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TAX LAW FOR BUSINESS

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VAT refunds under TRAIN

While lower income-tax rates and higher excise-tax rates in the Tax Reform for Acceleration and Inclusion (TRAIN) law have been receiving much attention, the changes introduced for value-added tax (VAT) refunds have been left undiscussed. Such changes deserve the same attention as those changes being subjected to much media mileage.

First, prior to TRAIN, the Commissioner of Internal Revenue (CIR) is authorized to either grant a cash refund or issue a tax-credit certificate. Under the TRAIN, only cash refunds will be granted for meritorious claims.

Second, under old rules, taxpayer-claimants must submit "complete documents." TRAIN now requires submission of "official receipts or invoices and other documents." Thus, official receipts or invoices related to purchases and sales of taxpayer-claimants are required to be submitted, and "other documents," may now likewise be submitted. Such is similar to the evidentiary standard in tax assessments under Section 228 of the Tax Code requiring submission of "relevant supporting documents." This means that taxpayers may determine what documents to submit, not the Bureau of Internal Revenue (BIR).

Third, similar to assessments under Section 228 of the Tax Code, TRAIN places a due process requirement on the CIR. Should he find that the grant of the VAT refund is not proper, he must state the legal and factual basis of his denial. Failure to state such in the case of an assessment renders the same void. Since the same procedural requirement is found in VAT refunds in the TRAIN law, there is no reason the same rule should not apply in the latter case. Considering that the denial is void, pursuant to the *Pilipinas Total* doctrine (GR 207112, December 8, 2015), the Court of Tax Appeals (CTA) may give credence to all evidence presented by the taxpayer, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.

Fourth, the period given to the CIR to decide whether to grant or deny the VAT refund claim has been reduced from 120 days to 90 days. Failure of any official, agent or employee of the Bureau of Internal Revenue (BIR) to act on the claim within the 90-day period could result in criminal liability on his or her part. Whether the BIR can review and decide on the VAT refund claims of taxpayers efficiently within the 90-day period, it is hoped that VAT refund claims are not denied simply because of fear of revenue officers of being held criminally liable.

Last, and perhaps most notably, under the old rules, taxpayer-claimants may appeal unacted VAT refund claims within 30 days from the expiration of the then 120-day period. In the Rohm Apollo case (GR 168950, January 14, 2015), the Supreme Court has stated that the CIR's inaction within the 120-day period is already a decision denying the refund claim. In relation to Revenue Memorandum Circular (RMC) 54-2014, the CIR loses jurisdiction to process the claim and, consequently, the taxpayer has no choice but to file his appeal to the CTA within 30 days from the lapse of the 120-day period.

The TRAIN law has removed this remedy of the taxpayer to appeal in case of inaction by the CIR. It appears that the law assumes that, in all cases, VAT refund claims shall be acted upon within the 90-day period, perhaps, due to fear of criminal liability. But what if there are still cases where the 90-day period to decide the VAT refund claim lapses with no action at all?

To abide by the notion that the taxpayer may only appeal to the CTA after the receipt of a decision denying the claim is to leave VAT refund claims at the mercy of the BIR. While there is a rule in tax refunds that the same should be strictly construed against taxpayers, this should not be used as a reason to deny taxpayers of a remedy.

The better rule is to allow taxpayers the option to appeal the CIR's inaction after the lapse of the 90-day period similar to that of assessments under Section 228 of the Tax Code. This would treat the inaction as "deemed a denial," instead of an actual decision denying the refund claim pursuant to the Rohm Apollo case. After all, Republic Act (RA) 1125, as amended, by RA 9282, provides that the CTA has jurisdiction over inaction by the CIR in cases involving refunds where the Tax Code provides for a specific period of action, in which case the inaction shall be deemed a denial. Thus, in the case of VAT refund claims, the taxpayer should have two options: (a) if the claim is wholly or partially denied by the CIR, then the taxpayer shall appeal to the CTA within 30 days from receipt of the whole or partial denial of the claim; and (b) if the CIR fails to act upon the claim within 90 days from submission of the official receipts or invoices and other documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 90-day period.

To guide taxpayer-claimants, the BIR should clarify the above matters by amending Revenue Regulations 16-2005, or the Consolidated VAT Regulations and RMC 54-2014. This should be done before the close of the first taxable quarter or before March 31, 2018, the deadline to file the administrative claims for input VAT for the first taxable quarter of taxable year 2016.

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