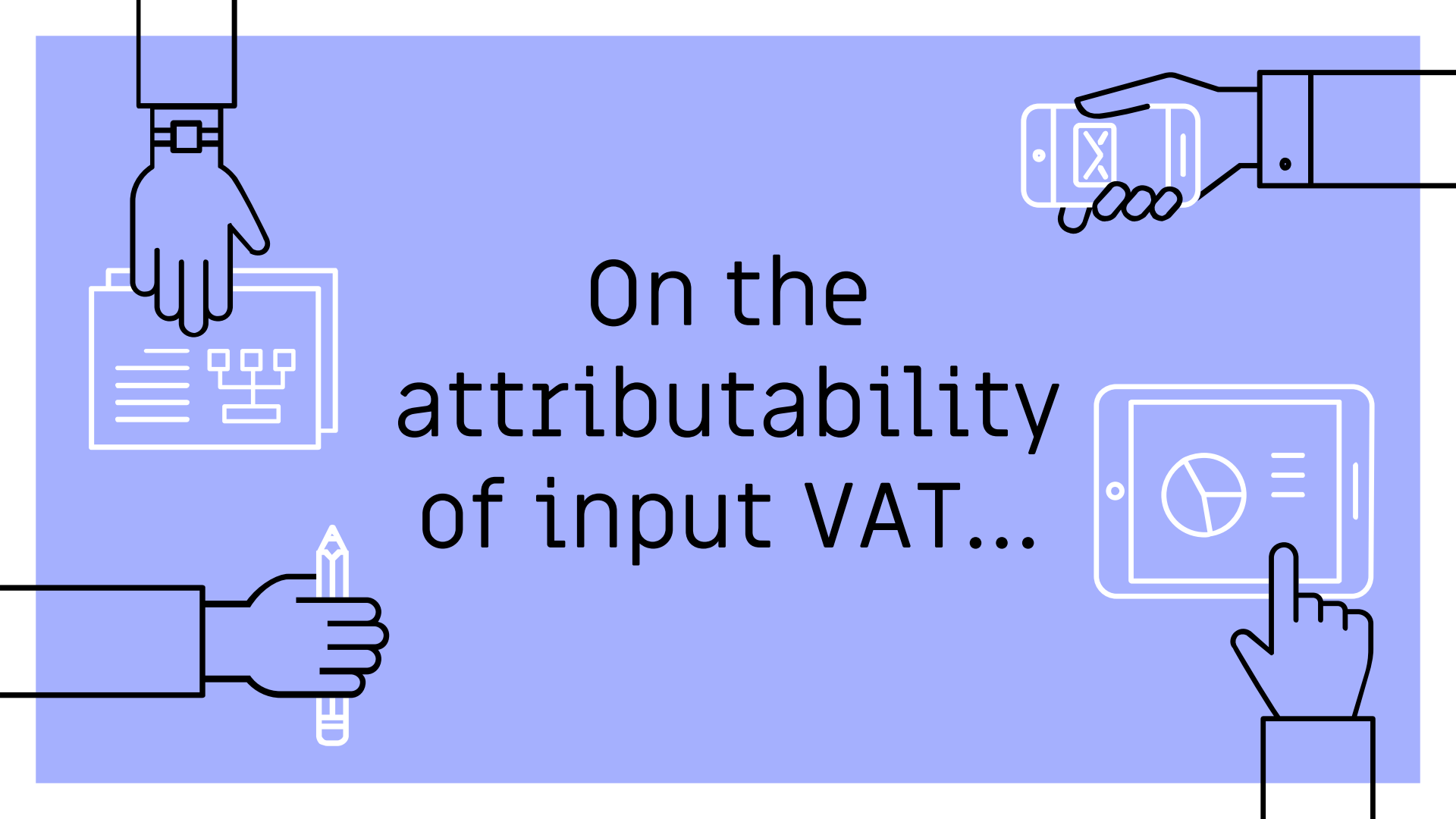
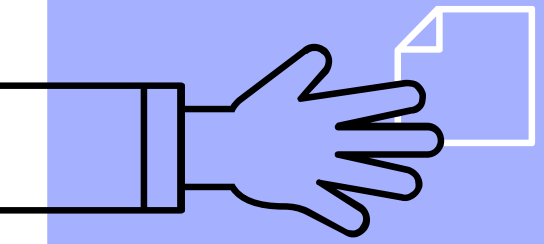
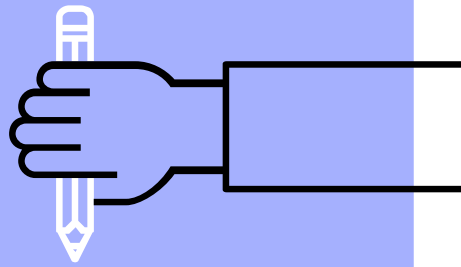
On the attributability of input VAT...



Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue





G.R. No. 191495, 23 July 2018

“

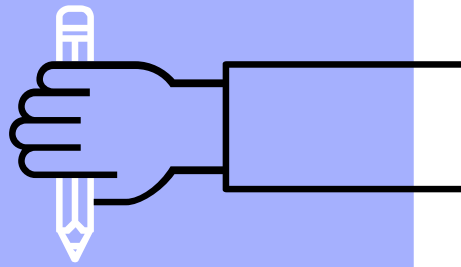
In a claim for refund under Section 112 of the National Internal Revenue Code *(NIRC),* the claimant must show that: *(1)* it is engaged in zero-rated sales of goods or services; and *(2)* it paid input VAT that are attributable to such zero-rated sales. Otherwise stated, the claimant must prove that it made a *purchase* of taxable goods or services for which it paid VAT (input), and later on engaged in the *sale* of goods or services subject to VAT (output) but at zero rate. There is a refundable sum when the amount of input (VAT (attributable to zero-rated sale) is higher than the claimant's output VAT during one taxable period (quarter).

“

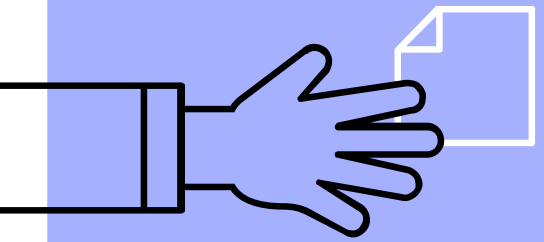
As stated in our introduction, the burden of a claimant who seeks a refund of his excess or unutilized creditable input VAT pursuant to Section 112 of the NIRC is two-fold: *(1)* prove payment of input VAT to suppliers; and *(2)* prove zero-rated sales to purchasers. Additionally, the taxpayer-claimant has to show that the VAT payment made, called input VAT, is attributable to his zero-rated sales.

???

Should the input VAT payment be "directly and entirely" attributable to the taxpayer's zero-rated sales?



Commissioner of Internal Revenue vs. Cargill Philippines, Inc.



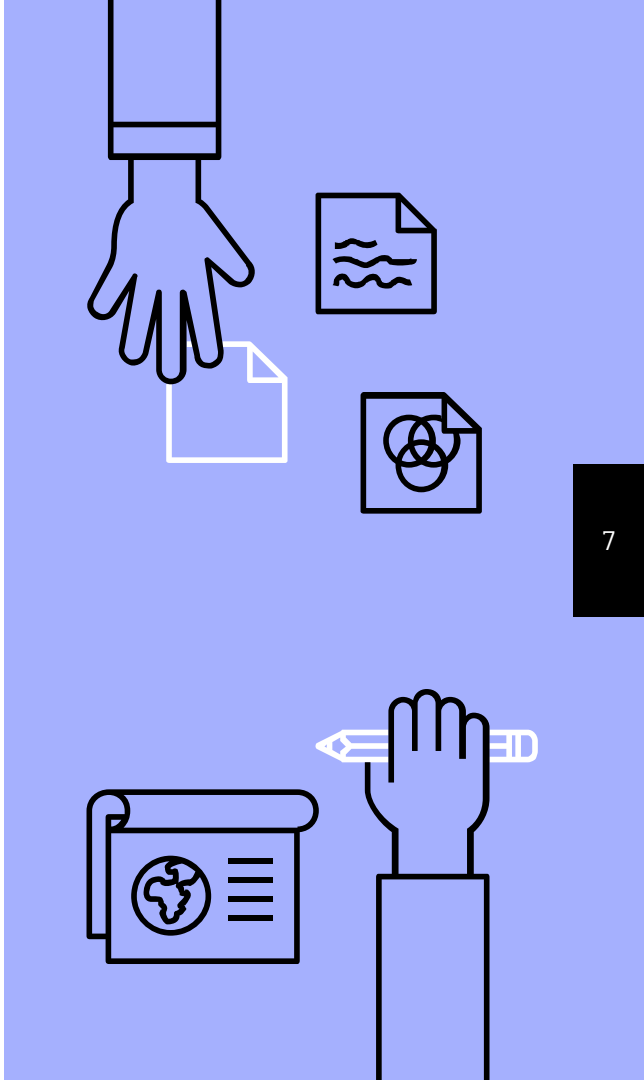
G.R. Nos. 255470-71, 30 January 2023,
Third Division, *J.* Dimaampao

Cargill case – Facts

Two (2) claims for input VAT refund

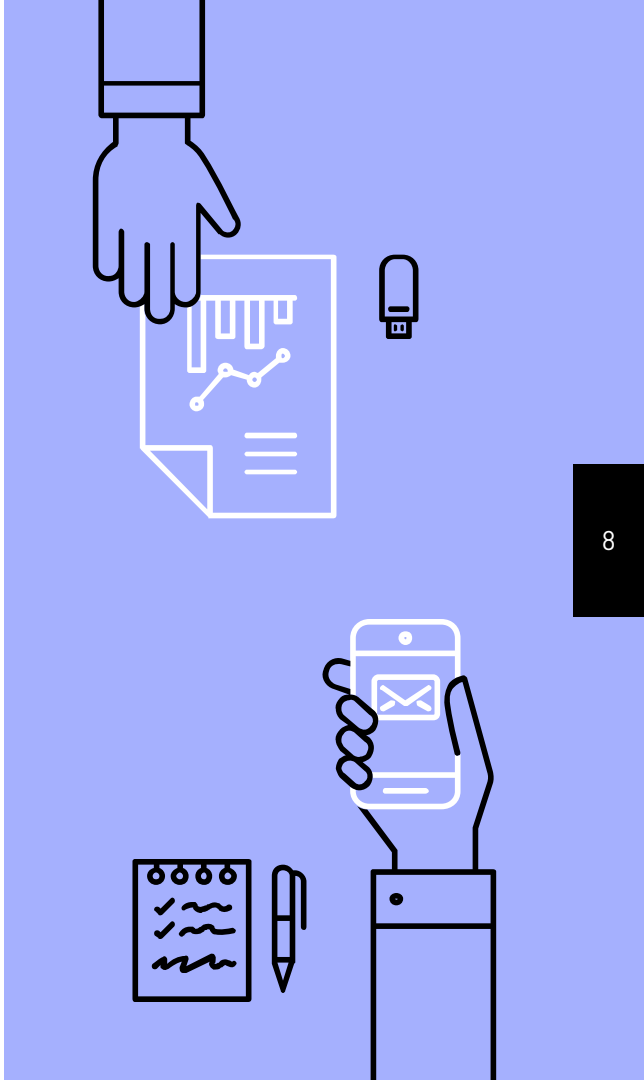
Periods:

- 1 April 2001 to 28 February 2003; and
- 1 March 2003 to 31 August 2004.



Cargill case – ISSUE:

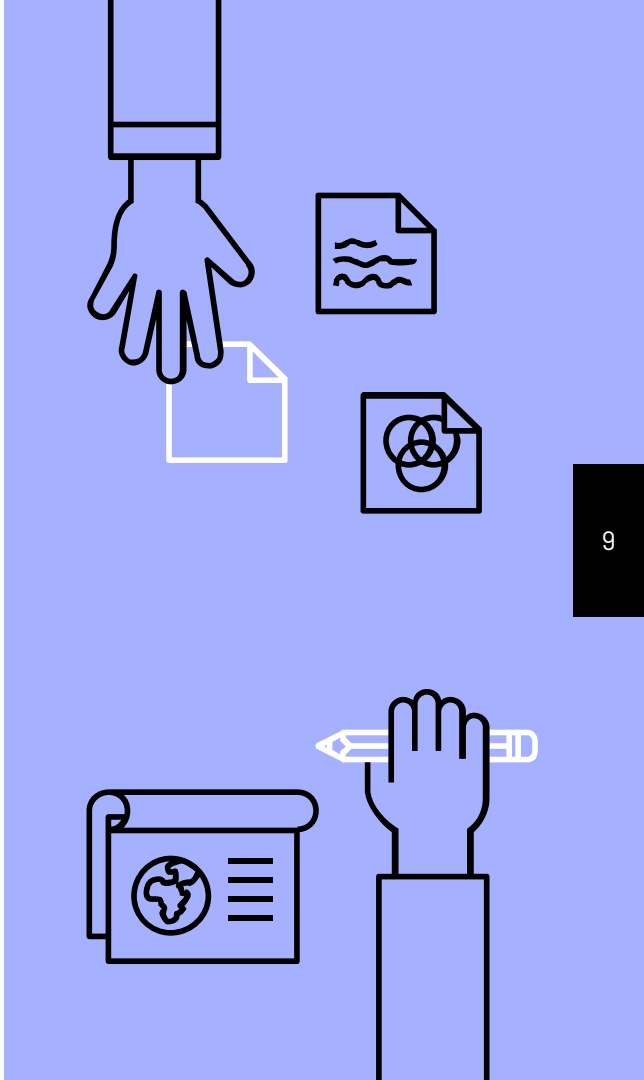
...whether or not [Cargill], in its claim[s] for refund of excess/unutilized input VAT, is required by law to prove ***direct*** attributability of its purchases or the input VAT to its zero-rated sales.



The CIR's stance:

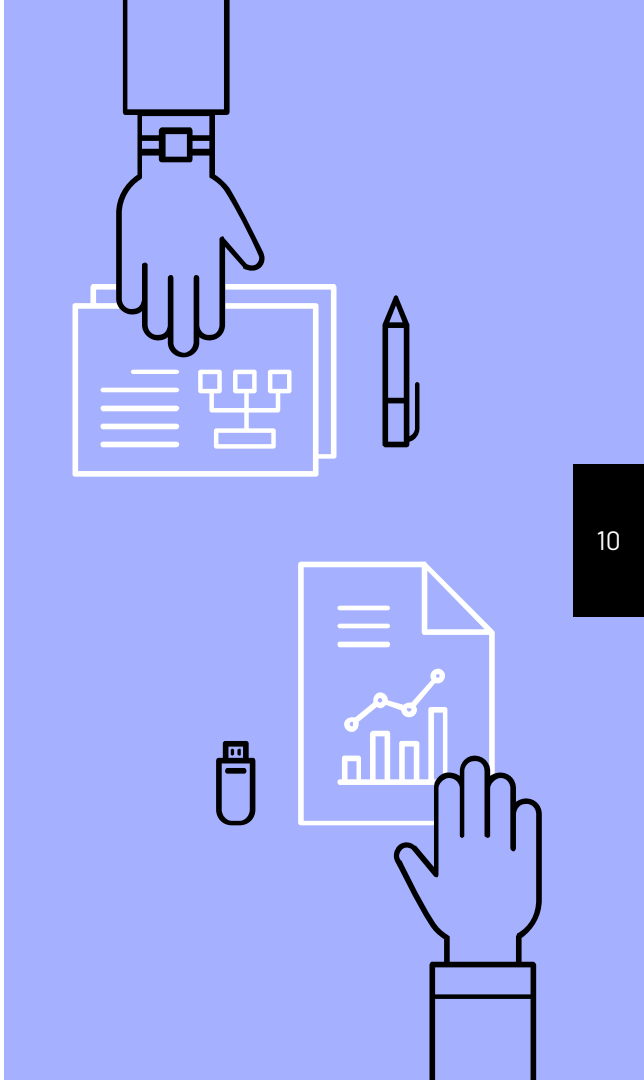
The CIR posits that input VAT must be ***directly*** attributable to the zero-rated sales of Cargill in order to be refundable.

Along this grain, the CIR argues that the input VAT must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production.



Cargill case – Ruling

On the issue, the SC ruled in the negative.



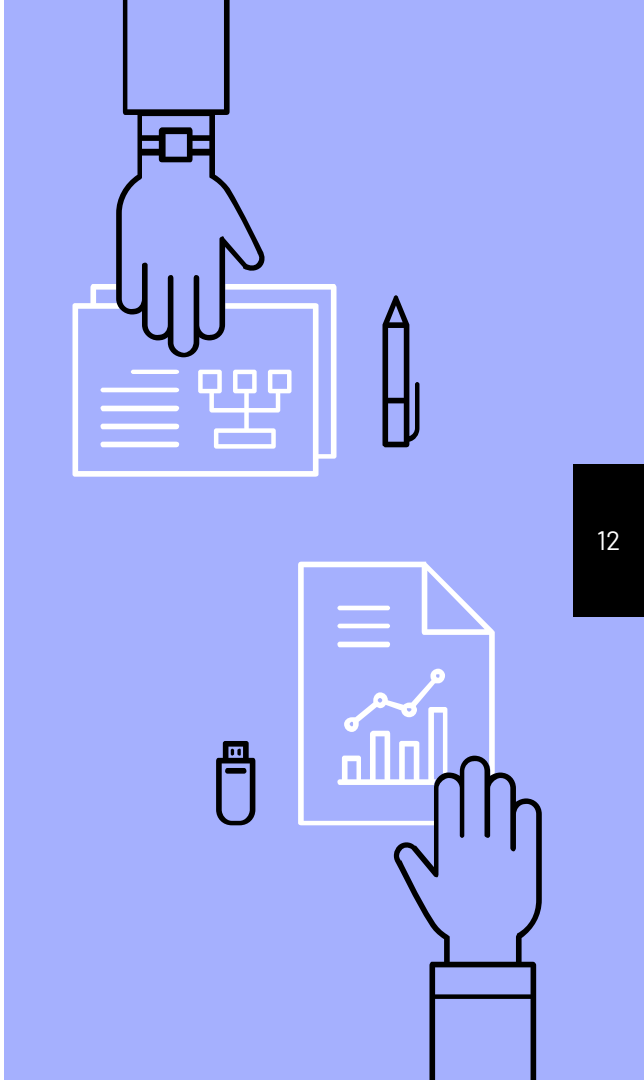
Section 112(A) of the Tax Code elucidates:

SECTION 112. *Refunds or Tax Credits of Input Tax.*—

(A) *Zero-rated or Effectively Zero-rated Sales.*— **Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may**, within two (2) years after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, **to the extent that such input tax has not been applied against output tax**: x x x *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. [Emphasis supplied]

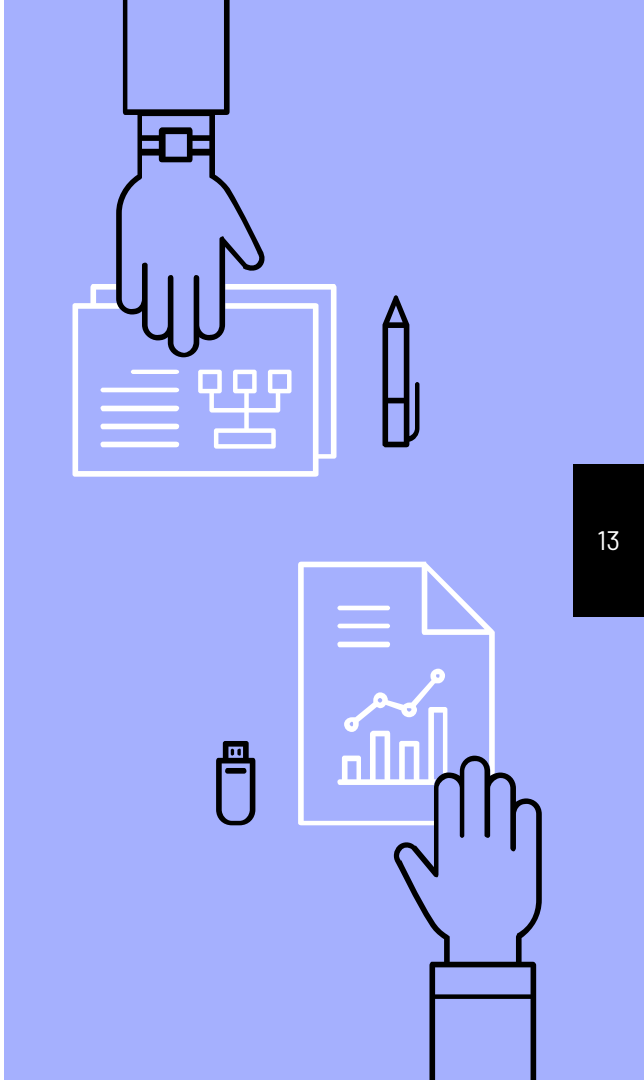
Cargill case – Ruling

- Evidently, the law **does *not* require *direct* attributability** of the input VAT from the purchase of goods to the finished product whose sale is zero-rated, in order for such input VAT to be refundable.



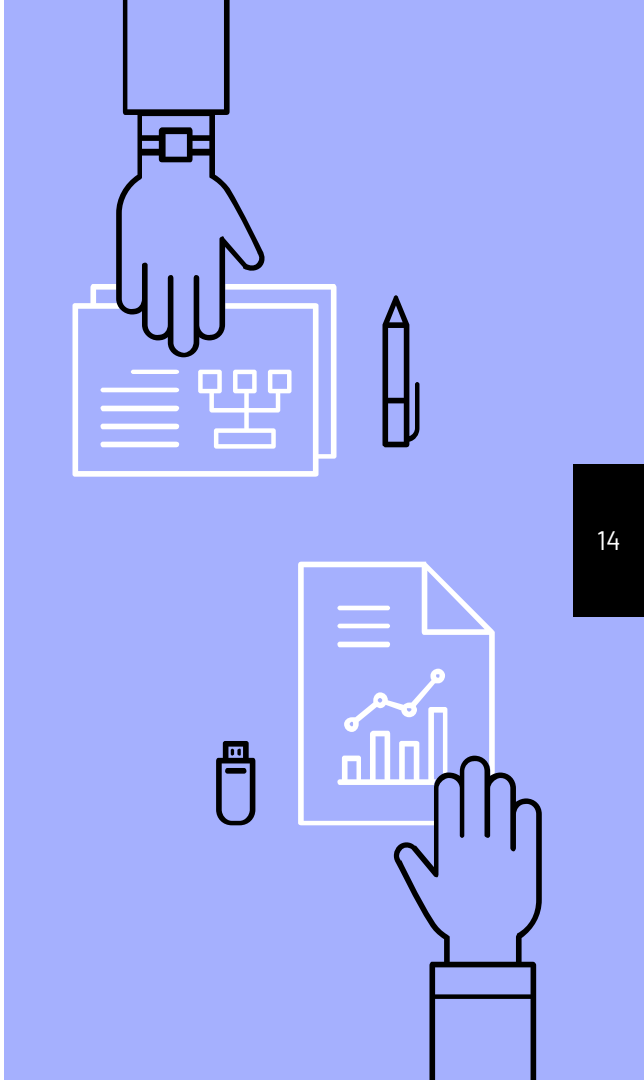
Cargill case – Ruling

- *Ubi lex non distinguit nec nos distinguere debemos*.
- When the law has made no distinction, the courts ought not to recognize any distinction.



Cargill case – Ruling

- It suffices that the purchase of goods, properties, or services upon which the input VAT is based, **can be attributed to the zero-rated sales**.
- This conclusion is further bolstered by Section 110(A)(1), which explicitly sets forth the sources of creditable input VAT.



SECTION 110. *Tax Credits.*—

(A) *Creditable Input Tax.*—

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

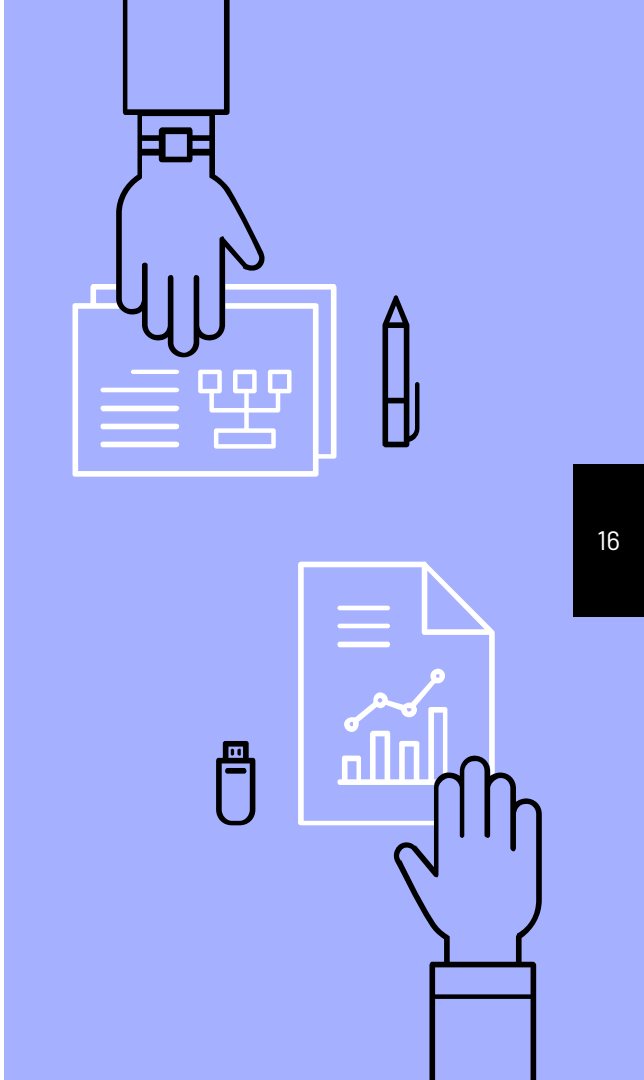
(a) Purchase or importation of goods:

(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.

(b) Purchase of services on which a value-added tax has been actually paid.

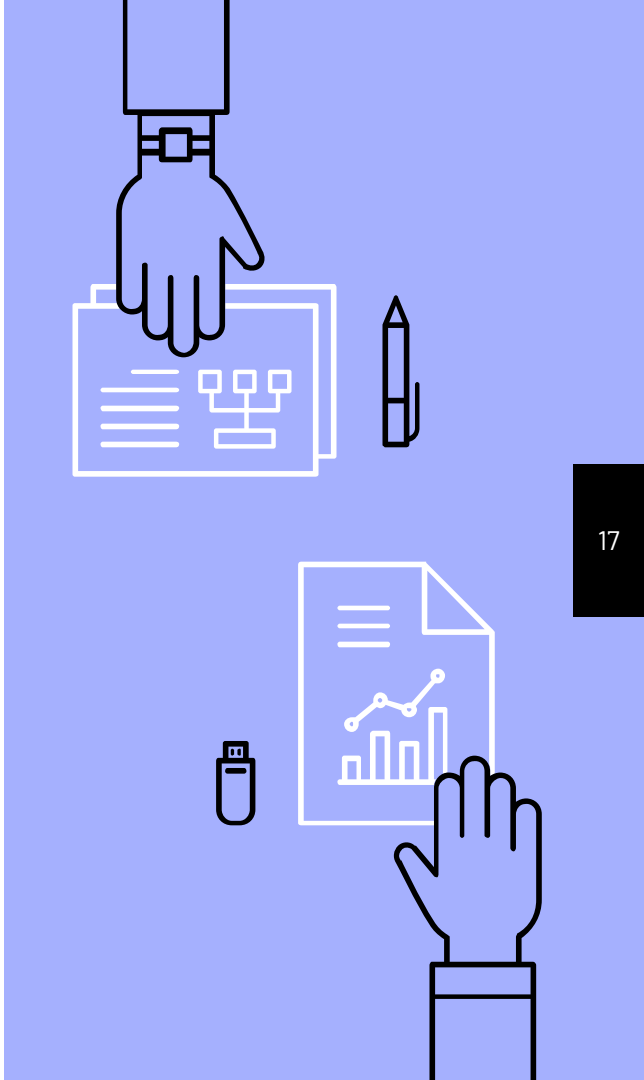
Cargill case – Ruling

- Verily, the law does *not* limit itself to purchases of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production.



Cargill case – Ruling

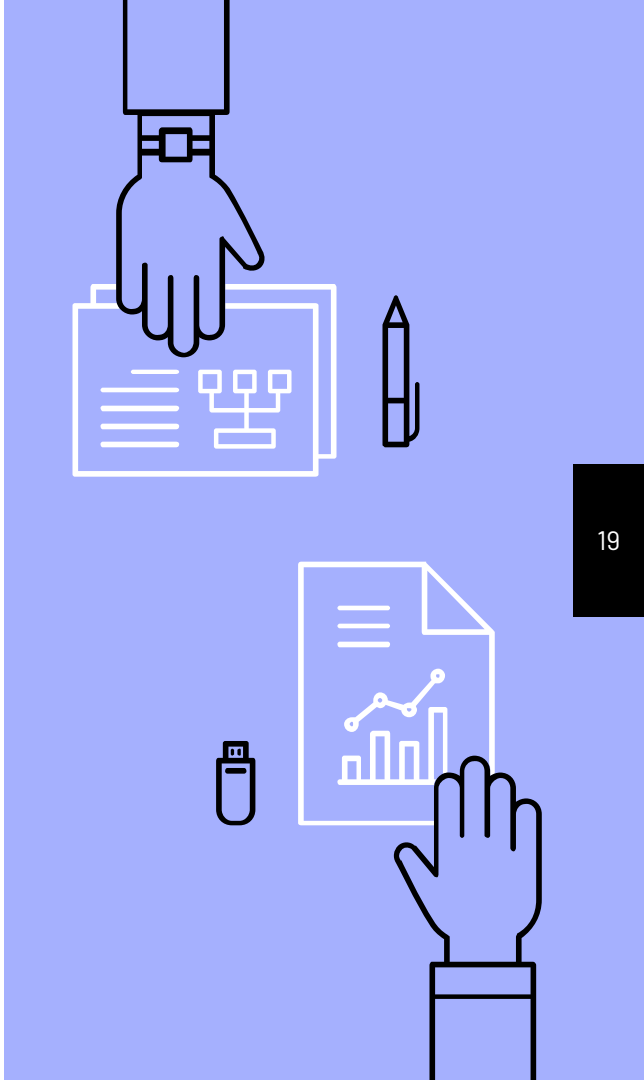
- However, the CIR invokes or "zeroes in" on the SC's previous pronouncements in the 2007 and 2011 cases of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* (G.R. Nos. 141104 & 148763, and G.R. No. 159471, respectively), to wit:



The formal offer of evidence of the petitioner failed to include photocopy of its export documents, as required. There is no way therefore, in determining the kind of goods and actual amount of export sales it allegedly made during the quarter involved. This finding is very crucial when we try to relate it with the requirement of the aforementioned regulations that the input tax being claimed for refund or tax credit must be shown to be ***entirely*** attributable to the zero-rated transaction, in this case, export sales of goods. Without the export documents, the purchase invoice/receipts submitted by the petitioner as proof of its input taxes cannot be verified as being ***directly*** attributable to the goods so exported.[46] [Emphasis supplied]

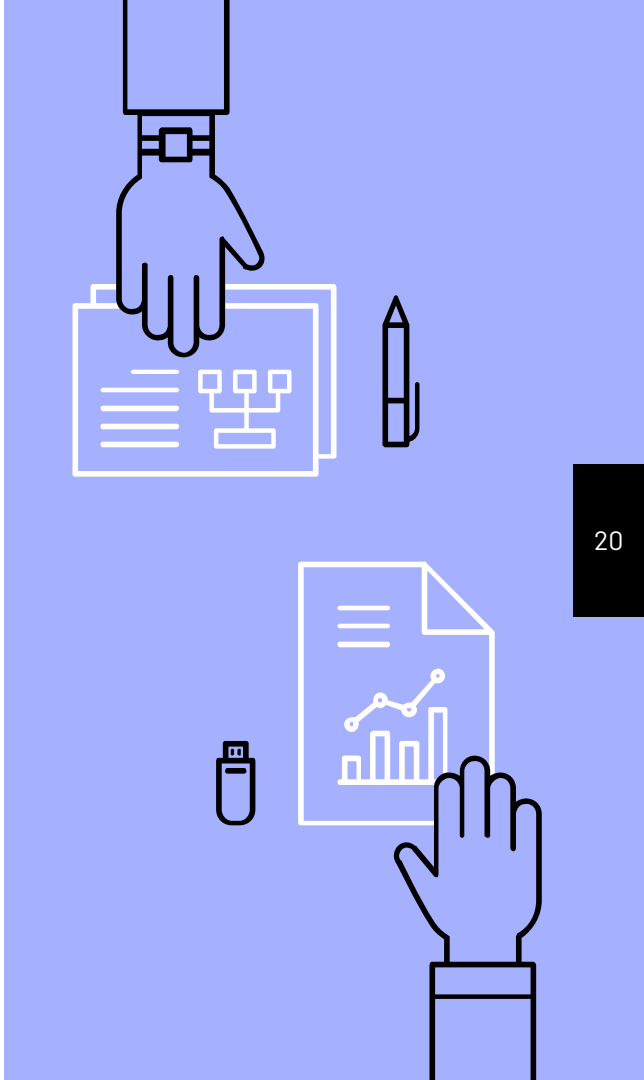
Cargill case – Ruling

- According to the SC, however, the said cases were decided on the basis of **RR No. 5-87, as amended by RR No. 3-88**, which ***limited*** the amount of refund or tax credit to the amount of VAT paid ***directly and entirely*** attributable to the zero-rated transaction during the period covered by the application for credit or refund.



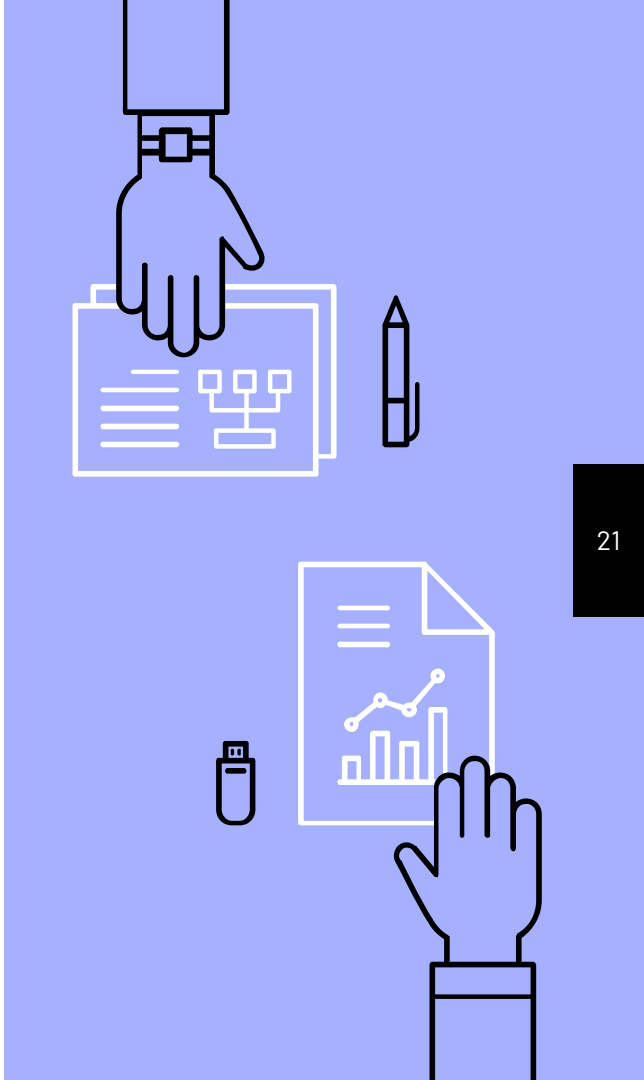
Cargill case – Ruling

- Nevertheless, the Secretary of Finance, upon recommendation of the CIR, issued RR No. 14-2005 on June 22, 2005, which was later superseded by RR No. 16-2005. This latter BIR issuance has undergone a series of amendments, the most recent of which is RR No 21-2021.



Cargill case – Ruling

- A meticulous study of these latter-day RR reveals that the requirement for input VAT being claimed for refund to be directly and entirely attributable to the zero-rated sales was ***not*** retained. The pertinent portion of RR No. 16-2005 is plain as day—



SEC. 4.106-5. *Zero-Rated Sales of Goods or Properties.* — A zero rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties, or services, **related to such zero-rated sale**, shall be available as tax credit or refund in accordance with these Regulations.

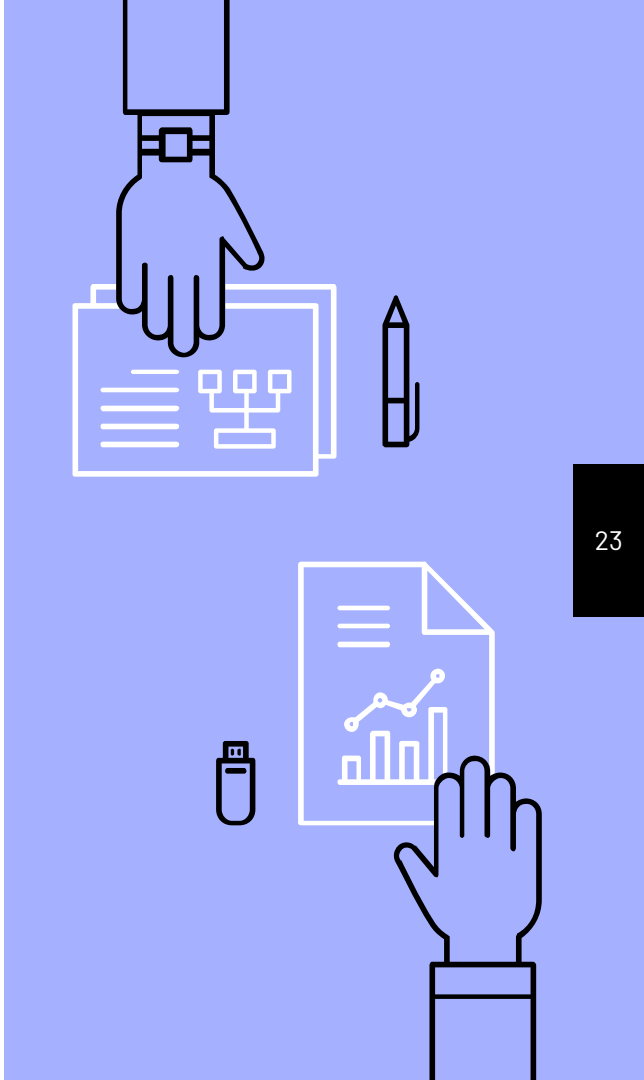
x x x

SEC. 4.108-5. *Zero-Rated Sale of Services.* —

(a) *In general.* — A zero-rated sale of service (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax. However, the input tax on purchases of goods, properties or services **related to such zero-rated sale** shall be available as tax credit or refund in accordance with these Regulations.[50] [Emphasis supplied]

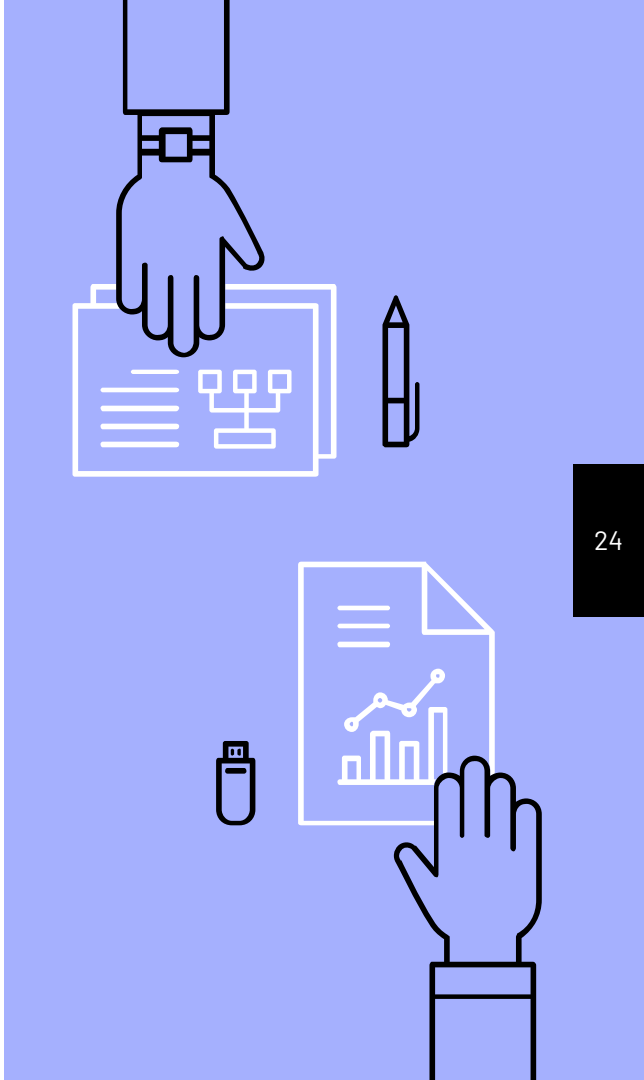
Cargill case – Ruling

- According to the SC, it **cannot** be bound by RR No. 5-87, as amended by RR No. 3-88, requiring ***direct* attributability** of input VAT *vis-à-vis* zero-rated sales.



Cargill case – Ruling (Summary)

- The law [Sections 112(A) and 110(A)(1)] does ***not*** require *direct* attributability.
- The *Atlas* cases are not applicable; and RR No. 5-87, as amended by RR No. 3-88, is not binding, because in RR No. 16-2005, the requirement of *direct and entire* attribution was ***not*** retained.

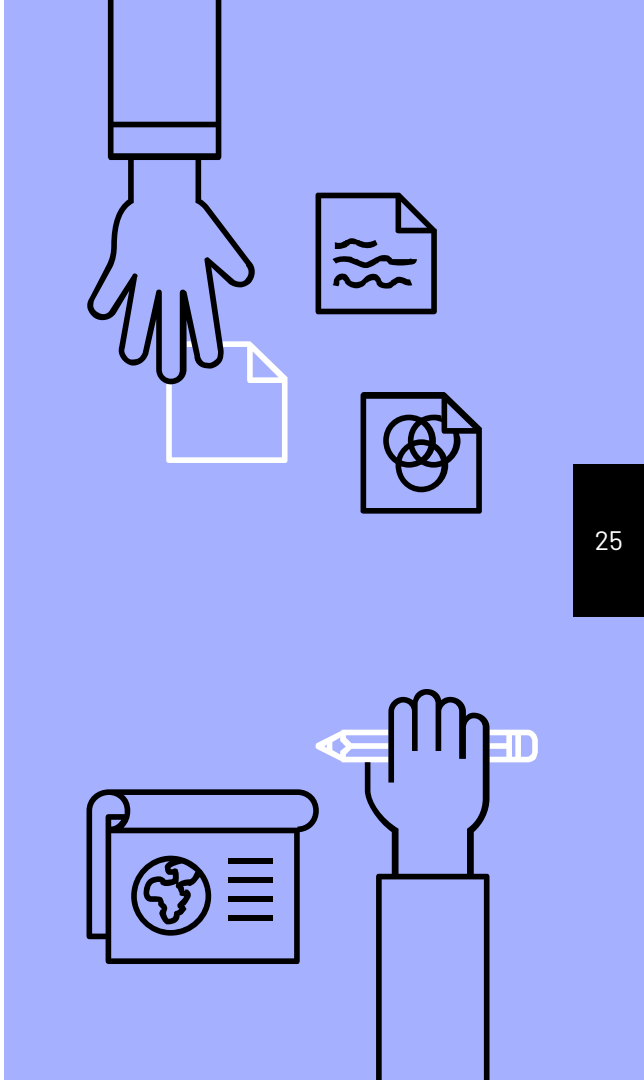


Cargill case – Facts

Two (2) claims for input VAT refund

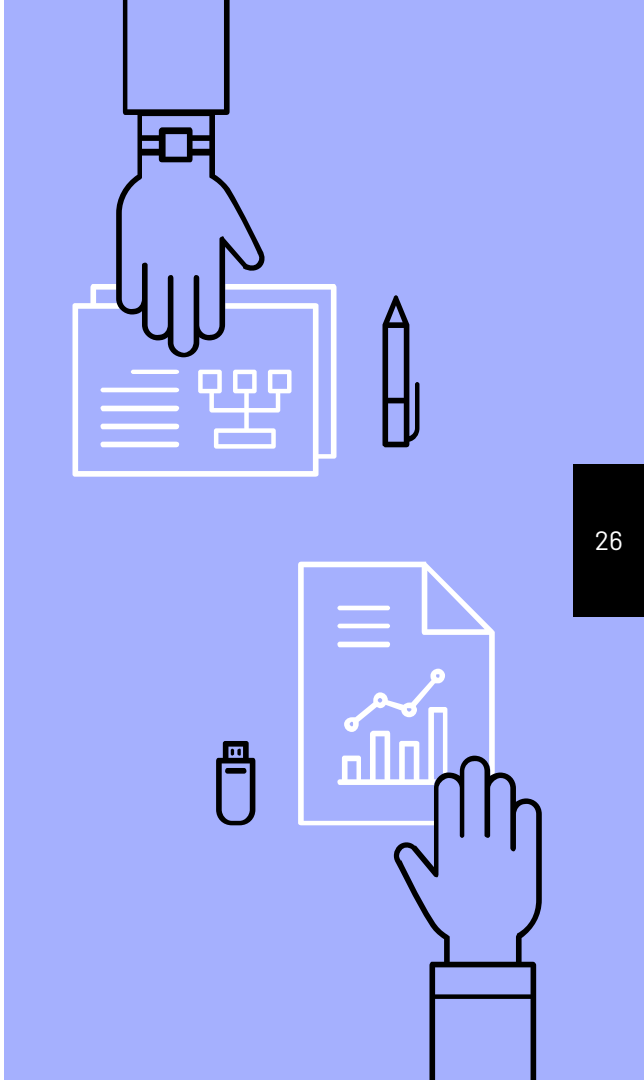
Periods:

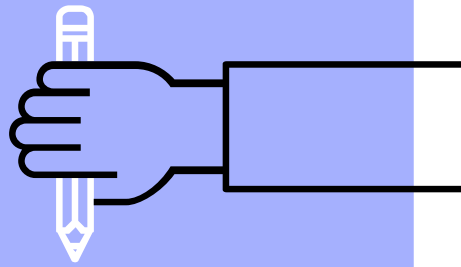
- 1 April 2001 to 28 February 2003; and
- 1 March 2003 to 31 August 2004.



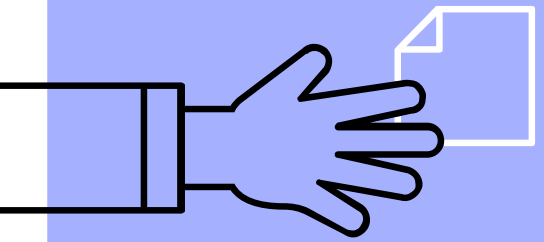
Cargill case – Ruling (Summary)

- RR Nos. 14-2005 and 16-2005 were issued only in 2005.
- And the law being implemented by said RR (*i.e.*, pursuant to RA No. 9337), by express provision, took effect only on 1 July 2005.





Commissioner of Internal Revenue vs. Toledo Power Company



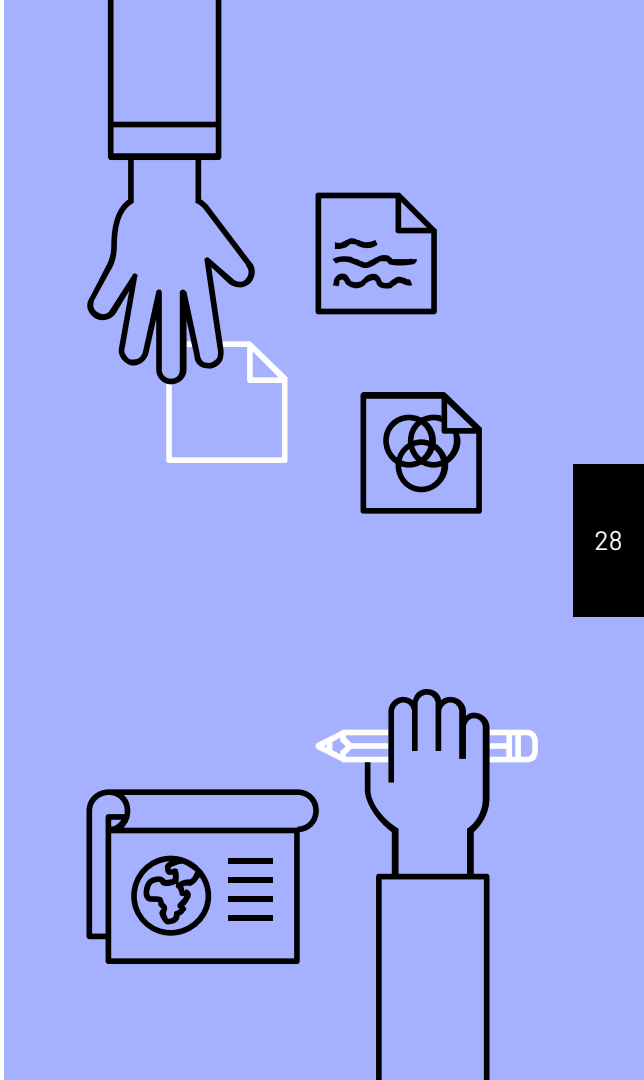
G.R. Nos. 255324 & 255353, 12 April 2023 , Third Division, *J.* Dimaampao

Toledo case – Facts

Claim for the refund or the issuance of a tax credit certificate of unutilized input VAT.

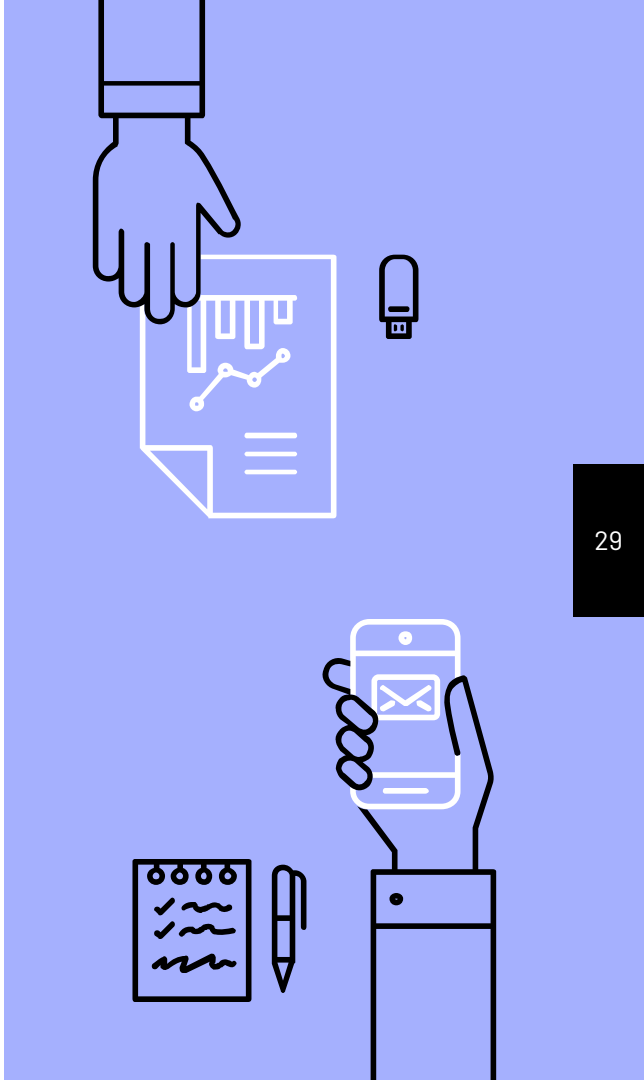
Period:

- 1st quarter of 2003.



Toledo case – ISSUE:

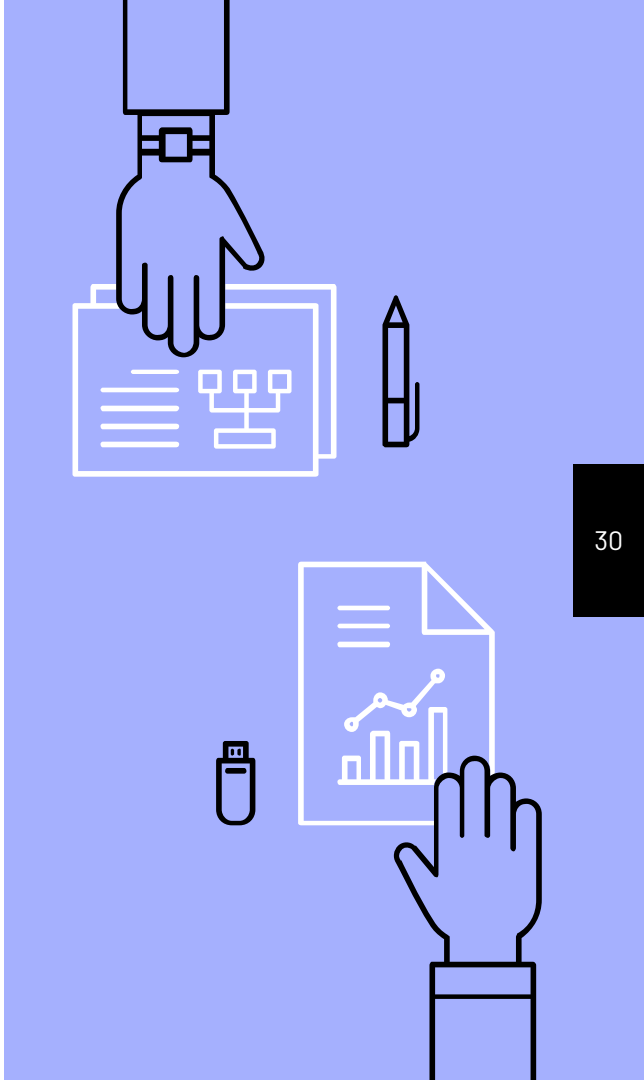
While the issues were not couched similar to the *Cargill* case, the same also seek to address whether it is required that the input VAT be ***directly and entirely*** attributable to the zero-rated sales, for the refund claim to prosper.



Toledo case – Ruling

Consistent with the *Cargill* case, the SC maintained its stand (but with some additional discussions, and a slight modification).

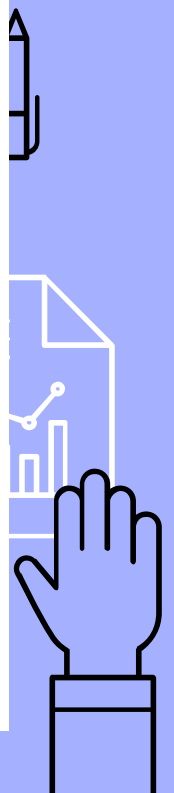
Note, however, that the CIR invokes again the 2011 *Atlas* case, and adds *CIR vs. Team Sual Corporation* [739 Phil. 215 (2014)], in support of his argument.



As to the question of law

The Court emphasizes that the applicable law to the instant Petition is the Tax Code in view of the principle of prospective application of tax laws.[33] Here, respondent's claim for tax refund and issuance of tax credit certificate of its unutilized input taxes for the first quarter of TY 2003 was filed with the CTA on April 22, 2005. Meanwhile, the amendments brought forth by Republic Act (RA) No. 9337[34] took effect on July 1, 2005 or more than two months after respondent filed the judicial claim subject of this case. Thusly, the instant Petition shall be examined based on the parameters of the Tax Code, prior to any amendments brought by RA No. 9337, and its effective implementing rules and regulations.

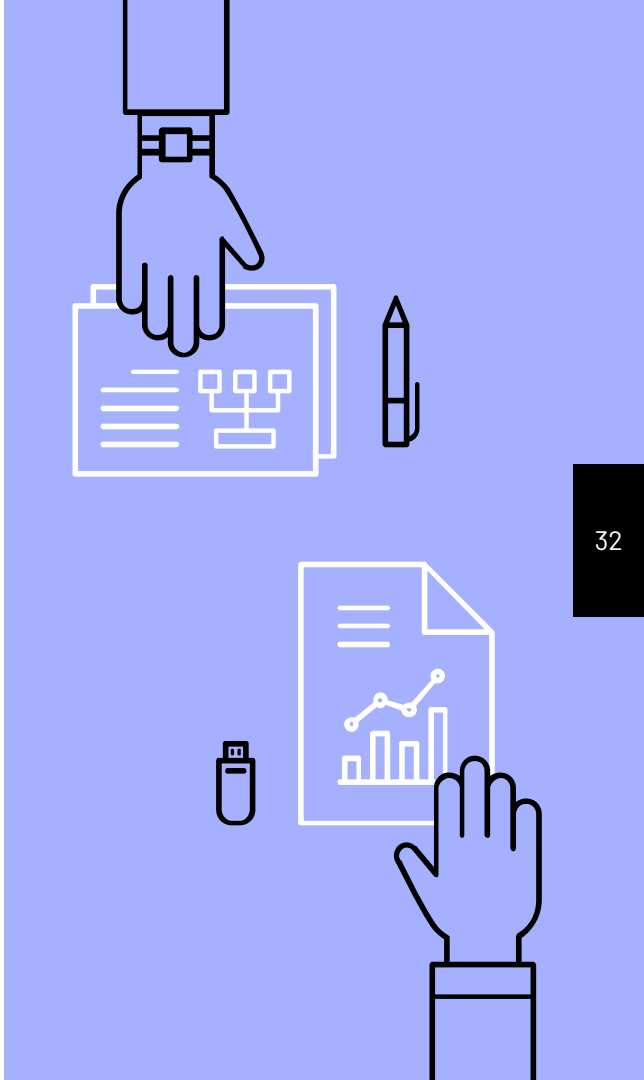
Section 112(A) of the Tax Code provides for the requirements for refund and tax credits of input taxes, *viz.*—



Toledo case – Ruling

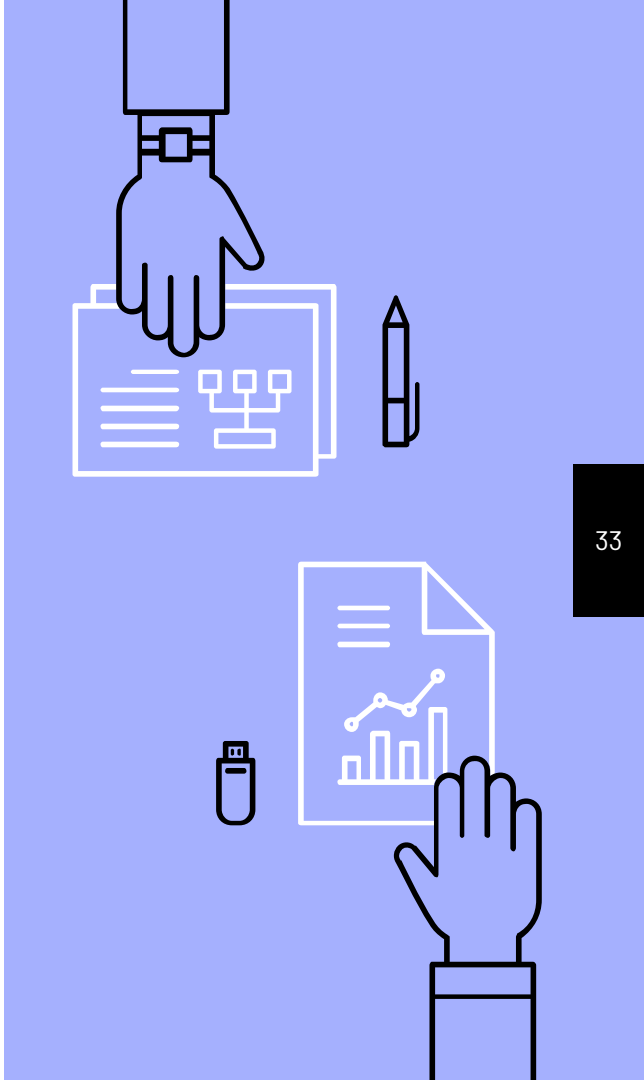
- N.B.:

Tax Code = RA No. 8424 a.k.a. *"Tax Reform Act of 1997"*.



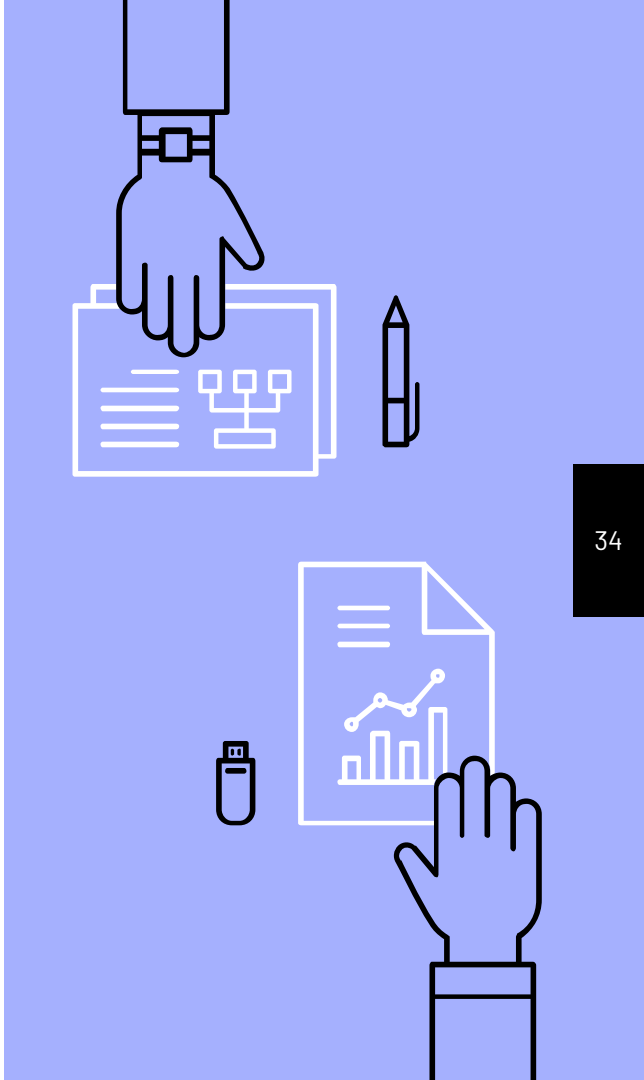
Toledo case – Ruling

- Elsewise stated, a VAT-registered person engaged in zero-rated or effectively zero-rated sales may apply for a claim of refund or issuance of TCC for its creditable input tax due or paid attributable to such sales.
- However, the input taxes must have not been applied to any output taxes.



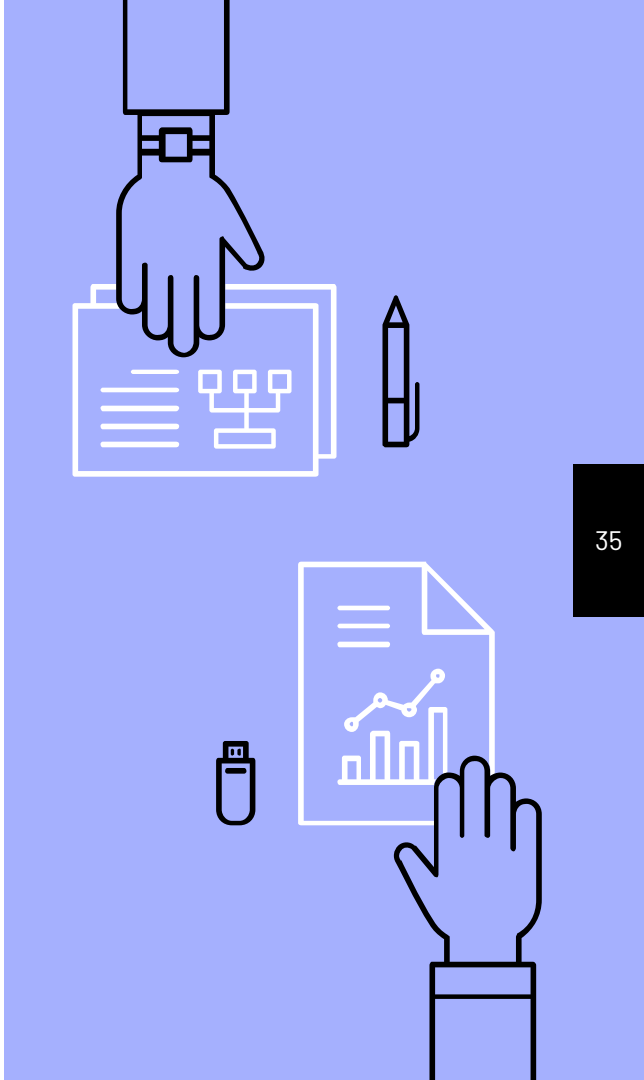
Toledo case – Ruling

- Moreover, the application of claim must be made within two years after the close of the quarter when the sales were made.
- Mere semblance of attribution to the zero-rated or effectively zero-rated sales would suffice.



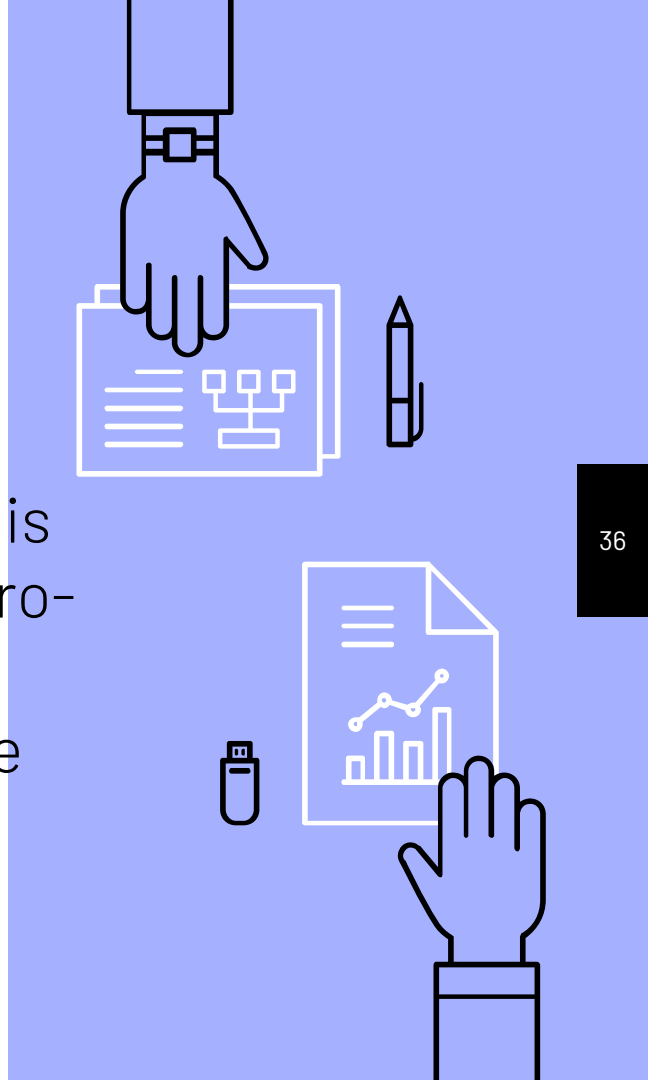
Toledo case – Ruling

- Contrary to the CIR's allegation, the Tax Code does ***not*** require direct and entire attribution of input taxes to the zero-rated or effectively zero-rated sales before it may be made subject of a tax refund or claim for TCC.



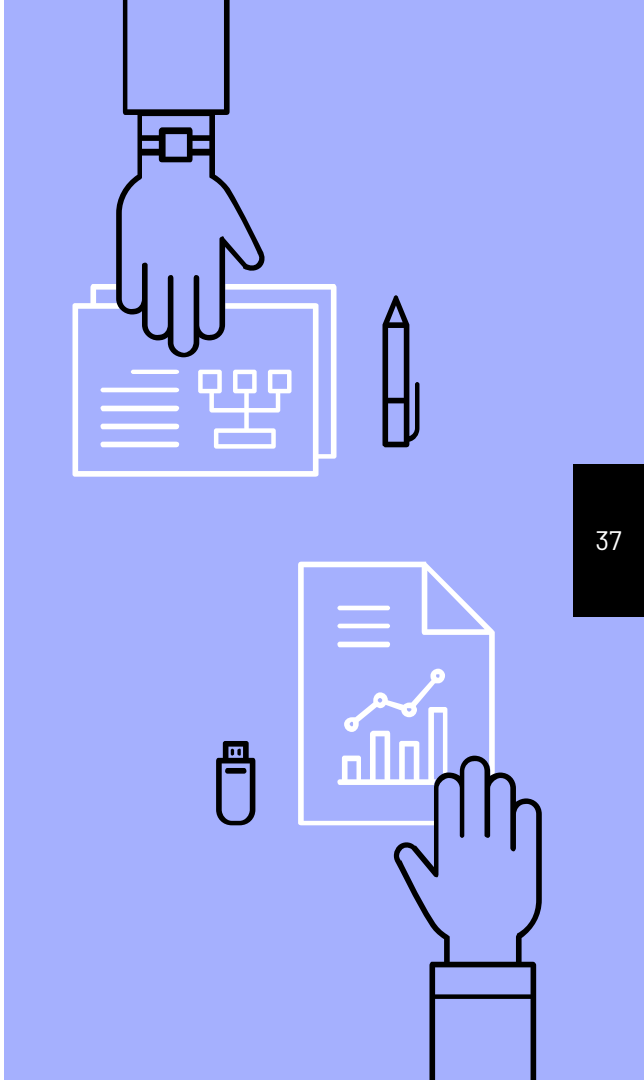
Toledo case – Ruling

- In fact, the law only mentions the phrase *"directly and entirely"* in reference to mixed transactions or in cases where the taxpayer is engaged in both zero-rated or effectively zero-rated sales and VAT-taxable or VAT-exempt sales—such that input taxes which cannot be directly and entirely attributed to specific transactions shall be allocated based on the sales volume of each transaction.



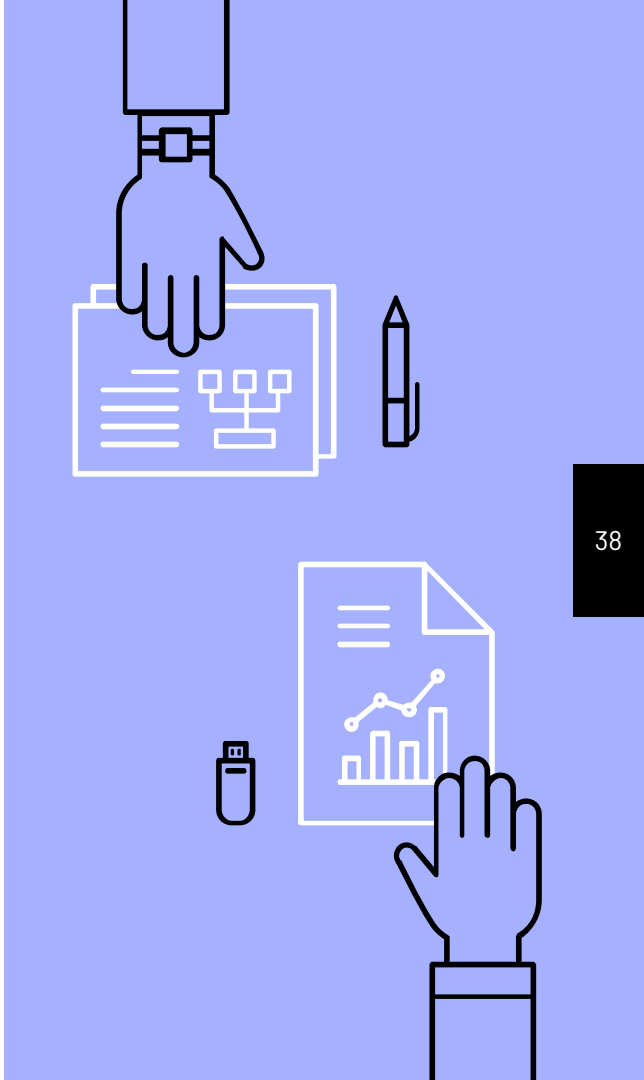
Toledo case – Ruling

- The word *"attribute"* means to explain something by indicating a cause.



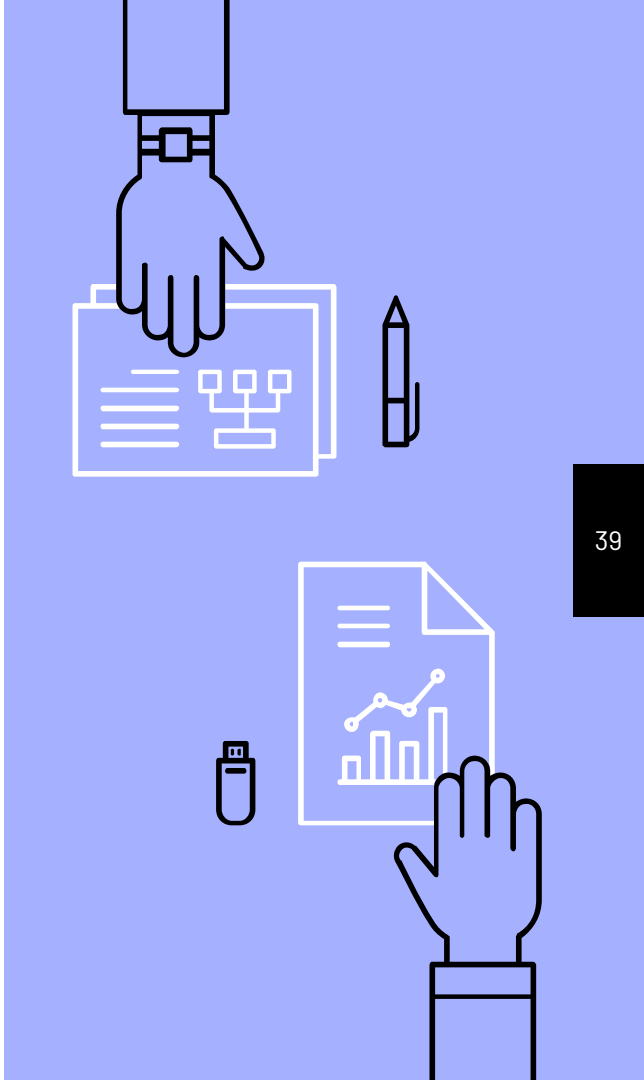
Toledo case – Ruling

- Thus, when the law states that the input VAT must be *attributable* to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be incurred on a purchase or importation which causes or relates to the [said] sales, but not necessarily a part of the finished goods subject of such sales.



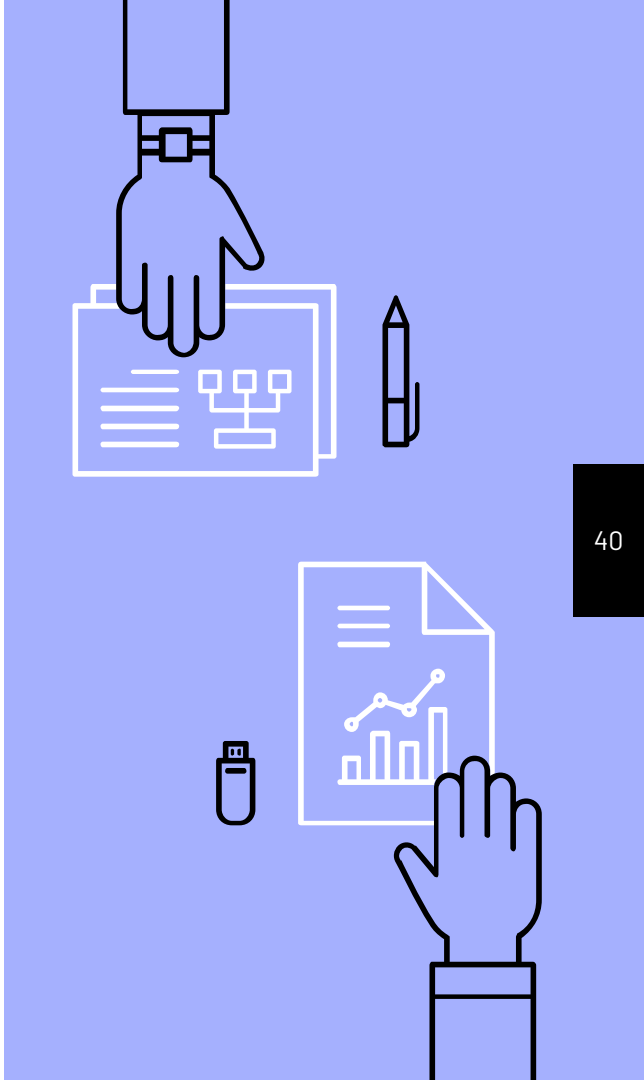
Toledo case – Ruling

- Based on this parameter, the input taxes of taxpayers engaged purely in either zero-rated or effectively zero-rated transactions are presumably attributable to the zero-rated or effectively zero-rated activity as they are not engaged in any other category for VAT purposes.



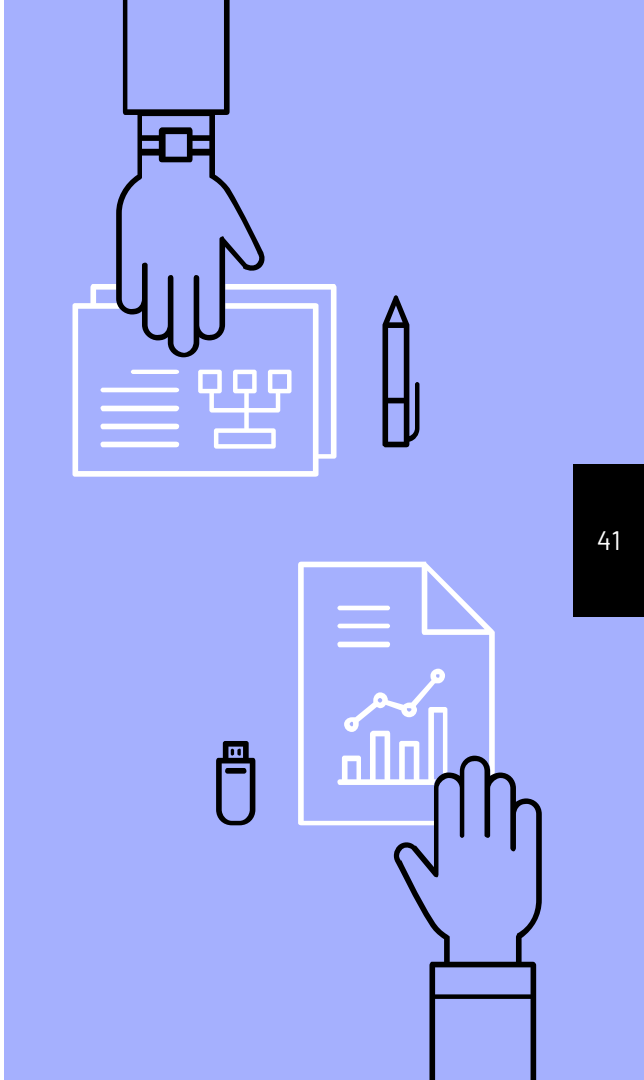
Toledo case – Ruling

- All its purchases of goods and services are made in relation to or caused by its zero-rated or effectively zero-rated activities.
- Otherwise, how else would the taxpayer utilize its purchase but for its main activity which, incidentally in this case, is a zero-rated or effectively zero-rated transaction?



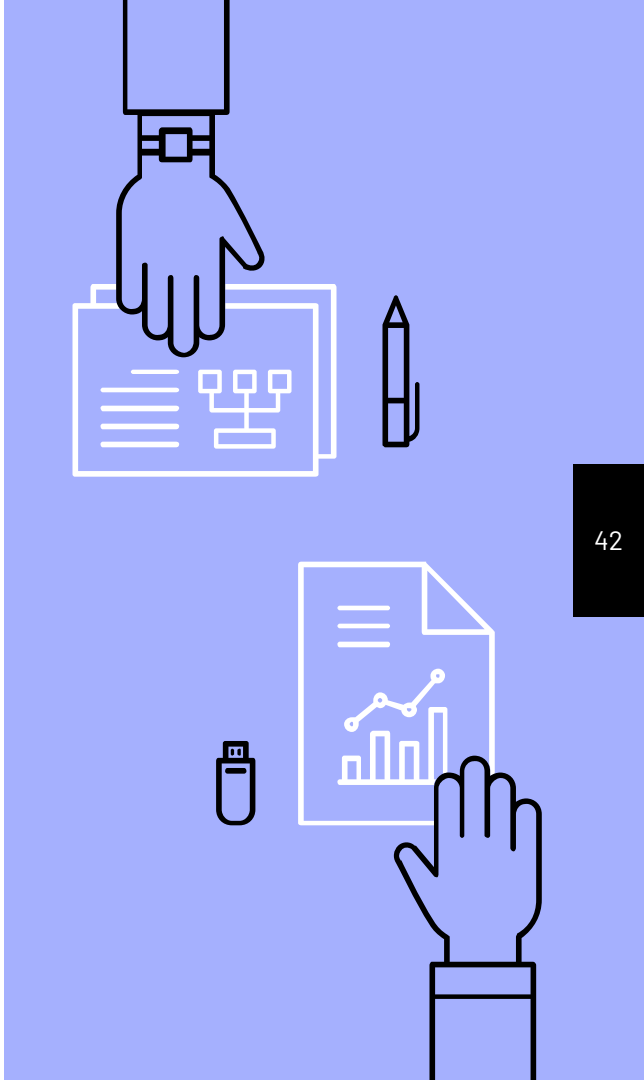
Toledo case – Ruling

- The remaining requirement for it to claim refund or TCC for unutilized input tax are the documentary requirements and the period within which the same must be filed.
- Meanwhile, taxpayers engaged in mixed transactions must first categorize its input taxes.



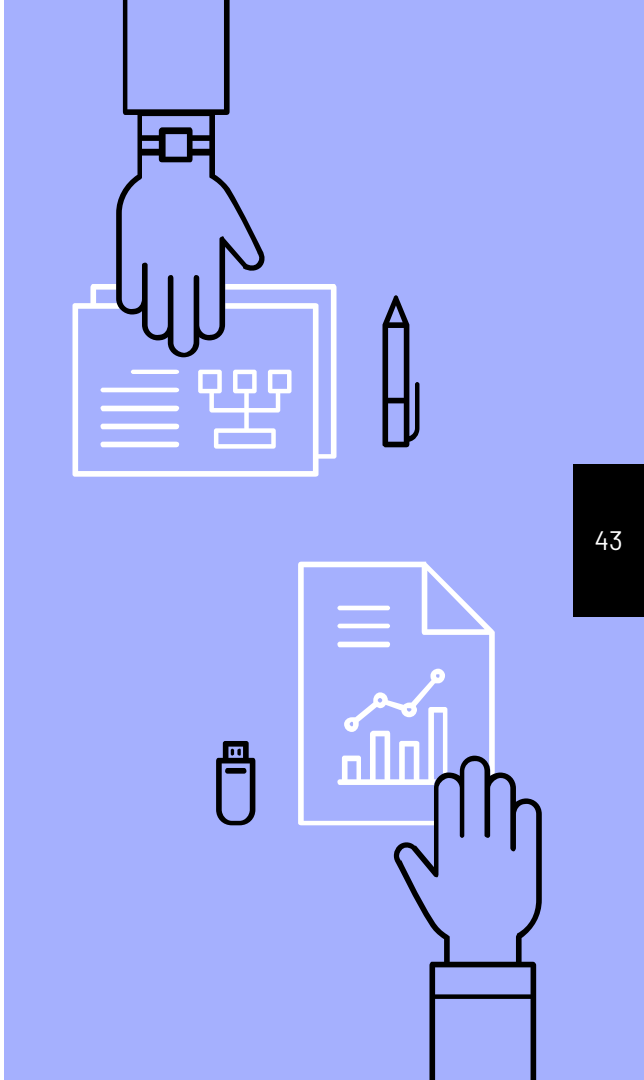
Toledo case – Ruling

- Those which can be directly and entirely attributed to VAT-taxable transactions, VAT-exempt transaction, zero-rated transactions, and effectively zero-rated transactions shall *first* be applied to the respective output tax resulting from such transaction.



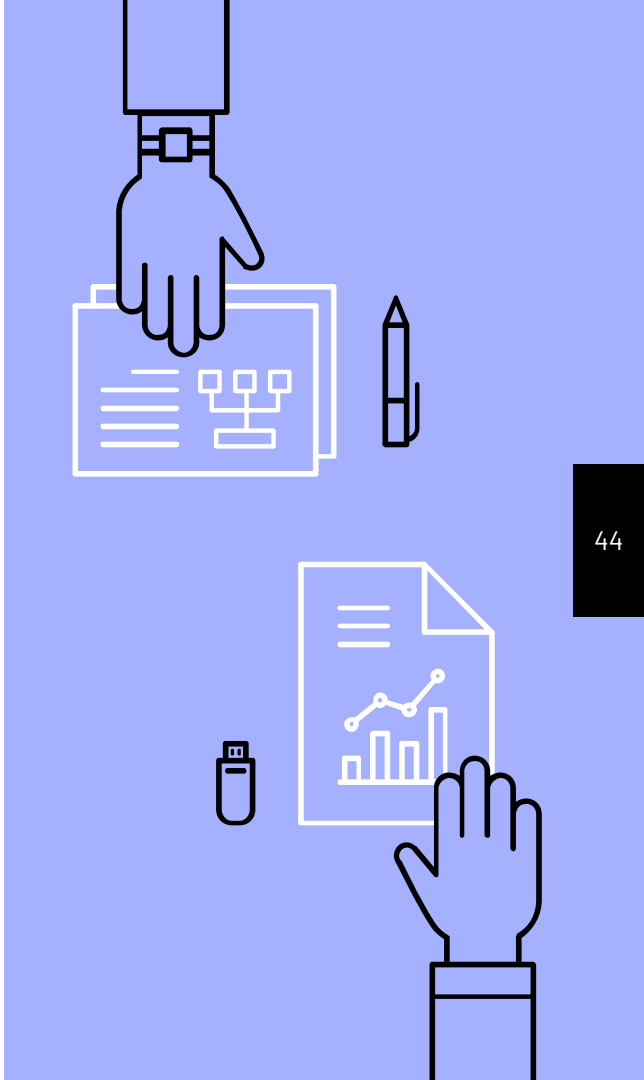
Toledo case – Ruling

- Thereafter, residual input taxes, or input tax which *"cannot be directly and entirely attributed to any one of the transactions*, [xxx] *shall be allocated to any one of the transactions* [xxx] *proportionately on the basis of the volume of sales."*



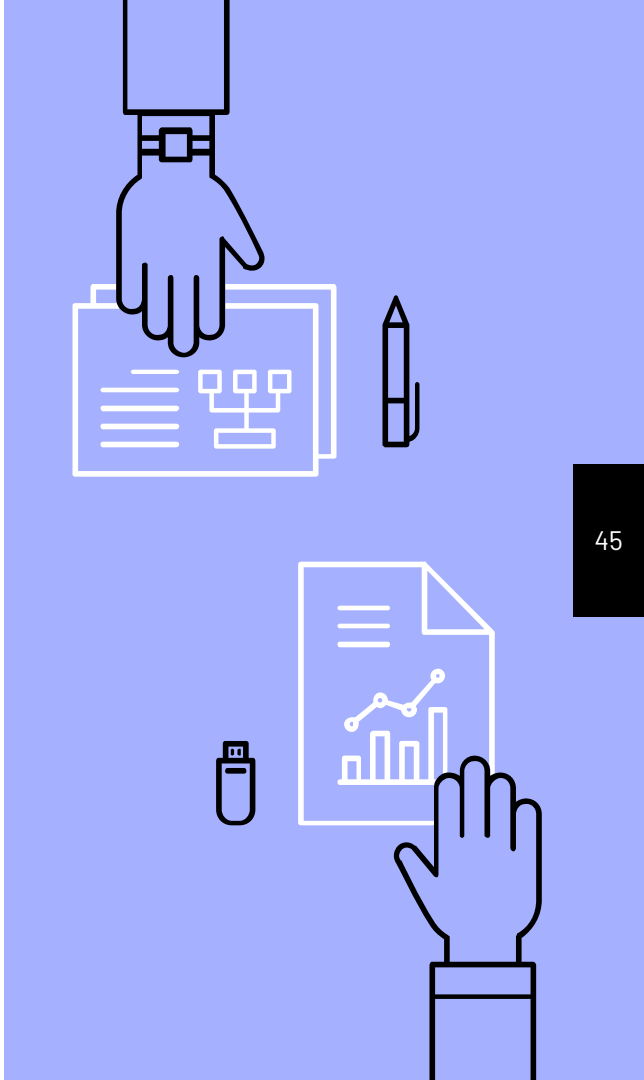
Toledo case – Ruling

- Simply stated, even if the input VAT cannot be *directly* and *entirely* allocated in any of these transactions, the taxpayer may still apply the input VAT proportionately based on the volume of the transactions.



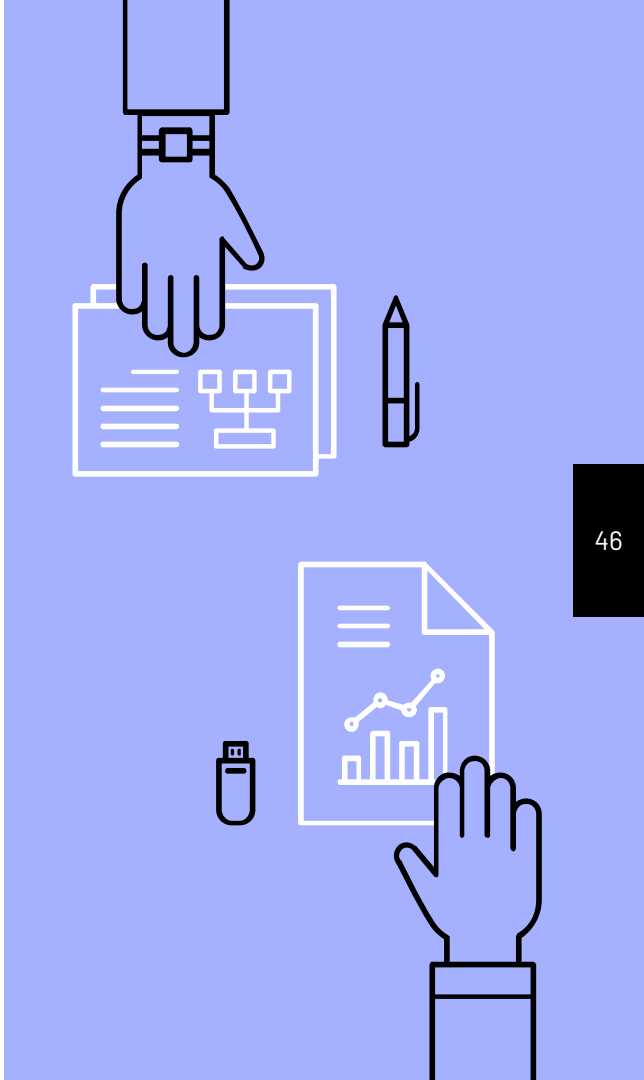
Toledo case – Ruling

- This is so because requirement of *direct and entire* attributability only applies in mixed transactions and only to the extent that input taxes can be attributed as a particular transaction.



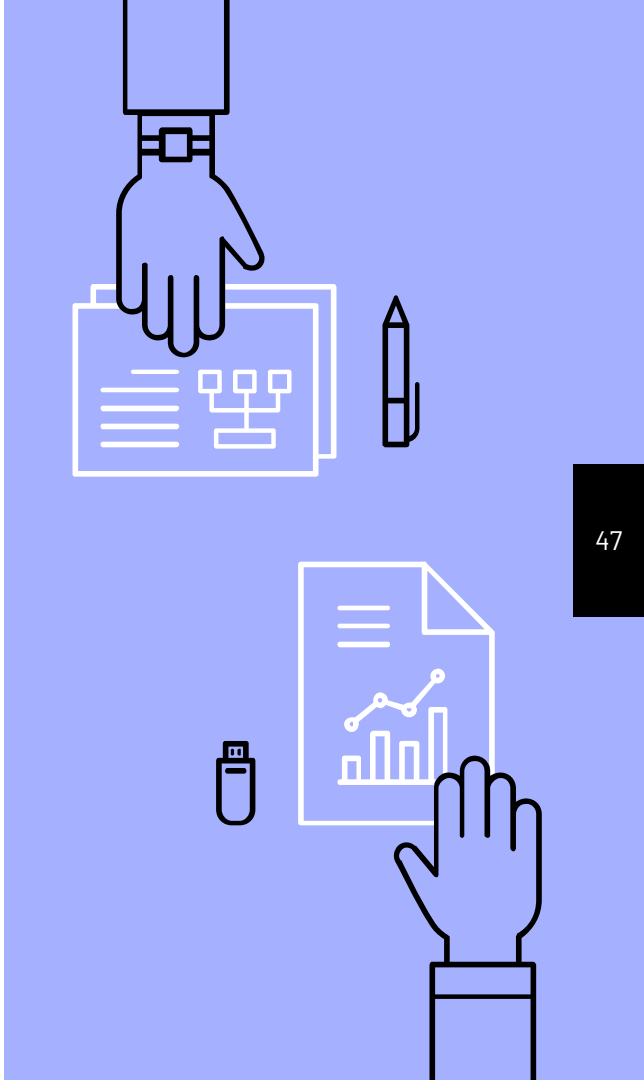
Toledo case – Ruling

- This interpretation is further bolstered when juxtaposed with the definition of creditable input taxes under Section 110 of the Tax Code and effective RR at the time.



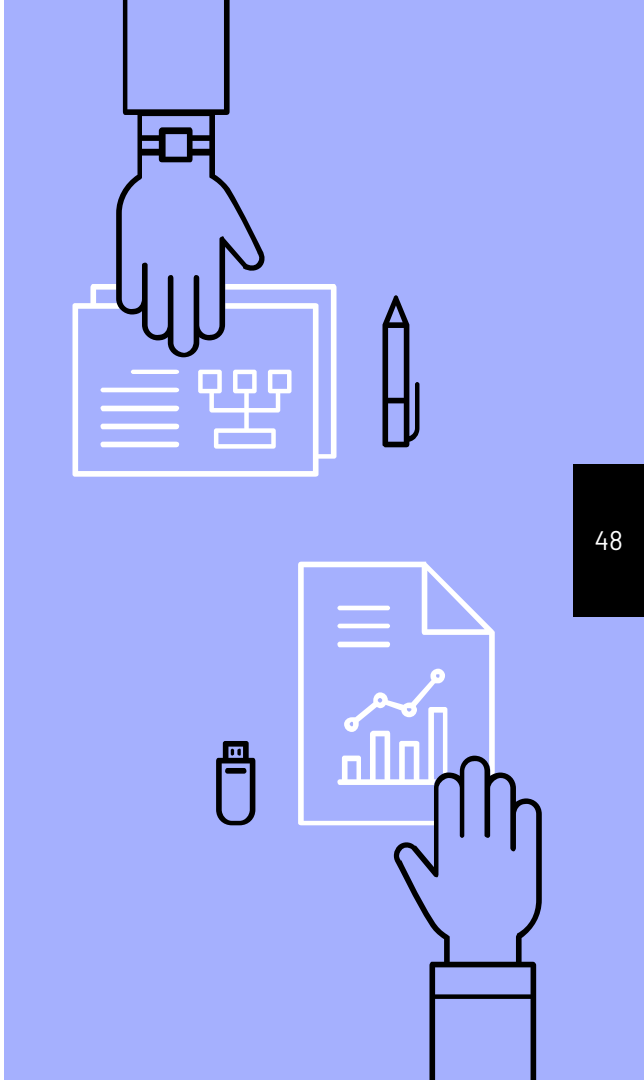
Toledo case – Ruling

- Contrary to petitioner's submission, creditable input taxes go beyond taxes on purchases of goods that form part of the finished product of the taxpayer or those which are directly used in the chain of production.



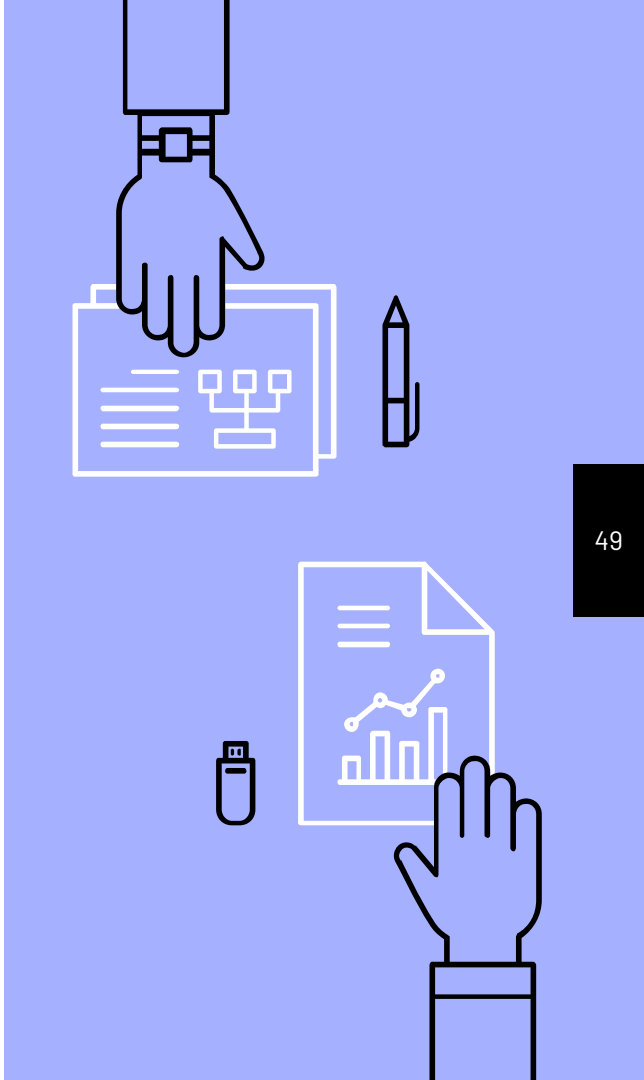
Toledo case – Ruling

- The Tax Code did not limit creditable input taxes to those incurred on purchases which ultimately find its way to taxpayer's finished products for sale.
- Input taxes incurred on other purchases may still be credited against output tax liability.



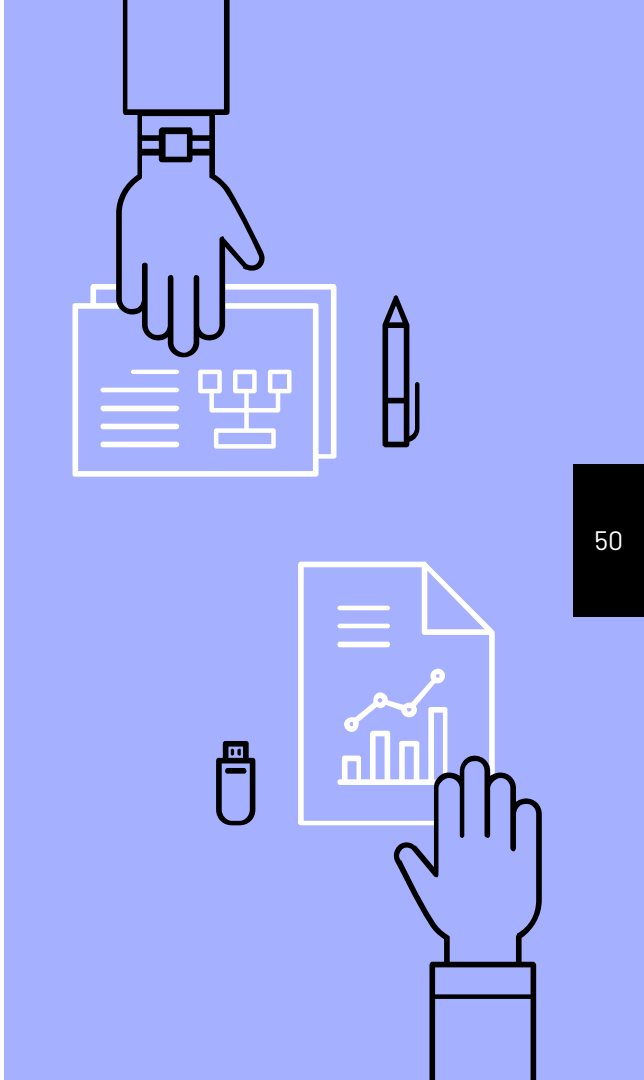
Toledo case – Ruling

- Despite not forming part of the finished goods, Section 110 treats as creditable those input tax due from or paid in the course of their trade or business on the importation of goods or local purchase of goods or services, including lease or use property, from a VAT-registered person.



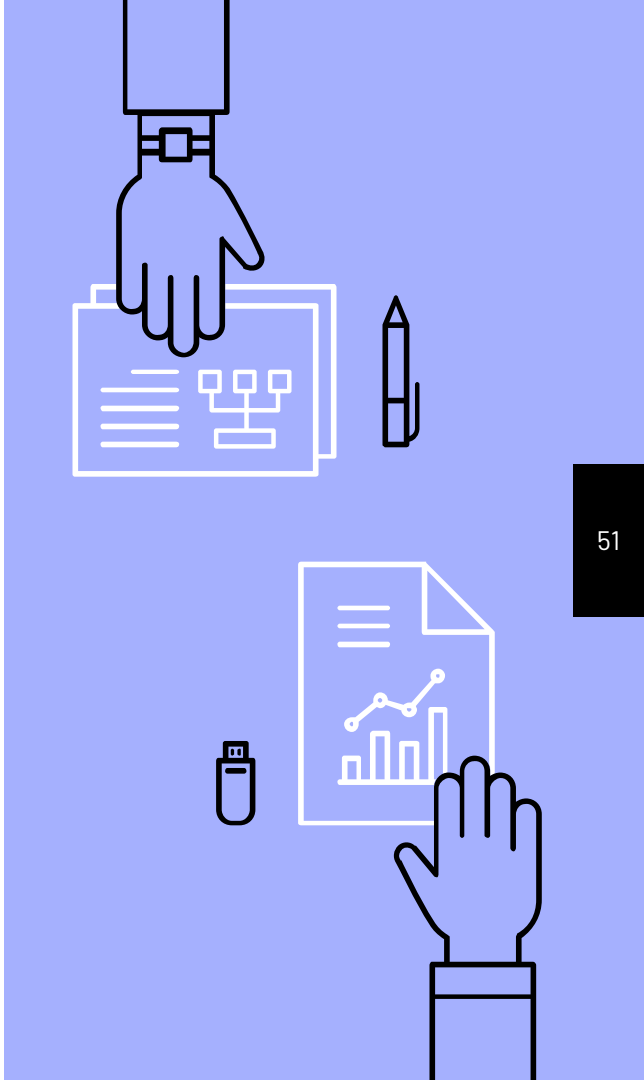
Toledo case – Ruling

- Surely, even if the purchased goods do not find their way into the taxpayer's finished product, the input tax incurred therefrom can still be credited against the output tax if it is (1) incurred or paid in the course of the VAT-registered taxpayer's trade or business, and (2) supported by a VAT invoice issued in accordance with the invoicing requirements of the law.



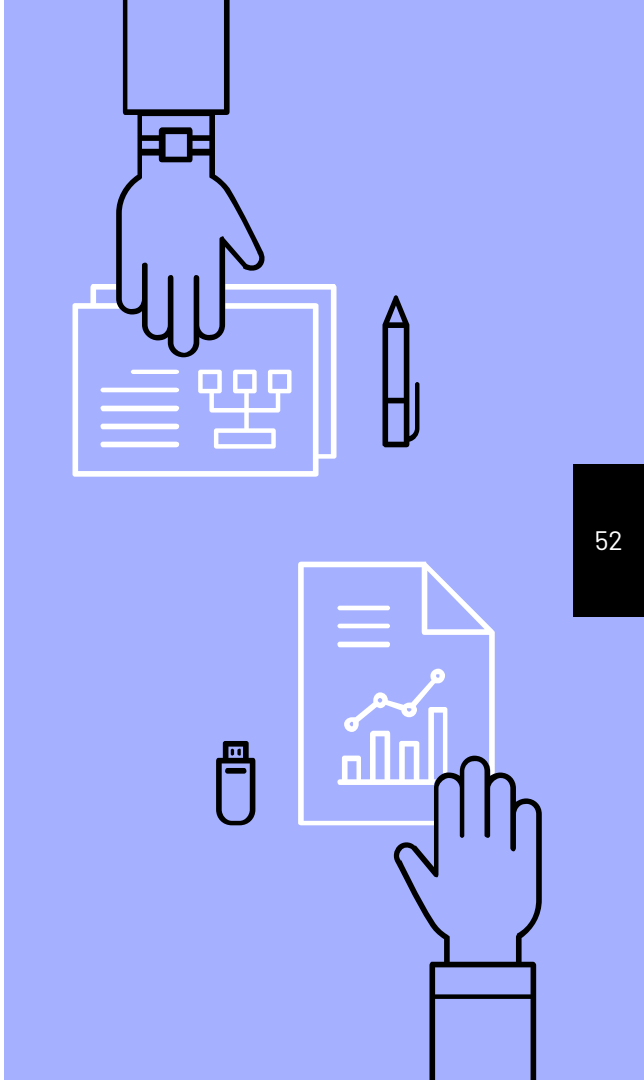
Toledo case – Ruling

- In promulgating the 2011 *Atlas* decision, the SC did not categorically require direct and entire attributability of input taxes to zero-rated or effectively zero-rated transactions.
- It did not even touch upon or rule on the matter.



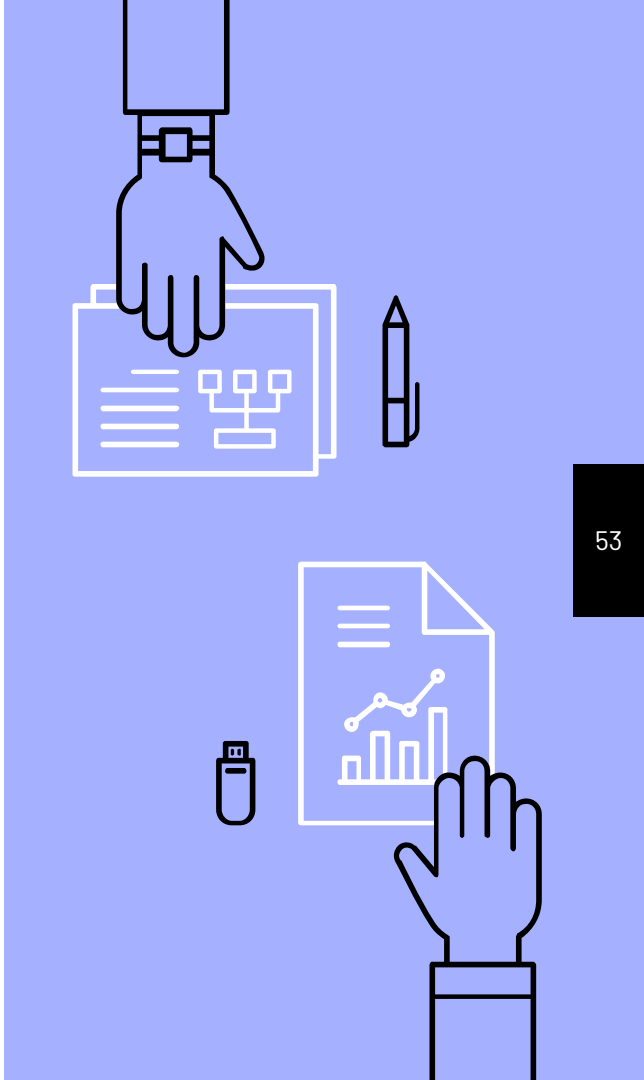
Toledo case – Ruling

- The requirement of proving that input taxes subject of a claim for refund or the issuance of TCC had not been applied to the taxpayer's output tax liability was merely emphasized.



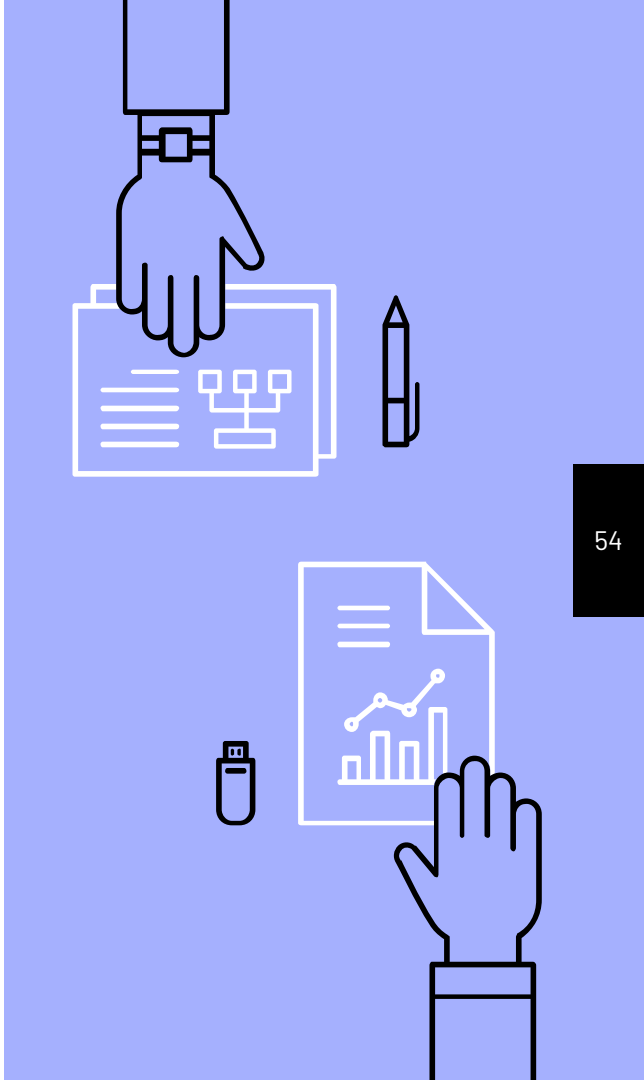
Toledo case – Ruling

- The *Team Sual* case, as with the *Atlas*, made no the requirement of direct and entire attributability of input taxes in claims for refund and issuance of TCC.
- In both cases, the SC's discussions never touched upon the issue of direct and entire attribution of input taxes as it was never raised as an issue.



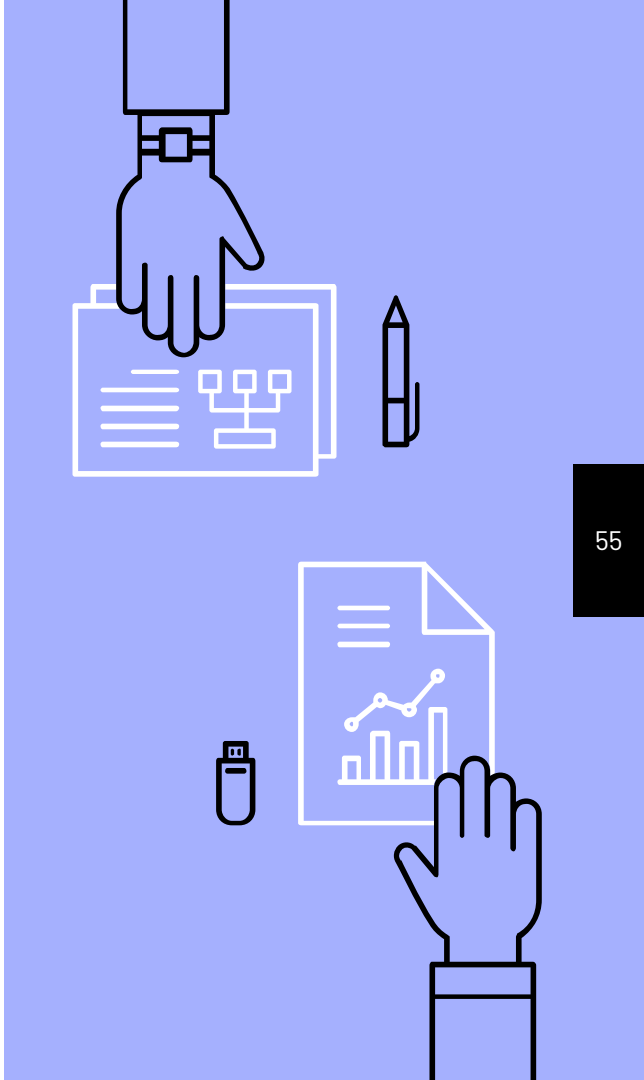
Toledo case – Ruling

- While the SC cited the provision of RR Nos. 3-88 and 5-87, no categorical pronouncements as to this requirement was made.
- Any issue, whether raised or not by the parties, but not passed upon by the SC, does not have any value as precedent.



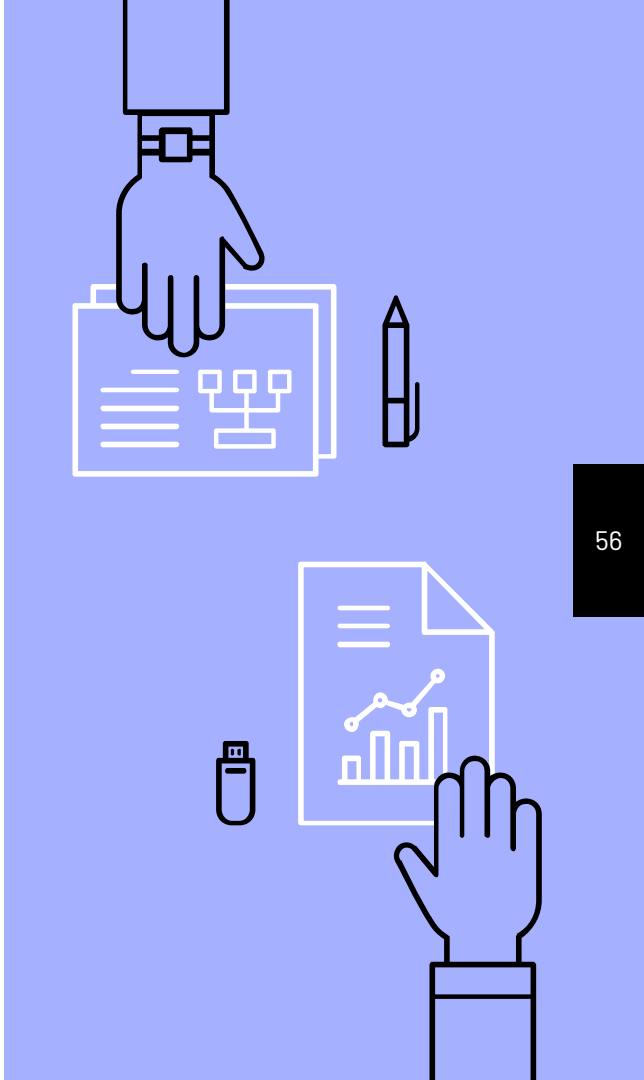
Toledo case – Ruling

- Petitioner cannot, therefore, invoke these cases as legal bases to impress upon this Court the direct and entire attributability requirement of input taxes in claims for refund and issuance of TCC.



Toledo case – Ruling

- Pursuant to Section 245, in relation to Section 4, of the 1997 Tax Code, the Secretary of Finance promulgated on September 1, 1987 RR No. 5-87, as amended by RR No. 3-88.
- The RR implemented the provisions of the law imposing VAT on importation of goods and sale of goods and services.



RR No. 5-87

Sec. 16. *Refunds or tax credits of input tax.* —

(a) *Zero-rated sales of goods and services.* — Only a VAT-registered person may be granted a tax credit or refund of value-added taxes paid corresponding to the zero-rated sales of goods or services, to the extent that such taxes have not been applied against output taxes, upon showing of proof of compliance with the conditions stated in Section 8 of these Regulations. cd

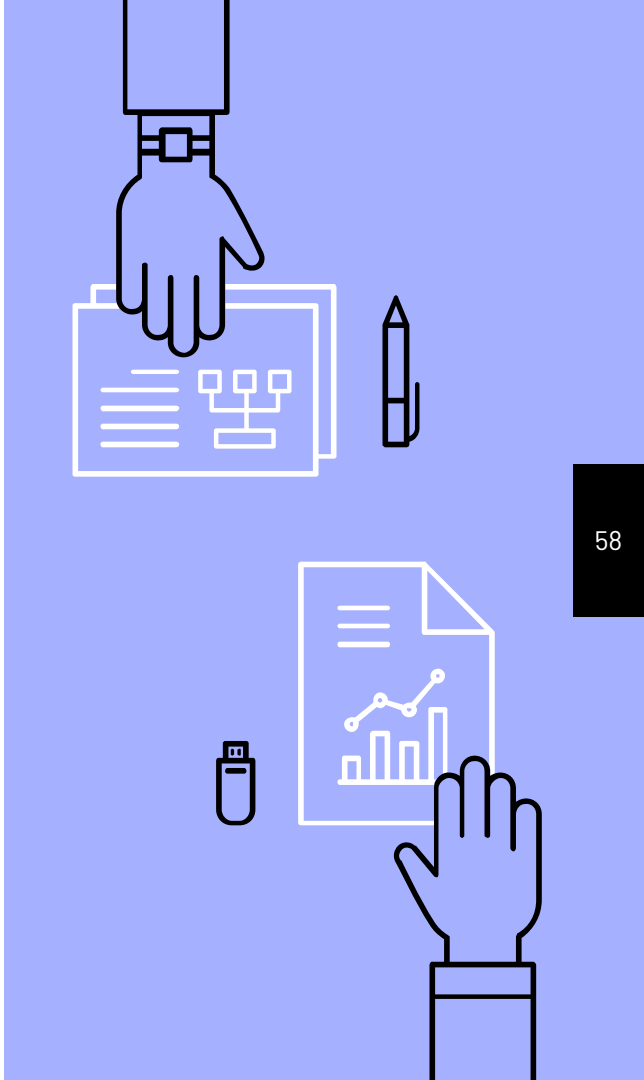
x x x x

In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of the value-added tax (VAT) paid directly and entirely attributable to the zero-rated transaction during the period covered by the application for credit or refund.

Where the applicant is engaged in zero-rated and other taxable and exempt sales of goods or services, and the VAT paid (inputs) on purchases of goods and services cannot be directly attributed to any of the aforementioned transactions, the following formula shall be used to determine the creditable or refundable input tax for zero-rated sale:

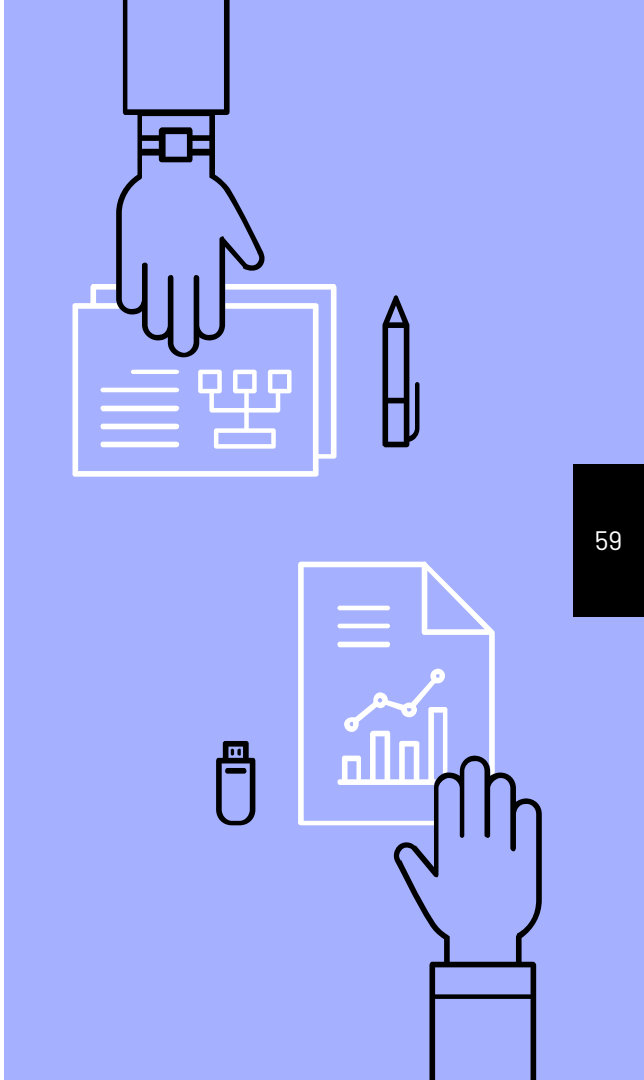
Toledo case – Ruling

- On its face, it appears that the RR limited that amount of refund of input taxes to those paid directly and entirely attributable to the zero-rated transaction.
- However, the SC takes note of the guidelines in the determination of refundable or creditable input taxes as contained in RR No. 9-89.



Toledo case – Ruling

- The CIR failed to mention RR No. 9-89 which is similarly applicable to the instant *Petition*.

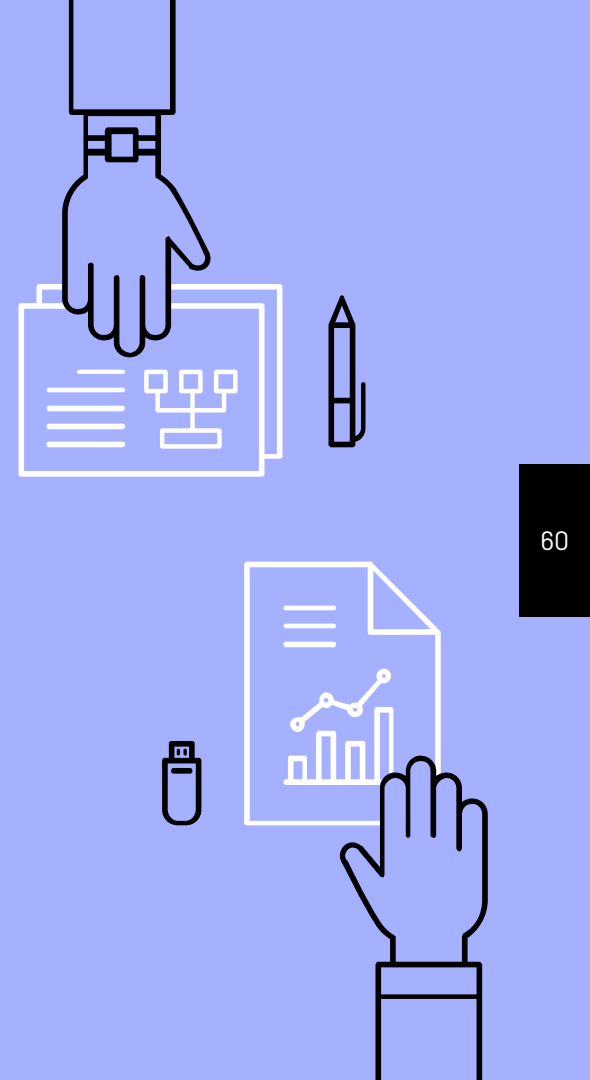


SECTION 3. Section 16 of RR No. 5-87, as amended by RR 3-88, is further amended by adding a new paragraph to be known as Section 16(c)(6); to read as follows:

Section 16(C)(6). *Determination of attributable input tax.* – In general, the amount of refund or tax credit shall be limited to the amount of the value added tax (VAT) paid attributable to zero-rated transactions during the period covered by the application for credit or refund.

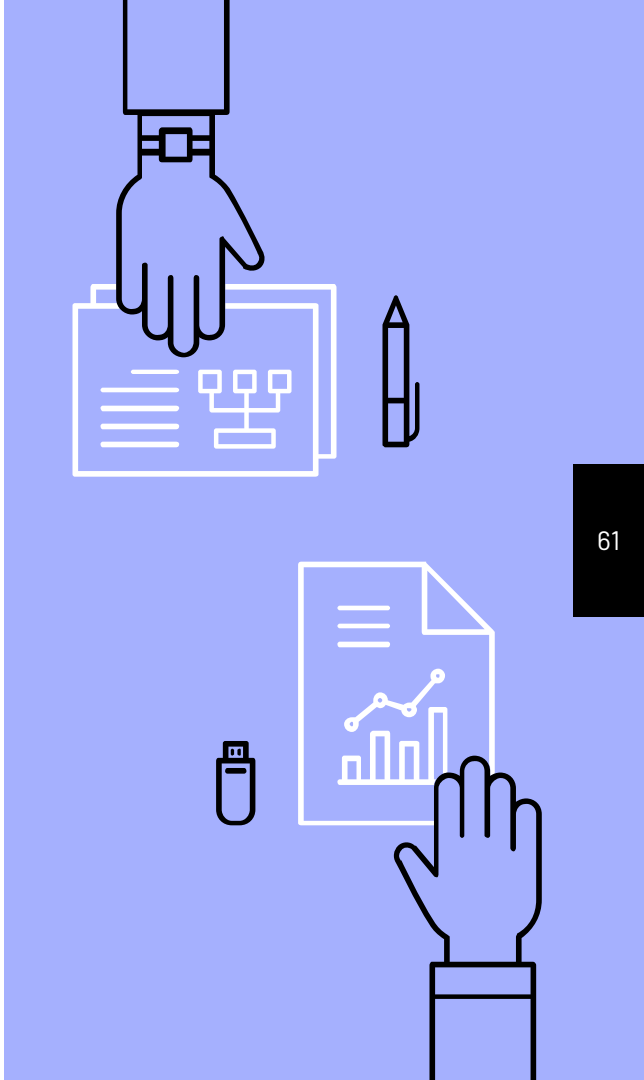
Purely zero-rated transactions. **Where the applicant is exclusively engaged in zero-rated or effectively zero-rated transactions, he shall be entitled to the entire amount of the value-added tax paid on purchases of goods and services, as well as on importations, notwithstanding the existence of an inventory of goods at the end of the quarter in which the zero-rated transactions were made**, subject to the submission of a sworn statement attesting to the subsequent actual exportation or consumption of goods in the inventory and supported by appropriate export documents.

For purposes of this paragraph, a VAT-registered person shall be considered as exclusively engaged in zero-rated or effectively zero-rated transactions if there are no taxable or exempt sales not only during the quarter covered by the claim but also that of the immediately preceding last three quarters prior to the claim. Incidental sales of obsolete or non-moving supplies, equipment, "scraps", and by-products of processed, manufactured or milled goods, etc., which are shown to have been subjected to value-added tax, shall not be considered for purposes of determining if the VAT registered person shall be considered as exclusively engaged in zero-rated of effectively zero-rated transactions.[47]



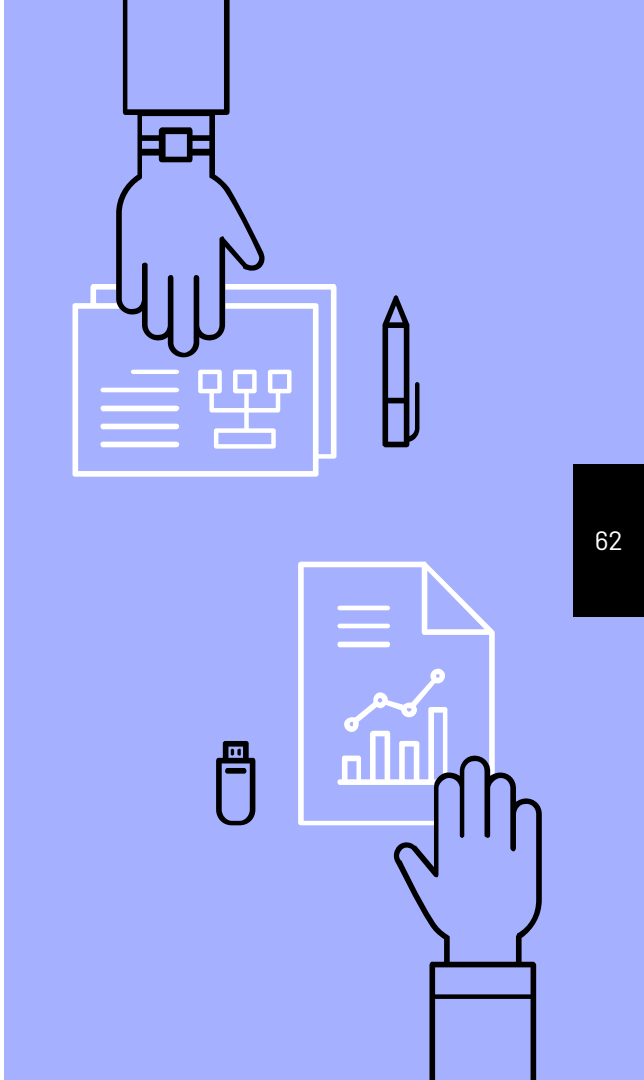
Toledo case – Ruling

- Recognizing the confusion that might have stemmed from its previous pronouncements in RR No. 3-88, as amended, the Secretary of Finance promulgated guidelines in the determination of refundable/creditable input taxes attributable to zero-rated transactions.



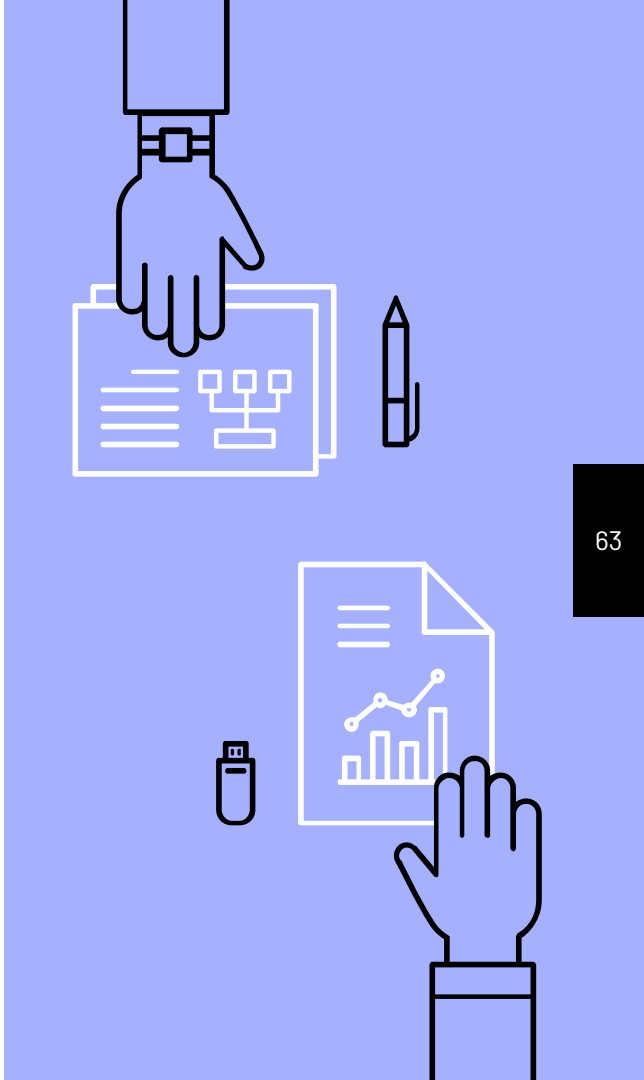
Toledo case – Ruling

- In effect, RR No. 8-89 explicitly stated that taxpayers engaged in purely zero-rated or effectively zero-rated transactions may apply for the refund or credit of the entire amount of input tax paid on the purchases of goods and services in the quarter in which the transactions were made.



Toledo case – Ruling

- Thus, contrary to the CIR's notion, the applicable regulations at the time Toledo filed its claim for refund or issuance of TCC do not require direct and entire attributability of input taxes.
- The basic tenet: direct and entire attributability of the input taxes is *not* required in claims for tax refund and issuance of TCC.



Republic Act No. 9337
AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

SEC. 23. Implementing Rules and Regulations. – The Secretary of Finance shall, upon recommendation of the Commissioner of Internal Revenue, promulgate not later than June 30, 2005, the necessary rules and regulations for the effective implementation of this Act. **Upon issuance of the said rules and regulations, all former rules and regulations pertaining to value-added tax shall be deemed revoked.**

- Thus, upon the issuance of RR No. 14-2005, and moreso, of RR No. 16-2005, RR Nos. 5-87, 3-88, and 9-89 are already revoked.
- In sum, in case of purely zero-rated transactions, the requirement of direct and entire attributability ceased upon the issuance of RR No. 9-89, and for those with mixed transactions, from RR No. 14-2005 or 16-2005.