



TAX LAW FOR BUSINESS
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VAT invoice fundamentals

CLAIMS for tax refund/tax credit certificates (TCCs) entail very strict compliance, both with procedural and substantive requirements, or else a taxpayer's otherwise meritorious claim may not be given due course.

To claim for a refund/TCC under Section 112(A) of the 1997 Tax Code, as amended, the Supreme Court had occasion to lay down the criteria to be followed:

- (1) The taxpayer is VAT registered.
- (2) The taxpayer is engaged in zero-rated or effectively zero-rated sales.
- (3) The input taxes are due or paid.
- (4) The input taxes are not transitional input taxes.
- (5) The input taxes have not been applied against output taxes during and in the succeeding quarters.
- (6) The input taxes claimed are attributable to zero-rated or effectively zero-rated sales.
- (7) For zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign-currency exchange proceeds have been duly accounted for in accordance with BSP rules.
- (8) Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributed to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.
- (9) The claim is filed within two years after the close of the taxable quarter when such sales were made.

With the cited requirements, taxpayers usually have difficulty complying not only on the prescriptive period but more on the substantiation of the taxes sought to be refunded, which may prove fatal in a claim for refund/TCC.

For value-added tax (VAT)-related transactions, among the essential documentary requirements are the invoices, official receipts as well as other documents evidencing payment of input VAT or input taxes incurred on local purchases and importations. To be guided, Revenue Memorandum Circular 62-2005 was issued discussing the registration and invoicing requirements including clarification on common issues affecting VAT taxpayers pursuant to Republic Act (RA) 9337.

Relative to the invoice, it is significant to note that the Supreme Court declared in the case of *Microsoft Philippines Inc. v Commissioner of Internal Revenue*, G.R. 180173, April 6, 2011, that a VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to claim for input taxes on domestic purchases of goods or services attributable to zero-rated sales. An invoice, lacking the word “zero-rated,” is not a “VAT invoice,” and thus, cannot give rise to any input tax. The printing of the word “zero-rated” is required on VAT invoices or receipts covering zero-rated sales to be entitled to a claim for tax credit or refund.

In addition to the requisites mentioned, the Bureau of Internal Revenue (BIR) recently promulgated yet another revenue regulation (RR) to set the guidelines in the proper invoicing and receipting of output tax on the sale of goods and services. Published on November 23, 2011, RR 18-2011 was issued pursuant to Section 264, in relation to Section 113 (B)(2)(a) and (d) of the 1997 Tax Code, as amended.

Section 1 of the regulations explicitly provides that, “All VAT-registered taxpayers who are required under Section 237 of the 1997 Tax Code, as amended, to issue sales or commercial invoices or official receipts should separately bill the VAT corresponding thereto.”

It must be noted that prior to RA 9337, the VAT was billed as part of the selling price and the sellers were prohibited from showing the amount of VAT as a separate item. With this new BIR issuance, the amount of the tax shall be shown as a separate item in the invoice or receipt. Failure or refusal to comply with the requirement in Section 1 shall be punished by a fine of not less than P1,000 but not more than P50,000 and suffer imprisonment of not less than two years but not more than four years.

In view of these developments, taxpayers must be mindful of all the requirements categorically laid down by the BIR and the courts, otherwise they shall be subjected to the corresponding penalties or worse, their rightful claim for refund/TCC may be unduly denied.

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