January 6, 2021

BIR RULING NO. VAT-002-21

RA No. 8436, as amended by RA No. 9369;
BIR Ruling No. 016-2018, BIR Ruling No. 1242-2018

Commission on Elections
Intramuros, Manila

Attention: *Bartolome J. Sinocruz*
Executive Director

Gentlemen :

This refers to your letter dated September 17, 2020, requesting on behalf of the Commission on Elections ("COMELEC" for brevity), for confirmation that its local procurements of goods and services as well as importation of goods are subject to zero percent (0%) value-added tax (VAT) under the National Internal Revenue Code (NIRC) of 1997, as amended, pursuant to Republic Act (RA) No. 8436, as amended by RA No. 9369.

It is represented that the COMELEC is an independent Constitutional Commission whose primary mandate under the 1987 Constitution is to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall. In relation thereto, the COMELEC will administer the 2022 Automated National Elections. In preparation to the said elections, the COMELEC started its bidding process for the procurement of goods and services since September 2020. The goods and services that have been procured and/or to be procured by the COMELEC in relation to the 2022 Automated National Elections are as follows:

1. Automated Election System (AES) Certification by an International Certification Entity (ICE);

2. AES groups/committees and election supplies and materials (accountable and non-accountable);

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3. Ballot Boxes;

4. Ballot Paper Rolls and Marking Pens;

5. Ballot Papers, Printing of Official Ballots (OB) and other Accountable and Non-Accountable Forms;

6. Ballot printing facilities, and other related ballot goods and services;

7. OB Packaging;

8. Transport and Delivery of Ballot Boxes;

9. Central Server, Transparency Server, Back-up Sever and other equipment and services needed in Election Results Transmission Solutions, Management Related Services (ERSTSMRS);

10. Command and Media Center;

11. Deployment Services;

12. Election Management System (EMS);

13. External Batteries;

14. I-Buttons with handle;

15. Laptops, Printers and USB key(s) for Canvassing and Consolidation System (CCS) and other CCS items;

16. National Technical Support Center (NTSC) related goods and services;

17. Optical Mark Reader or Optical Scan with EMS and other related requirements;

18. Printing with Toners;

19. Printing Services for Election Day Computerized Voter's List (EDCVL);

20. Reverse Logistics of Equipment, Peripherals, Forms, Supplies;

21. Secure Digital (SD) Card Write-Once-Read-Many (WORM);

22. SD Card Main;

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23. SD Card Duplicators;

24. SD Card Readers and Memory Card Readers;

25. Technical Support;

26. Thermal Papers;

27. USB Tokens;

28. Voter Registration and Verification Project (VRVP) related goods and services;

29. Warehousing Services; and

30. Other automated election-related goods and services as the COMELEC may deem necessary.

In view thereof, you now request for confirmation that the local procurements as well as importation of goods and services are subject to zero percent (0%) value-added tax (VAT) under the NIRC of 1997, as amended, pursuant to RA No. 8436, as amended by RA No. 9369, as cited in the Decision of the Court of Tax Appeals (CTA)-First Division in the case entitled: *Smartmatic-Tim Corporation vs. Commissioner of Internal Revenue* [1] which was eventually affirmed by CTA *En Banc* in CTA *En Banc* No. 1480. [2]

In reply, please be informed that RA No. 8436, as amended by RA No. 9369, provides for the COMELEC's exemption from taxes on its procurement of goods and services in relation to the automated elections, *viz.*:

> *"**SEC. 12. Procurement of Equipment and Materials**. — To achieve the purpose of this Act, the Commission is authorized to procure, in accordance with existing laws, by purchase, lease, rent or other forms of acquisition, supplies, equipment, materials, software, facilities and other services, from local or foreign sources free from taxes and import duties, subject to accounting and auditing rules and regulations. With respect to the May 10, 2010 elections and succeeding electoral exercises, the system procured must have demonstrated capability and been successfully used in a prior electoral exercise here or abroad. Participation in the 2007 pilot exercise shall not be conclusive of the system's fitness."* (Underscoring supplied)

In view of the foregoing and as held in BIR Ruling No. 1242-2018 dated October 12, 2018, this Office is of the opinion that the COMELEC is exempt from the 12% VAT on its local purchases of goods and services as well as VAT on its importation of goods and services that will be used in the automated national and local elections. Accordingly, the

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suppliers/sellers of goods and services to the COMELEC cannot shift or pass on any VAT to COMELEC on the latter's purchases of goods and services [3] in pursuance to 2022 Automated National Elections.

It must be emphasized, however, that the exemption of the COMELEC from VAT on its purchase of goods as well as its procured services are limited only to its purchases and/or importation of goods and services enumerated above during the period beginning September 2020 until completion of the post-election activities; provided further, that the aforesaid purchases and/or importation of goods and services will be used in, or directly related to, the conduct of the 2022 Automated National Elections. [4]

Consequently, any purchase of goods and services directly related to the 2022 Automated National Elections will not be subject to the 5% final VAT in accordance with Section 114 (C) of the NIRC of 1997, as amended, and as implemented by Section 4.114 (2) (a) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 13-2018, to wit: [5]

> *"Sec. 4.114-2.* ***Withholding of VAT on Government Money Payments.*** *— (a) The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and/or of services which are subject to the value-added tax imposed in Secs. 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof."*

However, purchases of goods and services not related to the said election shall be subject to the above-preceding provision.

It is worth noting that Article 8 of the New Civil Code enjoins adherence to judicial precedents. The law requires courts to follow a rule already established in a final decision of the Supreme Court. [6] However, the decisions of CTA are not given the same level of recognition. [7] At the most, decisions of the lower courts only have a persuasive effect. [8] Therefore, the pronouncement in CTA *En Banc* No. 1480 [9] as to the treatment of purchases of goods and services from local and foreign sources in relation to automated elections as zero percent (0%) VAT cannot, by any stretch of imagination, be sustained.

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

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

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Footnotes

1. CTA Case No. 8643, June 16, 2016.
2. Decided on September 28, 2017.
3. BIR Ruling No. 016-2018 dated October 10, 2018.
4. *Ibid*.
5. BIR Ruling No. 1242-2018 dated October 12, 2018.
6. *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203249 dated July 23, 2018.
7. *Supra*.
8. *United Coconut Planters Bank vs. Spouses Uy*, G.R. No. 204039 dated January 10, 2018.
9. Decided on September 28, 2017.

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