Republic of the Philippines
Department of Finance
BUREAU OF INTERNAL REVENUE
National Office
Quezon City

Bringing in Revenues for Nation-building

CREATE Law; IRR of CREATE Law; Republic Act No. 7916 and its IRR;
RMC No. 24-2022; BIR RULING NO. VAT-424-2022
OT– 055 - 2025 APR 14 2025

CCT CONSTRUCTORS CORPORATION
3rd Floor, Planters Products Building
109 Esteban St., Legaspi Village,
Makati City

Attention: **SHINSUKE YAMAGUCHI**
Treasurer

Gentlemen:

This refers to your request on behalf of CCT Constructors Corporation ("**CCT**") for confirmation of your opinion that the sale of services by CCT to Itabashi Seiki Philippines, Inc. ("**ISPI**") is subject to value-added tax ("**VAT**") at zero-percent rate.

Background

1. CCT (with Taxpayer Identification No. ("**TIN**") s a company organized and existing under the laws of the Philippines duly registered with the Securities and Exchange Commission ("**SEC**") with Corporate Registration No.

2. ISPI (with TIN is a company organized and existing under the laws of the Philippines duly registered with the SEC with Corporate Registration No. engaged in the business of manufacturing, selling, importing, exporting, and dealing in printed wire board (single and double layer) and supplies of every description or kind.

3. ISPI is registered with Philippine Economic Zone Authority ("**PEZA**") as an Ecozone Export Enterprise evidenced by Certificate of Registration No. issued on January 2, 1995.

4. On January 19, 2022, PEZA issued a Certification with Certification No. stating that ISPI is a qualified enterprise for the purpose of VAT zero-rating of its

transactions with its local suppliers of goods and services directly and exclusively used in the registered project or activity.

5. On April 26, 2022, ISPI engaged the services of CCT for roof overlay works and roof framing rehabilitation of ISPI's factory at Cavite Export Processing Zone ("**CEPZ**"), Rosario, Cavite, with a total cost of the "**Project**").

6. As represented, eighty percent (80%) of the Project cost pertains to the works/rehabilitation of the Production Area and twenty percent (20%) of which is of the Administration Area.

7. Prior to the start of the Project, CCT submitted its applications for VAT Zero Rating for the Project to the Bureau of Internal Revenue ("**BIR**") Large Taxpayers ("**LT**") Service, however, it was denied on June 29, 2022 for alleged lack of legal bases as the roof overlay works supplied by CCT to ISPI is not exclusively and directly attributable to the registered project or activity of ISPI without which the said project or activity cannot be carried out.

8. CCT submitted a letter of reconsideration to the Large Taxpayers Service, Regular LT Audit Division III, but it was denied on March 14, 2023.

In reply, please be informed that Section 5, Rule 2 of the Implementing Rules and Regulations[1] of Republic Act No. 11534 or the Corporate Recovery and Tax Incentives for Enterprises Act ("**CREATE Law**") provides that registered export enterprises are granted VAT zero-rating incentive on their local purchases of goods and services that are directly and exclusively used in its registered project or activity, to *wit*:

> *"Rule 2*
> *Tax and Duty Incentives*
>
> *xxx xxx xxx*
>
> *SECTION 5. Value-Added Tax (VAT) Zero-Rating and Exemption. – The VAT exemption on importation and VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in the registered project or activity of export enterprises, during the period of registration of the said registered project or activity with the concerned IPA; ... xxx*
>
> *The direct and exclusive use in the registered project or activity refers to raw materials, inventories, supplies, equipment, goods, services and other expenditures necessary for the registered project or activity without which the registered project or activity cannot be carried out."* (Underscoring supplied)

[1] 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, June 22, 2021.

For this purpose, under Questions No. 13 and 14 of Revenue Memorandum Circular ("**RMC**") No. 24-2022,[2] the BIR clarified what is meant by the phrase "direct and exclusive use," to wit:

> *"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."* (Emphasis and underscoring supplied)

Based on the afore-quoted provisions, purchases of goods and services includes the expenditures that are/will be directly and exclusively used in or attributable to the registered project or activity, without which the registered project or activity cannot be carried out. By phrasing the provision in such way, it is clear that the intention of the legislators is to subject to VAT zero-rating only those expenditures that are directly and exclusively used in the registered project or activity, excluding any expenses that may be important but the absence of which, will not impede the continuous operation the same.

The BIR acknowledges the fact that the categorization of expenses as to what falls under "directly and exclusively used in business" depends on the nature of the registered project or activity of the export enterprise. That is why it is important to emphasize that the

[2] 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 9R/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), February 23, 2022.

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assessment or evaluation whether a certain purchase/expenditure is actually indispensable for the registered project or activity of the export enterprise and without which the project or activity cannot be carried out is heavenly dependent on the actual facts as determined by the BIR.

In this light, this Office is of the position that the proper office to conduct the evaluation or determination whether the Project is indeed indispensable for ISPI's registered project or activity and without which such project or activity cannot be carried out, hence, any related costs is subject to VAT at zero percent (0%) rate, is the Regular LT Audit Division III, the office which has jurisdiction over ISPI.

Considering that Regular LT Audit Division III has already thoroughly evaluated ISPI's application and its supporting documents in accordance the CREATE Law, this Office fully respects the factual determination made by Regular LT Audit Division III and their decision that the entire purchase/cost of the Project is not qualified for VAT zero rating incentive. ISPI is, however, not precluded from availing of the proper legal remedy as provided in the National Internal Revenue Code of 1997, as amended, and other laws, rules and regulations, on the adverse decision of the BIR.

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

Copy furnish:

BETHSHEBA R. BAUTISTA
Chief
Regular LT Audit Division III

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