REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

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Date: JUN 09 2021

REVENUE REGULATIONS NO. 9-2021

SUBJECT : Amending Certain Provisions of Revenue Regulations (RR) No. 16-2005, as Amended by RR No. 13-2018 and as Further Amended by RR No. 26-2018 to Implement the Imposition of Twelve Percent (12%) Value-Added Tax (VAT) on Transactions Covered Under Section 106(A)(2)(a) Subparagraphs (3), (4), and (5), and Section 108(B) Subparagraphs (1) and (5) of the National Internal Revenue Code (Tax Code) of 1997, as Amended by R.A. No. 10963 (TRAIN Law)

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 Tax Code of 1997, as amended, these Regulations are hereby promulgated to implement the imposition of 12% VAT on certain transactions previously taxed at zero rate under Sections 106(A)(2)(a) subparagraphs (3), (4), and (5), and 108(B) subparagraphs (1) and (5) of the Tax Code of 1997, as amended, after satisfaction of the conditions set forth in the TRAIN Law.

SECTION 2. TRANSACTIONS THAT ARE NOW SUBJECT TO 12% VAT. – The conditions required under the proviso of Sections 106(A)(2)(a) and 108(B) of the Tax Code of 1997, as amended, have been fully satisfied, hence, in accordance thereto, the following transactions that were previously taxed at zero percent (0%) VAT shall now be subject to 12%:

A. Those transactions considered as export sale under subparagraphs (3), (4), and (5) of Section 106(A)(2) of the Tax Code of 1997, as amended, to wit:

   1. Sale of raw materials or packaging materials to a non-resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) [Sec. 106(A)(2)(a)(3)];

   2. Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production [Sec. 106(A)(2)(a)(4)]; and

   3. Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws [Sec. 106(A)(2)(a)(5)].

B. The sale of sale of services and use or lease of properties under subparagraphs (1) and (5) of Section 108(B) of the Tax Code of 1997, as amended:

   1. Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP) [Sec. 108(B)(1)]; and

2. Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of the total annual production [Sec. 108(B)(5)].

SECTION 3. AMENDMENTS. – Subparagraphs of Sections 4.106-5 and 4.108-5 of RR No. 16-2005 as further amended by RR No. 13-2018 and RR No. 26-2018, are hereby renumbered and shall be read in the following order:

*"**SEC. 4.106-5. Zero-Rated Sales of Goods or Properties.** - xxx.*

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

(a) Export sales – "Export Sales" shall mean:

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported, paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations: Provided, That the goods, supplies, equipment, and fuel shall be used exclusively for international shipping or air transport operations.

The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations is limited to goods, supplies, equipment and fuel that shall be used in the transport of goods and passengers from a port in the Philippines directly to a foreign port, or vice versa, without docking or stopping at any other port in the Philippines unless the docking or stopping at any other Philippine port is for the purpose of unloading passengers and/or cargoes that originated from abroad, or to load passengers and/or cargoes bound for abroad: Provided, further, that if any portion of such fuel, goods, supplies or equipment is used for purposes other than that mentioned in this paragraph, such portion of fuel, goods, supplies, and equipment shall be subject to 12% VAT.

(b) Sales to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such sales to zero rate.

xxx xxx xxx" (italics supplied)

*"**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:*

(1) Services other than processing, manufacturing or repacking rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;

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(2) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

(3) Services rendered to persons engaged in international shipping or air transport operations, including leases of property for use thereof: Provided, that these services shall be exclusively for international shipping or air transport operations. Thus, the services referred to herein shall not pertain to those made to common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines, the same being subject to twelve percent (12%) VAT under Sec. 108 of the Tax Code.

(4) Transport of passengers and cargo by domestic air or sea vessels from the Philippines to a foreign country. Gross receipts of international air or shipping carriers doing business in the Philippines derived from transport of passengers and cargo from the Philippines to another country shall be exempt from VAT; however, they are still liable to a percentage tax of three percent (3%) based on their gross receipts derived from transport of cargo from the Philippines to another country as provided for in Sec. 118 of the Tax Code; and

(5) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels: Provided, however, that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power.

xxx xxx xxx" (italics ours)

SECTION 3. REPEALING CLAUSE. – Any rules and regulations, issuances or parts thereof inconsistent with the provisions of these Regulations are hereby repealed, amended or modified accordingly.

SECTION 4. 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 5. EFFECTIVITY. – These Regulations shall take effect fifteen (15) days following publication in leading newspapers of general circulation.

CARLOS G. DOMINGUEZ
Secretary of Finance
JUN 09 2021

Recommending Approval:

CAESAR R. DULAY
Commissioner of Internal Revenue
040695

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