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## **Proving VAT zero-rated sale of services**

Services performed in the Philippines by a value-added tax (VAT)-registered domestic corporation to a nonresident foreign corporation can be subject to VAT at a rate of zero percent. As these services yield a zero output VAT liability, the input VAT, which are attributable to such services, incurred by the domestic corporation can be the subject of a claim for tax credit or refund. And in claiming a tax credit or refund, the domestic corporation must prove, among others, that the sale of services is VAT zero-rated.

To prove that the supply of services is subject to VAT at a rate of zero percent, the Supreme Court held in the case of *Commissioner of Internal Revenue (CIR) v. Burmeister and Wain Scandinavian*, GR 153205, January 22, 2007:

- The services must be other than processing, manufacturing or repacking of goods;
- The payment for such services must be in acceptable foreign currency accounted for in accordance with the Bangko Sentral ng Pilipinas rules and regulations; and,
- The recipient of such services must be doing business outside the Philippines.

The landmark cases of *CIR v. Burmeister* and *CIR v. American Express International Inc.* (GR 152609, June 29, 2005), conversely, are scant of enumerations of evidence that may prove compliance with the foregoing requisites.

However, in the recent case of *General Motors Automobiles Philippines Inc. v. CIR*, CTA Case 8976, December 2, 2016, the Court of Tax Appeals (CTA) held that the first requisite can be complied by presenting the service agreements between the domestic corporation and the nonresident foreign corporation, which reflects the nature of the services to be rendered by the domestic corporation

With regard to the second requisite, the domestic corporation must present the Funds Transfer Credit Advice and Certificate of Inward Remittances issued by the bank which facilitated the payment, and the VAT zero-rated official receipts. Corollary to this requisite, the VAT official receipts must comply with the invoicing and accounting requirements for VAT-registered persons, otherwise, the amounts reflected in the noncompliant VAT official receipts shall be deemed as not supported by VAT zero-rated official receipts, and shall be denied zero-rating.

Anent the third requisite, the CTA appreciated the following documentary evidences to prove that the recipient of the services is doing business outside the Philippines: (a) the certification of nonregistration of company issued by the Securities and Exchange Commission (SEC); (b) the consularized certificate of residence of the nonresident foreign corporation authenticated by the Philippine Embassy, or the original certificate of residence issued by the appropriate department of the foreign government; and (c) the consularized certificate of registration/incorporation/formation of the nonresident foreign corporation authenticated by the Philippine Embassy.

It is worth noting, however, that despite the fact that the official receipts were not issued in the name of the nonresident foreign corporation, the CTA held that the third requisite was complied with, after it considered the testimony of the finance manager of the domestic corporation, who manifested that the official receipts were all named and addressed to the "Customer Care and Aftersales" Division of the nonresident foreign corporation. The second division noted that, even

though the internal reports and billing statements pertain to Customer Care and Aftersales, the financial entity indicated in all the reports is the nonresident foreign entity.

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