Tax Updates

The New VAT Law & 2007 Issuances

Topics

- RR 16-2005 – Consolidated VAT Regulations of 2005
- RR 1-2007 – Amending RR 4-2006, Otherwise known as the "Expanded Senior Citizens Act of 2003"
- RR 2-2007 – Amending RR 16-2005
- RR 3-2007 – The Expanded One-Time Administrative Abatement of all Increments on Delinquent Accounts & Assessments

Rev. Regs. 16-2005, as amended by RR 2-2007

Consolidated VAT Regulations

What is **VALUE-ADDED TAX?**

A tax on consumption levied on the

- sale, barter, exchange or lease of goods or properties, and services in the Phils. & on
- importation of goods into the Phils.

VAT Threshold

- Gross sales and/or gross receipts on sale of goods and services, and lease of goods and properties <u>exceeding</u> P1,500,000

Persons Liable

(1) Seller of **goods or properties**, including transactions deemed sale

(2) Seller of **service, and**

(3) Lessor of properties

- In the course of trade or business
- Seller/lessor is statutorily liable to the payment of the tax, but the tax may be passed on to the buyer

(4) Importer of goods

- Whether or nor made in the course of trade or business

VAT on Importation of Goods

- Subject to VAT, whether for use in business or not
- Same rule applies to technical importation of goods sold by a person located in ecozone to a customer located in a customs territory
- VAT on imported goods by VAT exempt persons which are subsequently sold to non-exempt persons shall be paid by the non-exempt buyer who is considered as the importer thereof.

Meaning of "*in the course of trade or business*"

The **REGULAR** conduct or pursuit of a commercial or economic activity

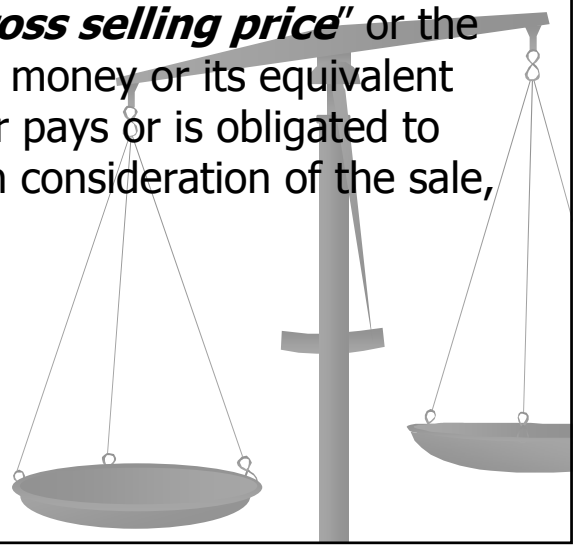
Including transactions **INCIDENTAL** thereto,

Whether the seller is a non-stock nonprofit organization, or a government entity

- Non-resident persons who perform services in the Philippines are deemed making sales in the course of trade or business even if the performance of services is not regular

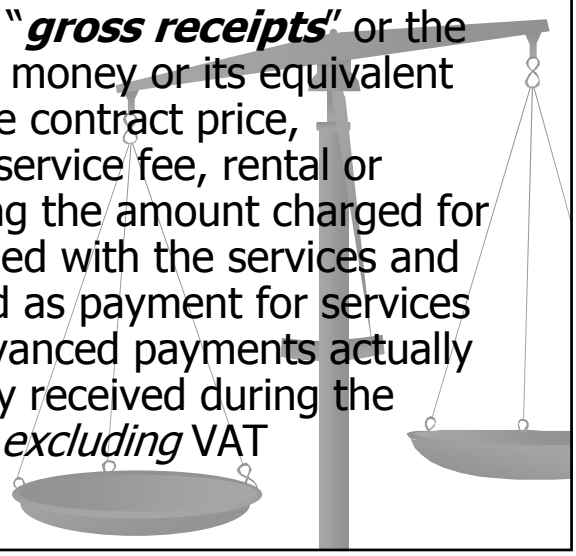
VAT on Sale of Goods

- Tax base is "***gross selling price***" or the total amount of money or its equivalent which the buyer pays or is obligated to pay the seller in consideration of the sale, *excluding* VAT.



VAT on Sale of Service

- Tax Base is the "***gross receipts***" or the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payment for services rendered or advanced payments actually or constructively received during the taxable period, *excluding* VAT



Zero-rated Sale

(1) Seller must be VAT-registered

(2) Sale must fall under Secs. 106(A)(2) & 108(B) of the Tax Code

(3) Output Tax rate is 0%

(4) Input tax on seller's purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund.

Zero-rated sale of goods or properties (Sec. 106(A)(2)

(a) Export sales

(1) Actual export to a foreign country paid for in foreign currency and accounted for under BSP rules

(2) sale of raw materials to nonresident buyer for delivery to resident local export-oriented enterprise to be used in manufacturing, etc. in the Phils. Of the non-resident buyer's goods paid for in foreign currency and accounted for under BSP rules

(3) Sale of raw materials to export-oriented enterprise whose export sales exceed 70% of total annual production

(4) Sale of gold to BSP

(5) Transactions considered export sale under EO 226 & other special laws

(6) ***Sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations***

(b) Foreign currency denominated sale

(c) Sale to persons or entities exempt under special law or international agreement

Zero-rated sale of service (Sec. 108(B)

(1) Processing, etc. of goods for non-residents doing business outside the Phils which goods are subsequently exported, where services are paid for in foreign currency under BSP rules

(2) Services other than the above, for persons/nonresidents engaged in business outside the Phils. Paid for in foreign currency under BSP rules

(3) Services rendered to persons exempt under special laws or international agreements

(4) ***Services rendered to persons engaged in international shipping or air transport operations, including leases of property for use thereof***

(5) Services performed by subcontractors/contractors in processing, etc. for export-oriented enterprise whose export sales exceed 70% of total annual production.

(6) Transport of passengers and cargo by domestic air or sea carriers from the Phils. To a foreign country.

(7) Sale of power or fuel generated through renewable sources of energy such as biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels

VAT exempt transactions

- (1) Refer to sales of goods or properties and/or services and the use or lease of properties that are not subject to VAT (output tax) under *Sec. 109 (1)* of the Tax Code, and seller is not allowed any tax credit of VAT (input tax) on its purchases
- (2) A ***VAT-registered person*** may elect to exempt also his non-exempt sales, *but once election is made, it shall be irrevocable for a period of 3 years from the quarter when the election was made.*

Claim for input tax on depreciable goods

(1) Input taxes on capital goods which are depreciable assets for income tax purposes, the ***aggregate*** acquisition cost of which (exclusive of VAT) in a calendar month ***exceeds*** **P1Million**, shall be claimed as credit against the output tax as follows:

(a) If estimated useful life of the capital goods is 5 yrs or more – input tax shall be spread evenly for 60 months

(b) If estimated useful life is less than 5 yrs – input tax shall be spread evenly on a monthly basis by the actual number of months comprising the useful life of the capital goods.

(2) If the aggregate acquisition (exclusive of VAT) does not exceed P1Million, total input tax will be allowed as credit against output tax in the month of acquisition.

VAT Payable (as amended by RA 9361, as implemented by RR 2-2007)

- If the input tax, inclusive of input tax carried over from the previous quarter exceeds the output tax, the excess input tax shall be carried over to the succeeding quarter or quarters
- Provided, that any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or applied for a tax credit certificate which may be used in the payment of internal revenue taxes.
- Effectivity: It shall apply to the quarterly VAT returns to be filed after the effectivity of RA 9361. (RA 9361 took effect Dec. 13, 2006)

Claims for Refund / Tax Credit Certificate of Input Tax

(a) *Zero-rated & Effectively zero-rated sale of goods, properties or services* – application should be filed within 2 yrs. AFTER the close of the taxable quarter when such sales were made

(b) *Cancellation of VAT registration* – application for TCC *within 2 yrs from the date of cancellation.* TCC may be converted ONLY to CASH (refund) if he has no internal revenue tax liabilities against which the TCC may be utilized.

Invoicing Requirements

(1) For seller of goods – shall issue VAT invoice

(2) For seller of service – shall issue VAT O.R.

(3) All purchases of VAT-registered taxpayer covered by VAT invoice/O.R. shall give rise to input tax.

(4) Amount of VAT shall be shown as a **SEPARATE ITEM** in the VAT invoice/O.R.

(5) If sale is exempt from VAT, the term "*VAT exempt*" shall be written or printed prominently on the invoice or O.R.

(6) If zero-rated, the term "*zero-rated sale*" shall be likewise written on the invoice/O.R.

(7) In case of mixed transactions, the invoice/O.R. shall indicate the breakdown of the sale price & the VAT. Seller has *option* to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

Withholding of VAT

(1) On Govt. money payments – Govt. entities before making payments shall withhold **5% FWH VAT** of the gross payment on account of purchases of goods and/or services

- 5% FWH VAT – shall represent the net VAT of the seller
- Effective ***Feb. 1, 2006***, the remaining 7% effectively accounts for the *standard input VAT*, in lieu of the actual input VAT directly attributable or ratably apportioned to such sales
- Should actual input VAT ***exceed 7***% of gross payments, the EXCESS may form part of the sellers "*expense or cost"*
- If actual input VAT is ***LESS than*** 7% of gross payment, the difference must be CLOSED to "*expense or cost*." (***NOTE: No RR issued yet on this)***

Withholding of VAT

(2) On Govt. money payments & payments by private corporations & individuals – subject to the **12% FWH VAT** *effective Feb. 1, 2006* of the gross payment on account of purchase of services, viz:

- Lease or use of properties or property rights owned by non-residents;
- Services rendered to local insurance companies, with respect to reinsurance premiums payable to nonresidents
- Other services rendered in the Philippines by non-residents.

Rev. Regs. 1-2007

Amending RR 4-2006 implementing the Expanded Senior Citizens Act of 2003

Availment by Establishments of Sales Discounts as Deduction from Gross Income

- The TIN of the senior citizen as a requirement in order that establishments may claim the sales discounts as deductions from gross income is deleted.
- A new paragraph is added regarding the basis of computation of VAT on sale to senior citizens, viz:

Amt. of sale (w/o VAT)	P100
Less: 20% sales discount	20
Vatable sale	P 80
Plus: 12% VAT (based on P80)	9
Total amt. to be paid by senior citizen	P 89

Rev. Regs. 3-2007

Policies, Guidelines and Procedures in the Implementation of the Expanded One-Time Administrative Abatement of all Penalties and Interest on Delinquent Accounts and Assessments

Scope

- To expand the coverage of the Abatement Program under RR 15-2006 to provide an equal opportunity to other delinquent taxpayers who were previously not covered by the abatement program.

Coverage

(a) Delinquent accounts/Accounts Receivable cases,

(b) Income tax 2nd Installment cases

(c) Dishonored checks cases

(d) Cases under administrative protest pending in ROs, RDOs, etc. and other offices in the NO

(e) Assessed cases, whether preliminary or final, disputed or not, as of **NOV. 30, 2006**,

(f) **Collection and Civil tax cases** being disputed before the DOJ and the courts, including decided cases which are not yet final and executory

Coverage (Cont'n)

(g) **Cases with pending request for compromise settlement under RRs 6-2000, 7-2001, 30-2002 & 8-2004, and other prior years' issuances. However, request for compromise settlement pursuant to said RRs, where the amount offered is more than 100% of the basic tax which has already been approved shall not be covered by these Regs.**

(h) Cases with pending request for abatement under RR 13-2001. However, request for abatement which has already been approved shall not be covered by these Regs;

Coverage (Cont'n)

(i) Failure to withhold withholding taxes discovered upon audit;

(j) Criminal violations, (*except* those already filed in court, those involving criminal tax fraud, those under the RATE Program, and tax fraud cases which are the results of confidential information, unless allowed to avail by the CIR or his representative on meritorious grounds);

Coverage (Cont'n)

(k) Letter Notice Cases

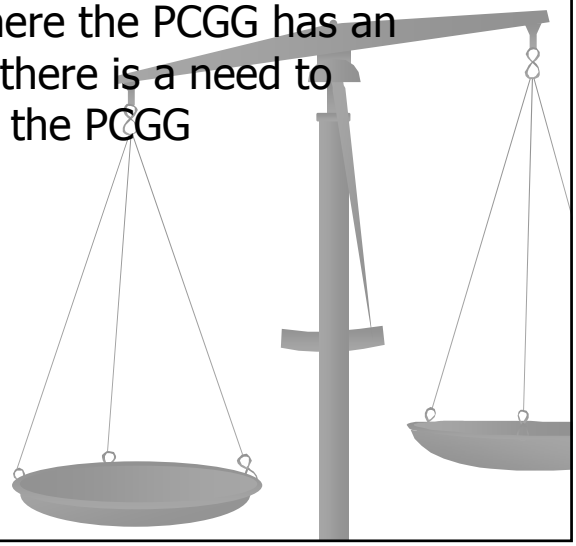
(l) "Accounts Payable or Due to BIR" account duly recorded or acknowledged by the TP in his books of accounts.

(m) TPs who have been paying their tax liabilities through an approved installment plan, provided they have paid 100% or more of the basic tax as originally assessed, and provided further that they will waive any claim for refund of what they may have already paid

(n) Govt WHAs or any delinquent taxpayers who have already remitted 100% of the basic withholding tax and was assessed penalties (surcharge, interest and compromise penalties) for late payment. The interest assessed shall be considered as the basic tax which should be paid to be able to avail of this Program.

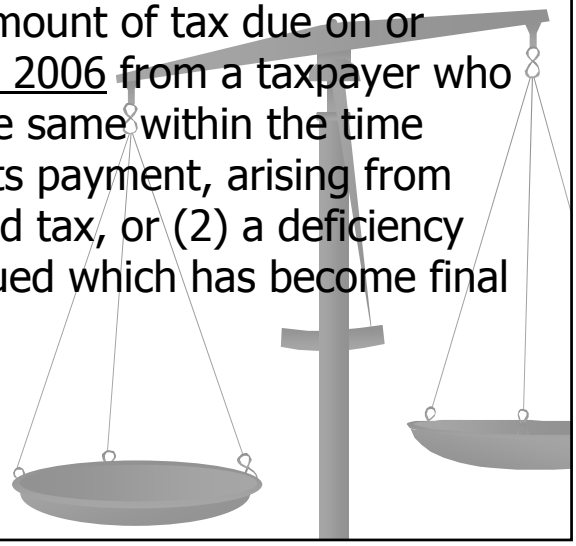
EXCEPTION

- Those cases where the PCGG has an interest and/or there is a need to coordinate with the PCGG



Delinquent Account

- Refers to the amount of tax due on or before Nov. 30, 2006 from a taxpayer who failed to pay the same within the time prescribed for its payment, arising from (1) self-assessed tax, or (2) a deficiency assessment issued which has become final and executory.



Assessment

- Refers to assessments (preliminary, or final, whether disputed or not) issued or self assessment made on or before Nov. 30, 2006, which has not yet become final and executory

Basic Tax Assessed

- Refers to

(1) unpaid tax shown on the return filed;

(2) Tax due shown on the Assessment Notice and Letter of Demand, excluding surcharge and interest;

(3) Unpaid 2nd installment income tax

(4) Amount of dishonored check;

(5) Deficiency interest, if the assessment issued was for penalties only (interest and surcharge)

Who may avail

Any person, whether natural or juridical,

Whose Asessment notice has been released as of Nov. 30, 2006

May avail of this program

How to avail

By paying an amount equal to **100% or more of the basic tax assessed.**

After payment of the basic tax, assessment for penalties/surcharge and interest shall be cancelled by the BIR Office.

Thereafter, the docket of the case shall be forwarded to the CIR, thru the DCIR for Operations Group, for issuance of Termination Letter

This program shall include TPs who have already paid any portion of the increments (surcharge, interest, etc) on their tax liabilities, provided, they will waive any claim for refund of paid amount in excess of 100% of the basic tax paid.

Mode of Payment

- Upon filing of the application/acceptance of the offer to avail this program, the amount offered shall be paid with the AABs located within the jurisdiction of the RDO/LTS where the TP is registered
- Staggered payments may be considered on a case to case basis upon approval of the RD or ACIR. But cases pending in courts shall not be withdrawn unless the concerned TP fully pays 100% of the basic tax.
- If the amount is not paid as required, the approved staggered payment is automatically nullified and the delinquent account or assessment shall be reverted to the original assessed amount plus the statutory increments incident to delinquency, which shall be collected thru the summary remedies and/or judicial processes provided for by law.

Effectivity

- Until March 31, 2007

Maraming Salamat Po!

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