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Landmark Court Decisions that impact on the New VAT and Incentive System

OUTLINE



A. Cross Border Doctrine



B. Zero-rated sale under CREATE



C. Attribution rule under the Tax Code vs. “direct and exclusive use”



D. VAT Refund Process



Cross Border Doctrine

Cross Border Doctrine? -

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Cross

Commissioner of Internal Revenue v. Seagate Technology (Philippines),

G.R. No. 153866, February 11, 2005.

FACTS:

- Seagate Technology is registered with PEZA to engage in the manufacture of recording components primarily used in computers for export.
- Seagate filed an administrative claim for refund of VAT input taxes incurred on purchased capital goods and services.

Cross Border Commissioner of Internal Revenue v. Seagate Technology (Philippines),

G.R. No. 153866, February 11, 2005.

DECISION:

- An ECOZONE — indubitably a geographical territory of the Philippines — is, however, regarded in law as foreign soil.
- Sales to the export processing zone, even without being actually exported, shall in fact be viewed as **constructively exported** under EO 226.
- Thus, purchase by an ECOZONE enterprise is considered zero-rated.

X

Cross Border Doctrine? -

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Cross E

Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.) Inc., G.R. No. 150154, August 9, 2005.

FACTS:

- Toshiba filed a claim for refund on the input tax paid on purchased capital goods.
- The CIR claims that capital goods and services purchased by Toshiba are considered not used in VAT taxable business and therefore not entitled to refund of input taxes.
- Toshiba, on the other hand, contends that it is PEZA-registered and located within the ecozone and therefore for, VAT-exempt entity.

Cross Border Doctrine?

Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.) Inc.,

G.R. No. 150154, August 9, 2005.

DECISION:

- ❑ RMC No. 74-99 declared that:

“All sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the latter's type or class of PEZA registration.”

X



Question -



Question -

What if the ECOZONE enterprise is still in its pre-operation stage, and its application is yet to be officially approved?

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Can the ECOZONE enterprise file a claim for refund for the input VAT it incurred during its pre-registration stage?

x



Coral Bay Nickel Corp. v. Commissioner of Internal Revenue,

G.R. No. 190506, June 13, 2016.

FACTS:

- Coral Bay is registered with PEZA as an Ecozone Export Enterprise at the Rio Tuba Export Processing Zone.
- Coral Bay filed a claim for refund on unutilized input VAT from its domestic purchases of capital goods, other than capital goods and service.

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Coral Bay Nickel Corp. v. Commissioner of Internal Revenue,

G.R. No. 190506, June 13, 2016.

DECISION:

- The purchases of goods and services destined for consumption within the ECOZONE should be free of VAT.
- No input VAT should be paid on such purchases.
- Thus, the taxpayer not entitled to claim a tax refund or credit.

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- Coral Bay should have filed a claim for refund not against the government but against its suppliers. These suppliers must not have passed on VAT to it

x

Zero-rated sale under CREATE



RA No. 11534
(CREATE Law)

**The Corporate
Recovery and
Tax Incentives
for Enterprises**



RA No. 11534
(CREATE Law)

**The Corporate
Recovery and
Tax Incentives
for Enterprises**

Section 295. Condition of Availment. – The tax incentives in the proceeding Section shall be governed by the following rules:

XXX

XXX

XXX

D. The VAT Exemption on importation and VAT zero-rating on local purchases shall only apply to goods and services **directly and exclusively** used in the registered project or activity by a registered enterprise.

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IMPLEMENTING RULES AND REGULATIONS
OTHERWISE KNOWN AS THE "NATIONAL
AMENDED BY REPUBLIC ACT NO. 10863
INCENTIVES FOR INVESTMENT

Pursuant to Section 21 of Republic Act No. 10863, the
CORPORATE INCOME TAX AND INVESTMENT INCENTIVES
SECTIONS 20, 22, 25, 27, 28, 29, 34 AND 35 OF THE
INTERNAL REVENUE CODE OF 1997, AS AMENDED,
AND FOR OTHER PURPOSES," the Secretary of Finance,
Industry, after consultations with the Department of
Investments, and other Investment Promoting Agencies,
Implementing Rules and Regulations

RULE 1.

SECTION 1. Title. These rules and regulations shall be known as the
and Regulations of Title XIII of the Code.

SECTION 2. Scope and Coverage.

- a. All existing investment projects registered with respect to the ad valorem tax specifically exempted from the tax on goods imported for use in the project;
- b. All newly registered projects of export-oriented enterprises under the Investment Priority Plan;
- c. Registered enterprises enjoying incentives provided under the Code;
- d. Other government-owned or controlled enterprises with tax incentives; and
- e. Government-owned instrumentalities (GOIs) and government-owned or controlled corporations (GOCCs) that were granted tax incentives under the Code.

Implementing Rules and Regulations of the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act

Section 5. Value-added Tax (VAT) zero-rating and exemption –

XXX

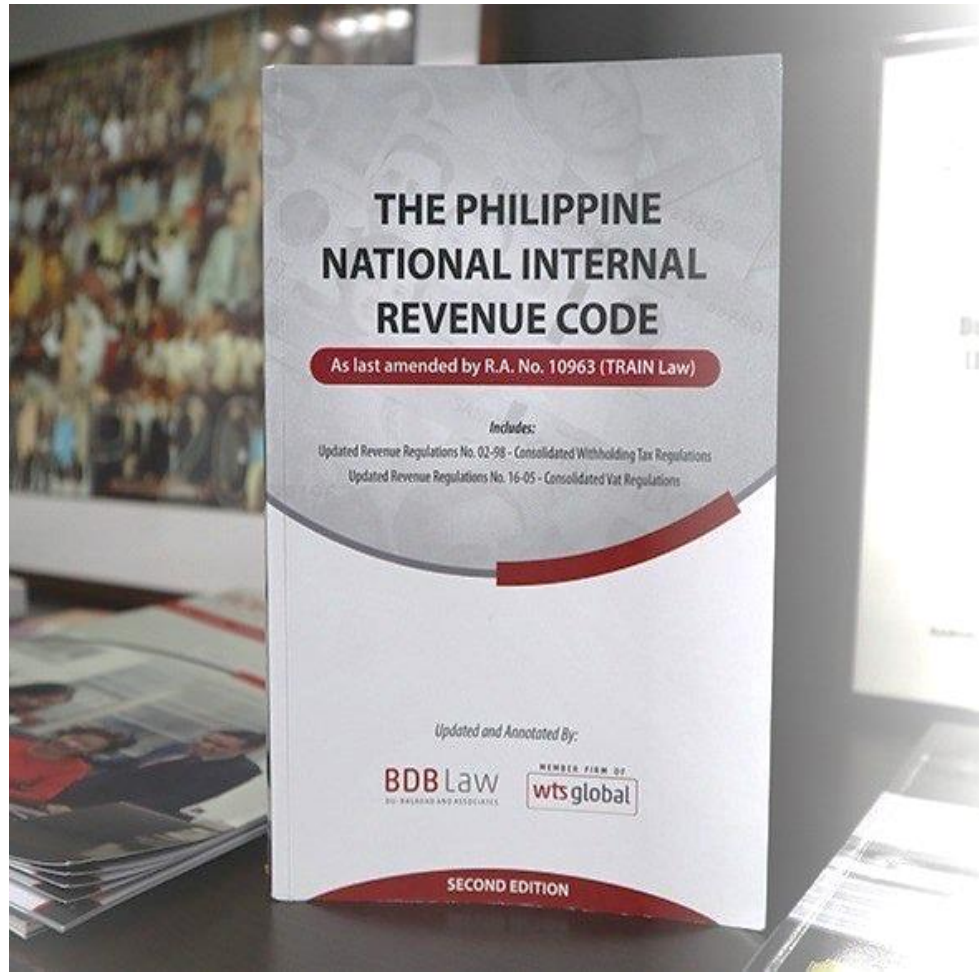
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XXX

The **direct and exclusive** use in the registered project or activity refers to raw materials, inventories, supplies, equipment, goods, services, and other expenditures necessary for the registered project or activity without which the registered project or activity cannot be carried out.

X





Attribution rule under the Tax Code

VS.

“direct and exclusive use”

Direct and entirely? -

Toledo Power Company vs. Commissioner of Internal Revenue,

CTA Case No. 8792, January 29, 2019.

- ❑ Section 110 and 112(A) of the Tax Code uses the words "**directly**" and "**entirely**".
- ❑ "**Directly**" and "**entirely**" does not mean that only purchases of goods that form part of the finished product of the taxpayer can be subject of an input VAT refund.

x

Sec. 110. Tax Credits. -

- ┌ ─▶ (a) Purchase or importation of goods: -

Sec. 110. Tax Credits. -

┌ ─▶ (a) Purchase or importation of goods: -

┌ ─▶ (i) For sale; or -

Sec. 110. Tax Credits. -

(a) Purchase or importation of goods: -

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or -

Sec. 110. Tax Credits. -

┆
┆ -> (a) Purchase or importation of goods: -

┆
┆ -> (iii) For use as supplies in the course of
business; or
-

Sec. 110. Tax Credits. -

┌
└─▶ (a) Purchase or importation of goods: -

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└─▶ (iv) For use as materials supplied in the sale
of service; or -

Sec. 110. Tax Credits. -

(a) Purchase or importation of goods: -

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

X

Attribution



Court of Tax Appeals -



Cou

Toledo Power Company vs. Commissioner of Internal Revenue,

CTA Case No. 8792, January 29, 2019.

FACTS:

- Toledo is a generation company granted by ERC to operate its generation facilities.
- Toledo filed a claim for refund on its unutilized input VAT attributable to its zero-rated sales.
- The BIR avers that the input tax must come from purchased goods that form part of the finished product of the taxpayer. The word "directly" means that the connection between the purchases and finished product is "concrete" and not "imaginary" or "remote".

Cou

Toledo Power Company vs. Commissioner of Internal Revenue,

CTA Case No. 8792, January 29, 2019.

DECISION:

- To the extent possible, words must be given their ordinary meaning.
- The word "**attribute**", the adjective form of which is "**attributable**", is defined in the dictionary as "**to explain as to cause or origin**".
- In other words, "**creditable input tax due or paid attributable to such sales**" simply means that the input tax is connected with the zero-rated or effectively zero-rated sales.

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Court of Tax Appeals -

Toledo Power Company vs. Commissioner of Internal Revenue,

CTA Case No. 8792, January 29, 2019.

- The phrase "**attributable to such sales**" and "**directly and entirely attributed**" to **must not be** confused to mean "**direct costs**" which applies to the computation of gross income.
- The above interpretation of the phrase "**attributable to such sales**", to simply mean that the input tax is connected with a taxpayer's zero-rated or effectively zero-rated sales and not to its taxable or exempt sales.

X

Court of Tax Appeals -



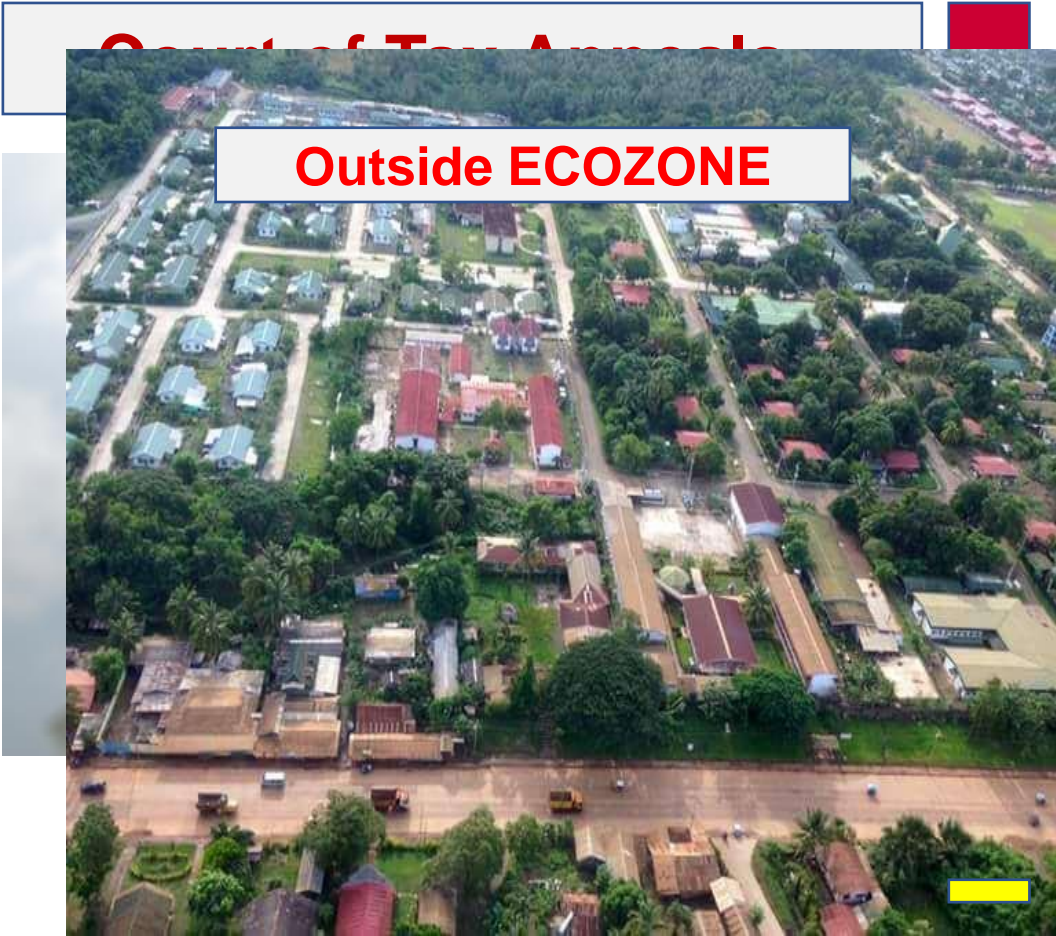
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Coral Bay Nickel Corp. v. Commissioner of Internal Revenue,

CTA EB No. 1735 & 1737, July 18, 2019.

FACTS:

- ❑ Coral Bay is a domestic corporation engaged in the manufacture and exportation of nickel/cobalt mixed sulfide.
- ❑ Coral Bay is registered with PEZA and has a principal address at Barangay Rio Tuba, Palawan.
- ❑ Coral Bay filed a refund on input VAT accumulated from its domestic purchases rendered and used outside the ECOZONE, including construction of laborer row houses, bus terminal, dormitories, runway, and foreman duplex.



Court Coral Bay Nickel Corp. v. Commissioner of Internal Revenue,

CTA EB No. 1735 & 1737, July 18, 2019.

DECISION:

- ❑ The boarding houses that serve as housing of Coral Bay employees cannot be considered as “**attributable**” to the registered activity of Coral Bay.

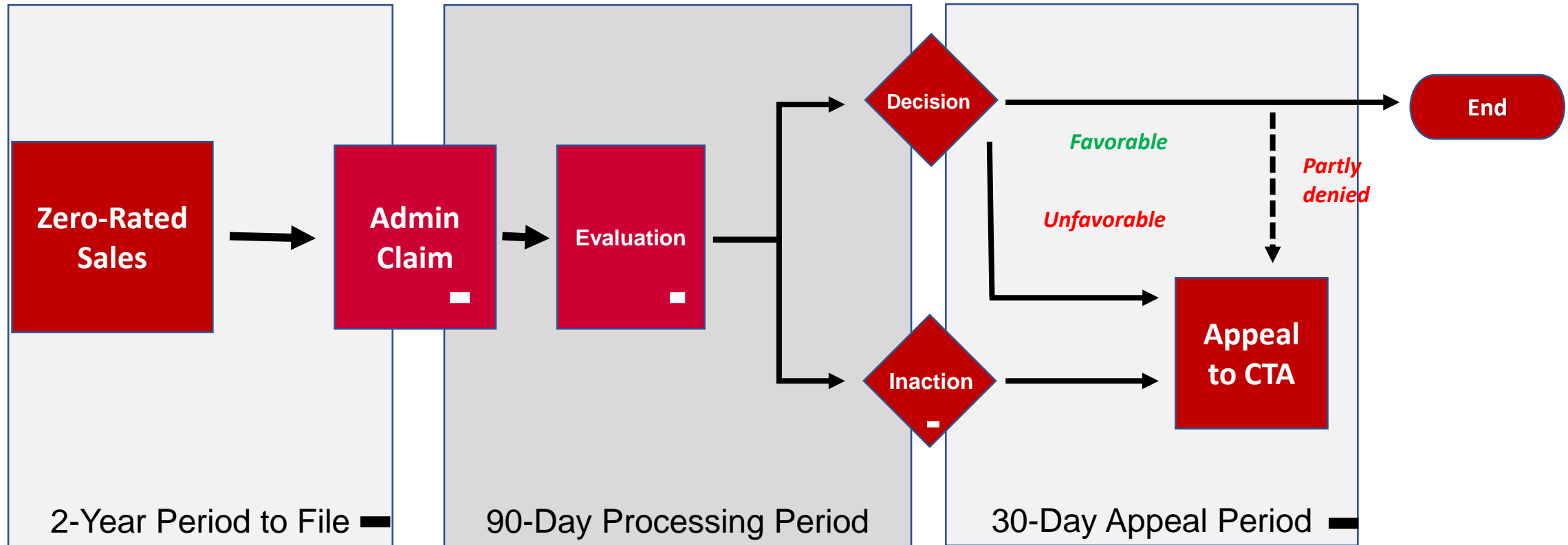
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VAT Refund Process



VAT REFUND PROCESS

Section 112(A) of the Tax Code ■



VAT REFUND PROCESS

Revenue Memorandum Order No. 47-2020. December 23, 2020

- Only applications with **COMPLETE DOCUMENTARY REQUIREMENTS** shall be received
- Original copies of documents shall be presented for comparison
- The application shall be construed as an audit whereby a Letter of Authority may be issued

X

2-Year Period to File

90-Day Processing Period

30-Day Appeal Period

Zero-
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VAT REFUND PROCESS

Section 112(A) of the Tax Code ■

Pre-TRAIN, inaction on the application upon the lapse of the 90-day period to process is considered a “**deemed denial**” and shall entitle the claimant to elevate the claim to the CTA.

Zero **In TRAIN**, “**deemed denial**” was removed. Though it should be noted that the CTA has jurisdiction on matters not acted upon by the CIR within the period provided for under the law.

2-Year Period to File ■

90-Day Processing Period

30-Day Appeal Period ■

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THANK YOU