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Global Tax Update

Philippines

Deloitte Tohmatsu Tax Co.

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1. Revenue Memorandum Circular

(1) Guidelines on monetization of VAT TCCs

Pursuant to Executive Order (EO) No. 68, series of 2012 which provides the mechanism for the cash conversion of outstanding VAT TCCs, the BIR issued the following guidelines on the monetization of VAT tax credit certificates (TCCs).

1. Coverage of monetization program

The following VAT TCCs shall be qualified for conversion to cash:

a) VAT TCCs for which the BIR has issued the corresponding notices of payment schedule (NPS) pursuant to EO 68, series of 2012 and DOF-BIR-DBM Joint Circular No. 2-2012;

b) VAT drawback TCCs approved for monetization program by the Bureau of Customs (BOC) pursuant to EO 68, series of 2012 and DOF-BIR-DBM Joint Circular No. 2-2012;

c) VAT TCCs outstanding as of December 31, 2012 which are not covered by a) and b); and

d) VAT TCCs issued after December 31, 2012.

2. Guidelines on processing of VAT TCCs

1) Monetization of VAT TCCs with BIR-Issued Notice of Payment

Holders of NPS may present their notice to the BIR for payment at any time, on or before their maturity dates. Upon presentation of the NPS to the BIR by the NPS holder or his authorized representative, the BIR shall pay the amount subject to the existing budgeting, accounting and auditing law, rules and regulations.

To expedite the implementation of the monetization program, the BIR shall, within ten days from the effectivity of the Joint Circular, send official communications advising holders of NPS of the monetization program. Within 45 days from the presentation of the NPS, the BIR shall directly pay the amount equivalent to the total face value of the NPS, net of any delinquent tax liability, to the account of the NPS holder, pursuant to the modified disbursement payment system (MDPS) of the government, as follows:

- For notices presented on or before the 15th of the month, the 45-day processing shall commence on the first day of the immediately following month; and
- For notices presented after the 15th of the month, the 45-day processing period shall commence of the 16th day of the immediately following month.

2) Monetization of import VAT-TCCs and VAT drawback TCCs

The BOC shall, within ten days from the date of effectivity of the Joint Circular, send written notices advising holders that the cash equivalent of their import VAT TCCs and VAT drawback TCCs may already be claimed from the BOC, subject to existing budgeting, accounting and auditing law, rules and regulations.

The qualified import VAT TCC holders are given one year from receipt of the notice to claim payment from the BOC. The BOC shall, within 45 calendar days from the presentation of notice, pay directly the amount equivalent to the outstanding balance of the TCC, net of any delinquent tax liability to the account of the TCC holder, pursuant to the MDPS of the government.

3) Cash conversion of VAT TCCs

All applications for cash conversion of import VAT TCCs and drawback VAT TCCs shall be filed directly with the BOC. Applications for cash conversion of all other VAT TCCs shall be filed directly with the BIR.

All applicants for cash conversion of TCCs should submit a letter of application, together with the complete documents. An application shall be deemed complete if accompanied by the following documents:

- Letter of application
- Original TCC
- Proof of authority of representative: secretary's certificate on the board resolution designating the TCC holder's authorized representative in the case of corporations, and (b) special power of attorney in the case of partnerships and sole proprietorships; and
- For import VAT and VAT drawback TTCs, a certification from the BOC Collection Service that the applicant has no tax and/or duty liabilities or a statement of the outstanding account, as the case may be.

All applications for cash conversion of TCC shall be evaluated by the concerned BOC or BIR office. Within 45 calendar days from the filing of application, the BIR or BOC shall pay the amount equivalent to the outstanding balance of the TCC, net of any delinquent tax liability, to the account of the TCC holder, pursuant to the MDPS of the government.

VAT TCC holders who fail or do not avail of the cash conversion program shall retain the right to credit his VAT TCCs against their tax and/or duty liabilities or apply for VAT-TCC revalidation under Section 230(B) of the Tax Code.

3. Prohibition to issue VAT-TCCs

Upon effectivity of EO 68-A, the BIR and BOC shall no longer issue VAT TCCs, unless the VAT taxpayer applies for VAT TCC, in which case, taxpayers who apply for, and are issued VAT TCCs may apply for cash conversion.

[Department of Finance (DOF), Department of Budget and Management (DBM), Bureau of Customs (BOC) and Bureau of Internal Revenue (BIR) Joint Circular No. 002-2014, as circularized under Revenue Memorandum Circular No. 82-2014, December 2, 2014]

2. Court of Tax Appeals (CTA) decisions

(1) Non-submission of complete documents does not toll the running of the 120-day period for BIR to act on refund cases

Under Section 112 (C) of the Tax Code of 1997, as amended, the Commissioner of Internal Revenue (CIR), in proper cases, shall grant a refund or issue the tax credit certificate (TCC) for creditable input taxes within 120 days from the date of submission of complete documents.

For the purpose of defining proper cases, RMC 029-09 provides that the taxpayer/claimant must comply with the conditions/requirements upon audit/verification of his/its claims which include, among others, the submission of complete documents and all books of accounts and accounting records pertaining to the claim for

refund.

In case of non-compliance with the conditions/requirements, e.g., failure to present the accounting books and records for audit/verification, additional documents to explain discrepancies/findings are not submitted, RMC 029-09 provides that the running of the 120-day period shall stop from the date of notification to the taxpayer. Likewise, the running of the 120-day period shall be suspended in case a question of law arises during the conduct of audit/verification and/or review of the claim for tax refund/credit.

The CTA held that the running of the 120-day period does not stop or toll in case of non-submission of complete documents or failure to comply with the other requirements under RMC 029-09. In this regard, the CTA held that section 112(C) of the Tax Code is clear and plain that it does not provide for any instance where the 120-day period may be stopped or tolled, nor does it authorize the Commissioner of Internal Revenue (CIR) to stop or toll the same. According to the CTA, even conceding that the construction of the statute by the CIR is to be given great weight, the CTA is not bound by said statute if the construction is erroneous or is clearly shown to be in conflict with the governing statute or the Constitution or other laws.

Moreover, the CTA maintained that under RMC 029-09, the taxpayer/claimant must comply with the conditions or requirements stated therein only upon audit/verification of his /its claim. But even if it is assumed that such audit or verification has been conducted, the CTA explained that it is clear that the stoppage or suspension of the 120-day period will respectively occur only in the following instances: (1) from the date of notification to the taxpayer of his/its failure to comply or (2) when during the audit or verification, a question of law arises and the issues is referred to the legal division or the legal service. In the instant case, neither of the said instances were shown to exist. Hence, the reckoning of the 120-day period should be uninterrupted from the filing of the administrative claim.

(Commissioner of Internal Revenue v. Manulife Data Services, CTA EB 1051 re: CTA Case Nos. 8054, 8117 and 8139, November 17, 2014)

(2) Taxpayer not estopped from questioning the validity of waiver for the first time on CTA appeal

A taxpayer is not estopped from assailing the validity of the waiver extending the assessment period notwithstanding that the issue was raised for the first time on appeal with the CTA.

In the instant case, the taxpayer executed a waiver which extended the period within which the assessment can be made by the BIR beyond the three-year prescriptive period. When the BIR issued the assessment notice, the taxpayer did not raise the issue of validity of the waiver in its protest letter nor did it raise the issue as a defense in its administrative appeal with the Commissioner of Internal Revenue (CIR). However, when the taxpayer filed its appeal with the CTA, it raised the issue of prescription due to the defects in the waiver.

The CTA held that the taxpayer is not estopped from raising the validity of the waiver with respect to the deficiency tax assessment issued beyond the three-year prescriptive period. Citing the Supreme Court (SC) decision in the case of La Naval Drug Corporation v. Court of Appeals (GR 1032000, August 31, 1994), the doctrine of estoppel cannot be applied as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of waiver, which the BIR must follow.

Due to the defects on the waiver executed by the taxpayer and BIR, the period to assess or collect taxes was not extended. Consequently, the CTA held that assessments were issued by the BIR beyond the three-year period and hence, with no force and effect.

(Asian Transmission Corporation v. Commissioner of Internal Revenue, CTA Case No. 8475, November 28, 2014)

(3) Non-resident foreign corporations doing business in the Philippines not qualified for 0% VAT

Under Section 108(B)(2) of the Tax Code, in order for the supply of services to a foreign corporation shall qualify for zero-percent VAT, the VAT-registered taxpayer that performed the service/s must prove that: (a) the service is other than processing, manufacturing or repacking of goods; (b) payment for such services is in acceptable foreign currency accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations; and (c) the recipient of such services is doing business outside the Philippines.

In the instant case, a regional operating headquarter filed its judicial claim for VAT refund of its unutilized and excess creditable input taxes attributable to its zero-rated sales. The sale transaction involves the rendering of corporate and administrative services to its foreign affiliate which is engaged in international shipping operations.

To prove that its client for whom it rendered its services is a nonresident foreign corporations not doing business in the Philippines, the taxpayer-refund claimant presented the Securities and Exchange Commission (SEC) Certificate of Non-Registration of the Corporation, Certificate of Residency issued by the Customs and Tax Administration where the client is a resident, and its Articles of Incorporation. The CTA held that while based on the submitted documents, the client appears that it is not doing business in the Philippines, it was disclosed during the testimony of the officer of the taxpayer refund-claimant and Court-commissioned independent certified public accountant (CPA) that a portion of the international shipping business of its client's business relates to the Philippine business.

Because its non-resident foreign client is actually doing business in the Philippines, the sale of service does not qualify for VAT zero-rating. Hence, the CTA denied the claim for refund of the taxpayer on its unutilized the input taxes attributable to its sale of service to its non-resident foreign affiliate.

(Maersk Global Services Services Centres v. Commissioner of Internal Revenue, CTA Case No. 8549, November 14, 2014)

(4) Contractual agreement to pass on input VAT as part of export service fee does not negate right to claim VAT refund

The passing on of the input tax as a component of export service fees does not negate the taxpayer's right to refund its unutilized excess input VAT attributable to zero-rated sales under Section 112(A) of the Tax Code.

In the instant case, the taxpayer entered into a service contract with its non-resident foreign client. Under the agreement, the parties agreed to include the taxpayer's net cost incurred in the services charges billed to its non-resident foreign client. In its financial statements and books of account, the taxpayer recorded input taxes attributable to its sales under an asset account which is subsequently closed to the "VAT settlement" account and "Other Receivables" account or to "Prepaid Expenses and Other Current Assets" account for Deferred Input VAT. It likewise took up a "Bad Debts Provision" and recognized an "Allowance for Impairment of Receivables on input VAT Claims.

The CTA held that such contractual agreement should not disqualify the taxpayer from claiming its excess and unutilized input taxes attributable to zero-rated sales pursuant to Section 112(A) of the Tax Code. The CTA noted that technically, since the taxpayer records its input taxes under an asset account, it cannot charge the input tax to its clients under their agreement, only net costs are included in the service charges. However, as further noted by the CTA, the provision for bad debts which is debited when an

allowance for impairment loss is set up, forms part of the taxpayer's cost which can be charged to the client per its agreement.

The allowance for impairment of unrecoverable input tax as well as agreement to pass on the input VAT as component of export service fee should have no bearing on the taxpayer's claim for refund of excess and unutilized input VAT. The CTA held that allowance for uncollectible accounts that have not been written off, such as the taxpayer's allowance for unrecoverable input tax are not deductible for income tax purposes, thus have no tax consequence pursuant to Section 34(E)(1) of the Tax Code. In the event that the claim for refund is granted, the CTA noted that the entry for the allowance is simply reversed for financial reporting purposes but remains to have no income tax consequences. Moreover, the CTA held that the computation of services fees payable is solely a contractual agreement which should not preclude the taxpayer's claim for VAT refund.

(Maersk Global Services Services Centres v. Commissioner of Internal Revenue, CTA Case No. 8549, November 14, 2014)

(5) Establishing VAT zero-rated direct export sales

Under Section 112(A) of the Tax Code, a VAT-registered taxpayer with input taxes attributable to zero-rated or effectively zero-rated sales is entitled to claim for refund within the two-year period from the close of the taxable quarter when such sales were made.

As one of the transactions subject to zero-percent rate, direct export sales qualify as VAT zero-rated sale pursuant to Section 106(A)(2)(a)(1) of the Tax Code if the following conditions are present: (1) there was a sale and actual shipment of goods from the Philippines to a foreign country; (2) the sale was made by a VAT-registered person; and (3) the sale was paid for in acceptable foreign currency.

To establish that there is a VAT zero-rated direct export sale, the VAT-registered taxpayer claiming VAT

To establish that there is a VAT zero-rated direct export sale, the VAT-registered taxpayer claiming VAT refund must present at least three (3) types of documents, to wit: (1) the sales invoice as proof of sale of goods; (2) the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (3) the bank credit advice, certificate of bank remittance or any other document proving payment of goods in acceptable foreign currency of its equivalent in goods and services.

While the taxpayer-refund claimant was able to submit documents such as sales invoices, official receipts, schedule of export sales and bank certification, it failed to submit its export documents such as export declarations and bill of lading or airway bills. Due to failure to comply will all the documentary requirements, its export sales cannot qualify for VAT zero-rating, and hence, the CTA denied its claim for refund of tis unutilized excess input VAT.

(Phil. Gold Processing and Refining Corp., v. Commissioner of Internal Revenue, CTA Case No. 8542 and 8577, November 11, 2014)

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Contacts

Navarro Amper & Co. (Deloitte Philippines)

Fredieric B. Landicho, Tax Partner	flandicho@deloitte.com
Richard R. Lapres, Tax Partner	rlapres@deloitte.com
Walter L. Abela, Jr., Tax Partner	wabela@deloitte.com

Issued by

Deloitte Tohmatsu Tax Co.

HQ･Tokyo Office

Shin-Tokyo Building 5F, 3-3-1, Marunouchi, Chiyoda-ku, Tokyo 100-8305, Japan
TEL: +81-3-6213-3800
email: tax.cs@tohmatsu.co.jp
URL: www.deloitte.com/jp/en/tax

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