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TAX LAW FOR BUSINESS

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VAT zero rating of sale of services under the Peza law

Section 108(B)3 of the 1997 Tax Code, as amended, provides for the value-added tax (VAT) zero rating on supply of services performed in the Philippines by VAT-registered persons to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory. Following this provision, the supply of services to entities registered under the Philippine Economic Zone Authority (Peza) law, or Republic Act (RA) 7916, shall be subject to VAT zero rating.

However, in a number of rulings, the Bureau of Internal Revenue (BIR) has laid down qualifications in order that VAT zero rating on sale of services should apply. The BIR has ruled that sale of services to a Peza-registered enterprises shall be subject to VAT at zero percent, provided that the services are rendered within the ecozone and provided further that the services are rendered in connection with the registered activities of the Peza-registered buyers. Following this view, if the services are rendered within the Customs territory, such sale of services by the VAT-registered person shall be subject to the 12-percent VAT, irrespective of the status of the buyer as ecozone registered enterprise.

Recently, though, the Court of Tax Appeals (CTA) in CTA Case 9004 promulgated a decision, ruling that under Section 108(B)3 of the Tax Code, as amended, the only requisites for the application of VAT zero rating are as follows: 1) Sale of service is performed in the Philippines; 2) Service is performed by a VAT-registered person; and 3) Service is rendered to persons or

entities exempted under special laws or international agreement to which the Philippines is a signatory.

Based on the foregoing requisites, the CTA held that sale of services by VAT-registered person performed within the Philippines to the Peza-registered entities operating within an ecozone shall be subject to zero-percent VAT. To qualify for VAT zero rating, a sale of service by VAT-registered persons need not be rendered within the ecozone and need not be connected to the activities of the Peza-registered entity. A contrary view is not in accordance with the plain wording of the law.

In rationalizing its ruling, the CTA said the VAT exemption of Peza-registered enterprises flows from the legal fiction establishing ecozone as foreign territories under Section 8 of the Peza law, and not by virtue of the special tax incentives granted to them under Section 24 of the same law. As such, there is no need to prove that the sale of services to Peza-registered enterprises are directly connected to their registered activities. What is important is that the Peza-registered enterprise availing itself of the services is located and operating within the ecozone.

Accordingly, for as long as the Peza-registered purchaser is located and operating within the ecozone, sellers from the Customs territory cannot pass on any output VAT to it for any sale of goods or services destined for consumption within the ecozone.

Indeed, Section 108(B)3 of the 1997 Tax Code is clear. A sale of service by a VAT-registered person to a VAT-exempt person or entity performed in the Philippines is subject to VAT zero rating. Under the law, no other conditions are required.

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