BDB Law wts

DU-BALADAD AND ASSOCIATES

Atty. Benedicta Du-Baladad

TAX LAW FOR BUSINESS

__BDB Law's "Tax Law for Business"__ appears in the opinion section of __Business Mirror__ every Thursday.

Antibusiness Tax Code provisions

Refund Process

Part Four

As I have said, time and again, unfairness in tax laws is not limited to substantive matters but also to those procedural in nature. A classic example is the process in claiming tax refunds.

Sections 229 and 112 of the Tax Code, lay down the process in claiming tax refunds. Section 229 pertains to erroneously paid tax, and Section 112 pertains to refunds of excess input value-added tax (VAT). The procedures in refunding taxes under these two situations vary.

Most claims for refunds filed under Section 229 relates to excess withholding taxes on income. The refund is the end-product of a defective withholding system, where withholding rates set are too high resulting in tax payments greater than one's tax liability as determined at end of year. Taxes withheld on income are in the nature of advance payments of taxes that are, otherwise, due on April 15 of the following year. Any amount over-withheld is an erroneously paid tax, which the government is obligated to pay back.

On the other hand, Section 112 pertains mostly to refunds of excess input VAT paid by sellers of exported goods and providers of services to foreign persons, on their inputs. We call them sellers of zero-rated goods and services.

The policy of the government as regards to VAT is that, no VAT shall form part of a good that is consumed abroad, or in the case of services, those rendered to foreign persons. This was adopted primarily to bring down the prices of our exports and to make it competitive in the international market. Subsequently, other goods and services were, for policy considerations, given the same concession, such as in the case of production and sale of renewable energy.

There are two ways of achieving this policy: First is the automatic zero rating—meaning, no VAT shall be passed-on to a seller of zero-rated transaction. Sale to Philippine Economic Zone Authority entities is an example of this. Second is through the input-credit mechanism, wherein VAT is passed on but such tax can be subsequently claimed as refund. Our VAT system follows the second method, which is a circuitous version of the first.

As laid down, whether it pertains to a refund of excess withholding tax under Section 229, or excess input VAT under Section 112, these claims arose because of a defect in the tax system. It is not through mistake or fault of the claimant.

Had the tax administration been more considerate in setting a withholding rate that would approximate the tax due on income at year-end, taxpayers would not end up in a tax refund position. Similarly, had the government adopted a direct, automatic zero-rating approach rather than the circuitous process of paying VAT first and then claiming it as a refund, taxpayers would not be going through the difficult and costly process of refunding.

It is the tax system that puts a taxpayer in a situation that ends up in excessive tax payments. Thus, it is but fair to make refunding easy and within a short period. But this is not so. Difficult documentary requirements are imposed, reglementary periods are strict, approvals take time, and, most of all, refund claims are strictly construed against claimants since these are in the nature of tax exemptions, says the courts.

In claims for excess input VAT, for example, the law gives the Bureau of Internal Revenue (BIR) 120 days to act on a claim. If the BIR does not act within this period, such inaction is tantamount to a denial of the claim. There is no sanction imposed on the BIR for such inaction. Naturally, many claims are not acted upon. The poor claimant, on the other hand, is forced to elevate his claim to the courts and pay 1-percent filing fee based on the amount claimed and pay all costs and charges including attorneys' fees and all. To top it all, he gets a refund after more than five years (on the average) at which time, the claim had already diminished in value. In addition, he had lost the income that would have been earned had that money been rolled back in business.

A reform in the tax system is sought to: (1) remove situations that puts a taxpayer in an excess tax position, such as putting reasonable cap on the withholding rates; (2) automatic zero-rating on inputs of sellers of zero rated goods and services; (3) consider a realistic period (120 days is too short considering the voluminous documents) for the BIR to review the claims and if still unacted, it is tantamount to approval, or the BIR should be sanctioned; (4) interest should be paid to the claimant for any delay in the grant of refund.

*****

The author is the managing partner and CEO of Du-Baladad and Associates Law Offices (BDB Law), a member-firm of World Tax Services (WTS).

The article is for general information only and is not intended, nor should be construed, as a substitute for tax, legal or financial advice on any specific matter. Applicability of this article to any actual or particular tax or legal issue should be supported, therefore, by a professional study or advice. If you have any comments or questions concerning the article, you may e-mail the author at dick.du-baladad@bdblaw.com.ph or call 403-2001, local 300.