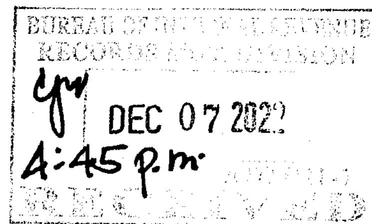
REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE



REVENUE MEMORANDUM CIRCULAR NO. 152 - 2022

SUBJECT : Clarifies Further the Transitory Provisions for the VAT Zero-Rate Incentives Under Sections 294(E) and 295(D), Title XIII of the Tax Code, as amended, and as Implemented by Section 5, Rule 2 and Section 5, Rule 18 of the CREATE Act Implementing Rules and Regulations (CREATE IRR)

TO : All Internal Revenue Officials, Employees and Others Concerned

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This Circular is issued to provide further clarification and guidelines to several issues raised in the implementation of the transitory provisions of Revenue Regulations (RR) No. 21-2021 and as explained in Revenue Memorandum Circular (RMC) Nos. 24-2022 and 49-2022. These issuances implement and clarify the incentives provision in Sections 294(E) and 295(D), Title XIII of the Tax Code, as amended, and Section 5, Rule 2 and Section 5, Rule 18 of the CREATE Act Implementing Rules and Regulations (CREATE IRR).

I. **TRANSACTIONS THAT HAVE BECOME SUBJECT TO VAT.** Pursuant to RR No. 21-2021 and as clarified by Q & A No. 26 of RMC No. 24-2022[i], Registered Export Enterprises (REEs) whose incentives period have already expired are already subject to VAT. Thus, such entities are no longer qualified for VAT zero-rating on their local purchases starting from the effectivity of RR No. 21-2021 on December 10, 2021. While RR No. 21-2021 has already become effective, RMC No. 24-2022 was only issued on March 9, 2022. Thus, there might be suppliers that declared their sales to unqualified RBEs as subject to VAT at zero-percent (0%) from December 10, 2021 to March 8, 2022. These include REEs with expired incentives (e.g. Income Tax Holiday) that were erroneously endorsed by their respective Investment Promotion Agencies (IPAs) as still qualified for VAT zero-rating. Since the REE buyers have been endorsed for VAT zero-rating by their respective IPAs, the sellers/suppliers might have treated and declared their sales to these REEs as VAT zero-rated in their respective quarterly VAT returns.

   As clarified under Q & A No. 26 of RMC No. 24-2022, REEs whose incentive periods have already expired are already subject to 12% VAT. Thus, they are no longer qualified for VAT zero-rating on their local purchases. However, considering that RMC No. 24-2022 was issued only on March 9, 2022, confirming that the said transactions are indeed subject to VAT at 12%, affected suppliers are now in a quandary on whether or not they have to revert the sales from VAT zero-rated to subject to 12 % VAT.

Q1: Will there be a retroactive effect for transactions that have become subject to VAT pursuant to RR No. 21-2021 and up to the clarification made in Q & A No. 26 of RMC No. 24-2022?

A1: Yes. Taking into account that a retroactive application of RMC No. 24-2022 may prejudice the affected taxpayers, it is hereby clarified that the above transactions which transpired from the effectivity of RR No. 21-2021 on December 10, 2021 up to the day before the effectivity of RMC No. 24-2022 on March 8, 2022, shall remain as VAT zero-rated.

Q2: In case the purchaser is qualified for VAT zero-rate, but was imposed 12% VAT by the seller for the said transitory period, what will be the procedures to correct the situation?

A2: The buyer and the seller may pursue any of the following:

1. **Retain the transaction as subject to 12% VAT.** The seller shall 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 deducted from output tax, if any. 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.

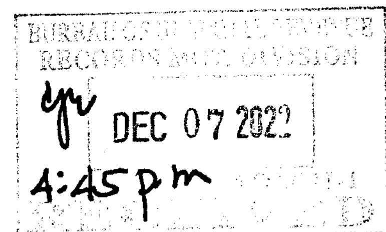
2. **Revert the transaction from VAT at 12% to VAT zero-rated.** Where the transactions have already been declared in the VAT return/s, the seller may amend the same after reimbursing/returning the VAT paid by the buyer that is an REE.

   The adjustment to sales shall only be to the extent of the reimbursed VAT to the REE. 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, since the corresponding sale is reverted to VAT zero-rated.

   On the part of the VAT-registered REE purchaser, the VAT return/s filed shall likewise be amended to reflect the reduced input VAT it previously declared in the VAT return/s.

   In this regard, the seller shall retrieve the VAT Sales Invoice/Official Receipt (SI/OR) originally issued to the REE 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.

II. REGISTRATION FROM VAT TO NON-VAT OF REEs THAT ARE UNDER THE 5% GROSS INCOME TAX (GIT)/SPECIAL CORPORATE INCOME TAX (SCIT). Q&A No. 31 of RMC No. 24-2022, as amended by RMC No. 49-2022[ii], requires REEs who have completed their ITH and now under the 5% GIT/SCIT regime or those already enjoying the 5% GIT/SCIT upon the effectivity of CREATE Act but remained VAT-registered to change their registration to non-VAT within two (2) months from the expiration of the ITH incentive or effectivity of RMC No. 49-2022, whichever is applicable.



Q3: For those REEs that changed their status from "VAT" to "non-VAT", will they now be subject to Percentage Tax (PT)?

A3: No. The said requirement to change the registration from "VAT" to "non-VAT" does not necessarily mean that these REEs are subject to Percentage Tax (PT). "PT" tax type should not be registered since these REEs are only subject to GIT/SCIT in lieu of all other internal revenue taxes. These taxpayers are only required to file and pay the corresponding tax due in their respective Annual or Quarterly Income Tax Returns (BIR Form No. 1702/1702Q), subject to regular validation by the RDO or Large Taxpayer Audit Division where the REE is registered in order to verify whether no project or activity other than those that are registered under the 5% GIT/SCIT is being carried out by the REE. If found to be in violation, a corresponding assessment and penalties shall be imposed accordingly.

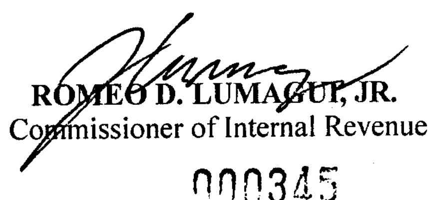
Q4: Since these REEs are required to register as non-VAT taxpayer, are they still qualified for the 0% VAT on their local purchases of goods and services that are directly and exclusively used in their registered activity?

A4: Yes. These REEs can enjoy their VAT zero-rate incentive on their local purchases until the end of their incentive period. Note that as clarified under Q & A No. 26 of RMC No. 24-2022, REEs whose incentive periods have already expired will be subject to 12% VAT on the local purchases.

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.



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Commissioner of Internal Revenue

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[1] *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.

[ii] *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: Registered export enterprises whose sales are generated only from the registered activity and have shifted from ITH to 5% GIT or SCIT regime shall within two (2) months from the expiration of their ITH, change their registration status from a VAT-registered entity to non-VAT. Likewise, registered export enterprises enjoying 5% GIT regime but are still VAT-registered at the time the CREATE Act took effect shall within two (2) months from the effectivity of this Circular change their registration status to Non-VAT.

However, if the taxpayer has other activities other than those registered with the IPA that are subject to VAT (i.e., VAT at 12% and 0%), it shall remain as a VAT taxpayer and shall report the sales in the VAT returns as VATable, zero-rated and/or VAT-exempt, as the case may be.