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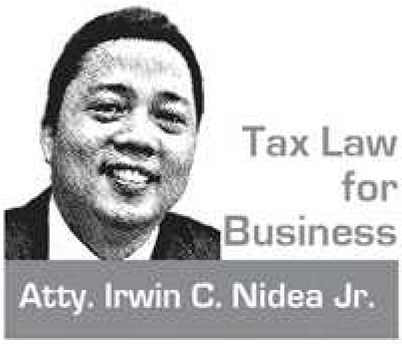

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VAT cannot be written off

THERE are many ingenious ways to increase tax collection. If it cannot be done by increasing the tax rate or tax base, why not decrease the amount that can be claimed as a deduction by a taxpayer? This is apparent in the new ruling issued by the Bureau of Internal Revenue (BIR), wherein it was ruled that excess input value added tax (VAT) cannot be written off.

Tax authorities are well aware of this practice by many companies of writing off excess input VAT. Some companies constantly accumulate excess creditable input taxes, since there is no output tax against which the input tax can be applied or credited in the first place, because all their sales are considered zero-rated. Sometimes, this excess unutilized input VAT is so small that it is impractical to file a claim for refund, due to the utter impossibility of being granted the refund in the administrative level and the cost of litigation if the claim is elevated to the Court of Tax Appeals (CTA). Considering the opportunity cost and the length of time until the refund is finally given, if at all, many companies opt not to file a refund claim. Instead, since the input VAT is booked as excess input taxes that form part of Other Asset (a receivable account from the BIR), and after waiting for the period to claim the input taxes as a refund or Tax Credit Certificate (TCC) to lapse, these companies prefer to write off the input tax receivables from their books. In this way, the benefit of the excess input VAT, although not in its full amount, is reaped right away.

This practice of writing off excess input tax has been affirmed by the CTA in several cases. The CTA has ruled that input taxes are actually part of the cost of purchases that can be claimed as a deduction from gross income. In one case, the court agreed with the treatment of input taxes in VAT Ruling 59-92, which considered these as costs that may be deducted from gross income for income-tax purposes, unless claims for refund or TCC were filed.

Even the BIR, in a long line of rulings, has already upheld that a company may remove from its books the accumulated input taxes that have been prescribed for refund purposes and deduct the same from its gross income.

In one ruling, for example, the BIR confirmed that a taxpayer-claimant of a denied claim for refund/tax credit of unutilized input taxes relating to VAT zero-rated sales may claim the same as deduction for income tax. Moreover, it was held that input taxes are assets that are expected to benefit the taxpayer. Denial of the refund application by the BIR or the court means that the asset has lost its value. Therefore, the denied claim should be treated as a deductible loss of property sustained during the taxable year.

Unfortunately, the practice of writing off excess input VAT has been abandoned by current tax authorities. Citing Section 112 of the Tax Code, the commissioner, in a recent BIR ruling, said the unutilized creditable input tax related to zero-rated sales can only be recovered through the application for refund or tax credit. The commissioner also said nowhere in the tax code can be found a specific provision expressly providing for another mode for recovering unapplied input taxes.

Taxpayers are now left with no other option but to claim for excess input VAT refund. If the practice of writing off is continued, the BIR will disallow the same as part of the taxpayer's deduction on its income tax and the corresponding deficiency-tax assessment will be imposed, plus penalties and interest.

It is a bitter pill to swallow, but until this new position of the commissioner is reversed, it will stand. Thus, in order to preempt any possible tax exposure, it is prudent to discontinue the practice of writing off excess input VAT and file a claim for refund with the BIR instead.

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