



TAX LAW FOR BUSINESS
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Of Refunds and Invoices

Loopholes in Philippine taxation may consist of ambiguities because of how the law has been worded, or, they may involve areas that are not covered by specific rules that should have been issued by the Bureau of Internal Revenue (BIR). If left unchecked, loopholes will certainly affect the collection efforts of the government.

Many have made the observation that one of the major loopholes in our VAT system pertains to the grant of refunds of unutilized input VAT in relation to zero-rated or effectively zero-rated sales. It does not mean though that claiming a refund is like a walk in the park. It is far from it.

A claimant must not only establish that he is entitled to the claim, he must also show proof of compliance with the substantiation requirements as mandated by the law or regulations.

There are certain requisites before a taxpayer can claim a refund (under Section 112 (A) of the 1997 Tax Code), and these are as follows:

- (1) that the claimant is a VAT registered person;
- (2) that the claimant's sales are zero-rated;
- (3) that the administrative claim for refund was seasonably filed;
- (4) that input taxes being claimed are attributable to zero-rated sales; and
- (5) that the input taxes were not applied against any output tax liability.

Vital to any claim for refund is compliance with documentation requirements, and central to these documentation requirements are the invoices and official receipts.

A VAT-registered person is required to issue a receipt or invoice with a TIN for every consummated sale. The receipt or invoice must be duly registered with the BIR, and should contain the information required by Sections 113 and 237 of the 1997 Tax Code, as amended, namely:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

(2) The total amount which the purchaser pays or is obligated to pay to the seller with indication that such amount includes the VAT, provided that:

- (a) The amount of tax shall be shown as a separate item in the invoice or receipt;
- (b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
- (c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;
- (d) If the sale involves goods, properties or services which are subject to VAT, VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) For sales in the amount of one thousand pesos (P1,000.00) or more made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in the invoice or official receipt.

Even if the buyer is a non-resident, the requirement to issue a VAT-invoice or receipt cannot be dispensed with. In one case, the Court of Tax Appeals (CTA) ruled that sales services to non-residents must still be covered by valid invoices or receipts. In this case, the claimant argued that its non-resident clients are not covered by the Philippine VAT system since they are not engaged in any taxable transaction in the Philippines. Hence, in no instance will the non-resident taxpayer claim refund or credits of any input tax that may be passed on to them.

The CTA made it clear that when the law is free from ambiguity therefore, the court may not introduce exceptions or conditions where none is provided. The CTA said that the law requires all VAT-registered persons to issue receipts or invoices. The law mandates VAT-registered persons to issue receipts or invoices in their transactions of selling goods and/or services with no reference to their clients or customers. Furthermore, the use of the word “shall” implies mandatory compliance. This means that strict observance of the invoicing/substantiation requirements is mandated by the VAT law and regulations regardless of whether the taxpayer deals exclusively with residents or non-residents. (*CTA Case No. 6514, Marubeni Phils. Corp. vs. CIR, June 27, 2007*)

Should a VAT-invoice or receipt reflect or indicate the BIR Authority to Print? It is not necessary that the BIR Authority to Print be indicated in the invoice or receipt. The Supreme Court, in one case, ruled that while the Tax Code and the rules and regulations implementing them require entities engaged in business to secure BIR Authority to Print invoices or receipts, and to issue duly registered invoices or receipts, it is not specifically required that the BIR Authority to Print be reflected or indicated therein. It is required, though, that the BIR Authority to Print be secured or obtained by the taxpayer, and that the invoices or receipts be duly registered.

It has been observed that for a number of companies, either multinational or domestic, less attention and care are usually given to the issuance of invoices and receipts. For those intending to file a refund with the BIR, this practice has to change, or they might just have to face the possibility of the denial of their claim.