REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

APR 20 2023

REVENUE REGULATIONS NO. 3-2023

SUBJECT: Amending Certain Provisions of Revenue Regulations (RR) No. 16-2005, as Amended by RR No. 21-2021, to Implement Sections 294 (E) and 295 (D), Title XIII of the National Internal Revenue Code of 1997, as Amended by R.A. No. 11534 (CREATE Act), and Section 5, Rule 2 and Section 5, Rule 18 of the CREATE Act Implementing Rules and Regulations, as Amended.

TO: All Internal Revenue Officials, Employees and Others Concerned

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SECTION 1. Scope. — Pursuant to the provisions of Sections 244 and 245 of the National Internal Revenue Code of 1997, as amended (Tax Code), these Regulations are hereby promulgated to amend certain provisions of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 21-2021, implementing Sections 294 (E) and 295 (D) of Title XIII of the Tax Code, as introduced in Republic Act (RA) No. 11534 or the "Corporate Recovery and Tax Incentives for Enterprise Act" (CREATE), and Section 5, Rule 2 of its Implementing Rules and Regulations (IRR), as amended.

SECTION 2. Zero-Rated Sale of Goods or Properties. — Section 4.106-5 of RR No. 16-2005, as amended by RR No. 21-2021, is hereby further amended and shall now be read as follows:

"SEC. 4.106-5. Zero-Rated Sales of Goods or Properties. — A zero-rated sale of goods or properties by a VAT-registered person is a taxable transaction for VAT purposes but shall not result in any output tax. However, the input tax on purchases of goods, properties, or services, attributable to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.

The following sales by VAT-registered persons shall be subject to zero-percent (0%) rate:

(a) Export sales — xxx xxx xxx

xxx xxx xxx

(c) Sale of raw materials, inventories, supplies, equipment, packaging materials, and goods, to a registered export enterprise, to be used directly and exclusively in its registered project or activity pursuant to Sections 294 (E) and 295 (D) of Republic Act No. 11534 or the "Corporate Recovery and Tax Incentives for Enterprise Act" ("CREATE Act"), and Section 5, Rule 2 of its IRR for a maximum period of seventeen (17) years from the date of

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registration, unless otherwise extended under the SIPP; Provided, That the term "registered export enterprise" shall refer to an export enterprise as defined under Section 4 (M), Rule 1 of the CREATE Act IRR, that is also a registered business enterprise as defined in Section 4 (W) of the same IRR: Provided further, That the above-described sales to existing registered export enterprises located inside ecozones and freeport zones shall also be qualified for VAT zero-rating under this sub-item until the expiration of the transitory period.

Local purchases of goods relating to the following services shall not be considered as "directly and exclusively used" in the registered project or activity of a registered export enterprise, to *wit*:

1. **janitorial services;**
2. **security services;**
3. **financial services;**
4. **consultancy services;**
5. **marketing and promotion; and**
6. **services rendered for administrative operations such as Human Resources (HR), legal, and accounting.**

This notwithstanding, the registered export enterprise is not precluded from further proving, with supporting evidence, to the concerned Investment Promotion Agency (IPA) that any of the local purchase of goods relating to the above-listed services are indeed directly and exclusively used in its registered project or activity. In all instances, in issuing the VAT zero-rating certification, the concerned IPA shall be guided by the rule that such local purchases of goods are directly attributable to the registered project or activity without which such registered project or activity cannot be carried out. These are costs that are indispensable to the project or activity, *i.e.*, without which the project or activity cannot proceed, and these include expenses that are necessary or required depending on the nature of the registered project or activity of the export enterprise.

If the purchased goods are used in both the registered project or activity and administrative operations, the registered export enterprise shall adopt a method to best allocate the same. If a proper allocation could not be determined, the purchase of such goods shall be subject to twelve percent (12%) VAT.

The VAT zero-rating on local purchases of goods shall be availed of on the basis of the VAT zero-rating certification issued by the concerned IPA, without prejudice, however, to the conduct of post audit investigation/verification by the Bureau of Internal Revenue (BIR) that the goods are indeed directly and exclusively used by the registered export enterprise in its registered project or activity.

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For this purpose, upon the effectivity of these Regulations, local suppliers of goods of registered export enterprise shall no longer be required to apply for approval of VAT zero-rating with the BIR. All applications with accompanying VAT zero-rating certification issued by the concerned IPA which have been received but have not yet acted upon by the concerned office of the BIR upon the effectivity of these Regulations 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 goods are indeed directly and exclusively used by the registered export enterprise in its registered project or activity.

The concerned IPA shall furnish the BIR through the Assessment Service Attention: Audit Information, Tax Exemption and Incentives Division (AITEID) within twenty (20) days following the close of each taxable quarter a list of registered export enterprise issued with VAT zero-rating certification. In order to obtain relevant information, for audit purposes, the Commissioner of Internal Revenue may prescribe a report template in a separate revenue issuance."

SECTION 3. Zero-Rated Sale of Services. — Section 4.108-5 of RR No. 16-2005, as amended by RR No. 21-2021, is hereby amended and shall now be read as follows:

"SEC. 4.108-5. Zero-Rated Sale of Services. —

XXX XXX XXX

(b) Transactions Subject to Zero Percent (0%) VAT Rate. — The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:

XXX XXX XXX

(3) Sale of services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, to a registered export enterprise, to be used directly and exclusively in its registered project or activity pursuant to Sections 294 (E) and 295 (D) of CREATE Act, and Section 5, Rule 2 of its amended IRR for a maximum period of seventeen (17) years from the date of registration, unless otherwise extended under the SIPP; Provided, That the term "registered export enterprise" shall refer to an export enterprise as defined under Section 4 (M), Rule 1 of the CREATE IRR, that is also a registered business enterprise as defined in Section 4 (W) of the same IRR: Provided further, That the above-described sales to existing registered export enterprises located inside ecozones and freeport zones shall also be qualified for VAT zero-rating under this sub-item until the expiration of the transitory period.

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Health maintenance organization (HMO) plans acquired by registered export enterprise for its employees who are directly and exclusively involved in the operations of their registered projects or activities and forming part of their compensation package shall be considered as "directly and exclusively used" in the registered project or activity of a registered export enterprise subject to the conditions provided under the existing laws, rules and regulations regarding the availment thereof.

The following local services shall not be considered as "directly and exclusively used" in the registered project or activity of a registered export enterprise, to *wit*:

1. **janitorial services;**
2. **security services;**
3. **financial services;**
4. **consultancy services;**
5. **marketing and promotion; and**
6. **services rendered for administrative operations such as Human Resources (HR), legal, and accounting.**

This notwithstanding, the registered export enterprise is not precluded from further proving, with supporting evidence, to the concerned IPA that any of the above-listed local purchases of services are indeed directly and exclusively used in its registered project or activity. In all instances, in issuing the VAT zero-rating certification, the concerned IPA shall be guided by the rule that such local purchases of services are directly attributable to the registered project or activity without which such registered project or activity cannot be carried out. These are costs that are indispensable to the project or activity, *i.e.*, without which the project or activity cannot proceed, and these include expenses that are necessary or required depending on the nature of the registered project or activity of the export enterprise.

If the purchased services are used in both the registered project or activity and administrative operations, the registered export enterprise shall adopt a method to best allocate the same. If a proper allocation could not be determined, said services shall be subject to twelve percent (12%) VAT.

The VAT zero-rating on local purchase of services shall be availed of on the basis of the VAT zero-rating certification issued by the concerned IPA, without prejudice, however, to the conduct of post audit investigation/verification by the BIR that the services are indeed directly and exclusively used by the registered export enterprise in its registered project or activity.

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For this purpose, upon the effectivity of these Regulations, local suppliers of services of registered export enterprise shall no longer be required to apply for approval of VAT zero-rating with the BIR. All applications with accompanying VAT zero-rating certification issued by the concerned IPA which have been received but have not yet acted upon by the concerned office of the BIR upon the effectivity of these Regulations 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 registered export enterprise in its registered project or activity.

The concerned IPA shall furnish the BIR through the Assessment Service Attention: Audit Information, Tax Exemption and Incentives Division (AITEID) within twenty (20) days following the close of each taxable quarter a list of registered export enterprise issued with VAT zero-rating certification. In order to obtain relevant information, for audit purposes, the Commissioner of Internal Revenue may prescribe a report template in a separate revenue issuance."

SECTION 4. Repealing/Amendatory Clause. — Any rules and regulations, issuances or parts thereof inconsistent with the provisions of these Regulations are hereby repealed, amended or modified accordingly.

SECTION 5. Separability Clause. — If any of the provisions of these Regulations is subsequently declared unconstitutional, the validity of the remaining provisions hereof shall remain in full force and effect.

SECTION 6. Effectivity. — This issuance shall take effect immediately following its publication in a newspaper of general circulation or in the Official Gazette, whichever comes first.

BENJAMIN E. DIOKNO
Secretary of Finance

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Recommending Approval:

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
006218

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