

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

July 15, 2003

REVENUE MEMORANDUM CIRCULAR NO. 42-2003

SUBJECT : Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters

TO : All Internal Revenue Officers and Others Concerned

Q-1: In case the supporting documents (invoices/receipts) evidencing the sources of input tax credits were issued outside the taxable period covered by the claims (out-of-period claims), can the input taxes generated therefrom still be credited upon verification that the same have not yet been claimed?

A-1: Out-of-period claims may be allowed provided that they comply with all the following requirements, viz:

1. That the VAT invoices/receipts are issued within the taxable year that the claim was made;
2. That the VAT invoices/receipts cover transactions for the same taxable year;
3. That they have not been claimed in any other quarter of the same or different taxable year; and
4. The invoices/receipts are not claimed in any period ahead of the actual date of the said invoices/receipts.

It is to be emphasized that provided the VAT invoices/receipts are claimed within the taxable year, any excess input taxes generated therefrom can be carried over to the following taxable year.

(Invoice is the supporting document for the claim of input tax on purchase of goods whereas official receipt is the supporting document for the claim of input tax on purchase of services)

Q-2: What procedures should be performed by the TCC/Refund Processing Office to prevent double claim of “out-of-period” input taxes?

A-2: To ensure that “out-of-period” input taxes are not claimed again in any period other than the period covered by the claim, the processing office should mandatorily:

- a. Assign the verification of claims of a taxpayer for the four (4) quarters of a taxable year to only one group;
- b. Ensure that the input taxes being claimed were recorded in the books under the asset account "Input Taxes"; and
- c. Cancel original invoices/receipts before release of the TCC/Refund.

Q-3: There are cases where sales transactions of the suppliers of exporters-claimants were already considered as effectively zero-rated by virtue of BIR's approval of their applications for zero-rating. Notwithstanding such approval, these suppliers still issued VAT invoices, which became the sources of the claim for tax credit. Will these input taxes be denied/disallowed or shall the corresponding output taxes be assessed against the suppliers?

A-3: When the supplier has an approved application for effectively zero-rating on its sale to the exporter-claimant, the claimant should be aware that the invoices and receipts from that supplier should not carry any VAT component. With an approved zero-rating from the BIR, the supplier will report its sales as zero-rated.

In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.

In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.

Q-4: In the course of the processing of the claims, there are instances where deficiency assessments are found due from the claimant by the Tax and Revenue Group (TRG) of the One-Stop Shop Tax Credit and Duty Drawback Center of the Department of Finance (OSS-DOF). Should the findings be offset against the claimed amount or should these be endorsed to the appropriate BIR office having jurisdiction over the taxpayer-claimant for issuance of assessment notice?

A-4: If the assessment pertains to output VAT and compromise penalties related to VAT, the same shall be deducted from the claim.

If, in the course of the verification of the claim, there are findings which would result to assessment of taxes other than VAT, the TRG should not deduct such assessments from the claim and instead, refer the assessment of other taxes to the concerned BIR office.

However, if the taxpayer is willing to pay such assessment, other than an assessment for withholding tax, or any unprotested delinquent account before the

release of its TCC, it shall apply for a Tax Debit Memo which shall be charged off immediately against the TCC issued. The herein payment for the assessment of other taxes is just an advance payment of deficiency tax and therefore, without prejudice to additional assessments that might be made by the appropriate BIR office.

In case the delinquent account is protested, the office processing the claim should verify from the concerned BIR office if the taxpayer's protest has been granted based on sufficient legal ground/s. If not, then the assessment is final and executory and, therefore, the amount thereof should be deducted from the approved amount of tax credit through the issuance of a Tax Debit Memo.

Q-5: Under Revenue Memorandum Circular (RMC) No. 74-99, purchases by PEZA-registered firms automatically qualify as zero-rated without seeking prior approval from the BIR effective October 1999.

- 1) Will the OSS-DOF Center still accept applications from PEZA-registered claimants who were allegedly billed VAT by their suppliers before and during the effectivity of the RMC by issuing VAT invoices/receipts?**
- 2) In the event that the suppliers treated these transactions as zero-rated sales despite issuing VAT invoices/receipts, who shall be the subject of our assessment?**

A-5 (1): If the PEZA-registered enterprise is paying the 5 % preferential tax in lieu of all other taxes, the said PEZA-registered taxpayer cannot claim TCC or refund for the VAT paid on purchases. However, if the taxpayer is availing of the income tax holiday, it can claim VAT credit provided:

- a. The taxpayer-claimant is VAT registered;
- b. Purchases are evidenced by VAT invoices or receipts, whichever is applicable, with shifted VAT to the purchaser prior to the implementation of RMC No. 74-99; and
- c. The supplier issues a sworn statement under penalties of perjury that it shifted the VAT and declared the sales to the PEZA-registered purchaser as taxable sales in its VAT returns.

For invoices/receipts issued upon the effectivity of RMC No. 74-99, the claims for input VAT by PEZA-registered companies, regardless of the type or class of PEZA-registration, should be denied.

A-5 (2): In case the supplier issued VAT invoices/receipts without having been stamped of the word "zero-rated" but treated the same as zero-rated sales, the purchaser cannot generate any input VAT from the said transactions.

Q-6: 1) Should passed-on VAT or input tax of the buyer, when part of a claim for refund or TCC by said buyer, be disallowed if the same was part of the output tax of the seller paid using seller's Tax Credit Certificates (TCCs)?

2) If a TCC is used to pay VAT on importation, can the input VAT on imported purchases be the subject of claim for refund or TCC?

A-6 (1): If the supplier paid the VAT through a TCC, the same may be allowed as claim for input tax credit of the purchaser provided that the TCC originated from the payment of an internal revenue tax, and not a TCC from another agency.

A-6 (2): If the claimant pays VAT on importations using a BOC TCC which was recommended by the BIR/TRG for issuance, the same shall be allowed to be claimed by the importer/buyer as input tax credit.

Q-7: When should the 2-year period for filing the claim for input tax credit be reckoned from: 1) the end of the taxable quarter when the transaction was made, or 2) the date of filing the VAT return?

A-7: The claim may be filed within two (2) years after the close of the taxable quarter when the sales were made pursuant to Section 112 (A) of the Tax Code of 1997.

For input taxes paid on capital goods imported or locally purchased, the claim may be filed within two years after the close of the quarter when the importation or purchase was made, pursuant to Section 112 (B) of the Tax Code of 1997.

Q-8: With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular NO. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the processing of claims for TCC/refund, specifically on offsetting arrangements?

A-8: In the case of offsetting arrangements, the following documents should be required:

- a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
- b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
- c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;
- d. Documents or correspondence regarding offsetting arrangements;
- e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
- f. Documents to prove actual export of goods;
- g. Documents to prove that the sales are zero-rated sales.

Q-9: The taxpayer did not maintain separate input tax account in its books of accounts (VAT on purchases is capitalized or charged to cost in full). During the succeeding period, the taxpayer made a journal entry setting up the input

tax account and crediting expense/capitalized asset account. Can this input tax credit be claimed for TCC in the year when the said account was adjusted?

A-9: No. When input taxes have been capitalized or charged to expense, the same cannot be claimed as tax credit during any taxable year, notwithstanding any adjustment made during the succeeding taxable year. The input tax claim should always be recorded under the asset account "Input Tax" in the books of the claimant, with full observance of the accounting principle of timeliness, before the same can be claimed as tax credit.

Q-10: Should claims of taxpayers with no reported sales (companies on a pre-operating stage) filed with the Tax and Revenue Group of the One-Stop-Shop Duty Drawback Center, Department of Finance be denied?

A-10: The Tax and Revenue Group of the One-Stop Shop Duty Drawback Center, Department of Finance has no jurisdiction to process such claims. Hence, the same should be denied by the OSS DOF but without prejudice to the filing thereof with the proper BIR Office.

Claims for input taxes during the pre-operating stage should be filed with the BIR office where the taxpayer is registered. In processing the claim, the Revenue Officer should determine if VAT was paid by the purchaser-claimant in the acquisition of property, plant and equipment, as well as other fixed assets. If not, the purchaser-claimant is not entitled to any input tax credit.

Q-11: Should the claimant be penalized for non-indication of zero-rated sales in the VAT return?

A-11: If the taxpayer did not reflect zero-rated sales in the VAT returns but it is claiming for tax credit or refund based on zero-rated sales, the Revenue Officer should mandatorily establish the existence of zero-rated sales from the audited financial statements, books of accounts, export invoices, bills of lading or airway bills and by comparing the reported sales against the output tax reflected in the VAT return. When zero-rated sales have been determined despite the fact that the specific amounts were not categorically reflected in the VAT return, the claim may be processed upon sufficient proof of its existence but, at the same time, the taxpayer shall be imposed a compromise penalty for not supplying the correct information.

Q-12: Is interest income on loan subject to VAT?

A-12: If the taxpayer qualifies as a lending investor, dealer in securities, financial institution as defined in Revenue Regulations No. 12-2003, or another entity performing similar financing activities, interest income is subject to VAT.

Q-13: Should penalty be imposed on TCC application for failure of claimant to comply with certain invoicing requirements, (e.g., sales invoices must bear the TIN of the seller)?

A-13: Failure by the supplier to comply with the invoicing requirements on the documents supporting the sale of goods and services will result to the disallowance of the claim for input tax by the purchaser-claimant.

If the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g. failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable. Moreover, the case shall be referred by the processing office to the concerned BIR office for verification of other tax liabilities of the taxpayer.

Q-14: If the Taxpayer Identification Numbers (TIN) of claimant's suppliers are not found in the BIR's database, should the invoices/receipts issued by such suppliers to the claimant be disallowed?

A-14: If the claimants' suppliers are not found in the BIR's database, the input taxes on the purchases from said suppliers may be allowed on the following conditions:

- a. The claimant submits a certified true copy of the BIR registration certificate of the supplier certified as such by a duly designated responsible officer of the organization;
- b. The purchases are evidenced by valid VAT invoices/ receipts (printed and issued in accordance with Sections 237, 238 and 113 of the Tax Code of 1997); and
- c. The concerned Revenue District Officer issues a certification on the authenticity of the BIR registration of the supplier.

Q-15: The claimant is a VAT-registered enterprise which is a member of PEZA and whose sales are strictly for export. If this claimant issues sales invoices where the letters "NV" are printed, will this claimant be entitled to input tax credit for the VAT it paid on purchase of raw materials and supplies?

A-15: No. Sales invoices which are marked "NV" are considered non-VAT sales invoices and are being issued by a non-VAT taxpayer. This type of invoice is outside of the VAT system. Such being the case and since the invoice the seller is issuing does not confirm its allegation that it is a VAT taxpayer, it is not qualified to claim input tax credit on its purchases. While the claim shall be denied, this is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable.

Q-16: Can the TCC processing office accept supporting documents of claimant companies which were issued denial letters, or letters of denial of claim due to absence of certain documents?

A-16: Taxpayers whose claims were denied due to failure to submit supporting documents are given a period of thirty (30) days from receipt of the letter of denial to file a request for reconsideration and to submit the required documents to the Tax and Revenue Group, OSS-DOF or to other concerned BIR offices which issued the denial letter.

Q-17: If a claim submitted to the Court of Tax Appeals for judicial determination is denied by the CTA due to lack of documentary support, should the corresponding claim pending at the BIR offices be also denied?

A-17: Generally, the BIR loses jurisdiction over the claim when it is filed with the CTA. Thus, when the claim is denied by the CTA, the BIR cannot grant any tax credit or refund for the same claim. However, cases involving tax credit/ refund claims, which are archived in the CTA and have not been acted upon by the said court, may be processed by the concerned BIR office upon approval of the CTA to archive or suspend the proceeding of the case pending in its bench.

All revenue officials concerned are requested to give this Circular as wide a publicity as possible.

(Original Signed)
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Commissioner of Internal Revenue