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TAX LAW FOR BUSINESS

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Shift in VAT treatment through the successful implementation of the VAT refund system

Among the long list of transactions enumerated as subject to the zero-percent value-added tax (VAT) rate under the Tax Reformation for Acceleration and Inclusion law, there are about five items that may eventually become subject to the 12-percent VAT rate. The law did not state the specific commencement date for the shift. The change in the vatability of the transactions is dependent upon the fulfillment of certain conditions provided under the law.

The five transactions are as follows:

1. Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise.
2. Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed 70 percent of total annual production.
3. Those considered export sales under Executive Order 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws.
4. Processing, manufacturing or repacking goods for other persons doing business outside the Philippines.

5. Services performed by subcontractors and/or contractors in processing, converting or manufacturing goods for an enterprise whose export sales exceed 70 percent of total annual production.

As of today, the above transactions remain subject to VAT zero- percent rate. However, these transactions shall become subject to the 12-percent VAT rate upon satisfaction of the following twin conditions:

1. The successful establishment and implementation of an enhanced VAT refund system that grants refunds of creditable input tax within 90 days from the filing of the VAT refund application with the Bureau of Internal Revenue (BIR).
2. All pending VAT refund claims as of December 31, 2017, shall be fully paid in cash by December 31, 2019.

Under the law, the first requisite is well-defined. As the law is worded, the implementation of the enhanced VAT refund system is considered successful once all applications filed from January 1 shall be processed and decided within 90 days from the filling of the VAT refund application. This means, therefore, that failure of the BIR to process and decide within the 90-day period at least one VAT refund claim filed from January 1, 2018, will already mean unsuccessful implementation. The law does not distinguish whether the decision is a denial or approval of the claim.

As to the second requisite, there are certain questions that the law seemingly could not answer with preciseness. The condition requires that all pending VAT refund claims as of December 31, 2017, shall be fully paid in cash by December 31, 2019. Does this mean that denial of at least one VAT refund claim pending as of December 31, 2017, is already a breach on the requisite? As the law is worded, the answer seems to be in the affirmative.

Also, how do we know that the twin requisites have been satisfied? Once the requisites are complied, would there be automatic application of the 12-percent VAT rate without a need for administrative declaration that the requisites have been satisfied? Or would there be a need for another piece of legislation confirming the compliance of the requisites set forth in the law? These are not clearly addressed in the law. What is clear for now is that the zero-percent VAT rate for all the five transactions stated above remain as of today.

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