June 23, 2021

BIR RULING NO. VAT-217-21

RA No. 9513; *CIR vs. Team Energy*, G.R. No. 230412

Stepasia, Inc.
1100, 88 Corporate Center
Sedeño cor. Valero Sts.
Salcedo Village, Makati City

Attention: *AAA*

Gentlemen :

This refers to your request for a confirmatory ruling on the following issues, to wit:

1. Whether or not a renewable energy developer (RE Developer) is required to obtain a Certificate of Compliance (COC) from the Energy Regulatory Commission (ERC) for its sales to be subject to zero-rated value-added tax (VAT); and,

2. Whether or not the sales of the RE Developer during its commissioning and testing phase can be considered a VAT zero-rated sale for the purpose of VAT refund.

Anent the first issue, please be informed that in the case of *CIR vs. Team Energy Corporation, G.R. No. 230412* dated March 27, 2019, the Supreme Court had the occasion to clarify that in a claim for a VAT refund, a COC is required when the claim is anchored on Republic Act (RA) No. 9136 or the Electric Power Industry Reform Act (EPIRA). The pertinent portions of the aforesaid case is quoted hereunder, *viz.*:

> *"In Commissioner of Internal Revenue v. Toledo Power Company which affirmed the said CTA decision, this Court essentially held that the requirements of the EPIRA must be complied with only if the claim for refund is based on EPIRA. The*

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pertinent portion of the decision reads:

> *'Now, as to the validity of TPC's claim, there is no question that TPC is entitled to a refund or credit of its unutilized input VAT attributable to its zero-rated sales of electricity to NPC for the taxable year 2002 pursuant to Section 108 (B) (3) of the NIRC, as amended, in relation to Section 13 of the Revised Charter of the NPC, as amended. Hence, the only issue to be resolved is whether TPC is entitled to a refund of its unutilized input VAT attributable to its sales of electricity to CEBECO, ACMDC, and AFC.*
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> xxx xxx xxx
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> *Section 6 of the EPIRA provides that the sale of generated power by generation companies shall be zero-rated, Section 4 (x) of the same law states that a generation company "refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity." Corollarily, to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA, a taxpayer must establish: (1) that it is a generation company, and (2) that it derived sales from power generation.*
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> xxx xxx xxx
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> *In this case, when the EPIRA took effect in 2001, TPC was an existing generation facility. And at the time the sales of electricity to CEBECO, ACMDC, and AFC were made in 2002, TPC was not yet a generation company under EPIRA. Although it filed an application for a COC on June 20, 2002, it did not automatically become a generation company. It was only on June 23, 2005, when the ERC issued a COC in favor of TPC, that it became a generation company under EPIRA. Consequently, TPC's sales of electricity to CEBECO, ACMDC, and AFC cannot qualify for VAT zero-rating under the EPIRA. 15 (Citations omitted)'*

In the recent case of Team Energy Corporation v. Commissioner of Internal Revenue, the Court likewise rejected the contention of the CIR that Team Energy is not entitled to tax refund or tax credit because it cannot qualify for VAT zero-rating for its failure to submit its ERC Registration and COC required under the EPIRA. In this case, the Court ruled:

> *Here, considering that Team Energy's refund claim is premised on Section 108(B)(3) of the 1997 NIRC, in relation to NPC's charter, the requirements under the EPIRA are inapplicable. To qualify its electricity sale to NPC as zero-rated, Team Energy needs only to show that it is a VAT-registered entity and that it has complied with the invoicing requirements under Section 108(B)(3) of the 1997 NIRC, in conjunction with Section 4.108-1 of Revenue Regulations No. 7-95."* (Underscoring supplied)

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As discussed above, it is clear that a COC is relevant in the claim for VAT refund only when such claim is anchored on the EPIRA Law. It is well to state in this regard that in Revenue Memorandum Order (RMO) No. 47-2020 (dated November 24, 2020) [1] the documentary requirements to be submitted by taxpayers engaged in renewable energy on claims for VAT credit/refund under Section 108 (B) (7) of the 1997 Tax Code, as amended, [2] are the following, on a per transaction or project basis:

(1) Photocopies of Certificate of Registration and Accreditation issued by the Department of Energy (DOE); and,

(2) Certificate of Endorsement from the DOE, through the RE Management Bureau.

In addition, Section 18 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9513, otherwise known as the "Renewable Energy Act of 2008," requires for the availment of incentives and other privileges therein the registration of RE developers, and manufacturers, fabricators, and suppliers of locally-produced equipment with the Board of Investments (BOI). In both the RMO No. 47-2020 and the IRR of RA No. 9513, COC is not mentioned.

Given the pronouncement of the Court in *CIR vs. Team Energy Corporation*, *supra*, it would appear that if the claim for VAT refund is not anchored on EPIRA but on the NIRC of 1997, as amended, or the Renewable Energy Act of 2008 for that matter, COC is not one of those documents required to be submitted.

On the second issue of whether the sales of the RE Developer during its commissioning and testing phase can be considered a VAT zero-rated sale for the purpose of VAT refund, RA No. 9513 otherwise known as the "Renewable Energy Act of 2008," provides:

> "Section 15. Incentives for Renewable Energy Projects and Activities. — RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:
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> xxx xxx xxx
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> (g) Zero Percent Value-Added Tax Rate. — The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to

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the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337."

Relative thereto, Section 108 (B) (7) of the 1997 Tax Code, as amended, provides:

"SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. —

xxx xxx xxx

(B) Transactions Subject to Zero Percent (0%) Rate — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.

xxx xxx xxx

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels."

Based on the above provisions, the sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, is subject to zero percent VAT. Thus, as long as the power or fuel is generated through renewable sources of energy, the sale thereof is subject to zero percent VAT regardless of the stage of the operation of the RE Developer. However, while the law did not distinguish at what stage of the operation of the RE developer can it sell power that is entitled to zero percent VAT, this must be interpreted in conjunction with the Supreme Court decision in *CIR vs. Team Energy Corporation*, *supra*, where the Court held that for the purpose of claiming VAT refund based on the EPIRA, the RE Developer must have a COC before it can operate as RE Developer and be entitled to zero VAT rate on its sale of power generated from renewable sources of energy. Also, RE developer must be authorized to sell power generated from renewable sources of energy during commissioning and testing phase. On the other hand, given the pronouncement of the Court in *CIR vs. Team Energy Corporation*, *supra*, it would appear that if the claim for VAT refund is not based on EPIRA but based on the NIRC of 1997, as amended, or the Renewable Energy Act of 2008, no COC is needed.

This ruling is being issued on the basis of the facts and documents as represented and submitted. However, if upon investigation, the BIR ascertains that the facts are different, then this ruling shall be considered null and void.

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Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. Consolidated and Updated Guidelines and Procedures on the Processing of Claims for Value-Added Tax Credit Refund Except Those under the Authority and Jurisdiction of the Legal Group.
2. See Annex "A-1" of RMO No. 47-2020.

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