REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

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July 20, 2023

REVENUE MEMORANDUM CIRCULAR NO. 78-2023

SUBJECT : **Prescribing the Administrative Requirements for Importers and Manufacturers of Raw Materials, Apparatus or Mechanical Contrivances, and Equipment Specially Used for the Manufacture of Heated Tobacco Products and Vapor Products**

TO : All Internal Revenue Officers, Employees, and Others Concerned

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I. BACKGROUND

It is the government's declared policy, as expressed under Section 2 of R.A. No. 11900, otherwise known as the "Vaporized Nicotine and Non-Nicotine Products Regulation Act", to regulate the importation, assembly, manufacture, sale, packaging, distribution, use, advertisement, promotion and sponsorship of Vaporized Nicotine and Non-Nicotine Products, and their devices, in order to, among other objectives, ensure that the illicit trade of such products in the country is prevented.

Under Section 152 of the National Internal Revenue Code (NIRC) of 1997, as amended by R.A. No. 11346, the Bureau of Internal Revenue (BIR) has authority to supervise establishments dealing in articles subject to excise tax so as to safeguard revenue.

It can be recalled that on October 9, 2002, the BIR entered into a Memorandum of Agreement (MOA) with the Bureau of Customs (BOC) with the aim of, among others, strengthening the collaboration between the two Bureaus in order to improve the level of monitoring and control over the business activities of the importers of excisable articles. Conformably with the same MOA, the BIR and the BOC signed on October 9, 2002 and issued on September 11, 2002 the BIR-BOC Joint Memorandum Circular No. 1-2002, which listed the imported articles that no longer require the issuance of Authority to Release Imported Goods (ATRIG) by the BIR prior to release of such articles from customs custody.

Revenue Memorandum Circular No. 112-2021 dated September 6, 2021 updates the list of articles that require the issuance of ATRIG prior to their release from customs custody as follows:

> *"xxx xxx*
>
> *Pending resolution on the taxability of certain imported articles and the issuance of clear policies and procedures on the issuance of certifications from concerned regulatory government agencies, the appropriate ATRIG shall still be secured from the BIR on the following articles xxx:*
>
> *xxx*
> *xxx AND*
> ***3. Articles subject to excise tax as well as on the raw materials, apparatus, or mechanical contrivances, and equipment specially used for the manufacture thereof."*** *(Emphasis supplied.)*

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Meanwhile, Revenue Regulations No. 14-2022, implementing pertinent provisions of RA No. 11900, define HTPs and Vapor Products as well as the devices which are considered part of the HTP System and the Vapor Product System, as follows:

HEATED TOBACCO PRODUCTS (HTPs) - also referred to as Heated Tobacco Products (HTP) Consumables or Heat-Not-Burn Product Consumables, shall refer to tobacco products that are intended to be consumed through heating tobacco either electronically or through other means, sufficient to release an aerosol that can be inhaled, without combustion of the tobacco. HTP Consumables or Heat-Not-Burn Product Consumables may also include liquid solutions and gels that are part of the product and are heated to generate an aerosol. HTPs may or may not operate by means of an HTP Device.

HEATED TOBACCO PRODUCT DEVICE or HTP Device - shall refer to the component or combination of components of an HTP System intended to be used in combination with HTP Consumables that generate an aerosol without combustion.

HEATED TOBACCO PRODUCT SYSTEM or HTP System - shall refer to an HTP Consumable and HTP Device that are intended to be used together as a system.

VAPOR PRODUCTS - also referred to as Vapor Product Refills, shall refer to the liquid, solid, or gel, or any combination thereof, which may or may not contain nicotine, that is transformed into an aerosol without combustion by a Vapor Product Device.

VAPOR PRODUCT DEVICE - shall refer to a device or a combination of devices used to heat a Vapor Product, to produce an aerosol, mist, or vapor that users inhale. These may include combinations of a liquid solution or gel that are heated and transformed into an aerosol without combustion through the employment of a mechanical or electronic heating element, battery, or circuit, and includes, but is not limited to, a cartridge, a tank, or a device without a cartridge or tank.

VAPOR PRODUCT SYSTEM - also referred to as electronic nicotine or non-nicotine delivery systems, shall refer to the specific combination consisting of the Vapor Product Refill and Vapor Product Device which, based on the information made available to the consumer by the provider, are intended to be used together.

HTP Devices and the Vapor Product Devices are deemed part of the HTP System and the Vapor Product System, respectively. The HTPs and Vapor Products, which are subject to excise tax, require the use of, or are intended to be used together with, their corresponding devices such that the use and enjoyment of such products is rendered impossible without the latter devices. Within the context of the HTP and Vapor Product Systems, HTP and Vapor Product Devices are considered as apparatus, mechanical contrivance, and equipment specially designed and used for the manufacture of HTPs and Vapor Products. These devices, therefore, require the issuance of eATRIG prior to their release from customs custody.

In view of the foregoing, this Circular is hereby issued to prescribe the administrative requirements for importers and manufacturers of raw materials, apparatus or mechanical contrivances, and equipment specially used for the manufacture of HTPs and Vapor Products.

II. POLICIES & GUIDELINES

Importers or manufacturers of raw materials, apparatus or mechanical contrivances, and equipment specially used for the manufacture of HTPs and Vapor Products are required to comply with the following requirements:

1.) Application for a Permit to Operate as importer or manufacturer of raw materials, apparatus or mechanical contrivances, and equipment specially used for the manufacture of HTPs and Vapor

Products. – Applicant shall file his/her application in writing and addressed to the Commissioner of Internal Revenue, Attention: Chief, Excise LT Regulatory Division (ELTRD), together with the following basic supporting documents:

a. BIR Certificate of Registration (BIR Form No. 2303) including Payment Form (BIR Form No. 0605) evidencing payment of registration fee;
b. Copy of latest Income Tax Return duly filed with and received by the BIR, if applicable; and
c. Location map, and plat and plan of the Production Plant/Warehouse, if applicable.
d. Specifications (model/serial number) of the apparatus or mechanical contrivance, and equipment, if locally manufactured.

2.) Application with the ELTRD for eATRIG for every importation. – The application shall be done using the Philippine National Single Window System (https://nsw.gov.ph/). The basic documentary requirements include the following:

a. Bill of lading
b. Packing list
c. Commercial invoice
d. Import Entry and Internal Revenue Declaration (IEIRD)

Revenue Memorandum Order No. 14-2014 prescribes the procedures and guidelines for the processing and issuance of eATRIG for excise tax purposes.

The raw materials specially used for the manufacture of HTPs and vapor products shall include, but not limited to: propylene glycol, vegetable glycerin, organic sweetener, artificial flavoring and nicotine.

On the other hand, the devices specially used for the manufacture of HTPs and vapor products shall refer to, or comprise, any device or combination of devices designed or used to deliver the desired purpose, function, or effect of HTPs and vapor products. These devices or combinations thereof include, but are not limited to, a mechanical or electronic heating element (or atomizer), circuit, cartridge (or reservoir or pod), tank, mod, cartridge, or mouthpiece.

III. PENALTIES

Failure to comply with the foregoing requirements shall be subject to the corresponding penalties provided for under **Section 254** and **Section 265-B** of the **1997 NIRC**, as amended.

IV. EFFECTIVITY

All concerned are hereby enjoined to be guided accordingly and give this Circular as wide a publicity as possible.

This Circular shall take effect immediately.

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ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
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