REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

23 February 2022

REVENUE MEMORANDUM CIRCULAR NO. 24 - 2022

SUBJECT: **Clarifying Issues Relative to Revenue Regulations (RR) No. 21-2021 Implementing the Amendments to the Value-Added Tax (VAT) Zero-Rating Provisions Under Sections 106 and 108 of the National Internal Revenue Code of 1997 (Tax Code), in Relation to Sections 294(E) and 295(D), Title XIII of the Tax Code, Introduced by Republic Act (R.A.) No. 11534 (CREATE Act), and Section 5, Rule 2 and Section 5, Rule 18 of the CREATE Act Implementing Rules and Regulations (CREATE IRR)**

TO: **All Internal Revenue Officers and Others Concerned**

This Circular is issued to clarify the transitory provisions under RR No. 21-2021 and certain issues pertaining to the effectivity and VAT treatment of transactions by registered business enterprises (RBEs) particularly the registered export enterprises.

I. CLARIFICATION OF APPLICABLE RULES

Q1: Prior to the CREATE Act, for VAT purposes, what rule governs the sale of goods and services by a VAT-registered seller from the customs territory to enterprises located and registered within the economic zones (Ecozone) or a Freeport?

A1: Before the CREATE Act, Ecozones and Freeportzones were, by legal fiction, regarded as foreign territories under RMC No. 74-99 and RMC No. 7-2007. Thus, following the "cross border doctrine", the sale of goods and services by a VAT-registered seller to registered enterprises in these economic and freeport zones were treated as constructive export subject to zero-percent (0%) VAT.

Q2: With the passage of CREATE Act, is the "cross border doctrine" still applicable for purposes of VAT as laid down in RMC No. 74-99 and RMC No. 50-2007?

A2: No. The "cross border doctrine" as applied to Ecozones or Freeport zones has been rendered ineffectual and inoperative for VAT purposes because of the following:

(i) Passage of RA No. 11534, or the CREATE Act, expressly providing that only those goods and services that are directly and exclusively used in the registered project or activity of RBEs qualify as VAT 0% local purchases;

(ii) Sections 294(E) and 295(D), Title XIII of the Tax Code, as amended by the CREATE Act, and as implemented under Rule 2, Section 5, and Rule 18, Section 5, respectively, of the CREATE IRR, stating certain parameters for the availment of VAT zero-rating on local purchases of registered export enterprises, regardless of location; and

(iii) Issuance of RR No. 21-2021, amending Sections 4.106-5(b) and 4.108-5(b)(2) of RR No. 16-2005, as amended, to harmonize the VAT zero-rate provisions of the

Tax Code, as amended by TRAIN and CREATE laws, which now provide that the effectively zero-rated sales shall only apply to sales of goods and services rendered to persons or entities who have direct and indirect tax-exemption granted pursuant to special laws or international agreements to which the Philippines is a signatory.

Q3: What rules govern the enjoyment of VAT exemptions and VAT 0% incentives for registered business enterprises (RBEs) with the passage of the CREATE Act?

A3: Business enterprises duly registered with the concerned Investment Promotion Agencies (IPAs) under the CREATE Act shall now be governed by the CREATE provisions with respect to their availment of tax incentives, including VAT exemption of RBEs enjoying the 5% gross income earned (GIE) or special corporate income tax (SCIT), VAT exemption on importation and VAT zero-rating on local purchases of goods and services by registered export enterprises.

In addition, enterprises registered prior to the effectivity of the CREATE Act shall continue to enjoy the foregoing VAT exemptions and VAT zero-rating on local purchases of goods and services subject to the rules as provided in Rule 18, Section 5 of the CREATE IRR, that is: "*VAT-exemption on importation, and VAT zero-rating on local purchases shall only apply to goods and services directly attributable to and exclusively used in the registered project or activity of the export enterprises during the period of registration of the said registered project or activity of the export enterprises" until the expiration of the transitory period under Section 311 of the Code.*

Q4: Can enterprises located within the Ecozones or Freeport Zones still invoke Sections 106(A)(2)(b) and 108(B)(3) the Tax Code, as amended, after the effectivity of CREATE Act to claim VAT zero-rating on their local purchases of goods and services?

A4: No. With the CREATE Act already in place, business enterprises duly registered with the concerned IPA pursuant to the CREATE Act shall only be accorded VAT zero-rating on their local purchases of goods and/or services that are directly and exclusively used in the registered project or activity of the registered export enterprises.

II. EFFECTIVITY AND TRANSITORY PROVISIONS

Q5: When is the effectivity date of RR No. 21-2021?

A5: As stated in RR No. 21-2021, the *Regulations shall take effect immediately following its publication in a leading newspaper of general circulation, and shall cover transactions entered into the third quarter of taxable year (TY) 2021 and onwards.* RR No. 21-2021 was published in a newspaper of general circulation on December 10, 2021, thus, took effect on said date.

Q6: Why does RR No. 21-2021 cover transactions entered into prior to its effectivity or beginning third quarter of 2021?

A6: Considering that the taxpayers affected will be able to reclassify their sales from VATable to zero-rated by virtue of the retroactive application of RR No. 21-2021, the retroactive application is justified as it will be beneficial to the taxpayers affected.

Q7: What will be the VAT treatment for sale of goods and services that transpired during the effectivity of RR No. 9-2021 or from June 27, 2021 to June 30, 2021?

A7: For sale of goods and services that transpired within the four-day period, the seller should declare the same as subject to 12% VAT. Consequently, the purchaser, if VAT-registered, can utilize the passed on VAT as input tax and shall be deducted from the output tax, if any, or should the purchaser be engaged in zero-rated activities, the same can be recovered through VAT refund pursuant to Section 112(A) of the Tax Code, as amended. If the purchaser is not a VAT-registered taxpayer, the VAT paid may be claimed as part of the cost of sales or expenses.

Q8: What will be the VAT treatment for sale of goods and services that transpired during the effectivity of RR No. 9-2021 from July 1, 2021 to July 27, 2021, which is covered by the retroactive application of RR No. 21-2021?

A8: For sale of goods and services where the VAT has already been billed and/or collected during the effectivity of RR No. 9-2021 from July 1, 2021 to July 27, 2021, the seller and the buyer have the following options:

1. **Retain the transaction as subject to VAT.** The seller can opt to still declare the sales as subject to 12% VAT. Consequently, the purchaser, if VAT-registered, can utilize the passed on VAT as input tax and shall be credited against the output tax, if any, or should the purchaser be engaged in zero-rated activities, the same can be recovered through VAT refund pursuant to Section 112(A) of the Tax Code, as amended. If the purchaser is not a VAT-registered taxpayer, the VAT paid shall be claimed as part of the cost of sales or expenses.
2. **Revert the transaction from VATable to zero-rated.** Where the transactions have already been declared in the VAT return/s, the seller may amend the VAT return filed after reimbursing/returning the VAT paid by the buyer that is a registered export enterprise subject to the rule that no Letter of Authority (LOA) has been issued yet. The adjustment to sales shall only be to the extent of the reimbursed VAT to the registered export enterprise. The resulting overpayment due to unutilized input tax credits, if any, may be recovered through VAT refund pursuant to Section 112(A) of the Tax Code, as amended, inasmuch as the corresponding sale is reverted to VAT zero-rated.

Q9: Should the seller revert the transactions from VATable to zero-rated, what will happen to the sales invoices/official receipts (SIs/ORs) previously issued?

A9: The seller shall retrieve the VAT SI/OR originally issued to the registered export enterprise buyer for cancellation and replacement with a zero-rated SI/OR. The seller shall prepare a list of VAT SI/OR cancelled, together with the corresponding zero-rated SI/OR replacement subject to validation of the BIR.

Q10: RR No. 21-2021 was issued few months after the issuance of RR No. 15-2021, which deferred the implementation of RR No. 9-2021. There is a possibility that affected taxpayers may have declared their sales to registered export enterprises as VAT zero-rated and domestic market enterprises (DMEs) within Ecozones and Freeport zones for the period July 1, 2021 up to the effectivity of RR No. 21-2021 on December 10, 2021. What happens if these are not qualified for VAT zero-rating based on the provisions of the CREATE Act?

A10: This is an instance where the non-retroactivity rule under Section 246 of the Tax Code, as amended, can be applied inasmuch as this will be prejudicial to the taxpayers affected. Hence, the said transactions that have been considered by the seller as VAT zero-rated shall still remain as VAT zero-rated for the period July 1, 2021 to December 9, 2021.

However, for those taxpayers that declared their transactions to qualified registered export enterprises and DMEs within the Ecozones and Freeport zones as subject to VAT, the options laid down in Q&A No. 7 and 8 may be followed.

III. VAT TREATMENT OF SALE TO REGISTERED EXPORT ENTERPRISES UPON THE EFFECTIVITY OF CREATE ACT

Q11: What is the treatment on the sale of goods and/or services by a VAT-registered seller to registered export enterprises, regardless of the location, enjoying fiscal incentives under the CREATE Act?

A11: Sale of VAT-registered suppliers to registered export enterprises enjoying fiscal incentives under the CREATE Act shall be treated as VAT zero-rated. However, it shall only apply to goods and/or services directly and exclusively used in the registered project or activity of said registered export enterprise, for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended under the Strategic Investment Priority Plan (SIPP).

The enjoyment of VAT and duty incentives is reckoned from the registered export enterprise's date of registration and throughout the period as indicated in its Certificate of Registration.

The term "date of registration" mentioned herein where the 17-year maximum period shall be reckoned from shall refer to the date of registration of the registered project or activity of the registered export enterprise as reflected in the Certificate of Registration issued by the concerned IPA.

Q12: What is a registered export enterprise?

A12: As defined under Section 4(M), Rule 1 of the CREATE IRR, an export enterprise refers to any individual, partnership, corporation, Philippine branch of a foreign corporation, or other entity organized and existing under Philippine laws and registered with an IPA to engage in manufacturing, assembling or processing activity, and services such as information technology (IT) activities and business process outsourcing (BPO), and resulting in the direct exportation, and/or sale of its manufactured, assembled or processed product or IT/BPO services to another registered export enterprise that will form part of the final export product or export service of the latter, of at least seventy (70%) of its total production or output.

Provided, however, that the export enterprise is also a registered business enterprise as defined in Section 4(W) of the same IRR.

Q13: What is meant by direct and exclusive use in the registered project or activity?

A13: Direct and exclusive use in the registered project or activity refers to raw materials, supplies, equipment, goods, packaging materials, services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, and other expenditures directly attributable to the registered project or activity without which the registered project or activity cannot be carried out.

Only the portion of the expense directly and exclusively used by a registered export enterprise for its registered project or activity shall qualify for VAT zero-rating on local purchases, excluding those used for administrative purposes. The registered export enterprise concerned should adopt a method to best allocate goods or services purchased, e.g. for utilities, use of separate water and power meters for its registered project or activity or any method that may determine the allocation such as area usage or ratio of utility expenses between cost of sales and administrative expenses as reflected in the prior year Audited Financial Statements. If the goods or services are used in both the registered project or activity and administration purposes and the proper allocation could not be determined, the purchase of such goods and services shall be subject to 12% VAT.

For this purpose, services for administrative purposes, such as legal, accounting, and such other similar services, are not considered expenses directly attributable to and exclusively used in the registered project or activity.

Q14: What cost items fall under the "other expenditures" in the preceding question?

A14: These are costs that are indispensable to the project or activity, i.e., without which, the project or activity cannot proceed, and these include expenses that are necessary or required to be incurred depending on the nature of the registered project or activity of the export enterprise.

Examples:

1. Insurance costs required to be paid by the IPA before the facility can start operations.
2. Freight costs necessary to bring the raw materials or equipment to be used in the production area.
3. Telecommunication expenses of registered export enterprises engaged in IT/BPO services or other registered project or activity, without the telecommunication services, such registered project or activity cannot be carried out. This, however, does not include telecommunication expenses incurred for administration purposes.

Any costs incurred prior to the registration of a project or activity with the IPA shall not be allowed for this purpose.

Q15: Are the purchases of registered export enterprises not directly and exclusively used in its registered project or activity subject to VAT at zero-rate?

A15: No. Only the purchases of goods and services that are directly and exclusively used in the registered project or activity of the registered export enterprise shall be allowed for VAT zero-rating. Hence, not all goods coming into, or services rendered within the Ecozones or Freeport shall be accorded VAT zero-rating.

Q16: Are there RBEs not entitled to avail the VAT zero-rating on their purchases of goods and/or services?

A16: Yes. RBEs which are categorized as Domestic Market Enterprises are not entitled to VAT zero-rating on local purchases. Sale of goods or services to a registered domestic market enterprise shall be subject to VAT at 12%.

In addition, the following service enterprises, though duly accredited or licensed by any of the IPAs, are not entitled to VAT zero-rating on their local purchases of goods and/or services:

1. Customs brokerage;
2. Trucking services;
3. Forwarding services;
4. Janitorial services;
5. Security services;
6. Insurance;
7. Banking and other financial services;
8. Consumers' cooperatives;
9. Credit unions;
10. Consultancy services;
11. Retail enterprises;
12. Restaurants; and
13. Such other similar services as may be determined by the Fiscal Incentives Review Board (FIRB).

Q17: What is the treatment on the sales by registered non-export enterprises or DMEs located in Ecozones and Freeport Zones to registered export enterprises and non-RBEs?

A17: The DME under the 5% Gross Income Tax (GIT) or Special Corporate Income Tax (SCIT) regime, registered as a VAT exempt entity, shall treat its revenues as VAT exempt. The VAT passed on to it by its VAT-registered local suppliers shall form part of its cost or expenses.

Q18: What is the treatment on the sale made by registered export enterprise to another registered export enterprise?

A18: The following rules shall apply:

a. If the seller is VAT-registered while enjoying ITH, the sale of goods and services to another registered export enterprise is subject to VAT at zero-rate, provided, the goods and services are directly and exclusively used in the latter's registered project or activity.

b. If the seller is enjoying the 5% GIE incentive, the sale of goods and services, such as manufactured, assembled or processed product or IT/BPO services to another registered export enterprise that will form part of the final export product or export service of the latter, of at least seventy (70%) of its total production or output, shall be VAT-exempt.

Same rule applies to the sale of a DME to a registered export enterprise.

Q19: Are non-RBE export-oriented enterprises also accorded with the benefits under Title XIII of the Tax Code, as introduced in the CREATE Act?

A19: No. Incentives of non-RBE exporters shall be limited only to VAT at zero rate on its direct export sale of goods or services pursuant to Sections 106(A)(2)(a)(1) and 108(B)(2) of the Tax Code, as amended. However, if the non-RBE exporter is VAT-registered and sells goods and services to a registered export enterprise, the rule under the Q&A No. 18(a) shall apply.

Q20: What will be the VAT treatment should the RBE sell, transfer, or dispose the previously VAT-exempt imported capital equipment, raw materials, spare parts, and accessories?

A20: The VAT treatments on the sale, transfer, or disposition of the imported capital equipment, raw materials, spare parts, or accessories are as follows:

1. If the purchaser is a registered export enterprise, regardless of location, the transaction is subject to VAT at zero-rate; provided that the same shall be directly and exclusively used in the registered project or activity of the registered export enterprise.

2. If seller is non-registered export enterprise or a domestic market enterprise, regardless of location and is under the following regimes:
   a. Under Special Corporate Income Tax (5% GIT), transaction is VAT- exempt.
   b. Not under the 5% SCIT, transaction is generally subject to VAT at 12% based on the net book value of the capital equipment, raw materials, spare parts, or accessories, unless purchaser is a registered export enterprise, in which case, the rule in number 1 above shall apply.

Q21: What will be the VAT treatment if the imported capital equipment, raw materials, spare parts, and accessories were utilized in the non-registered project or activity?

A21: In case the aforementioned imported items will be used for a non-registered project or activity of the RBE, the corresponding VAT on importation should be paid accordingly.

For partial utilization in a non-registered project or activity, the amount corresponding to the VAT on a specific capital equipment, raw materials, spare parts, or accessories shall be paid in proportion to its utilization for the non-registered project or activity.

Q22: It appears that enterprises registered with the Board of Investments (BOI) and those that are located in the Ecozones and Freeport zones are covered under Title XIII of the Tax Code, as amended by CREATE Act, how about sales to enterprises covered by special laws other than those mentioned?

A22: Sales to enterprises covered by special laws such as renewable energy developers under R.A. No. 9513 (Renewable Energy Act of 2008, International Rice Research Institute (IRRI), Asian Development Bank (ADB), etc. are still subject to VAT at zero percent rate (0%) pursuant to Sec. 4.106-5(b) for goods and Sec. 4.108-5(b)(2) for services, of RR No. 16-2005, as amended by RR No. 21-2021.

IV. TAXABILITY OF EXISTING EXPORT ENTERPRISES REGISTERED PRIOR TO CREATE

Q23: Are sales of suppliers from the customs territory to existing registered export enterprises located inside the Ecozones or Freeport zones also qualified for VAT zero-rating?

A23: Yes. Sales to existing registered export enterprises located inside Ecozones or Freeport zones shall also be qualified for VAT zero-rating under Sec. 4.106-5(c) and Sec. 4.108-5(b)(3) of RR No. 16-2005, as amended by RR No. 21-2021 until the expiration of the transitory period or the remaining period of their incentives as specified in Rule 18 of the CREATE IRR.

However, it shall only apply to goods and/or services directly and exclusively used in the registered project or activity of a registered export enterprise.

Q24: Are sales of suppliers located inside the customs territory to existing registered non-export enterprises located inside the Ecozones or Freeport zones also qualified for VAT zero-rating?

A24: No. Sale of goods or services **to** existing registered non-export enterprises located inside the Ecozones or Freeport Zones shall be subject to VAT at 12%. On the other hand, the sale of goods or services **by** existing registered non-export enterprises located in Ecozones and Freeport Zones shall be subject to the rules under Q&A No. 17.

Q25: How about the sale by VAT-registered sellers to registered export enterprises registered with the BOI and IPAs other than PEZA or Freeport Zones?

A25: Sales by VAT-registered sellers to export enterprises registered with the BOI and IPAs other than PEZA or Freeports are also subject to VAT at zero-rate but shall only apply to goods and/or services directly and exclusively used in the registered project or activity of the registered export enterprise until the expiration of the transitory period or the remaining period of their incentives as specified in Rule 18 of the CREATE IRR.

Q26: What will be the VAT treatment for the local purchases of the registered export enterprise on its previously registered project or activity that is qualified for VAT zero-rating in case its registration has already expired and is not anymore available for renewal?

A26: A VAT-registered RBE whose registration with an IPA has already expired, shall be subject to VAT in accordance with Sections 106, 107, and 108 of the Tax Code, as amended.

Q27: Are the sale of goods or services to non-resident foreign buyers by non-RBEs, not enjoying incentives, but were delivered or rendered to export-oriented companies in the Philippines, still considered zero-rated under Sections 106(A)(2)(a)(3) and 108(B)(1) of the Tax Code, as amended?

A27: No. Transactions under Sections 106(A)(2)(a)(3) and 108(B)(1) of the Tax Code, as amended, have already been considered subject to VAT in compliance with the provisions of the TRAIN Law.

Q28: What is the VAT treatment on the sale of processing, manufacturing or repacking of goods by a PEZA-registered business enterprises (RBEs) for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)?

A28: The sale of processing, manufacturing or repacking services by PEZA RBEs entitled to 5% GIT or SCIT to persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, shall be exempt from VAT. In this case, the service fee shall be indicated in the Official Receipt and VAT returns as a VAT exempt sale.

Q29: What is the VAT treatment on the sale of raw materials or packaging materials by a PEZA RBE to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP?

A29: If the sale is made by a PEZA RBE entitled to 5% GIT or SCIT, such sale shall be exempt from VAT.

Q30: What rule applies to registered export enterprises with multiple incentives regime as they have more than one registered activity, i.e. ITH for one registered activity and 5% GIT or SCIT regime for another registered activity?

A30: The registered export enterprise shall remain VAT-registered until the expiration of the ITH for all its registered activities and all its activities are covered by the 5% GIT or SCIT regime. The registered export enterprise shall report as VAT exempt the sales under the 5% GIT or SCIT regime as provided in Q&A No. 18(b), while the sales under the ITH shall be reported in the VAT return as 0% VAT.

Q31: What is required from the existing registered export enterprises that have already completed their ITH and already under the 5% GIT or SCIT regime but remained as VAT-registered entity?

A31: The registered export enterprise is required within two (2) months from the expiration of its ITH to change its registration status from a VAT-registered entity to Non-VAT.

Registered export enterprises enjoying GIT or SCIT regime but are still VAT-registered at the time the CREATE Act took effect are required within two (2) months from the effectivity of this Circular to change its registration status as provided in the preceding paragraph.

V. APPLICATION FOR VAT ZERO-RATING

Q32: Will previously approved applications for VAT zero-rating remain effective due to the retroactive application of RR No. 21-2021?

A32: Yes. All approved applications and applications for VAT zero-rating that were suspended due to the effectivity of RR No. 9-2021 shall remain effective as if RR No. 9-2021 was not implemented should the taxpayers involved in the transaction opt to revert the same as VAT zero-rated, except for the four (4)-day period covering June 27, 2021 to June 30, 2021. Provided, however, that Title XIII of the Tax Code, as amended by the R.A. No. 11534 (CREATE), shall, henceforth, be strictly complied with, particularly the requisite that it shall only apply to goods and/or services directly and exclusively used in the registered project or activity of a registered export enterprise.

Q33: Is prior approval from the BIR needed to be secured by the local suppliers of goods/services of registered export enterprises in order for their sales to be accorded VAT zero-rating, as provided for under the CREATE?

A33. Yes. Sections 294(E) and 295(D), Title XIII of the Tax Code, as implemented by Section 5, Rule 2 of the amended CREATE IRR emphasize that VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in the registered project or activity of a registered export enterprise upon the endorsement of the concerned IPA, in addition to the documentary requirements of the BIR.

It is therefore of paramount importance to validate whether the said requisites are duly complied with before availment of the VAT zero-rate incentive by the supplier of the registered export enterprise. Absence of prior approval from the BIR may result in the disallowance of the VAT zero-rated sale of the supplier.

Q34: What certification shall the IPA issue to a registered export enterprise? What should the IPA certification contain?

A34: For this purpose, the IPA concerned shall issue annually a VAT zero percent (0%) certification **only** to registered export enterprises. The same certification shall indicate the registered export enterprise's (i) registered export activity i.e., manufacturing, IT BPO; (ii) tax incentives entitlement under agreed terms and conditions with the validity period; and (iii) the applicable goods and services (or category thereof), i.e., raw materials, supplies, equipment, goods, packaging materials, services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, and other expenditures directly attributable to the registered project or activity without which the registered project or activity cannot be carried out.

Q35: Shall IPAs be required to provide the BIR an endorsement for purposes of VAT zero-rating on local purchases?

A35: Yes. All IPAs are required to submit to BIR the list of RBEs which are categorized as export enterprise, for purposes of VAT zero-rating.

Q36: What are the documents that must be provided by the registered export enterprise buyers to their local suppliers prior to the sale transaction to avail of the VAT zero-rate incentives?

A36: Prior to the transaction, the registered export enterprise buyers shall provide their suppliers with a photocopy of the BIR - Certificate of Registration (BIR Form No. 2303), Certificate of Registration and VAT certification issued by the concerned IPA containing the information or specifications required under Q&A No. 34.

In addition, the registered export enterprises shall provide their suppliers a sworn declaration stating that the goods and/or services being purchased shall be used directly and exclusively in the registered project.

Q37: What will govern the processing of the applications for VAT zero-rating upon the effectivity of RR No. 15-2021?

A37: Processing of applications for VAT zero-rating shall be governed by Revenue Memorandum Order (RMO) No. 7-2006. However, provisions of Sections 294(E) and 295(D), Title XIII of the Tax Code, as amended by CREATE and Section 5, Rule 2 and Section 5, Rule 18 of the CREATE IRR, as amended, shall be strictly complied with. Relative hereto, the following must be included in the attachments to the application for VAT zero-rating:

1. Certificate of Registration and VAT Certification issued by concerned IPA as submitted to them by their registered export enterprise buyers;

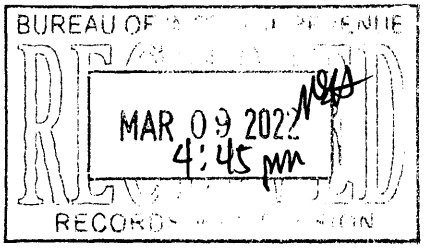
2. A sworn affidavit executed by the registered export enterprise-buyer, stating that the goods and/or services bought are directly and exclusively used for the production of goods and/or completion of services to be exported or for utilities and other similar costs, the percentage of allocation to directly and exclusively used for the production of goods and/or completion of services to be exported; and

3. Other documents to corroborate entitlement to VAT zero-rating such as but not limited to duly certified copies of purchase order, job order or service agreement, sales invoices and/or official receipts, delivery receipts, or similar documents to prove existence and legitimacy of the transaction.

VI. REFUND BY LOCAL SUPPLIERS AND RECOVERY OF INPUT VAT PASSED ON TO REGISTERED EXPORT ENTERPRISES

Q38: What are the documentary requirements if the local suppliers will claim for VAT refund under Section 112(A) of the Tax Code, as amended?

A38: In addition to the documentary requirements provided under existing revenue issuances, the supplier-applicant of the RBE-buyer shall be required to submit upon filing of the claim for VAT credit or refund the approved application for VAT zero-rating.



Q39: What will be the recourse of the registered export enterprise if VAT is passed on by its suppliers of goods and services directly and exclusively used in the registered project or activity?

A39: Since the transaction is already considered VAT zero-rated under the provisions of CREATE, no VAT shall be passed on to the registered export enterprise on its purchases of goods and services directly and exclusively used in the registered project or activity.

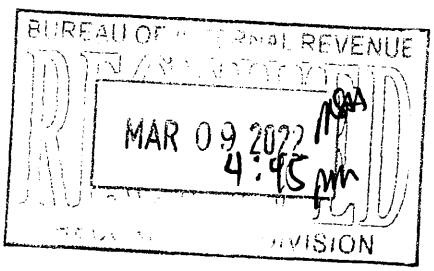
Should the local supplier inadvertently passed on VAT to the registered export enterprise, the latter may contest the same and/or resolve with the former the reimbursement of VAT paid, if any. The previously issued SI/OR to the registered export enterprise having VAT imposed must be surrendered/returned to the local supplier for cancellation and replacement.

Q40: What will be the recourse of registered export enterprises for the VAT passed on by its suppliers for purchases of goods and/or services not directly and exclusively used in the registered project or activity?

A40: Section 112(A) of the Tax Code, as amended, prescribes that *"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****."* In this regard, the CREATE Act has prescribed that the purchases, to be considered VAT zero-rated, shall only apply to goods and/or services directly and exclusively used in the registered project or activity, during the period of registration of the said registered project or activity with the concerned IPA.

Reconciling both provisions, VAT paid or incurred for purchases not directly and exclusively used in the registered project or activity of the registered export enterprise are not allowed for VAT refund under Section 112(A) of the Tax Code, as amended. However, the following options may be availed of:

1. If VAT registered and enjoying ITH, claim the passed on VAT as input tax credit under Section 110 of the Tax Code, as amended, and apply against future output VAT liabilities; or
2. Should there be no sales subject to VAT, accumulate the input tax credits and claim as VAT refund upon expiration of VAT registration (i.e., end of ITH period and the 5% SCIT incentive commences) pursuant to Section 112(B) of the Tax Code, as amended, and implemented in Section 4.112-1(b) of RR No. 13-2018; or
3. If non-VAT registered, charge to cost or expense account.



All revenue issuances and BIR Rulings inconsistent herewith are hereby considered amended, modified or revoked accordingly.

All revenue officials concerned are enjoined to give this Circular as wide a publicity as possible.

This Circular takes effect immediately.

CAESAR R. DULAY
Commissioner of Internal Revenue

by: 050278

BUREAU OF INTERNAL REVENUE
RECEIVED
MAR 09 2022
4:45 pm
RECORDS ... DIVISION