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TAX LAW FOR BUSINESS

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Taxpayer's recourse on BIR's unacted VAT refund claims

Prior to the amendments introduced by the Tax Reform for Acceleration and Inclusion (TRAIN) law, the 1997 Tax Code was clear that a taxpayer may elevate to the Court of Tax Appeals (CTA) its claim for refund or tax credit of unutilized input tax attributable to VAT zero-rated sales in case the Commissioner fails to act on the said claim within 120 days from the submission of complete documents.

Section 112(c) of the old Tax Code provides that in case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the commissioner to act on the application within the period prescribed by law, 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 or the unacted claim with the CTA.

Under the TRAIN law, the Tax Code provision on the taxpayer's right to appeal an unacted claim to the CTA was deleted, with a proviso, however, that failure on the part of any official, agent, or employee of the Bureau of Internal Revenue (BIR) to act on the application within the 90-day period shall be punishable, which under Section 269 of the Code, could be imprisonment of up to a period of 15 years.

Following the provisions of the TRAIN law, it is only when there is a full or partial denial of the claim for tax refund that the taxpayer affected may, within 30 days from the receipt of the decision denying the claim, appeal the decision with the CTA. The law is not clear whether an unacted claim may already be elevated to the courts in case the commissioner fails to act on it within the 90-day period.

Understandably, Revenue Regulations 13-2018, which implements the value-added tax (VAT) provisions of the TRAIN law, did not clarify this, since it is not clear in the law in the first place. So also, Revenue Memorandum Circular 17-2018, which laid down the guidelines in VAT refund claims, is likewise silent on this issue.

So then, what will be the recourse of a taxpayer whose claim for VAT refund with the BIR is unacted by the commissioner?

Interestingly, in CTA Case 8752, involving an inaction of the commissioner of the Bureau of Customs on a refund claim of allegedly erroneously paid Customs duties, the CTA has ruled that the case was properly elevated to the CTA, following the provisions of *solutio indebiti* under Article 2154 of the Civil Code. In this case, it was argued that the inaction of the Commissioner is not appealable to the CTA, citing as basis Section 7(a) 4 of Republic Act 1125, as amended by RA 9282.

The CTA asserted its jurisdiction on the issue. The court finds it anomalous, if not highly iniquitous, if the claimant is totally without recourse but to await the decision of the commissioner of Customs, which may or may not be forthcoming. Such inaction can deprive lawful tax refund claimants of positive and expedient relief from the courts of justice.

Will this ruling be applicable to VAT refund claims not acted upon by the commissioner of Internal Revenue? Following the rationale of the tax court in CTA Case 8752, it would seem that the court will take a positive stand on this issue. Truly, the taxpayer claimant cannot be forever awaiting for the decision of the commissioner.

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