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Atty. Irwin C. Nidea Jr.

**TAX LAW FOR BUSINESS**

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## 'Deemed denied' lives

IN my many years in practice, I have seen how the rules in claims for value-added tax (VAT) refund have evolved.

In the early-2000 the Court of Tax Appeals (CTA) was divided on whether the 120-day waiting period is mandatory. Majority of the CTA justices were of the opinion that it is not, i.e., the taxpayer is not required to elevate a claim for refund to the CTA even if the 120-day waiting period has expired, as long as it files the claim within two years from filing of the VAT return. But later on, the Supreme Court (SC) promulgated the Aichi case where it ruled that inaction by the Bureau of Internal Revenue (BIR) within the 120-day period is deemed a denial of a claim for VAT refund.

Thus, it was made clear that a claim for VAT refund must be elevated to the CTA within 30 days after the expiration of the 120-day waiting period. As a result of this SC ruling, many claims for refund that were filed prior to the Aichi case were dismissed because some were either filed before or after the expiration of the 120-day period. As regards the former, they were dismissed for having been prematurely filed. On the other hand, as regards the latter, some were filed after 30 days from the expiration of the 120-day period. These cases were also dismissed because they were considered as belatedly filed.

It is also worth noting that, before the Aichi case, there was no definite ruling on when the two-year period to file a claim for refund must be reckoned from. Should it be counted from the filing of the VAT return or from the end of the quarter when the sales were made? The SC later on ruled that since the wordings of the law states the latter, then it is the one that should be followed. Of course, this was not without consequence. All claims for VAT refund that were filed using the date of filing as the reckoning point were dismissed for having been filed late.

There is another issue that the court is yet to resolve with finality. When should the two-year period be reckoned from? Is it within two years when the input VAT was incurred or is it within two years when the sales were made? The CTA in many cases use the former, but there are some divisions of the CTA that use the latter interpretation. This issue will also have far reaching implications when the time comes that the SC rules either way.

This brief narration of history will show that the taxpayer is the loser as the interpretation of the law changes over time. When there is a flip-flop of decisions, taxpayers are almost always left in the cold.

The evolution of the law on VAT refund is not yet over. In Tax Reform for Acceleration and Inclusion (TRAIN) 1, the BIR is only given 90 days to act on a claim. But unlike the old law, where failure to act by the BIR is considered a denial that can be elevated to the CTA, TRAIN 1 is silent in this regard. In fact, there was an express repeal of a similar provision of the old law.

But I think the "deemed denied" principle lives. The CTA rule is enlightening. It provides that, "The CTA shall have exclusive jurisdiction on inaction by the Commissioner of Internal Revenue in cases involving…refunds of internal revenue taxes…where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial."

Note that TRAIN 1 uses the phrase "the Commissioner shall grant a refund for creditable input taxes within 90 days." Clearly, there is a specific period of action in the law.

If you reconcile these two provisions, you will come to a conclusion that if there is an inaction of the BIR within 90 days (which is the specific period of action), it will be deemed a denial which must be elevated to the CTA.

There have been billions of pesos lost because of the continuing evolution of the VAT refund provision of the Tax Code. Now that you know your history, as laid down above, it is now up to you to use that knowledge to make a better judgment. If there is an inaction on your claim for VAT refund after 90 days, should you elevate your claim to the CTA or just pray that the BIR will act on the same and risk forfeiting any judicial relief?

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The author is a partner of Du-Baladad and Associates Law Offices (BDB Law), a member-firm of WTS Global.