



*BDB Law's "Tax Law for Business" appears in the opinion section of **Business Mirror** every Thursday.*

New requirements for VAT-refund claims

THE Bureau of Internal Revenue (BIR) recently released Revenue Memorandum Circular (RMC) 54-2014, which clarifies issues related to the application for a value-added tax (VAT) refund under Section 112 of the Tax Code. This is in line with the decision of the Supreme Court in Commissioner of Internal Revenue [CIR] v San Roque Power Corp. and Mindanao II Geothermal Partnership v CIR.

The circular highlights the following features that all taxpayers must observe:

It is now clear that a VAT-refund claim must be filed with the BIR within two years after the close of the taxable quarter when the sales were made;

The BIR commissioner shall have 120 days from the date of the submission of complete documents to decide whether to grant the claim for refund or not. If the claim for a VAT refund or credit is not acted upon by the commissioner within 120 days, as required by law, such "inaction shall be deemed a denial" of the application for a tax refund or credit;

The application for a VAT refund must be accompanied by complete supporting documents, as enumerated in Annex A of RMC 54-2014.

In addition, the taxpayer shall attach a statement under oath that attests to the completeness of the submitted documents, which will follow the format of Annex B of RMC 54-2014. The affidavit shall also state that the said documents are the only ones that the taxpayer will present to support his or her claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the chief financial officer) has been authorized by the board of directors of the company.

Upon submission of the administrative claim and its supporting documents, the claim shall be processed, and no other documents shall be accepted or required from the taxpayer while it is being evaluated.

A decision shall be rendered by the commissioner based only on the documents submitted by the taxpayer. The application for tax refund or credit shall be denied if the taxpayer or claimant failed to submit the complete supporting documents. For this purpose, the concerned processing or investigating office shall prepare and issue the corresponding denial letter to the taxpayer or claimant.

In case of a full or partial denial of the claim for tax refund or credit, or the failure on the part of the commissioner to act on the application within the period prescribed above, the taxpayer affected may, within 30 days from the receipt of the decision denying the claim or after the expiration of the 120-day period, appeal the decision on the claim not acted upon with the CTA.

A judicial claim must be filed with the CTA within 30 days from the receipt of the commissioner's decision denying the administrative claim or from the expiration of the 120-day period without any action from the commissioner, as the case may be. In this regard, the taxpayer or claimant is required to observe the "120 plus 30 days" rule before lodging a petition for review with the CTA.

In sum, the taxpayer can file the appeal in one of two ways: file the judicial claim within 30 days after the commissioner denies the claim within the 120-day period, or file the judicial claim within 30 days from the expiration of the 120-day period if the commissioner does not act within that period.

In cases where the taxpayer has filed a petition for review with the CTA, the commissioner loses jurisdiction over the administrative claim.

Indubitably, failure to file a judicial claim with the CTA within 30 days from the expiration of the 120-day period rendered the commissioner's decision, or inaction "deemed a denial," final and beyond appeal. This applies to all pending administrative claims for refund or tax credit.

The new requirements (i.e., affidavit of completeness and compliance with the list of documents to be submitted) raise new questions:

Will taxpayers be allowed to submit additional documents when the claim for refund is elevated to the court, considering that the proceeding therein is de novo?

Regarding claims that are pending, where additional documents are submitted by the taxpayer in compliance with the letters of authority of the BIR, should the counting of the 120-day period still commence from the filing of the administrative claim or from the submission of additional documents?

With the issuance of RMC 54-2014, is the determination of what is "complete documents" now lies with the BIR and not with the taxpayers, as the court has repeatedly declared in its decisions?

These are pristine legal enigmas that the court has to resolve in the future.

The author is a partner of Du-Baladad and Associates Law Offices, a member-firm of the World Tax Services Alliance.

The article is for general information only, and is neither intended nor should be construed as a substitute for tax, legal or financial advice on any specific matter. Applicability of this article to any actual or particular tax or legal issue should be supported by professional study or advice. For comments or questions about the article, e-mail the author at irwin.nidea@bdblaw.com.ph or call 403-2001, local 330.