

ADVISORY ON VAT ZERO-RATING PROVISIONS UNDER CREATE

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BIR REVENUE MEMORANDUM CIRCULAR NO. 24-2022	11
Clarifying Issues Relative to RR No. 21-2021 Implementing the Amendments to the VAT Zero-Rating Provisions under the 1997 NIRC, as amended by CREATE	

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Clarifying Issues Relative to RR No. 21-2021 Implementing the Amendments to the VAT Zero-Rating Provisions under the 1997 NIRC, as amended by CREATE

ON CLARIFICATION OF APPLICABLE RULES

Q1: Prior to CREATE, what rule governs the sale of goods and services by a VAT-registered seller from the customs territory to registered business entities (“RBE”) within the ecozone or freeport?

A1: Following the *cross border doctrine*, such sale of goods and services were treated as constructive export subject to zero-percent (0%) VAT.

Q2: With the passage of CREATE, is the *cross border doctrine* still applicable?

A2: No. The *cross border doctrine* has been rendered ineffectual and inoperative for VAT purposes because:

- CREATE expressly provided that only those goods and services that are directly and exclusively used in the registered project/activity of the RBE qualify as VAT 0% local purchases;
- CREATE and its IRR stated certain parameters for the availment of VAT zero-rating on local purchases of registered export enterprises, regardless of location; and
- VAT zero-rate provisions now provide that the effectively zero-rated sales shall apply only 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: With the passage of CREATE, what rules govern the enjoyment of VAT exemptions and zero-rated incentives for RBEs?

A3: Enterprises registered with Investment Promotion Agencies (“IPA”) shall now be governed by CREATE with respect to the availment of tax incentives, including VAT exemption of RBEs enjoying the 5% gross income earned or special corporate income tax.

In addition, enterprises registered prior to CREATE shall continue to enjoy VAT exemptions and zero-rating on local purchases of goods and services provided that it shall only apply to goods and services directly attributable to and exclusively used in the registered project/activity of the export enterprise during the period of registration until the expiration of the transitory period under Section 311 of the 1997 NIRC, as amended.

Q4: Can enterprises located within ecozones and freeports still invoke Sections 106(A)(2)(b) [on transactions deemed sale] and 108(B)(3) [on services rendered to persons or entities exempt under special laws or international agreements to which the Philippines is a signatory] of the 1997 NIRC, as amended, after the effectivity of CREATE to claim VAT zero-rating on local purchases of goods and services?

A4: No. These business enterprises shall only be accorded VAT zero-rating on local purchases of goods and/or services that are directly and exclusively used in the registered project or activity of the registered export enterprises.

ON EFFECTIVITY AND TRANSITORY PROVISIONS

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

A5: It took effect on December 10, 2021.

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

A6: Retroactive application is justified since it will be beneficial to taxpayers who would be able to reclassify their sales from VATable to zero-rated.

Q7: What will be the VAT treatment for the 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: The seller should declare the same as subject to 12% VAT.

Consequently, the buyer:

- if VAT-registered – can utilize the input tax as credit against output tax;
- if engaged in zero-rated activities – can recover through VAT refund; or
- if not VAT-registered – claim it as part of the cost of sales or expenses.

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

A8: The seller and buyer have the following options:

- Retain the transaction as subject to VAT wherein the seller shall declare the same as subject to 12% VAT while the buyer:

- if VAT-registered – can utilize the input tax as credit against output tax;
- if engaged in zero-rated activities – can recover through VAT refund; or
- if not VAT-registered – claim it as part of the cost of sales or expenses.

- Revert the transaction from VATable to zero-rated wherein the seller may amend the VAT return after reimbursing/returning the VAT paid by the buyer. The adjustment to sales shall only be to the extent of the reimbursed VAT. The resulting overpayment due to the unutilized input tax credits, if any, may be recovered through VAT refund.

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

A9: The seller shall retrieve the same for cancellation and replacement with a zero-rated SI/OR. A list shall be prepared by the seller containing the VAT SI/OR cancelled together with the corresponding zero-rated SI/OR replacement subject to validation by the BIR.

Q10: RR No. 21-2021 was issued a 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 (“DME”) within ecozones and freeports 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 CREATE?

A10: Transactions considered by the seller as VAT zero-rated shall remain as VAT zero-rated for the period July 1, 2021 to December 9, 2021. The non-retroactivity rule can be applied in as much as treating the transaction as VATable will be prejudicial to the taxpayers affected.

However, if the said sales were already treated as subject to VAT, the options in Q&A No. 7 and 8 may be followed.

ON VAT TREATMENT OF SALE TO REGISTERED EXPORT ENTERPRISES UPON THE EFFECTIVITY OF CREATE

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

A11: The said transactions shall be treated as VAT zero-rated. However, it shall apply only to goods and/or services directly and exclusively used in the registered project or activity for a maximum period of 17 years from the date of registration, unless extended under the SIPP.

The enjoyment of VAT exemption and duty incentives is reckoned from the date of registration and throughout the period as indicated in its Certificate of Registration.

The term *date of registration* shall refer to the date of registration of the registered project or activity as reflected in the Certificate of Registration issued by the concerned IPA.

Q12: What is a registered export enterprise?

A12: It 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 IT activities and BPO, and resulting in 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 70% of its total production or output (Section 4(M), Rule 1 of the CREATE IRR).

It also refers to 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: It refers to raw materials, supplies, equipment, goods, packaging materials, services, including the 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 a portion of the expense directly and exclusively used for the registered project or activity shall qualify for VAT zero-rating on local purchases, excluding those used for administrative purposes. The registered export enterprise should adopt a method to best allocate goods or services purchased. If the goods or services 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.

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.

Costs incurred prior to the registration of a project or activity is not included.

Q15: Are 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 shall be allowed for 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 categorized as DMEs are not entitled to VAT zero-rating on local purchases and these shall be subject to VAT at 12%. In addition, the following are not entitled to VAT zero-rating on its purchases despite being duly accredited or licensed by any of the IPAs:

- ✘ Customs brokerage
- ✘ Trucking services
- ✘ Forwarding services
- ✘ Janitorial services
- ✘ Security services
- ✘ Insurance
- ✘ Banking and other financial services
- ✘ Consumers' cooperatives
- ✘ Credit unions
- ✘ Consultancy services
- ✘ Retail enterprises
- ✘ Restaurants
- ✘ Other similar services as may be determined by FIRB

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

A17: The DME under the 5% GIT or SCIT regime and registered as VAT exempt shall treat its revenues as VAT exempt. The VAT passed on to it by VAT-registered local suppliers shall form part of its costs or expenses.

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

A18: The following rules shall apply (even to the sale of a DME to a registered export enterprise):

- ✘ If the seller is VAT-registered while enjoying ITH – Subject to VAT at zero-rate provided that the goods and services are directly and exclusively used in the latter's registered project or activity.
- ✘ If the seller is enjoying 5% GIT, the sale of goods and/or services shall be VAT-exempt.

Q19: Are non-RBE export-oriented enterprises also accorded with the benefits under Title XIII (on tax incentives) of the 1997 NIRC, as amended?

A19: No. The incentive shall only be limited to VAT zero-rating on its direct exports. However, if the non-RBE exporter is VAT-registered and sells goods and services to a registered export enterprise, the first rule under Q&A No. 18 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 treatment is as follows:

- If the purchaser is a registered export enterprise, regardless of location, the transaction is subject to VAT at zero-rate provided that the goods and services are directly and exclusively used in a registered project or activity of the registered export enterprise.
- If the seller is a non-registered export enterprise or a DME, regardless of location, and is under the following regimes:
 - If under 5% GIT – the transaction is VAT-exempt
 - If not under 5% GIT – the transaction is generally subject to VAT at 12%, in which case, the first rule 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: The corresponding VAT on importation should be paid accordingly. For partial utilization, the amount corresponding to the VAT on 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 BOI and those that are located in ecozones and freeports are covered under Title XIII of the 1997 NIRC, as amended, how about sales to enterprises covered by special laws other than those mentioned?

A22: Sales to enterprises covered by special laws (such as the RE Law, the IRRI Charter, the ADB Charter) are still subject to VAT at 0%.

ON 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 of freeports also qualified for VAT zero-rating?

A23: Yes. Such transactions are qualified for VAT zero-rating until the expiration of the transitory period or the remaining period of their incentives. However, it shall only apply to goods and services directly and exclusively used in the registered project or activity of the registered export enterprise.

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

A24: No. The sale of goods or services to existing registered non-export enterprises located inside the ecozones of freeports is subject to VAT at 12%. On the other hand, the sale of goods or services by existing registered non-export enterprises located inside the ecozones of freeports are 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: These sales are subject to VAT at zero-rate but shall only apply to goods and 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 the incentives.

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

A26: The transaction shall be subject to VAT.

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 1997 NIRC, as amended?

A27: No. These transactions have already been considered subject to VAT under TRAIN.

Q28: What is the VAT treatment on the sale of processing, manufacturing, or repacking of goods by a PEZA-RBE 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 BSP?

A28: The sales, if made by a PEZA-RBE entitled to the 5% GIT, are exempt from VAT. In this case, the service fee shall be indicated in the OR 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 non-resident buyer for delivery to a resident local export-oriented enterprise to be used in processing, manufacturing, packaging, 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: The sales, if made by a PEZA-RBE entitled to the 5% GIT, are exempt from VAT.

Q30: What rule applies to registered export enterprises with multiple incentives regimes as they have more than one registered activity?

A30: The registered export enterprise shall remain VAT-registered until the expiration of the ITH for all registered activities and all its activities are covered by the 5% GIT. The registered export enterprise shall report as VAT exempt the sales under the 5% GIT as provided in Q&A No. 18 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 are already under the 5% GIT or SCIT regime but remained as a VAT-registered entity?

A31: The registered export enterprise is required to change its status from a VAT-registered entity to Non-VAT within 2 months from expiration of its ITH. Registered export enterprises enjoying GIT or SCIT regime but are still VAT-registered upon effectivity of CREATE are required to change its registration status within 2 months from the effectivity of this circular.

ON 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 and suspended applications shall remain effective as if RR No. 9-2021 was not implemented should the taxpayers opt to revert the transaction as VAT zero-rated, except for the 4-day period covering June 27, 2021 to June 30, 2021. Provided, however, that there will be strict compliance with Title XIII of the 1997 NIRC, as amended.

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

A33: Yes. VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in the registered project or activity of the registered export enterprise upon endorsement of the concerned IPA, in addition to documentary requirements of the BIR.

The absence of prior approval may result in the disallowance of the VAT zero-rated sale of the supplier.

Q34: What certifications shall the IPA issue to registered export enterprises? What should the IPA certification contain?

A34: For this purpose, the IPA shall issue annually a VAT zero percent certification only to registered export enterprises which shall indicate:

- registered export activity;
- tax incentives entitlement under agreed terms and conditions with the validity period; and
- the applicable goods and services 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 the BIR the list of RBEs categorized as an 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 incentive?

A36: Prior to the transaction, the registered export enterprise buyers shall provide their suppliers a photocopy of the:

- BIR COR
- Certificate of Registration and VAT certification issued by the concerned IPA containing the information or specifications required under Q&A No. 34.

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

A37: It shall be governed by RMO No. 7-2006 but the following must be included in the attachments to the application for VAT zero-rating:

- Certificate of Registration and VAT certification issued by the concerned IPA;
- Sworn affidavit executed by the registered export enterprise-buyer, stating that the goods and 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
- Other documents to corroborate entitlement to VAT zero-rating such as but not limited to duly certified copies of purchase orders, job orders or service agreements, sales invoices and/or official receipts, delivery receipts, or similar documents to prove existence and legitimacy of the transaction.

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

Q38: What are the documentary requirements of the local supplier who will claim for a VAT refund?

A38: In addition to the documentary requirements 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: No VAT shall be passed on 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, the registered export enterprise may contest the same and/or resolve the reimbursement of VAT paid, if any. The previously issued SI/OR must be surrendered/returned to the local supplier for cancellation and replacement.

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

A40: 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. However, the following options may be availed of:

- If VAT-registered and enjoying ITH – claim the passed on VAT as input tax credit and apply against future output VAT liabilities; or
- Should there be no VATable sales – accumulate the input tax credits and claim as VAT refund upon expiration of the VAT registration; or
- If non-VAT registered, charge to cost or expense account.

Source:

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