REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
BIR National Office Building
Diliman, Quezon City

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REVENUE MEMORANDUM CIRCULAR NO. 80 - 2023

SUBJECT: **Clarifying Issues Relative to the Implementation of Revenue Regulations (RR) No. 3-2023 and Other Related Concerns on Value-Added Tax (VAT) Zero-Rate Transactions on Local Purchases of the Registered Export Enterprises (REEs) and Other Entities Granted with VAT Zero-Rate Incentives under Special Laws and International Agreements**

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

I. BACKGROUND:

Pursuant to Section 4.106-6 and Section 4.108-6 of Revenue Regulations (RR) No. 16-2005, as amended, other cases of zero-rated sales, *i.e.*, local sale of goods and properties and/or services by a VAT-registered person to a person or entity who was granted indirect tax exemption under special laws or international agreement, shall require prior application with the appropriate Bureau of Internal Revenue (BIR) office for effective zero-rating. Without an approved application for effective zero-rating, the transaction otherwise entitled to zero-rating shall be considered exempt.

Conversely, the above provisions were amended by RR No. 3-2023 which provides that local suppliers of goods and/or services of REEs shall no longer be required to apply for approval of VAT zero-rating with the BIR. The VAT zero-rating on local purchases of goods and/or services shall be availed of on the basis of the VAT Zero-Rate Certification issued by the concerned Investment Promotion Agency (IPA), without prejudice, however, to the conduct of post audit investigation/verification by the BIR that the goods and/or services are indeed directly and exclusively used by the REE in its registered project or activity.

Furthermore, Section 4(E) of RR No. 7-2022 likewise provides that local suppliers of goods, properties, and services of duly registered Renewable Energy (RE) Developer shall only require from the latter a copy of its Certificate of Registration (COR) issued by the Board of Investments (BOI) and Department of Energy (DOE) for purposes of availing the VAT zero-rate incentive. Thus, impliedly stating that prior approval for VAT zero-rate from the appropriate BIR office shall also no longer be required.

In view of the foregoing, this Circular is issued to provide clarification on the provisions of RR No. 3-2023 and certain issues and concerns pertaining to transactions with other entities granted with VAT zero-rate incentives on local purchases under special laws and international agreements.

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II. CLARIFICATIONS

A. ON TRANSACTIONS WITH REGISTERED EXPORT ENTERPRISE:

Q1: When is the effectivity of RR No. 3-2023?

A1: As stated in RR No. 3-2023, it *shall take effect immediately following its publication in a newspaper of general circulation or in the Official Gazette, whichever comes first.* RR No. 3-2023 was published in a newspaper of general circulation on April 28, 2023, thus, took effect on said date.

Q2: Is prior approval for VAT zero-rate from the BIR needed to be secured by the local supplier of goods and/or services of REEs upon the effectivity of RR No. 3-2023?

A2: No. Upon the effectivity of RR No. 3-2023, local supplier of goods and/or services of REEs shall no longer be required to secure prior approval for VAT zero-rate with the BIR.

Q3: What are the requisites for the local purchase transaction of the REE to qualify for VAT zero-rating?

A3: The local purchase of the REE must be directly and exclusively used in the registered project or activity, and not included in the negative list provided in RR No. 3-2023.

Q4: If the goods and/or services purchased were included in the negative list provided in RR No. 3-2023, but were directly and exclusively used in the registered project or activity of the REE, what is the remedy of the REE-buyer?

A4: Should the goods and/or services fall within the negative list, the REE is not precluded from further proving, with supporting evidence, to the concerned IPA that such goods and/or services are indeed directly and exclusively used in the registered project or activity.

Upon determination that such goods and/or services are directly and exclusively used in the registered project or activity of the REE, a VAT Zero-Rate Certificate shall be issued by the concerned IPA. This is without prejudice to the BIR's power to conduct post audit.

Q5: What are the documentary requirements needed to be secured by the local supplier from the REE-buyer for VAT zero-rating purposes?

A5: While it is true that the VAT zero-rating on local purchases of goods and/or services shall be availed of on the basis of VAT Zero-Rate Certification issued by the concerned IPA pursuant to RR No. 3-2023, the REE-buyer must still, however, provide a certified copy of the following documents to its local supplier for the latter's documentation in case of post-audit by the BIR, to wit:

1. VAT Zero-Rate Certification issued by the concerned IPA;
2. COR issued by the BIR having jurisdiction over the head office/branch/freeport/ ecozone location where the goods and/or services are to be delivered;
3. COR issued by the concerned IPA stating all registered ecozone location; and
4. A sworn affidavit executed by the REE-buyer, stating that the goods and/or services are directly and exclusively used for the production of goods and/or completion of services to be exported or for utilities and other similar costs, the percentage of allocation be directly and exclusively used for the production of goods and/or completion of services

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to be exported, following the prescribed format under RMC No. 84-2022 and attached hereto as Annex "A".

Q6: What will happen to applications for VAT zero-rate which have been received prior to the effectivity of RR No. 3-2023 but have not yet been acted upon by the concerned office of the BIR?

A6: If the application is accompanied by VAT Zero-Rate Certificate issued by the concerned IPA, as prescribed in RMC No. 36-2022, it shall be accorded VAT zero-rating treatment from the date of filing of such application subject to the conduct of post audit by the BIR that the services are indeed directly and exclusively used by the REE in its registered project or activity.

Q7: What is the VAT treatment on transaction that was already consummated prior to the effectivity of RR No. 3-2023, but without an approved application for VAT zero-rate?

A7: If the transaction was entitled for purposes of VAT zero-rating, *i.e.*, the goods and/or services sold were directly and exclusively used in the registered project or activity, and the REE is duly endorsed by the concerned IPA, but the seller failed to secure an approved Application for VAT Zero-Rate, such sale shall be subject to twelve percent (12%) VAT.

Q8: If the application for VAT zero-rate for a particular sale transaction was previously disapproved, would it be considered VAT zero-rate upon the effectivity of RR No. 3-2023?

A8: No. Since there was already a prior determination by the BIR that the transaction is not qualified for VAT zero-rate, accordingly, the same is subject to twelve percent (12%) VAT notwithstanding the issuance of RR No. 3-2023.

Q9: Are the transactions subjected to VAT due to disapproved applications for VAT zero-rate by the BIR be qualified for refund?

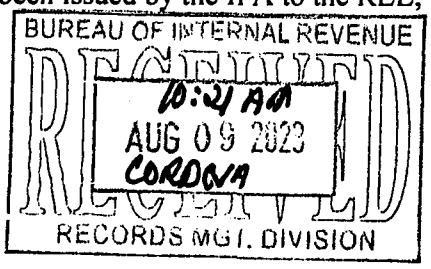
A9: As discussed in Q & A No. 8, BIR-disapproved applications for VAT zero-rate determined to be not qualified for VAT zero-rating purposes, are subject to VAT.

Inasmuch as these transactions are subject to VAT, the VAT-registered REE enjoying 5% Gross Income Tax (GIT) or Special Corporate Income Tax (SCIT) may claim the corresponding input VAT from the said purchase, which can be utilized as deduction against future output VAT liability after the incentive period or may be claimed as VAT refund under Section 112(B) of the National Internal Revenue Code of 1997, as amended (Tax Code), in relation to Q & A No. 40 of RMC No. 24-2022.

Q10: What are the elements to be considered for VAT zero-rating purposes during audit of transactions with REE?

A10: The following must be considered in the evaluation of transaction subject for VAT zero-rate:

1. The REE's place of business where the registered project or activity is being processed/rendered must be duly registered with the appropriate BIR office;
2. The REE must be duly registered with the IPA administering tax incentives;
3. A VAT Zero-Rate Certificate has been issued by the IPA to the REE;



4. The transaction occurred within the period the REE is entitled to VAT zero-rate incentives and is corroborated with a valid documentation, such as but not limited to duly certified copies of purchase order, job order or service agreement, sales invoice and/or official receipt, delivery receipt, or similar documents to prove existence and legitimacy of the transaction;
5. The purchased goods and/or services must be delivered within the REE's registered head office/branch/freeport/ecozone/location granted with VAT zero-rate incentives; and
6. The transaction is indeed qualified for VAT zero-rating in accordance with the provisions of the Tax Code, and its implementing rules and regulations, revenue issuances.

Q11: Since the application for VAT zero-rate is no longer required upon the effectivity of RR No. 3-2023, how would the supplier identify if the goods and/or services being sold is directly and exclusively used in the registered project or activity of the REE?

A11: The goods and/or services directly and exclusively attributable to the registered project or activity of the REE should be enumerated in Section III, Annex "A" of the prescribed Template for VAT Zero-Rate Certification per RMC No. 36-2022. The aforementioned goods and/or services must likewise be declared in the REE's sworn undertaking.

Q12: For the supplier of Health Maintenance Organization (HMO) plans, now that the submission of application for VAT zero-rate is not required, would HMO plans acquired for employees not directly involved in the REE's registered project or activity be accorded with VAT zero-rating?

A12: No. To reiterate the clarification made in RMC No. 137-2022, *the VAT zero-rating shall not extend to HMO plans procured for employees' dependents, as well as HMO plans for employees* ***not*** *directly involved in the operations of the registered projects or activities of the REEs.*

Accordingly, only those HMO plans acquired for employees directly involved in the operation of REE's registered project or activities and forming part of their compensation package shall be accorded with VAT zero-rating.

Q13: Does the supplier of HMO plans still need to secure from the REE-buyer a detailed information on the plans acquired as prescribed in RMC No. 137-2022?

A13: Yes. For audit investigation/verification purposes, the supplier of HMO plans must still require the REE-buyer to provide a detailed information on the acquired HMO plans as prescribed in Annex "A" of RMC No. 137-2022 and maintain a database of the same, for ease of reference.

B. <u>ON TRANSACTIONS WITH ENTITIES GRANTED WITH VAT ZERO-RATE INCENTIVES UNDER SPECIAL LAWS AND INTERNATIONAL AGREEMENTS:</u>

Q14: Does the local supplier of goods and/or services of other entities granted with VAT zero-rate incentives under special laws and international agreements need to submit application for VAT zero-rate?

A14: No. Submission of application for VAT zero-rate of the local suppliers of other entities granted with VAT zero-rate incentives under special laws and international agreements shall not be required. Alternatively, such local suppliers of goods and/or services shall require

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from the aforementioned entities the documentary requirements enumerated under Q & A No. 15 below.

Q15: What are the documentary requirements needed to be secured by the local supplier of goods and/or services of other entities granted with VAT zero-rate incentives under special laws and international agreements for VAT zero-rating purposes?

A15: The documentary requirements needed to be secured by the local supplier of entities granted with VAT zero-rate incentives under special law and international agreements are:

A. For the Supplier of RE Developer

The local suppliers of goods, properties, and services shall require from the duly registered RE Developer a certified copy of the following documents:

1. COR issued by the BIR which has jurisdiction over the location of the RE Project;
2. COR issued by the BOI; and
3. COR issued by the DOE.

It is emphasized that the VAT zero-rating shall apply only on the sale of goods, properties, and services, for the development, construction and installation of the RE Developer's power plant facilities. This includes the whole process of exploring and developing renewable energy sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contactors.

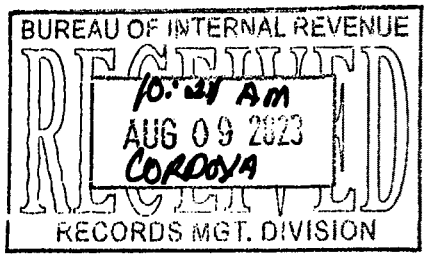
B. For the Supplier of Other Entities Under Special Law and International Agreements

The buyer must provide its local supplier a certified copy of VAT Exemption Certificate/Ruling or equivalent document, issued by the appropriate office of the BIR and other documentary requirements as may be required under the special law and international agreement including its implementing rules and regulations.

Q16: What are the elements to be considered for VAT zero-rating purposes during audit of transactions with entity granted with VAT zero-rate incentives under special law and international agreement?

A16: The following must be considered in the evaluation of transaction subject for VAT zero-rate:

1. The location of the registered project of the entity granted with VAT zero-rate incentives under special law must be duly registered with the appropriate BIR office;
2. The entity granted with VAT zero-rate incentives under special law must be duly registered with other government agency (OGA) administering tax incentives;
3. The entity granted with VAT zero-rate incentives under special law or international agreement must have been issued by its concerned OGA administering tax incentives a VAT Exemption Certificate/BIR Ruling/equivalent certificate; and
4. The transaction is indeed qualified for VAT zero-rating in accordance with the provisions of the Tax Code, and its implementing rules and regulations, revenue issuances, special laws or international agreements; and is likewise corroborated with a valid documentation, such as but not limited to duly certified copies of purchase order, job order or service agreement, sales invoice and/or official receipt, delivery receipt, or similar documents to prove existence and legitimacy of the transaction;



III. VAT ZERO-RATE CERTIFICATE/ENDORSEMENT BY APPROPRIATE GOVERNMENT AGENCY

Q17: Is there a prescribed template for VAT Zero-Rate Certificate which shall be issued by the IPA to its compliant REEs?

A17: Yes. The template for VAT Zero-Rate Certificate to be issued by the concerned IPA to its compliant REEs is prescribed under RMC No. 36-2022 and herewith attached as Annexes "B-1" and "B-2", for registered under CREATE and Pre-CREATE, respectively.

Q18: RR No. 3-2023 requires all concerned IPAs to furnish the BIR, on a regular basis, a master list of REEs with issued VAT Zero-Rate Certificate, is there a prescribed template for the said report?

A18: Yes. The template for VAT Zero-Rate endorsement of IPAs, which contains basic information needed in the audit investigation/verification by the concerned investigating office of the BIR, is herein attached as Annex "C" and shall be submitted to the BIR through the Assessment Service, *Attention: Audit Information, Tax Exemption and Incentives Division (AITEID)*, in softcopy (excel file format), via email address: aiteid_ies@bir.gov.ph, within twenty (20) days following the close of each taxable quarter.

All revenue issuances and BIR Rulings inconsistent herewith are hereby considered amended, modified, or revoked accordingly.

All revenue officials concerned are enjoined to give this Circular as wide a publicity as possible.

This Circular takes effect immediately.

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
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