REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

Section 311 the Tax Code; Section 5, Rule 18 of IRR of RA No. 11534	OT-	014-2024

Person to Contact: Chief, Legal & Legislative Division
Tel. Nos. 926-55-36/927-09-63

Date: FEB 22 2024

BATANGAS STATE UNIVERSITY
Rizal Avenue Ext., Batangas City
Batangas, Philippines 4200

Attention: **DOC. TIRSO A. RONQUILLO**
University President

Gentlemen:

This refers to your request on behalf of Batangas State University ("**BSU**") for clarification on the application of Value Added Tax ("**VAT**") zero-rating on its transaction with Compact Builders, Inc. ("**CPI**").

It is represented that BSU is an entity registered with the Philippine Economic Zone Authority ("**PEZA**") as an ecozone developer/operator enterprise to establish, develop, administer, manage and operate an Information Technology Park to be known as "BatStateU Knowledge, Innovation and Science Technology Park," pursuant to PEZA Registration Certificate No. dated June 2, 2020; that on November 11, 2021, BSU entered into a Construction Agreement with CPI in order to implement "Kist Park Site Development in Batangas State University Alangilan (Phase 1)" (the "**Project**"); and that in support of the request, BSU claims that pursuant to Section 295(D) of the Corporate Recovery and Tax Incentives for Enterprises Act ("**CREATE Law**"),[1] the VAT exemption on importation and VAT-Zero rating incentive apply to goods and services that are directly and exclusively used in the registered project or activity by a registered business enterprise ("**RBE**") such as BSU.

In reply, please be informed that Section 311 of the National Internal Revenue Code of 1997, as amended ("**Tax Code**")[2] as implemented by Rule 18 of the Implementing Rules and Regulations ("**IRR**") of CREATE Law[3] provides that RBEs may continue to avail of the income tax incentives granted to them before the effectivity of the CREATE Law (i.e., income tax holiday ("**ITH**"), five percent (5%) tax on gross income earned incentive after the ITH). However, these income tax incentives may only be availed of within the transitory period (For ITH, the remaining period of the ITH as specified in the terms and conditions of their registration; For 5% gross income tax, for ten (10) years from the effectivity of the CREATE Law or until April 11, 2031[4]).

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[1] Revenue Memorandum Circular No. 83-2021, Circularizing the Implementing Rules and Regulations of Title XIII of Republic Act No. 8424 Otherwise Known as the "National Internal Revenue Code of 1997" As Amended by Republic Act No. 11534 or the "Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, July 12, 2021.

[2] As amended by Section 16 of CREATE Law.

[3] Revenue Memorandum Circular No. 83-2021, Circularizing the Implementing Rules and Regulations of Title XIII of Republic Act No. 8424 Otherwise Known as the "National Internal Revenue Code of 1997", As Amended by Republic Act No. 11534 or the "Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, July 12, 2021.

[4] The CREATE was signed into law on March 26, 2021. It was published on March 27, 2021 and took effect on April 11, 2021; Revenue Memorandum Circular No. 38-2022, April 6, 2022.

When it comes to the non-income tax incentive such as the VAT zero-rating, it bears stressing that Section 5, Rule 18 of the amended IRR of CREATE Law expressly states that the VAT zero-rating on local purchases incentive shall only apply to goods and services directly attributable to and exclusively used in the registered project or activity of the export enterprises until the expiration of the transitory period.[5] Hence, while it is true that a registered export enterprise ("**REE**") may still avail of the VAT zero rating, the same is limited only to goods and services directly attributable to and exclusively used in the registered project or activity of said export enterprises.

It is worthy to note that Section 21 of the CREATE Law directed the Secretary of Finance and the Secretary of Trade and Industry to promulgate the necessary rules and regulations for the effective implementation of Title XIII (Tax Incentives) of the CREATE Law after due consultations with the Commissioner of Internal Revenue ("**CIR**"), the Board of Investments ("**BOI**"), and other Investment Promotion Agencies ("**IPAs**"), including, for the avoidance of doubt, the authorities governing the Ecozones.

Since all the stakeholders were consulted before the promulgation of the IRR, it is deemed that the locators were properly represented, the interests of the Philippine government and stakeholders were weighed and considered, and all the provisions of the IRR were agreed upon by all the concerned parties. Otherwise, the purpose of the public consultation was defeated.

Having all these on regard, this Office opines that the IRR of CREATE Law is consistent with the existing laws and regulations and, more importantly, with the spirit and intent of the Legislature in enacting the same. Please note that it is a cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.

Such being the case, considering that BSU is a non-export enterprise, this Office hereby rules that its income payment to CPI for the construction of the Project is subject to twelve percent (12%) VAT.

This ruling is issued on the basis of the foregoing facts as represented. However, if upon investigation it shall be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue

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[5] Section 5, Rule 18 of the amended CREATE IRR.