



**Atty. Irwin C. Nidea Jr.**

## **TAX LAW FOR BUSINESS**

### **120-30 day rule on VAT refund revisited**

The 120-30 day rule has its share of evolution in jurisprudence. It started as a strong, lone dissent by then-Presiding Justice Ernesto Acosta of the Court of Tax Appeals (CTA) until it became a doctrine. After several Supreme Court (SC) rulings, some of the principles on the 120-30 day rule have been defined as follows:

1. The Commissioner of Internal Revenue (CIR) has 120 days from the date of submission of complete documents in support of the administrative claim, within which, to decide whether to grant a refund or issue a tax-credit certificate.
2. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.
3. A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.
4. All taxpayers, however, can rely on Bureau of Internal Revenue (BIR) Ruling DA-489-03 from the time of its issuance on December 10, 2003, up to its reversal by this Court in *Aichi* on October 6, 2010, as an exception to the mandatory and jurisdictional 120+30 day periods.

5. If the BIR issues a written request for the taxpayer to submit additional documents after the filing of the administrative claim, the 120-day period commences from the submission of the additional documents by the taxpayer.

Unfortunately, there are still some issues that linger. One of these issues is whether a taxpayer may opt to appeal a decision of the CIR that is issued within the 30-day period after the lapse of the 120-day period. Justice Catherine Manahan of the CTA, in a dissenting opinion, answers this issue in the affirmative. According to her, if the CIR issued the denial of the claim for refund after the lapse of the 120-day period, but within the 30-day period, to appeal the inaction to the CTA, the taxpayer may opt to count the 30-day period to appeal to the CTA from the denial of the claim.

Her view is that a taxpayer is given two options after it files its administrative claim for refund, namely: 1) to wait for the lapse of the 120-day period without any action on the part of the CIR and, within 30 days from the lapse, file an appeal with the CTA; or (2) in case of full or partial denial of the claim for refund, file an appeal with the CTA within 30 days from receipt of the decision denying the claim. The mandatory character of the 120+30 day period is pertinent when the petitioner chooses to appeal the “inaction” of the Commissioner after the lapse of the 120-day period. The operative word “may” in Section 112 (C) of the Tax Code suggests that these two options are given to the taxpayer for its benefit who, in turn, may freely choose one over the other or none at all.

Although this opinion makes a lot of sense, this may not hold water as of now, since the SC, in a decision penned by Chief Justice Sereno, has already declared that the “inaction” of the CIR is already considered as its “decision”. Thus, the taxpayer has no other option but to appeal the inaction of the CIR and count the 30-day period from the lapse of the 120-day period.

The 120-30 day rule started as a strong dissenting opinion. I will not be surprised if, in the future, the SC adopts the dissenting opinion of Justice Manahan as the new doctrine. After all, change is the only permanent thing in this world.

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The author is a partner of Du-Baladad and Associates Law Offices (BDB Law), a member-firm of WTS Global.

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