REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

October 27, 2005

REVENUE MEMORANDUM CIRCULAR NO. 61-2005

SUBJECT : **Clarifying the VAT Provisions of R.A. 9337 Applicable to the Power Industry**

TO : **All Internal Revenue Officers and Other Concerned**

This Revenue Memorandum Circular is issued in order to publish and clarify certain provisions of Revenue Regulations No. 14-2005 as amended by Revenue Regulations No. 16-2005, implementing the Tax Code of 1997, as amended by Republic Act No. 9337, affecting generation, transmission, and distribution companies as well as electric cooperatives as defined in R.A. 9136 (EPIRA) subject to the value added tax as well as their suppliers and customers effective November 1, 2005.

Q1 – Beginning November 1, 2005, what kind of business tax under the NIRC applies to the sale of electricity by generation, transmission, and distribution companies as well as by electric cooperatives?

A1 – Generation, transmission, and distribution companies as well as electric cooperatives shall be subject to the value-added-tax on their sale of electricity pursuant to the provisions of Section 108, in relation to Section 109, all of the Tax Code, as amended by Republic Act No. 9337.

Section 108(A) of the Tax Code, as amended, imposes a value added tax equivalent to ten percent **(10%)** of gross receipts derived from the sale or exchange of services, including the use or lease of properties. The 10% VAT rate may however be raised by the President effective January 1, 2006, if any of the following conditions has been satisfied:

> "(i.) Value-added tax collections as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifths percent (2 4/5%); or
>
> "(ii.) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%)."

Q2 – How do you compute Gross Receipts, for VAT purposes, of generation, transmission, and distribution companies as well as electric cooperatives?

A2 – For purposes of this RMC, Gross Receipts shall refer to the following:

a. The total amount paid to the generation companies for the sale of electricity and related ancillary services. The latter is billed and collected by the transmission company which shall remit such collection to the concerned generation company.
b. The total amount paid to the National Transmission Corporation for the transmission of electricity and related electric services.
c. The total amount paid to the Distribution Utilities, which include Electric Cooperatives, for the distribution of electricity and related electric services.

Gross Receipts shall not include the Energy Tax under Batas Pambansa 36, the Universal Charges implemented under the EPIRA (RA 9136), Benefits to Host Communities under Energy Regulation 1-94; and security deposit for metering machine including interests *provided* that when applied to the consumer's liability it shall be subject to VAT.

Gross Receipts shall be net of discounts and gross of penalties.

Q3 – Being liable to the value added tax, what are the administrative requirements that must be complied with by generation, transmission, and distribution companies as well as by electric cooperatives?

A3 – The administrative requirements that must be complied shall include the following activities:

1. Before November 1, 2005

    a. Registration –
        i. BIR Form No. 1901 (for Individual)
        ii. BIR Form No. 1903 (for Non-Individual)
        iii. BIR Form No. 1905 (Registration Update)

    b. Invoicing –
        i. BIR Form No. 1906 (Application for Authority To Print Receipts and Invoices)
        ii. BIR Form No. 1907 (Application for Permit to Use Cash Register Machine/Point-of-Sale Machine)

    c. Bookkeeping –
        i. BIR Form No. 1900 (Application for Authority to Use Loose-Leaf/Computerized Books of Accounts and/or Accounting Record)

2. On or after November 1, 2005

   a. Filing of tax returns and payment of taxes –
      i. BIR Form No. 2550M (Monthly VAT Declaration)
      ii. BIR Form No. 2550Q (Quarterly VAT Return)
      iii. BIR Form No. 1702 (Quarterly/Annual Income Tax Return)

   b. Withholding of tax –
      i. BIR Form No. 1600 to 1604 (Withholding Tax Remittance Return)

   c. Filing of inventories.

Q4 – Generation companies are already registered as VAT zero-rated taxpayer, do they have to update their registration as VAT taxpayer subject to 10% regular rate?

A4 – Yes, they just have to fill up BIR Form No. 1905 for a change in status from VAT zero –rated to VAT 10% regular rate. If the applications are in order, new Certificates of Registration (BIR Form No. 2303) shall be issued to the applicants. At the same time, they shall surrender the original copy of their old VAT Certificate of Registration (BIR Form No. 1556/2303) to the appropriate revenue office.

Q5 – What is the penalty if the generation company did not update its registration before November 1, 2005?

A5 – Failure to update registration from VAT zero-rate to VAT 10% regular rate does not exempt said company from their output tax liability on their sales of electric and other taxable transactions.

Q6 – Transmission and distribution companies as well as electric cooperatives are already registered with the appropriate revenue office as non-VAT taxpayers. Do they have to re-register with the same revenue office where they are presently registered?

A6 – Yes. For this purpose they have to register as VAT taxpayers with Large Taxpayers Service or Large Taxpayer District Office in Makati City or Cebu City, if they have been officially identified and informed as large taxpayers; otherwise, if the company is a non-large taxpayer it has to register with the Revenue District Office which has jurisdiction over its principal place of business at anytime before November 1, 2005. The taxpayer must file BIR Form No. 1905 (Taxpayers Record Update), changing its tax status from a non-VAT taxpayer to a VAT taxpayer. If the application is in order, a new Certificate of Registration (BIR Form No. 2303) as VAT taxpayer shall be issued to the applicant. The applicant shall surrender the original copy of its non-VAT Certificate of Registration (BIR Form No. 1556/2303) to the appropriate revenue office.

Q7 – Are generation companies which were already registered as VAT zero-rated taxpayers prior to RA 9337 entitled to the transitional input tax?

A7 – No, inventories attributable to the activities already subject to VAT prior to October 31, 2005 are no longer entitled to the transitional input tax since the actual input taxes thereon were already claimed by the taxpayers as credits in their VAT return or subject of refund or Tax Credit Certificate (TCC).

Q8 – Are transmission and distribution companies as well as electric cooperatives who are now classified as VAT taxpayers subject to the 10% rate entitled to the transitional input tax credits on their beginning inventories?

A8 – Yes, they shall be entitled to a transitional input tax equivalent to 2% on the inventory on hand on October 31, 2005 or on applicable date that the concerned taxpayer becomes liable to VAT, or the 10% value added tax, if evidenced by VAT invoices or receipts, whichever is higher, on the following:

a. goods purchased for resale in their present condition;
b. materials purchased for further processing, but which have not yet undergone processing;
c. goods which have been manufactured by the taxpayer;
d. goods in process for sale; or
e. goods and supplies for use in the taxpayer's trade or business as a VAT-registered person.

Q9 – If the taxpayer has inventories of goods as of October 31, 2005 consisting of goods purchased without VAT components (e.g. fuel) and those with VAT components (spare parts, repair, supplies) how will he compute the allowable transitional input tax?

A9 – The transitional input tax shall be two percent (2%) of the value of the beginning inventory on hand or actual VAT paid on such goods, materials and supplies, whichever is higher, which amount shall be creditable against the output tax of the VAT registered person. The taxpayer is not allowed to claim 2% transitional input tax credit on his inventory of goods without VAT components.

Q10 – Is the entitlement for transitional input tax automatically available to taxpayers?

A10 – No. The taxpayer has to file an inventory list as of October 31, 2005 of such goods or supplies with the Revenue District Office where he is registered not later than November 30, 2005. The said list must show the quantity, description, and the amount of such goods or supplies. Furthermore, the taxpayer has to make a journal entry in his books of accounts recognizing such credit by debiting the input tax account. In case the taxpayer fails to comply with these requirements, he will lose the benefit of such credit.

Q11 – Is the utilization of the transitional input tax credit subject to the 70% cap?

A11 – Yes, since the transitional input tax credit will be commingled with the current input tax credits, the same shall be subject to the 70% cap. *(Sec. 4.111-1 in relation to Sec. 4.110-7 of Revenue Regulations No. 16-2006)*

Q12 – What amount of VAT shall be indicated on the face of the sales invoice for sales of electricity to the government considering that they are subject to the 5% withholding of the final VAT? How should the actual input tax credits attributable to such sales be taken up in the books of the seller since the same are no longer creditable against his output tax liability?

A12 – The amount of VAT that should be billed separately in the VAT invoice/receipts should be 10%. Consequently, the buyer who may also be a VAT-registered person, as in the case of a GOCC, can claim the passed-on VAT of 10% against his output tax liability.

The five percent (5%) final VAT withholding rate shall represent the net VAT payable of the seller. The remaining five percent (5%) effectively accounts for the standard input VAT for sales of goods or services to government or any of its political subdivisions, instrumentalities or agencies including GOCCs, in lieu of the actual input VAT directly attributable or ratably apportioned to such sales. Should actual input VAT exceed five percent (5%) of gross payments, the excess may form part of the sellers' expense or cost. On the other hand, if actual input VAT is less than 5% of gross payment, the difference must be credited to expense or cost.

Q13 – How will sales of electricity to government subject to 5% final VAT withholding be presented in the Quarterly VAT Returns/Monthly VAT Declaration?

A13 – The sales of electricity to government must be indicated as part of the sales subject to the 10% output tax. However, the amount of input tax attributable to the said sales should be limited to the 5% standard input tax. The net VAT payable subject to final VAT withholding shall be indicated as a separate item in the VAT return/declaration and should not be lumped with the net VAT payable amount.

Q14 – When will the purchaser-government office withhold and remit the 5% final VAT withholding on its purchases of electricity?

A14 – The withholding of the 5% final VAT shall be made when the payments of purchases of electricity were actually or constructively made. On the other hand, the remittance of the 5% final VAT withheld shall be made within ten (10) days following the end of the month when the withholding was made.

Q15 – In case the purchaser-government office fails to remit the 5% final VAT withholding, will the generation, transmission, distribution companies and electric cooperatives be held liable for the payment of the VAT?

A15 – The electric company will not be held responsible for the non-withholding and non-remittance of the 5% final VAT withholding, for as long as the generation, transmission, distribution companies and electric cooperatives has correctly declared the prescribed information in the quarterly VAT returns/monthly VAT declarations and has accurately reflected all the prescribed information in its monthly summary of sales submitted to the BIR. The party that is primarily responsible for such violation will be the government office-purchaser who is mandated by law to be the withholding agent of the BIR for collection of the said final VAT.

Q16 – What is the penalty if the transmission, distribution companies or the electric cooperatives did not register before November 1, 2005?

A16 – Non-registration as a VAT taxpayer does not exempt said companies from their output tax liability on their sales of electric and other taxable transactions. However, in computing their VAT payable for the period, no input tax credits on their purchases of goods, properties or services prior to registration shall be allowed to be credited against their output tax liability.

Q17 – Should the above companies which have paid the annual registration fee of P500 for each non-VAT head office or branch pay another P500 for each VAT head office or branch?

A17 – No, since the annual registration fee (as a non-VAT taxpayer) for 2005 has been paid sometime in January 2005, no additional registration fee (as a VAT taxpayer) shall be paid for the rest of the year.

Q18 – What transaction is subject to zero percent (0%)?

A18 – Sale of electricity generated from renewable sources like hydropower, geothermal, solar, wind, and other similar sources of energy.

Q19 – What is the treatment of sales of electricity (by generation, transmission and distribution companies or electric cooperatives) to PEZA- or SBMA-registered enterprises?

A19 – Since PEZA- or SBMA-registered enterprises are entitled to the five percent (5%) preferential tax rate under R.A. 7916 and R.A. 7227, respectively, sales of electricity by generation, transmission and distribution companies or electric cooperatives shall effectively be subject to the zero percent (0%) VAT rate.

Sales to enterprises duly-registered and accredited with the SBMA and PEZA shall effectively be subject to zero percent (0%) VAT. The zero-percent (0%) VAT rate shall not apply to sales made to individuals who are mere residents in the PEZA Ecozone or Subic Bay Freeport and Economic Zone.

Q20 – What are the sources of input tax of generation, transmission, distribution companies or by an electric cooperative?

A20 – In general, the sources of input tax may be classified as follows:

a. From local purchases or importation of capital goods; and

b. From other sources, such as purchase of goods (other than capital goods), properties, and services.

The term "capital goods" are goods or properties whose estimated useful lives are greater than one year, and which are subject to depreciation for income tax purposes.

Q21 – What are the available remedies to a VAT-registered person with respect to input tax on his purchase or importation of capital goods?

A21 – A VAT- registered person may credit his allowable input tax arising from the local purchase or importation of capital goods during the month, together with his input taxes from other sources and excess input tax carried over from previous quarter, from his output tax for the taxable month.

Q22 – How much is the allowable input tax credit arising from the local purchase or importation of capital goods during the month?

A22 – The input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction is allowed shall be spread evenly over a period of sixty (60) months and if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One Million Pesos (₱1,000,000.00). However, if the estimated useful life of the capital goods is less than five (5) years, then the input VAT shall be spread over such a shorter period.

If his total input tax is greater than his output tax for the month, the excess input tax for the month may be carried over to the next month or months. Under R.A. 9337, the remedy of filing a claim for refund or tax credit on input taxes arising from the local purchase or importation of capital goods has been expressly repealed.

Q23 – What is the amount that a VAT- registered person may claim as input tax credit against his output tax for a taxable quarter for VAT Purposes?

A23 – The amount of input tax for the current quarter, inclusive of input tax carried over from the previous quarter shall not exceed seventy percent (70%) of the output tax for the current quarter.

(1) If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person.

Illustration:

For a given taxable quarter ABC Corp. has output VAT of ₱100 and input VAT of ₱80. Since output tax exceeds the input tax for such taxable quarter, all of the input tax may be utilized to offset against the output tax. Thus, the net VAT payable is ₱ 20.

(2) If the input tax inclusive of input tax carried over from the previous quarter exceeds the output tax, the input tax inclusive of input tax carried over from the previous quarter that may be credited in every quarter shall not exceed seventy percent (70%) of the output tax.

Q24 – What is the remedy available to the taxpayer which has unused excess input tax credits in view of the limitations prescribed in R.A. 9337?

A24 – Under the law, the excess input tax shall be carried over to the succeeding quarter or quarters; any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or applied for a tax credit certificate which may be used in the payment of internal revenue taxes, subject to the limitations as may be provided for by law, as well as, other implementing rules.

Q25 – What is the treatment of the unapplied excess input VAT as of October 31, 2005 arising from VAT zero-rated transactions?

A25 – Unapplied excess input VAT arising from VAT zero-rated sales of power generation companies including Independent Power Producers (IPPs) selling power solely to GOCC/government agency as of October 31, 2005 can be carried over and offset against future output VAT liability subject to the 70% cap rule and the rule on the 5% final withholding VAT.

Unapplied input VAT can also be filed for tax refund/tax credit within 2-yr period from the close of the taxable quarter when such sales were made provided that it is clearly indicated in the VAT Declaration covering October 2005 that the excess credits arising from transactions subject to zero-rate as of October 31, 2005 will be applied for TCC/Refund.

Q26 – What is the treatment of the Generation and Transmission charges including the VAT thereon which are pass through charges of the Distribution Companies and Electric Cooperatives?

A26 – The Generation and Transmission companies shall bill the end-user through the Distribution Companies and Electric Cooperatives for the sale and transmission of electricity and ancillary services including the VAT thereon. The amount collected from the end-user for such charges shall not form part of the gross receipts of the Distribution Companies and Electric Cooperatives. The Distribution Companies and Electric Cooperatives shall not claim an input tax on such pass-through charges. The amount collected from the end-user as payment for the generation and transmission charges including the VAT thereon shall form part of the gross receipts and output VAT of the Generation Company or Transmission Company, accordingly.

The Distribution Companies and Electric Cooperatives may advance, exclusive of the corresponding VAT, the generation fee to the Generation company. The amount advanced may be offset against the amount collected from the end-user and only the VAT portion of the generation fee shall be remitted to the generation company upon collection from the end-user. The reckoning of the VATable sale between the generation company and the end-user shall be upon collection on the billing made by the Distribution Companies and Electric Cooperatives.

Q27 – What will be the treatment of billed but uncollected sale of services as of October 31, 2005?

A27 – Sale of electricity rendered on or before October 31, 2005 but which will be collected on or after November 1, 2005 shall be considered accrued as VAT zero-rated sales as of October 31, 2005.

Q28 – What will be the treatment of sale of electricity as of October 31, 2005 but billing will be made after November 1, 2005?

A28 – Sale of electricity rendered on or before October 31, 2005 but billing will be made on or after November 1, 2005 shall still be considered as VAT zero-rated. Provided, that such sales made prior to November 1, 2005 must be billed by November 30, 2005.

Q29 – What will be the treatment of "Deferred Charges" existing as of October 31, 2005?

A29 – "Deferred Charges" such as GRAM and ICERA existing as of October 31, 2005, although billed and collected thereafter, shall still be considered as VAT zero-rated. For this purpose, an inventory of "deferred charges" must be submitted by November 30, 2005.

Q30 – What will be the treatment of generation rate and foreign exchange rate adjustments to electricity sold on or before October 31, 2005?

A30 – Generation rate and foreign exchange rate adjustments to electricity sold on or before October 31, 2005, although billed and collected thereafter, shall be considered as VAT zero-rated.

Q31 – What will be the treatment of Excess Input VAT on the purchase of capital goods under a Build Operate and Transfer (BOT) which was made after the effectivity of RA 9337?

A31 – Under the BOT Scheme, IPPs have limited corporate lives concurrent with the duration of the BOT contract, the excess input VAT on the purchase of capital goods shall be allowed to be amortized over the life of the asset or the remaining life of the project agreement or five (5) years, whichever is shortest.

All internal revenue officers and employees are hereby enjoined to give this Revenue Memorandum Circular as wide publicity as possible.

(Original Signed)
JOSE MARIO C. BUÑAG
OIC-Commissioner of Internal Revenue