. Case No. 10474), February 19, 2026*)

BIR Issuances

- ***RR No. 01-2026, February 16, 2026*** – This amends Sections 3, 4, and 7 of RR No. 09-2025 clarifying the filing and payment rules for VAT on local sales, provide optional VAT registration for certain RBEs, extend the deadline for system reconfiguration, and exclude certain enterprises and activities from the coverage of VAT on local sales of RBEs.
- ***RMC No. 10-2026, February 4, 2026*** – This clarifies the tax treatment, documentation requirements, and filing of return and payment of donor's tax for donations consisting purely of cash.

COURT OF TAX APPEALS DECISION HIGHLIGHTS

UPDATES

"Buyer in good faith" is not a valid defense in a forfeiture proceeding instituted by the BOC.

The COC issued a forfeiture order against the taxpayer/importer as the latter's goods were allegedly illegally imported.

Aggrieved, the taxpayer/importer filed a petition with the tax court.

Taxpayer/importer argues that she is a purchaser in good faith. The COC, on the other hand, argued that good faith is immaterial since it is not a valid defense in a forfeiture proceeding.

The tax court held that the taxpayer's/importer's claim that she purchased the subject goods in good faith, for value, and without notice of any infirmity or defect in the legality of the subject goods does not render said goods immune from forfeiture. This is so because the forfeiture proceeding in this case was instituted against the goods themselves. Thus, the taxpayer's/importer's defense cannot absolve the subject goods from forfeiture. (*Briones v. Commissioner of Customs, C.T.A. EB Case No. 2946 (C.T.A. Case No. 10355), February 02, 2026*)

If the legality and authority of the RPT assessment are questioned, the taxpayer may directly resort to the regular courts, without paying under protest.

The taxpayer received an RPT notice of assessment from the municipal treasurer. Instead of paying under protest, the said taxpayer directly filed a complaint with the RTC questioning the said assessment even though it contained factual issue on whether electrical poles, standing on public lots and easements, are not exclusively used by it.

The municipal treasurer argued that the taxpayer incorrectly questioned the RPT assessment before the RTC because it did not follow the procedures provided under the LGC, which requires the RPT assessment to be paid under protest. The taxpayer, on the other hand, argued that it is not required to pay under protest because it questions the legality of the assessment made, and did not concern the reasonableness of the amount assessed.

The RTC dismissed the taxpayer's complaint on the basis that the taxpayer availed of the wrong remedy. Then the case was elevated to the tax court.

The tax court held that the present claim involves factual issue which should be resolved first by the LBAA, as the taxpayer is claiming that its electrical poles, standing on public lots and easements, are not exclusively used by it. Consequently, the proper remedy would be payment under protest and the case should be elevated to the LBAA if there is a denial of the protest or the sixty days to decide have already lapsed.

Only if the legality and authority of the RPT assessment are questioned, without involving factual issue, the taxpayer may directly resort to the regular courts, without paying under protest. (*Mactan Electric Co., Inc. v. Municipality of Cordova, C.T.A. EB Case No. 2957 (C.T.A. AC No. 258), February 02, 2026*)

DECISION HIGHLIGHTS

For the 10-year extraordinary prescriptive period to apply, the taxpayer must also be informed of its application in the assessment notices that it received.

The taxpayer received assessment notices from the BIR. The said assessment notices did not mention any allegation of falsity on the part of the taxpayer. Aggrieved, the taxpayer filed a Petition with the tax court, arguing that the BIR's assessment had already prescribed pursuant to the three-year prescriptive period to assess.

On the other hand, the BIR argued that the 10-year extraordinary prescriptive period should apply since there is a presumption of falsity when the taxpayer allegedly underdeclared more than 30% of its receipts.

However, the tax court ruled that the assessment was already prescribed since the BIR failed to sufficiently inform the taxpayer on the applicability of the 10-year extraordinary prescriptive period.

A review of the PAN, FAN, and FDDA shows that the BIR never mentioned any allegation of falsity nor any statement of applicability of the 10-year extraordinary prescriptive period. Apparently, there was no compliance on notice. This is in contrast with the *Asalus* case, where there was a categorical statement of the applicability of the extraordinary period in the PAN, thereby ruling that there was substantial compliance on notice in the said assessment. (*Commissioner of Internal Revenue v. TYC Trading & Manufacturing Philippines, Inc., C.T.A. EB Case No. 2973 (C.T.A. Case No. 10247), February 03, 2026*)

Under the BOT agreement with the government, the tollway operator is the one liable to pay the LBT pursuant to the beneficial owner rule.

The taxpayer-toll operator enters into a BOT agreement with the government.

The LGU treasurer, on the other hand, issued an RPT assessment against the taxpayer-toll operator pursuant to the beneficial owner rule.

The taxpayer-toll operator argues that the subject property is devoted to public use and is, considered as a public property. Furthermore, the taxpayer-toll operator argues that it does not have any ownership rights (whether legal or beneficial) over the toll roads and ancillary facilities and hence, it should not be liable to the RPT.

The tax court ruled that under the BOT agreement, if the private sector proponent goes into business for itself, assuming risks and incurring costs for its account in undertaking the project, and subsequently, managing the same for the agreed period to allow it to recover its basic costs and earn profits, the owner-manager-operator for the same is the actual, direct, and immediate user of the property.

In this case, it is the taxpayer-toll operator who has beneficial use over the subject property, because it actually uses, possesses, and enjoys such property, through generation of toll revenues from the public users. The nature of business of the taxpayer-toll operator, which is operating the toll facilities for the public, does not exempt itself from payment of RPT. (*Star Tollway Corp. v. City Treasurer, C.T.A. EB Case No. 2943 (CBAA Case No. L-145-2020), February 04, 2026*)

Registration with the DOE and BOI are mandatory conditions for the RE developers' entitlement to VAT-zero rating.

The taxpayer filed a VAT refund claim with the BIR, alleging that it incurred input VAT related to its zero-rated sales as a consequence of being an RE developer.

However, the BIR denied its claim. Aggrieved, the taxpayer filed a petition with the tax court. However, the taxpayer failed to attach the DOE certificate of registration to its petition.

The tax court ruled that the registration with the DOE, compliance with the criteria imposed pursuant to the DOE's regulatory authority, and registration with the Board of Investments are mandatory conditions for entitlement to the incentives granted by law, including VAT zero-rating.

Here, the taxpayer attached its DOE certificate of registration only to its MR. The tax court correctly denied its admission for being forgotten evidence.

Consequently, considering that the DOE certificate of registration is the foundational document that establishes an entity's status as a registered RE developer, the taxpayer's failure to timely present the same precludes the recognition of its entitlement to the fiscal incentives under R.A. 9513 or the Renewable Energy Act, including VAT zero-rating. (*YH Green Energy, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2995 (C.T.A. Case No. 9784), February 10, 2026*)

The proper basis for computing the reglementary period to file an appeal and for determining whether a decision had attained finality is service on the OSG, and not service on the deputized lawyer or the BIR.

The CTA in division issued a resolution partially granting the taxpayer's VAT refund.

The BIR received a copy of the assailed Resolution on December 4, 2024, while the OSG received a copy of the same on January 7, 2025.

However, the BIR filed a petition with the CTA EB on December 19, 2024 or before the OSG had received a copy of the assailed resolution.

The CTA EB dismissed the petition for lack of jurisdiction.

The CTA EB held that the fifteen (15)-day period to appeal the assailed resolution cannot be reckoned from the date of receipt by the BIR on December 4, 2024, as it is notice to the OSG that is binding, the OSG being the principal counsel of the government who is entitled to the service of all court orders, notices, and decisions. Furthermore, when the petition suffers from the basic infirmity of lack of the requisite imprimatur from the OSG, it is dismissible on that ground.

It is therefore reasonable to conclude that at the time the BIR filed the instant petition, it had no authority to do so, not only because of the high possibility that the OSG was unaware of the assailed resolution considering that it did not yet receive the same at the time of the filing of the said petition, but also because there is no evidence on record to prove that the BIR was duly authorized by the OSG to file the said petition. It must be emphasized that the BIR acting through its special counsels have no legal authority to decide on their own whether or not an appeal to the Court EB should be made.

Here, the BIR's failure to file the instant petition in accordance with prevailing rules and jurisprudence, particularly with proper authority from the OSG, has caused the assailed Resolution to attain finality. (*Commissioner of Internal Revenue v. MSCI Hong Kong Limited, C.T.A. EB Case No. 3047 (C.T.A. Case No. 10474), February 19, 2026*)

BIR ISSUANCES

RR No. 01-2026, February 16, 2026.
This amends Sections 3, 4, and 7 of RR No. 09-2025 clarifying the filing and payment rules for VAT on local sales, provide optional VAT registration for certain RBEs, extend the deadline for system reconfiguration, and exclude certain enterprises and activities from the coverage of VAT on local sales of RBEs.

I. Clarification on Filing and Payment of VAT on Local Sales

Buyer is engaged in B2B

Activity	RR No. 09-2025	RR No. 01-2026
Filing and Payment of VAT	For purchase of goods from economic zones/freeport, filing and payment is on a per transaction basis	For purchase of goods from economic zones/freeport, filing and payment is on a per transaction basis However, the buyer may opt to pay the VAT in a **single payment** in case of **bulk shipment of goods** covering **several invoices** purchased in freeport or ecozone. Prior to release, the BIR Form No. 0605 with the list of all invoices covered shall be presented to the BOC.

II. Optional VAT Registration

- Emphasis that the optional VAT registration is solely for purposes of the RBE 's local sales

- Other portions of the provision were rephrased but there was no change in the rules

BIR ISSUANCES

III. Exclusion of Certain RBEs from the Coverage of VAT on Local Sales

a. *Revised Rule for VAT-registered Domestic Market Enterprises (DMEs)*

Local purchases and importations of VAT-registered DMEs that do not qualify for VAT zero rating or VAT exemption, as the case may be, are subject to VAT. However, the application of the buyer's payment and remittance of VAT to the BIR (for B2B transactions) would result in accumulated unutilized input VAT which are not eligible for refund.

To address this, the VAT on such local sales shall now be filed and paid by the RBE -seller to the BIR as a regular VAT taxpayer.

b. *Additional Exclusions to the VAT on Local Sales under Section 295(D) of the Tax Code*

- Sale of the following goods/services:
  - ✓ VAT zero-rated goods under Section 106(A)(2);
  - ✓ VAT zero-rated services under Section 108(B);
  - ✓ VAT-exempt transactions under Section 109; and
  - ✓ VAT-exempt or zero-rated transactions under Title XIII of the Tax Code, as amended.
- BOI-registered entities that are not availing of incentives under Title XIII of the Tax Code, as amended
- Local sales by RBEs pertaining to activities not registered with the IPA (including scrap sales).

IV. Extended Deadline

Reconfiguration of the system/software (i.e. change "VAT/VAT Amount" to "VAT on local sales" or add the same term) is <u>extended until December 31, 2026</u>.

V. Effectivity

RR No. 01-2026 shall take effect 15 days after publication, or on March 03, 2026.

BIR ISSUANCES

RMC No. 10-2026, February 4, 2026.
This clarifies the tax treatment, documentation requirements, and filing of return and payment of donor's tax for donations consisting purely of cash.

I. Manner of filing of the return and payment of tax

Donor's tax return for purely cash donations shall be filed electronically in any of the available electronic platforms:

- ✓ eBIRForms Facility,
- ✓ eFPS,
- ✓ Tax returns filing applications/solutions of ATSPs

The donor's tax due thereon shall be paid manually through any AAB or electronically through the available ePayment channels of the BIR.

II. Notification requirement and supporting documents

The following documentary requirements shall be submitted within thirty (30) days after the date the gift is made or completed to the RDO having jurisdiction over the residence of the Donor (individual)/where the Donor is registered (non-individual); or, for large taxpayers, to the LT Division where the Donor is registered:

- ✓ Notarized Deed of Donation;
- ✓ Proof of cash transfer (e.g., official receipt, acknowledgement letter, validated deposit slip, fund transfer confirmation);
- ✓ Proof of filing of donor's tax return (BIR Form No. 1800);
- ✓ Proof of payment of donor's tax (if applicable);
- ✓ Certificate of Donation (for tax-exempt donee);
- ✓ Valid government-issued identification for individual Donor and Donee or, Secretary's Certificate/Board Resolution for non-individual taxpayers; and
- ✓ TIN of Donor and Donee.

Note: Cash donations made to accredited Donee Institutions under Section 34 (H) of the Tax Code, the aforesaid documents shall serve as evidence of the transaction to support future claims for deductions from gross income, in addition to the PCNC Accreditation issued by the BIR to the Donee.

III. Non-applicability of the eCAR requirement

An eCAR shall not be required for donations consisting exclusively of cash donations, as cash is not a registrable property requiring transfer of title under any government registry.

Taxation of Royalties: Distinction Between Active and Passive Income

By: Atty. Fulvio D. Dawilan

The taxation of royalties had not changed, even with the amendments introduced by the Capital Markets Efficiency Promotion Act (CMEPA). Yet to some, there is confusion. To provide clarity, let me revisit the rules affecting the taxation of royalties.

For income taxation purposes, royalties may either be treated as active income or passive income – and these are taxed differently. Royalties earned as active income are subject to the regular income taxes while royalties earned as passive income attract 20% (10% on books and other literary works) final withholding taxes. Because of this difference, a determination as to whether a royalty income is passive or active is necessary for the correct tax treatment to be applied.

So when should a royalty be treated as active income and when should it be treated as passive income? Even before the enactment of the CMEPA, the distinction was already clear – based on clarifications made by the tax bureau in a number of issuances (rulings) and in the explanations made in some Court decisions. While there was no specific definition of passive income in our tax law, through these pronouncements, we've learned that - if the income is generated in the active pursuit and performance of the taxpayer's primary purposes, the same is not passive income.

So when is an income considered to have been earned in the active pursuit of the taxpayer's business and when it is not? Typically, this can be determined from the purposes for which the taxpayer was organized and the business that it is actually pursuing. In one case, for example, the taxpayer's financial statements indicated that royalty was the main source of income of the taxpayer. It was also in line with the taxpayer's primary purposes, which includes owning, purchasing, licensing and/or acquiring trademarks. On these bases, the taxpayer's royalty income was deemed to have been generated in the active pursuit and performance of its primary purposes. The Tax Court also noted that the act of licensing out taxpayer's intellectual property rights cannot be said to be an incidental transaction considering that the financial statements clearly show that the main source of income is royalty. The determination of whether or not the royalty income is passive income is directly related to whether the income is generated in the active pursuit and performance of the taxpayer's primary purpose.

The enactment of CMEPA had not changed this rule. It only made it clearer. While CMEPA added sub-provisions for individuals and corporations, specifically dealing with the taxation of royalties earned as passive income, that was only to separate it from other types of passive income and emphasize the taxation of royalties earned as such. And to be clear what constitutes passive income, for the first time, the Tax Code defined the term "passive income" as – referring to any income that is earned from sources that do not require a taxpayer's active pursuit and performance of trade or business and is not subject to value-added tax. Nonetheless, this is not new as it simply mirrors the earlier pronouncements by our tax authority and by the Courts.

Interestingly, the recently issued Revenue Memorandum Circular No. 81-2025 also clarified that a passive income can become active if the taxpayer repeatedly and systematically engages in activities that produce such income, transforming it into business venture. Likewise, income typically considered active may be treated as passive if it is earned occasionally or without any substantial or recurring effort. Based on the same circular, classification hinges on whether the income results from habitual, business-driven actions or from merely holding assets and earning returns without substantial participation. The degree, frequency and intent of participation in the income-producing activity are the main considerations in classifying income as passive or active.

These parameters in determining the classification of royalty income or income payment is important to both the incomer payor and income earner – to the payor because the classification determines the withholding tax obligation and to the income earner because the classification determines whether it is liable to pay the regular income taxes or simply leaves the responsibility to the payor to remit the taxes through the final taxes withheld. Hence, there is a need for both parties to determine and agree on the proper classification.

Not Covered. These rules apply only to income derived from sources within the country. Royalty income derived from sources outside the Philippines, even if earned by residents and taxed in the country, do not require distinction for purposes of imposing the proper income tax.

Neither do they affect all types of taxpayers. The rule covers only the income derived by citizens, resident aliens, non-resident aliens engaged in trade or business in the Philippines, domestic corporations and resident foreign corporations. Royalty income earned by non-resident aliens not engaged in trade or business in the Philippines and non-resident foreign corporations are not governed by these rules. These types of taxpayers are subject to the 25% final withholding tax on their royalty income earned from Philippine sources. But if the income earner is a resident of a country of which the Philippines has an existing tax treaty, a lower tax rate as defined in the applicable tax treaty may apply. For these taxpayers, same rule applies without distinction as to whether the royalty income is considered active or passive.

As a last note, the new Tax Code definition of passive income includes the phrase “not subject to value-added tax”. With this specific qualification, I submit that once an income is classified as passive income, no VAT should attach – not even the rule on incidental transaction should apply.

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Glossary of Common Terms, Abbreviations, and Acronyms

AAB	-	Authorized Agent Banks
AN	-	Assessment Notices
ATSP	-	Authorized Taxpayer Service Providers
B2B	-	Business to Business
BIR	-	Bureau of Internal Revenue
BOC	-	Bureau of Customs
BOT	-	Built-Operate-Transfer
CIR	-	Commissioner of Internal Revenue
COC	-	Commissioner of Customs
CTA	-	Court of Tax Appeals
DOE	-	Department of Energy
DST	-	Documentary Stamp Tax
EB	-	*En Banc*
FDDA	-	Final Decision on Disputed Assessment
FLD	-	Final Letter of Demand
FY	-	Fiscal Year
LBAA	-	Local Board of Assessment Appeals
LBEPS	-	Landbank Electronic Payment Service
LGC	-	Local Government Code
LOA	-	Letter of Authority
LT	-	Large Taxpayers
FAN	-	Final Assessment Notice
FDDA	-	Formal Decision on Disputed Assessment
FLD	-	Formal Letter of Demand
IT	-	Income Tax
MR	-	Motion for Reconsideration
NEA	-	National Electrification Administration
NIC	-	Notice of Informal Conference
NIRC	-	National Internal Revenue Code
NRFC	-	Non-Resident Foreign Corporation
OSG	-	Office of the Solicitor General
PAN	-	Preliminary Assessment Notice
PCNC	-	Philippine Council for NGO Certification
PD	-	Presidential Decree
Petition	-	Petition for Review
Protest	-	Protest to the Final Assessment Notice/Formal Letter of Demand
RE	-	Renewable Energy
Reply	-	Reply to the Preliminary Assessment Notice
RA	-	Republic Act
RBE	-	Registered Business Enterprise
RMC	-	Revenue Memorandum Circular
RMO	-	Revenue Memorandum Order
RPT	-	Real Property Tax
RR	-	Revenue Regulations
RTC	-	Regional Trial Court

Glossary of Common Terms, Abbreviations, and Acronyms

SC	-	Supreme Court
TIN	-	Tax Identification Number
TPI	-	Third Party Information
TY	-	Taxable Year
VAT	-	Value-Added Tax