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PEZA zero-rated sales: What the future holds under the TRAIN Law

Just a little over a month in, and Republic Act (RA) No. 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN Law) has already caused a multitude and widely diverse reaction from the tax paying public. Some have expressed their approval, while others are a bit more critical.

One of the interesting changes under the TRAIN is the expansion of the definition of "export sales" under Sec. 106 (A) (2) of the Tax Code and the addition of another transaction under Sec. 108, which are both subject to zero percent VAT rate. Under the TRAIN, the sale and delivery of goods, as well as services rendered to: 1. Registered enterprises within a separate customs territory as provided under special laws, and 2. Registered enterprises within tourism enterprise zones as declared by the Tourism Infrastructure and Enterprise Zone Authority (TIEZA) subject to the provisions of The Tourism Act of 2009, are considered zero-rated sales and transactions, respectively. But while these amendments appear to be a welcome change to investors, Malacañang deems otherwise and as a result, vetoed the said provisions.

TOP OF MIND

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According to the President's veto message, the aforementioned amendments to Sec. 106 (A) (2) and Sec. 108 of the Tax Code "go against the principle of limiting the VAT zero-rating to direct exporters." These amendments, in effect, also grant a new incentive to suppliers of registered tourism enterprises, when in fact, the TIEZA Law explicitly allows only duty and tax free importation of capital equipment, transportation equipment and other goods.

Another noteworthy amendment in the TRAIN Law is the introduction of the enhanced VAT refund system. After the successful establishment of the VAT refund system, certain transactions, including the sales of goods to PEZA registered entities are no longer considered export sales subject to zero percent VAT rate. Instead, the concerned taxpayer is expected to file a claim for VAT refund that will be granted within a 90-day period. Effectivity of the enhanced VAT refund system, however, will be determined based on the processing of applications filed from Jan. 1 which must be decided within 90 days from filing. Compared to the amendment on zero-rated sales and transactions, Malacañang retained the provision on the enhanced VAT refund system.

The veto of the provisions pertaining to the zero-rating of sale and delivery of goods, as well as services rendered to: 1. Registered enterprises within a separate customs territory as provided under special laws, and 2. Registered enterprises within tourism enterprise zones declared by

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TIEZA, raised questions and a clamor to clarify whether sales of goods to PEZA entities are still entitled to the zero percent VAT rate incentive. While there is no definitive resolution yet to this matter, investors and those dealing with PEZA entities are inevitably worried of its possible repercussions to the trade.

Before the TRAIN Law, the basis for the incentives granted to PEZA registered entities are the pertinent provisions of RA No. 7916 (as amended by RA No. 8748) or "The Special Economic Zone Act of 1995". RA No. 7916 allows the exemption of business establishments within the ecozone from national and local taxes except for real property taxes on land owned by developers. In lieu of the said taxes, five percent of the gross income earned by all business enterprises within the ecozone shall be paid and remitted as three percent to the national government and two percent to the municipality or city where the enterprise is located.

Furthermore, previous court rulings hold that sales to PEZA registered entities are "automatic zero-rated sales", attributing the same to the 'Cross Border Doctrine' of the VAT System. This means that "no VAT shall be imposed to form part of the cost of goods destined for consumption outside the territorial border of the taxing authority". For the said "automatic zero-rated sales", the Court of Tax Appeals even held that the taxpayer merely has to comply with the substantiation requirements in the form of invoices imprinted with the word "zero-rated". This is sufficient compliance to prove the zero-rated nature of the said transaction.

The above notwithstanding, the BIR had been issuing VAT zero rating certification to taxpayers in relation to sales of goods to PEZA registered entities. With the introduction of the enhanced VAT refund system taxpayers are now asking whether the certification still finds support and relevance under the TRAIN Law. In the meantime, the BIR just released an advisory that applications for VAT zero-rate are still being received and processed following existing guidelines and procedures.

With all things considered, the fate of sales of goods to PEZA registered entities still requires clarification through subsequent issuance of detailed and exhaustive regulations. These regulations must be able to address, not only the qualification for entitlement to VAT zero-rating, but also its corresponding procedures that will ensure the proper documentation of this incentive. Until the time that these procedures are concretely laid down, taxpayers can only hope that all related tax issues are adequately addressed to avoid any difficulties in the future.

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