REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

BUREAU OF INTERNAL REVENUE
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August 16, 2021

REVENUE MEMORANDUM CIRCULAR NO. 99-2021

SUBJECT : **Clarifying Issues Relative to the Value-Added Tax (VAT) Exemption of Certain Medicines and other Medical Devices for COVID-19 Under Sections 109(1)(AA) and 109(1)(BB)(*ii*) of the National Internal Revenue Code of 1997 (Tax Code), as Amended by Republic Act (RA) Nos. 10963 (TRAIN Law), 11467 and 11534 (CREATE Act)**

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

The Bureau has received several concerns and issues from both internal and external stakeholders, in relation to the recent issuance of Revenue Memorandum Circular (RMC) No. 81-2021, circularizing the consolidated list of VAT-Exempt Products (*i.e.*, medicines for hypertension, cancer, mental illness, tuberculosis, kidney diseases, diabetes, and high cholesterol, and medicines and medical devices for COVID-19) published by the Food and Drug Administration (FDA) on **17 June 2021** pursuant to Republic Act (RA) No. 11534, or the CREATE Act. There were also issues raised pertaining to claims for refund under Revenue Memorandum Order (RMO) No. 36-2020, in relation to Revenue Regulations (RR) No. 4-2021.

To address these issues and concerns, this RMC, in question and answer format, is hereby issued.

Q1: When is the effectivity for the VAT exemption of the products included in the consolidated list of VAT-Exempt Products submitted by the Food and Drugs Administration (FDA) to the BIR, as circularized in RMC No. 81-2021?

A1: Item No. 2 of the General Guidelines of Joint Administrative Order No. 2-2018, or the Implementing Guidelines on the Value-Added Tax (VAT) Exemption of the Sale of Drugs Prescribed for Diabetes, High Cholesterol and Hypertension Under Republic Act (RA) No. 8424, as Amended by RA No. 10963, provides that, "*the sale of drugs not included in the 'List of VAT-exempt diabetes, high-cholesterol and hypertension drugs' published by the FDA shall not be exempt from VAT*".

Moreover, Section 2 of Revenue Regulations (RR) No. 4-2021, amending Section 4.109-1 of RR No. 16-2005, as amended, provides that, "*the exemption from VAT under this subsection shall only apply to the sale or importation by the manufacturers, distributors, wholesalers and retailer of drugs and medicines included in the 'list of approved drugs and medicines' issued by the Department of Health for this purpose*".

Based thereon, it is clear that the VAT exemption of medicines for diabetes, high cholesterol, hypertension, cancer, mental illness, tuberculosis, kidney diseases, drugs and vaccines prescribed and directly used for COVID-19 treatment, and medical devices

directly used for COVID-19 treatment shall take effect on the date of publication by the FDA of the consolidated list of VAT-Exempt Products, which was on **June 17, 2021**.

Q2: Is the VAT exemption exclusive only to the items enumerated in said consolidated list of VAT-Exempt Products, with specific dosage strength and dosage form and route of administration, submitted by the FDA to the BIR?

A2: Yes. The law and its implementing revenue regulations clearly provide that "*the exemption from VAT under this subsection shall only apply to the sale or importation by the manufacturers, distributors, wholesalers and retailer of drugs and medicines included in the 'list of approved drugs and medicines' issued by the DOH for this purpose.*" Hence, only the medicines and medical devices for COVID with the corresponding dosage strength, and dosage form and route of administration included in the consolidated list of VAT-Exempt Products submitted by the FDA to the BIR shall be considered as exempt from VAT.

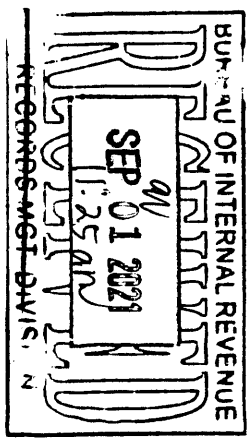
Q3: In relation to R.A. Nos. 10963 and 11467, several lists provided by FDA were circularized last year to provide the drugs and medicines that are exempt from VAT under Section 109(1)(AA) of the Tax Code, as amended. Are the said lists still in effect?

A3: No. The consolidated list of VAT-Exempt Products, which includes the previously-circularized lists through RMC Nos. 4-2019, 62-2020, and 101-2020, provided by FDA to BIR and circularized through RMC No. 81-2021 is now the controlling list insofar as the VAT exemption of items under Sections 109(1)(AA) and 109(1)(BB)(*ii*) of the Tax Code, as amended, is concerned. The consolidated list was intended to update the previous lists for ease of reference and for use by all stakeholders concerned. Therefore, this consolidated list should only be the list that will be used as a reference in checking whether or not a certain medicine or medical device is exempt from VAT or not.

Q4: How to treat the unutilized input VAT, if any, on the now VAT-exempt on-hand inventories?

A4: The treatment of unutilized input VAT on the now VAT-exempt on-hand inventories is found in Item No. 2, Section 3 (Transitory Provisions) of RR No. 4-2021, which reads:

"*2. The taxpayer shall treat the resulting excess taxes paid due to the inclusion in the items exempt from VAT or adjustment in percentage tax rates, as the case may be, in the following manner:*



a. Unutilized VAT paid on local purchases and importation under subsections 4.109-1(B)(aa)(ii) and 4.109-1(B)(bb) hereof from their specified effectivity under RA No. 11534 on January 1, 2021 until the effectivity of these Regulations may be carried-over to the succeeding taxable quarter/s or be charged as part of cost, pursuant to Section 110 of the Tax Code.

Input VAT which are directly attributable to goods now classified as VAT-exempt

may be allowed as part of cost. For input VAT that cannot be attributed to goods now classified as VAT-exempt, only a ratable portion thereof shall be charged to cost."

Taxpayers concerned are, thus, advised to follow and observe the illustrations provided for in said Item on the treatment of this unutilized input VAT.

Q5: Will a tax refund be allowed for the supposed erroneously paid VAT on local purchases and importation (from their specified effectivity under R.A. No. 11534 on January 1, 2021 until the date of the FDA's publication of the consolidated list of VAT-Exempt Products on June 17, 2021) since this was allowed under R.A. No. 10963 and R.A. No. 11467 per Section 3 (Transitory Provisions) of the implementing RR No. 18-2020?

A5: No. As mentioned in the preceding Q&A, the unutilized VAT paid on local purchases and importation of items under subsections 4.109-1(B)(aa)(ii) and 4.109-1(B)(bb) of RR No. 4-2021, from their specified effectivity under the law (RA No. 11534) on January 1, 2021 until the effectivity of the said RR on those items, which, as explained in Q1&A1 above, should be on the date when the FDA published the consolidated list of VAT-Exempt Products on June 17, 2021, may be carried-over to the succeeding taxable quarter/s or be charged as part of cost, pursuant to Section 110 of the Tax Code of 1997, as amended. A tax refund may be allowed only in cases where there is a change of status from VAT to Non-VAT registration, under Sec. 112(B) of the Tax Code of 1997, as amended.

RR No. 4-2021 is not to be confused with RR No. 18-2020 as the latter was anchored under R.A. Nos. 10963 and 11467, while the former was issued to implement the provisions of R.A. No. 11534 or the CREATE Act.

Q6: In relation to RR No. 18-2020, please further clarify the meaning of the phrase, *"provided that the input tax on the imported items have not been reported as input tax credit in the monthly and/or quarterly VAT returns"*, found in Section 3 (Transitory Provisions) thereof, in order to refund the erroneously paid VAT on importation of VAT-exempt drugs?

A6: The above-mentioned phrase was included therein to ensure that the imported items have not been reported and claimed as input tax credit in the monthly and quarterly VAT returns pursuant to Section 110 of the Tax Code of 1997, as amended, for purposes of computing the VAT payable. However, the taxpayer may be allowed to reflect the said importation as part of the "Purchases not Qualified for Input Tax" row of the monthly and quarterly VAT returns to properly show the amount of purchases for a certain period.

Q7: In relation to the preceding Q&A, if the corresponding VAT on the imported drugs or medicines has been claimed as input tax credit in the monthly and quarterly VAT returns, can it still be allowed for refund under Section 204(C) of the Tax Code?

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A7: No. RR No. 18-2020 is clear that when said VAT is claimed as input VAT credit and consequently allocated to either VATable, zero-rated or exempt sales, this only means that there was already a utilization of input tax. Hence, claiming it again under Section 204 is no longer permissible as this is already tantamount to claiming the alleged erroneously paid VAT twice.

Pursuant to Sec. 4.110-4 of RR No. 16-2005, as amended, input tax attributable to VAT-exempt sales shall not be allowed as credit against output VAT but should be treated as part of cost or expense.

All internal revenue officers, employees and others concerned are enjoined to give this Circular a wide publicity as possible.

CAESAR R. DULAY
Commissioner of Internal Revenue

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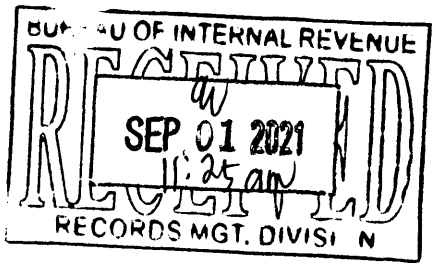

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