SyCip Salazar Hernandez & Gatmaitan 80 Years

SyCipLaw TIPS

Tax Issues and Practical Solutions

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1. Is an establishment engaged in the business of operating indoor playgrounds subject to the amusement tax under the Local Government Code?

No. An establishment engaged in the business of operating indoor playgrounds is not considered an amusement place that is subject to amusement tax. The amusement tax is imposed on theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement where one seeks admission to entertain oneself by seeing or viewing a show or performance and the establishment does not belong to this category.

In *Quezon City Government v. Aeon Fantasy Group Philippines, Inc.*, Court of Tax Appeals ("*CTA*") AC No. 317, June 27, 2025, the City Treasurer of Quezon City assessed the taxpayer for non-payment of monthly amusement taxes on its gross receipts derived from the indoor playground, Kidzoona. The taxpayer questioned the tax assessment before the Regional Trial Court ("*RTC*"), praying for the cancellation and withdrawal of the tax assessment. The RTC ruled in favor of the taxpayer and cancelled and set aside the alleged deficiency tax assessment.

The Quezon City Government subsequently filed a petition for review before the CTA, insisting that Kidzoona is an amusement place, and so the taxpayer is liable to pay amusement tax under Sections 3 and 39, Article 15 of the Quezon City Revenue Code.

The CTA ruled that Kidzoona is not an amusement place as defined under the Local Government Code ("*LGC*"), and so the taxpayer is not liable to pay amusement tax. Under Section 131(c) of the LGC, "[a]musement [p]laces include theaters, cinemas, concert halls, circuses and other places of amusement where one seeks admission to entertain oneself by seeing or viewing the show or performances." In ruling in favor of the taxpayer, the CTA cited *Pelizoy Realty Corp. v. The Province of Benguet*, G.R. No. 183137, April 10, 2013, where the Supreme Court clarified the meaning of amusement places as defined in Section 131(c) of the LGC, which may be subject to the imposition of amusement tax under Section 140, in relation to Section 151, of the LGC:

> Indeed, theaters, cinemas, concert halls, circuses, and boxing stadia are bound by a common typifying characteristic in that they are all venues primarily for the staging of spectacles or the holding of public shows, exhibitions, performances, and other events meant to be viewed by an audience. Accordingly, "other places of amusement" must be interpreted in light of the typifying characteristic of being venues "where one seeks admission to entertain oneself by seeing or viewing the show or performances" or being venues primarily used to stage or hold public shows, exhibitions, performances, and other events meant to be viewed by an audience.

The CTA ruled that Kidzoona playgrounds do not belong to the same category or class as the places of amusement referred to in the LGC, where one seeks admission to entertain oneself by seeing or viewing a show or performance. The definition of amusement places in Section 3, Article 15 of the Quezon City Revenue Code, as "establishments devoted to pleasurable diversion and entertainment," including "places of recreation, relaxation, avocation, pastime and fun" must be set aside in favor of the LGC definition of an amusement place. ■

SyCipLaw Tip No. 1

For an establishment to be considered as an amusement place subject to amusement tax, the form of entertainment it provides must be of such nature that would allow the audience to see or view a show or performance. A provision in an ordinance that expands the definition of an amusement place provided by the LGC cannot be used to justify the imposition of an amusement tax.

A motion for reconsideration of the decision is currently pending.

CTA decisions, while persuasive, do not become part of the law of the land, unlike decisions of the Supreme Court. They only bind the parties to the dispute.

2. Is a taxpayer civilly liable to pay the deficiency income tax, as alleged in the Information, when the criminal case against said taxpayer has been dismissed due to the absence of a valid assessment?

No. The taxpayer is not civilly liable to pay the deficiency income tax since the fact from which the civil liability might arise does not exist as the assessment itself is invalid.

In *People v. Tuazon*, CTA EB Crim No. 142, June 9, 2025, an *Information* was filed against the accused, who was charged with violating Section 255 of the Tax Code for knowingly, willfully, and unlawfully failing to supply correct and accurate information in his income tax returns.

After the prosecution presented its evidence, the accused filed a demurrer to evidence on the ground that the prosecution was not able to establish, with competent and sufficient evidence, the guilt of the accused for willful failure to pay any tax. The CTA granted the demurrer to evidence after finding that the Final Assessment Notice ("*FAN*") issued to the accused, did not include a due date for payment of the deficiency taxes. The CTA ruled that the FAN is void and without any effect and dismissed the criminal case against the taxpayer.

The prosecution then filed a petition for review with the CTA *en banc*, focusing on the civil liability of the accused, contending that despite the absence of a valid assessment, the accused is still liable to pay the assessed taxes. The prosecution argued that despite the acquittal of the accused in the criminal case, he may still be held civilly liable. Further, the prosecution asserted that the civil liability of the accused to pay the deficiency income tax survives the acquittal when there is fraud involved, such that the invalidity of the tax assessment is of no moment as collection may proceed even without an assessment.

The CTA *en banc* ruled that the accused is not civilly liable to pay the tax assessment. It enumerated the elements of the crime under Section 255 of the Tax Code, as follows: (a) the offender is required under the Tax Code, or by rules and regulations promulgated thereunder, to pay any tax, make a return, keep any record, or supply correct and accurate information; and (b) the offender willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations.

In absolving the accused of the crime charged, the CTA *en banc* found that the FAN was void for failure to indicate the due date for payment. An invalid assessment negates the willful failure to pay taxes, thus eliminating the existence of the willful element of the crime. The very reason for the acquittal obviates the criminal intent, hence, closing the door on the imposition of any civil liability. The CTA *en banc* further ruled that the extinction of a penal action does not automatically carry with it the eradication of civil liability. However, if the extinction proceeds from a declaration in the final judgment that the fact from which the civil liability might arise did not exist, then

the civil liability is extinguished. In this case, the fact from which the civil liability might arise (*i.e.*, the FAN) is non-existent for being void. ■

SyCipLaw Tip No. 2

Although a final assessment is not required to impose the civil liability for unpaid taxes in a criminal case pursuant to the ruling in *People v. Mendez*, G.R. Nos. 208310-11, March 28, 2023, such civil liability will still not be imposed if the final assessment is void and the final assessment is an essential element in the criminal case.

The extinction of the criminal liability does not carry with it the eradication of the civil liability for unpaid taxes unless the extinction proceeds from a declaration in the final judgment that the very fact on which the civil liability might arise is non-existent or void.

A motion for reconsideration of the decision is currently pending.

CTA decisions, while persuasive, do not become part of the law of the land, unlike decisions of the Supreme Court. They only bind the parties to the dispute.

3. Is a Registered Export Enterprise ("*REE*") required to provide its supplier a sworn declaration stating that the goods or services purchased from the supplier are directly and exclusively used for the production of goods and/or completion of services to be exported in order to claim value-added tax ("*VAT*") zero-rating?

No. In Revenue Memorandum Circular ("*RMC*") No. 66-2025, the Bureau of Internal Revenue ("*BIR*") clarified that a sworn declaration from the Registered Business Enterprise ("*RBE*") is not required for purposes of claiming VAT zero-rating.

The sworn declaration is a requirement based on RMC No. 80-2023 where the BIR stated that while VAT zero-rating on local purchases of goods and/or services shall be availed of on the basis of VAT Zero-Rate Certification issued by the concerned Investment Promotion Agency ("*IPA*") pursuant to Revenue Regulation No. 3-2023, the REE-buyer must still provide a certified copy of, among others, a **sworn affidavit** executed by the REE-buyer, stating that the goods and/or services are directly and exclusively used for the production of goods and/or completion of services to be exported or for utilities and other similar costs, the percentage of allocation be directly and exclusively used for the production of goods and/or completion of services to be exported, following the prescribed format under Revenue Memorandum Circular ("*RMC*") No. 84-2022. (*Emphasis supplied*)

RMC No. 66-2025 removed the requirement to submit a sworn declaration to the supplier for claiming VAT zero-rating on local purchases. Qualified entities may avail themselves of the VAT zero-rating on local purchase of goods or services based on the VAT Zero-Rate Certification issued by the concerned IPA. The BIR may still conduct a post audit investigation/verification that the services are directly attributable to the registered project or activity of the qualified RBEs. Local suppliers of services of qualified RBEs are also no longer required to apply with the BIR for approval of VAT zero-rating. The VAT Zero-Rate Certification by the IPA will be the primary document for purposes of claiming VAT zero-rating. ■

SyCipLaw Tip No. 3

Registered Export Enterprises and their suppliers may rely on the VAT Zero-Rate Certification issued by the relevant IPA for purposes of subjecting the REE's local purchase of goods and services to 0% VAT. The REE should thus make sure to secure this Certification from IPA at the soonest possible time for the relevant year; otherwise, the suppliers will be constrained to charge VAT without the Certification to avoid issues with the BIR.

4. Are tourists entitled to avail themselves of VAT refunds for goods they purchased in the Philippines?

Yes, under Republic Act No. 12079 ("*RA 12079*"), non-resident tourists may now ask for a refund of the VAT paid on their purchase of local goods

Section 5(g) of the Implementing Rules and Regulations of RA 12079 ("*IRR of RA 12079*") defines tourists as non-resident foreign passport holders who visit the Philippines. The term "non-resident" shall refer to an individual who is a mere transient or sojourner who comes to the Philippines for a definite purpose which, in its nature, may be promptly accomplished. Filipinos with dual citizenship are eligible to avail a VAT refund if they use their foreign passport in entering and exiting the Philippines and they fall under the definition of "tourist" as defined in the IRR of RA 12079.

Requirements to avail the VAT refund for tourists

Section 4 of the IRR of RA 12079 enumerates the requisites for the availment of a VAT refund:

a. The goods are purchased in person by the tourist from duly accredited stores;
b. The goods are physically taken out of the Philippines by the tourist as accompanied baggage, within sixty (60) days from the date of purchase; and
c. The value of the goods purchased per single transaction is equivalent to at least Three Thousand Pesos (PhP3,000.00) covered by a single invoice.

Eligible goods are "retail and tangible goods, such as clothing, apparel, electronics, gadgets, jewelry, accessories, souvenirs, food or non-food consumables, and other goods intended for personal use."

The goods will not qualify for the VAT refund if:

a. The goods are in commercial quantity;
b. The goods were consumed fully or partially in the Philippines;
c. The goods were purchased from e-marketplaces and other digital or online stores;
d. The purchase consists of services, such as transportation, accommodation, or other hospitality services.

Upon successful validation of the claim for VAT refund by the VAT Refund System ("*VRS*") operator at the airport or seaport, the refund will be approved and paid by the VRS operator, net of the service fee, in Philippine currency either in cash or electronically (*e.g.*, digital wallets, bank transfers, or credit cards). ■

SyCipLaw Tip No. 4

Tourists planning to claim the VAT refund for their purchases in the Philippines should always carry their foreign passport and present the QR Code for their e-Travel registration when they purchase goods from accredited stores. They must also be ready for a physical inspection of the goods purchased when claiming the VAT refund at the airport or seaport. Please note that the tourists bear a service fee for the processing of the VAT refund.

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