TAX & LEGAL

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# UPDATES

A special publication by the FINEX Tax and Legal Committee

## LEGAL UPDATES

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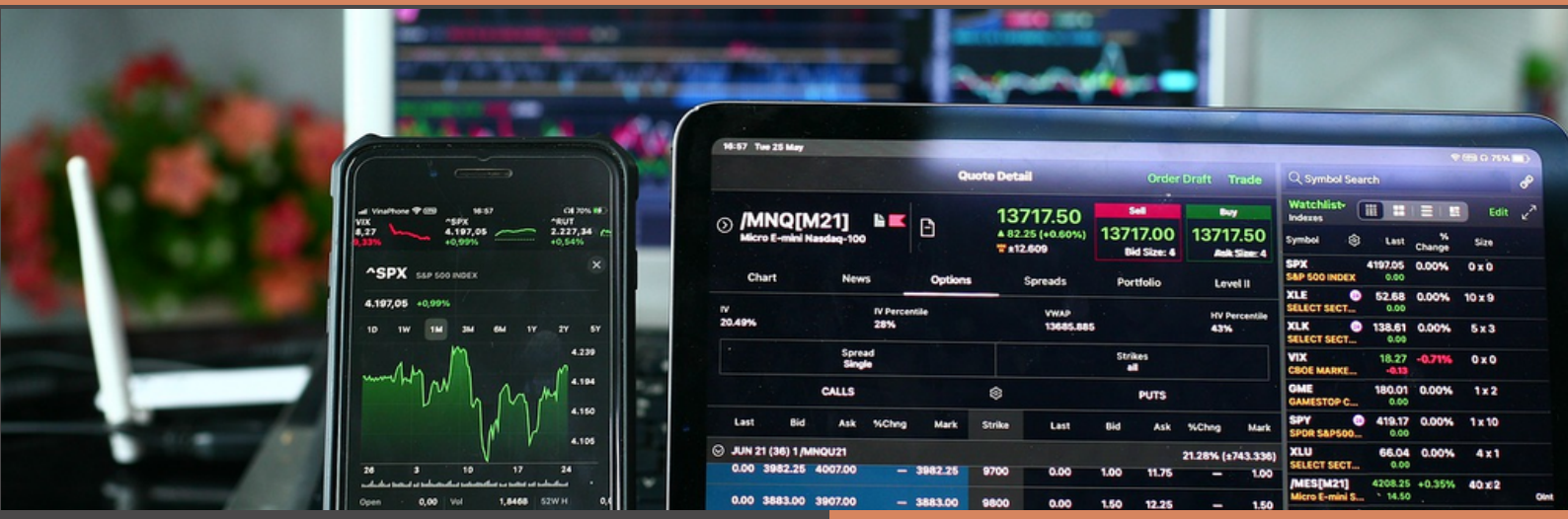
What's inside:



Three key legal updates on investment liberalization were introduced early this year. These were the amendments to the Retail Trade Liberalization Act (RTA), the Foreign Investments Act (FIA), and the Public Service Act (PSA). The passage of these laws will help both consumers and businesses as the country spurs economic growth as it emerges from the pandemic.

**Retail Trade Liberalization Act Amendments**

RA No. 11595 further liberalized the requirements for the entry of foreign retailers into the domestic market. Its implementing rules (IRR) clarify that the requirements do not apply to Philippine nationals, i.e., entities whose capital is controlled by Filipino citizens. Accordingly, non-Philippine nationals may acquire up to forty percent (40%) of the capital stock of such entities.

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First, a foreign retailer must have at least a paid-up capital of Php 25,000,000.00, significantly lower than the required paid-up capital prior to the amendment. The initial paid-up capital should be in cash, supported by the corresponding BSP Certificate of Inward Remittance or any document establishing the deposit of such amount in a Philippine bank. Such level of capital should be maintained at all times although it may be used to purchase properties. Accordingly, for capital maintenance purposes, paid-up capital may be in the form of cash or property. The SEC or the DTI, as applicable, shall monitor compliance with this requirement.

Prior to RA No. 11595, the minimum capitalization requirement was at least US$2,500,000.00 unless the foreign retailer would specialize in high-end or luxury product. In this case, it would only need (under the old law) a minimum investment of US$250,000.00 per store. The amendment removed this special category of retail activity.

Second, the home country of the foreign retailer must extend similar opportunity to Filipino retailers in its own market. For this purpose, the IRR requires the submission of a reciprocity certification issued by the proper official of the foreign retailer's home country. Notably, it does not anymore reflect, as a further limitation on the foreign retailer's equity ownership, the extent of foreign ownership allowed for retailing in its home country.

The amendment removed the other pre-qualification requirements, specifically on minimum net worth and track record in retailing of the parent company.Further, the mandatory public share offering is no longer required.

Third, the foreign retailer seeking to operate multiple stores must have a minimum investment per store of Php 10,000,000.00. The IRR clarifies what should qualify as part of minimum investment per store. For online retailing, the warehouse shall be deemed a store. The investment for common use and facilities shall be pro-rated among the number of stores served by such facilities.

The amendment reflects the "preferential use of Filipino labor" policy. It also encourages foreign retailers to promote locally made products. The IRR provides details of these requirements.

A foreign retailer is still prohibited to engage in certain retailing activities outside its accredited stores, such as the use of mobile or rolling stores or carts, the use of sales representatives, door-to-door selling, restaurants and sari-sari stores.

## Foreign Investments Act Amendments

The FIA promotes foreign investments and prescribes the procedures for registering enterprises doing business in the Philippines. These enterprises are classified into two: export enterprises and domestic market enterprises. They may take the form of a branch office, a subsidiary or an affiliate of a foreign corporation.

Export enterprises are those with export sales of at least sixty percent (60%). Those serving the domestic market or whose export sale is less than sixty percent (60%) of total output are considered domestic market enterprises. As a general rule, there are no restrictions on the extent of foreign ownership of export enterprises. Foreigners or non-Philippine nationals can invest up to one hundred percent (100%) equity of domestic market enterprises, provided the same are not engaged in activities enumerated in the negative list.Further, they must meet the prescribed capital. In particular, they must have paid-in equity capital of at least the Philippine Peso equivalent of two hundred thousand US dollars (US$200,000). Those not meeting this capital requirement are considered micro and domestic market enterprises and are generally reserved to Philippine nationals.The exception is when such enterprises have paid-in equity capital of at least the Philippine Peso equivalent one hundred thousand US dollars (US$100,000) and meet any of the qualifying conditions. The foreign investment by non-Philippine nationals in these enterprises may be in the form of foreign exchange or assets actually transferred to the Philippines and duly registered with the BSP. The amendment clarifies those engaged in retail trade are subject to the special capital requirements and the prescribed foreign investment may only be in the form of cash, as prescribed in RA No. 11595 and its IRR.

R.A. 11647 introduced certain clarifications and conditions. First, the foreign investment must be duly recorded in the stock and transfer book or the equivalent registry of ownership. Second, the export enterprises availing the incentives under CREATE must register with the concerned investment promotion agency (IPA) and comply with the prescribed export requirement. Their export sales must at least be seventy percent (70%) and not merely sixty percent (60%). The FIRB may set target performance metrics (which include the committed and approved amount of investment) monitored through the prescribed submission of the Annual Benefits Report. Third, defense related activities falling under List B may be permitted by the Secretary of National

Defense even without a substantial export component. Fourth, the instances when foreigners or non-Philippine nationals may invest up to one hundred percent (100%) equity of micro and domestic market enterprises with a paid-in equity capital of at least one hundred thousand US dollars (US$100,000) have been expanded and clarified. The prescribed number of direct employees has been reduced from fifty (50) to at least fifteen (15) Filipino employees. Those considered as startups or startup enablers are now included in the list. Fifth, foreign enterprises employing foreign nationals and enjoying fiscal incentives are required

to implement an understudy or skills development program. Finally, there may be a review, suspension or prohibition of foreign investments on strategic industries, specifically when there is a threat to the territorial integrity, security, safety, and well-being of the country.

The amendment also created the Inter-Agency Investment Promotion Coordination Committee (IIPCC). It is tasked, among others, to prepare a comprehensive business plan called Foreign Investment Promotion and Marketing Plan. It must be consistent with the Strategic Investment Priorities Plan introduced in CREATE Law.


Public Service Act Amendments

The PSA provides the basic legal framework for the regulation of public services. It describes the activities considered as public services, and the authority of the concerned administrative agency to fix the rate for such services.

RA 11659 identifies public services that are subject to nationality restriction, as contemplated in the Constitution. These services, specifically described as public utilities, are grouped into six (6) categories, namely: (a) distribution of electricity; (b) transmission of electricity; (c) petroleum and petroleum products pipeline transmission system; (d) water pipeline distribution systems and wastewater pipeline systems, including sewerage systems; (e) seaports; and (f) public utility vehicles (PUVs). Electric vehicles (EVs) and transport network vehicles (TNVs) are not considered as public utilities. However, they are considered as common carriers that are still subject to the concerned administrative agency's reasonable regulation.

The law recognizes a possible expansion of the list of public utilities, subject to certain procedural and substantive conditions. No nationality requirement may be imposed by the relevant administrative agency on any company that provides public services not considered as public utilities.

Public services, including public utilities, remain to be subject to reasonable regulation. They are considered as businesses affected with public interest. The government may temporarily take over or direct their operation in times of national emergency.

Further, the law restricts the equity investment of foreign nationals and foreign owned or controlled enterprises in companies operating public utilities and critical infrastructures, which include telecommunications facilities. The investment of foreign nationals in companies engaged in critical infrastructures may be up to fifty percent (50%), subject to reciprocity benefit accorded to Philippine nationals by their home country. Entities controlled by or acting on behalf of a foreign government or foreign state-owned enterprises are now prohibited from owning capital in any public utility or a public service classified as critical infrastructures. The prohibition applies prospectively. However, foreign

state-owned enterprises which own capital prior to the effectivity of the law are prohibited from investing in additional capital. Sovereign wealth funds and independent pension funds of a foreign state, however, are permitted to collectively own up to thirty percent (30%) of such companies. In all cases, these companies are prohibited from sharing any data or information, or providing assistance, support to or cooperation with foreign governments, instrumentalities or agents.

The amendment affirms the authority of the concerned administrative agency to fix and determine fair and reasonable fees, charges or rates for public services when public interest requires. It recognizes the use of performance-based regulation (PBR) as a rate setting methodology.

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# TAX UPDATES

P&A Grant Thornton

**Clarifications and guidelines on tax-free exchanges of properties under Section 40 (C)(2) of the Tax Code, as amended by CREATE**

(Revenue Memorandum Circular No. 19-2022 issued on February 4 2022)

Pursuant to Section 40 (C)(2) of the Tax Code of 1997, as amended by CREATE Act, reorganizations and transfer of property to controlled corporations are considered tax-free exchanges of properties.

Reorganizations include (a) mergers or consolidations, (b) stock swap resulting to acquisition of a controlled corporation, (c) acquisition of all or substantially all of properties of another corporation in exchange for shares, (d) recapitalization, and (e) reincorporation.

The term "control", when used in a tax free-exchange of properties, shall mean ownership of stocks in a corporation after the transfer of property possessing at least fifty-one percent (51%) of the total voting power of all classes of stocks entitled to vote. The collective and not the individual ownership of all classes of stocks entitled to vote of the transferor or

transferors shall be used in determining the presence of control.

Determination of substituted basis

Since the recognition of gain or loss pursuant to a tax-free exchange is merely deferred, the substituted basis of the properties transferred and shares received must clearly be established and properly monitored. Any gain realized in a subsequent sale or disposition shall be taxed accordingly.
The substituted basis shall be the basis for determining gain or loss on a subsequent sale or disposition of properties subject of the tax-free exchange transactions. As clarified by the BIR, existing rules on the determination of substituted basis shall still be followed. (see full copy of the RMC for detailed rules on substituted basis)

Monitoring of the substituted basis of the properties

For proper monitoring of the substituted basis, the parties to the tax-free exchange/ reorganization should comply with the reporting requirements as set forth under Revenue Regulations No. 18-2001 such as:

a. Each corporate party to the reorganization shall file, as part of its return for the taxable year, a complete statement of all facts pertinent to the non-recognition of gain or loss in connection with the reorganization;
b. Every non corporate party to the reorganization shall incorporate in his income tax return a complete statement of facts pertinent to the non-recognition of gain or loss upon such exchange;
c. The parties shall include a note to the respective audited financial statements a statement that they hold such assets/shares acquired in a tax-free exchange;
d. The parties shall annotate in the TCT, CCT and certificates of stock the original or historical cost of acquisition of the properties and the fact

no gain or loss was recognized;
e. Certified true copies of the annotated TCT/CCT/Certificates of stock shall be submitted to the RDO which issued the Certificate Authorizing Registration (CAR) within 90 days from receipt of the CAR; and
f. Recording of the transaction using the mandatory accounting entries pursuant to RMO No. 17-2016.

Tax treatment of exchange of properties pursuant to section 40 (C) (2) of the Tax Code

Tax-free exchanges shall be exempt from capital gains tax, creditable withholding tax, income tax, donor's tax, value-added tax, and documentary stamp tax (DST) on conveyances of real properties and shares of stocks. However, original issuance of shares in exchange for properties shall be subject to DST.

Venue for the issuance of the Certificate Authorizing Registration (CAR)

CAR shall be processed at the RDO having jurisdiction over the place where the property is located, in case of a real property, or in case of shares of stock, the RDO where the issuing corporation is registered.

In case the transaction involves transfer of multiple real properties and/or shares of

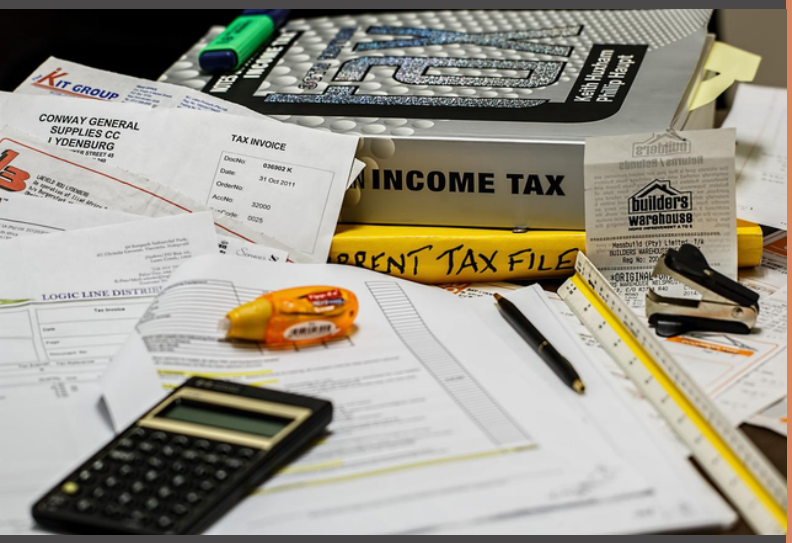
stocks situated in various locations covered by different RDOs, the CAR shall be processed with the RDO having jurisdiction over the place where the transferee corporation is registered.

The CAR shall specify, among others, that the transaction involved is a tax-free, the date of transaction, and the substituted basis of the properties subject.

Parties to the transaction shall submit the documentary requirements (Annex B of RMC 19-2022). https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/2022%20RMCs/RMC%20No.%2019-2022%20Annex%20B.pdf)

Conduct of post-transaction audit

Following the issuance of CAR, the concerned RDO shall conduct a post audit of said transactions pursuant to existing revenue issuances on tax audit and assessment, to determine the taxability thereof.




If after audit, the transaction is found to be not entitled to the tax deferment treatment, the transaction shall be subject to the applicable taxes, plus interest, penalty and surcharge. However, the result of the audit shall not invalidate the CAR previously issued for the transfer of the properties.

Option to request for legal opinion

Though a prior BIR ruling is not required, the taxpayer is not precluded from requesting a ruling/legal opinion with the Law and Legislative Division (LLD) of the BIR National Office in order to clarify legal issue/s that may affect the transactions, including the taxability of such transaction.

The LLD shall evaluate whether or not the request involves question/s of law that would merit the issuance of a ruling. Otherwise, it shall endorse the request to the concerned RDO for appropriate action.

**Suspension of income tax incentives of RBEs for violating WFH threshold/guidelines prescribed by FIRB**

(Revenue Memorandum Circular No. 23-2022 issued on March 09, 2022 revised by Revenue Memorandum Circular No. 39-2022 issued on April 06, 2022

Under FIRB Resolution Nos. 19-2021 and 23-21, registered business enterprises (RBEs) in the IT-BPM sector can continue with the WFH arrangement until March 31, 2022, subject to the conditions provided in the said resolutions.

The non-compliance with all the conditions prescribed under FIRB Resolution Nos. 19-21 and 23-21 shall result in the suspension of the income tax incentive on the revenue corresponding to the months of non-compliance.

Non-compliant RBEs shall pay as penalty, the RCIT of either 25% or 20% on the taxable net income corresponding to the months the RBE has violation.

RBEs shall file their Annual Income Tax Return (AITR) using BIR Form No. 1702-EX for those with Income Tax Holiday (ITH) incentive and BIR Form No. 1702-MX for those enjoying Gross Income Tax (GIT) ) incentive or those with mixed transactions, as if they are still entitled for incentives during the months of non-

compliance. Also, they are mandatorily required to complete the required information pertaining to allowable deductions pursuant to existing tax laws and regulations.

Payment of the computed penalty shall be made using BIR Form No. 0605 by choosing the radio button pertaining to 'Others', under 'Voluntary Payment' and by indicating in the field provided the phrase "Penalty pursuant to FIRB Res. No. 19-2021". The tax type code shall still be "IT" and the ATC to be indicated is "MC 200".

The RBE shall compute the penalty (income still payable) in the following manner:

| | | |
|---|---|---|
| Annual Net Taxable Income* divided by 12 | P | xxx |
| Average Monthly Net Taxable Income | | xxx |
| Multiply by the number of months with violation | | xxx |
| Taxable Income subject to regular income tax | | xxx |
| Multiply by regular income tax rate | | 20% / 25% |
| Income Tax due | | xxx |
| Less: Payments made per AITR** | | xxx |
| Income Tax still due and payable (Penalty) | | xxx |

*Annual Taxable Income must be computed based on existing tax laws and policies.
**For those under 5% GIT, payments made per AITR is computed as total gross income tax due per AITR divided by 12 months multiplied by the number of months with violation.

The payment of penalty must be made within 30 days after the due date prescribed for the payment of income tax. Payment made beyond such period will be imposed with administrative penalties.

If no payment of income tax due was made or the payment is not sufficient/correct, the RBE will be recommended for issuance of Letter of Authority for the conduct of audit covering all internal revenue taxes.

To monitor the violations, FIRB shall endorse monthly reports submitted by Investment Promotions Agencies (IPAs) regarding violations committed by concerned RBEs to the BIR.

## Clarifications on the VAT rules for Registered Business Enterprises (RBEs) under the CREATE Law

(Revenue Memorandum Circular No. 24-2022 issued on March 09, 2022; Amended by Revenue Memorandum Circular No 49-2022 issued on April 20, 2022)

This RMC clarifies VAT rules applicable to Registered Business Enterprises (RBEs) pursuant to Revenue Regulations No. 21-2021, implementing Sections 106 and 108 of the Tax Code, in relation to Sections 294(E) and 295(D), Title XIII of the Tax Code as introduced by Republic Act No. 11534, also known as the CREATE Act and its Implementing Rules and Regulations.

I. Applicable Rules

- RBEs duly registered with the concerned Investment Promotion Agencies (IPAs) under the CREATE Act shall now be governed by the CREATE provisions with respect to their availment of tax incentives, including VAT exemption of RBEs enjoying the 5% special corporate income tax (SCIT), VAT exemption on importation and VAT zero-rating on local purchases of goods and services.
- The “cross border doctrine”, as applied to Ecozones or Freeport Zones, has been rendered ineffectual and inoperative for VAT purposes upon the effectivity of CREATE Act.
- After the effectivity of CREATE Act, RBEs cannot invoke Sections 106(A)(2)(b) and 108(B)(3) of the Tax Code, which provides for VAT zero-rating under special laws and international agreements.
- Prior approval for VAT zero-rating must be secured from the BIR by local suppliers of goods/services of export RBEs in order for the sales to be accorded VAT zero-rating.

## II. Effectivity and Transitory Provisions

- RR No. 21-2021 took effect on December 10, 2021 but covers transactions entered into during third quarter of taxable year 2021 and onwards.
- The following should be the treatment for sale to RBEs during the period of effectivity of RR No. 09-2021 until its deferral on July 28, 2021, and until effectivity of RR No. 21-2021.

| Period | VAT Treatment | Procedures |
|---|---|---|
| A.) Effectivity of RR No. 09-2021 (June 27, 2021 to<br><br>June 30, 2021) | Subject to 12% VAT | a. VAT registered purchaser - utilize the passed on VAT as input tax; if engaged in zero-rated sales, it can recover the same through VAT refund; or<br>b. Non-VAT registered purchaser- claim VAT paid as part of cost or expenses |
| B.) Effectivity of RR No. 09-2021 covered by retroactive application of RR No. 21-2021 (July 1, 2021 to July 27, 2021), and until | **Option 1.** Seller retains the transaction as subject to 12% VAT | a. VAT registered purchaser – utilize the passed on VAT as input tax ; if engaged in zero-rated sales, it can recover the same through VAT refund; or<br>b. Non-VAT registered purchaser- claim VAT paid as part of cost or expenses |
| December 9, 2021, i.e. prior to the effectivity of RR No. 21-2021<br><br>*Sale to RBEs which were considered VAT zero-rated from July 01, 2021 to December 09, 2021 but will not qualify for VAT zero-rating based on the provisions of the CREATE Act shall remain as VAT zero-rated. If charged with 12% VAT, options 1 or 2 will apply.* | **Option 2.** Revert the transactions from subject to 12% VAT to VAT zero-rated | a. Seller to amend the VAT return after reimbursing the VAT paid by the RBE buyer, provided that no LOA has been issued yet. Resulting over-payment may be applied for refund inasmuch as the corresponding sales is reverted to zero-rated.<br>b. VAT SI/OR originally issued shall be retrieved by the seller from the RBE for cancellation and replacement with zero-rated SI/OR. The seller shall prepare a list of cancelled VAT SI/OR, together with the corresponding zero-rated SI/OR replacement for validation of the BIR. |

## III. VAT Treatment of Sales to RBEs upon effectivity of CREATE Act

| Transactions | VAT Treatment | Conditions |
|---|---|---|
| Sales to Registered Export Enterprises<br><br>*(Note: An export enterprise refers to any individual, partnership, corporation, Philippine branch of a foreign corporation, or other entity organized and existing under Philippine laws and registered with an IPA to engage in manufacturing, assembling or processing activity, and services such as information technology (IT) activities and business process outsourcing (BPO), and resulting in the direct exportation, and/or sale of its manufactured, assembled or processed product or IT/BPO services to another registered export enterprise that will form part of the final export product or export service of the latter, of at least seventy (70%) of its total production or output.)* | VAT zero-rated | • VAT zero-rating shall apply only to goods/services directly and exclusively used in registered project to activity<br>• Maximum period of 17 years from date of registration as indicated in its Certificate of Registration unless extended under SIPP. |
| Sales to Registered Domestic Market Enterprises (DMEs) and the following Service Enterprises:<br><br>1. Customs brokerage;<br>2. Trucking services;<br>3. Forwarding services;<br>4. Janitorial services;<br>5. Security services;<br>6. Insurance;<br>7. Banking and other financial services;<br>8. Consumers' cooperatives;<br>9. Credit unions;<br>10. Consultancy services;<br>11. Retail enterprises;<br>12. Restaurants; and<br>13. Such other similar services as may be determined by the FIRB | Subject to 12% VAT | |

Direct and Exclusive Use

- Direct and exclusive use in the registered project or activity refers to raw materials, supplies, equipment, goods, packaging materials, services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, and other expenditures without which the registered project or activity cannot be carried out. Other expenditures include (1) insurance costs required to be paid before the facility can start operations, (2) freight costs for bringing-in raw materials and equipment, and (3) telecommunication expenses of IT/BPO export enterprises.
- This excludes those used for administrative purposes.
- The registered export enterprise concerned should adopt a method to best allocate goods or services purchased. If the goods or services are used in both the registered project or activity and administration purposes and the proper allocation could not be determined, the purchase of such goods and services shall be subject to 12% VAT.
- Services for administrative purposes like legal, accounting, and such other similar services, are not considered expenses directly attributable to and exclusively used in the registered project or activity and shall not qualify for VAT zero-rating on local purchases.
- Any costs incurred prior to registration of a project or activity with the IPA shall not be allowed VAT zero-rating.

## IV. VAT Treatment of Sales to RBEs

- For imported capital equipment, raw materials, spare parts, or accessories use in non-registered project or activity, corresponding VAT shall be paid accordingly. For partial utilization in a non-registered project or activity, the

| Transactions | | VAT Treatment | Notes |
|---|---|---|---|
| Seller | Buyer | | |
| Registered non-export enterprise or DMEs under 5% SCIT, registered as VAT exempt entity | Export RBEs and non-RBEs | VAT Exempt | Passed on VAT by VAT-registered local suppliers shall form part of the cost or expenses of the DMEs |
| Registered export enterprise | Registered export enterprise | a. If seller is VAT-registered under ITH – VAT zero rated<br>b. If seller is under 5% SCIT and the sale of goods and services will form part of the final export product or service (of at least 70% of its total production or output) – VAT exempt | Sold goods and services are directly and exclusively used in the registered project or activity |
| DME | Registered export enterprise | Same as above. | |
| RBE (for subsequent sale of VAT-exempt imported capital equipment, raw materials, spare parts, accessories) | Registered export enterprise | VAT zero-rated | Purchases shall be directly and exclusively used in the registered project or activity of the registered export enterprise |
| Non-registered export enterprise or DME (for subsequent sale of VAT-exempt imported capital equipment, raw materials, spare parts, accessories) | Non-RBEs/export RBEs | a. If seller is under 5% SCIT - VAT Exempt<br>b. If seller is not under 5% SCIT – generally subject to 12% VAT; if sale is to a registered export enterprise, transaction is zero-rated) | 12% VAT is based on net book value of the items sold |

amount corresponding to the VAT on a specific capital equipment, raw materials, spare parts, or accessories shall be paid in proportion to its utilization for the non registered project or activity.

- ·Sale to enterprises covered by special laws such as renewable energy developers under RA No. 9513, IRRI, ADB, etc. remains to be subject to 0% VAT.

## V. Taxability of Existing Export Enterprises Registered Prior to CREATE Act

| Transactions | | VAT Treatment | Notes |
|---|---|---|---|
| Seller | Buyer | | |
| VAT registered suppliers from customs territory | Existing export RBE registered with PEZA, Freeport Zones, BOI and other IPAs | VAT zero-rated | Purchases shall be directly and exclusively used in the registered project or activity of the registered export enterprise until the expiration of the transitory period or the remaining period of their incentives under the CREATE IRR |
| VAT registered suppliers from customs territory | Existing registered non-export enterprise located inside ecozone and freeport zones | Subject to 12% VAT | |
| VAT registered suppliers from customs territory | Registered export enterprise whose registration already expired and is not anymore available for renewal | Subject to 12% VAT | |
| VAT registered suppliers from customs territory | Non-resident foreign buyers for delivery within the Philippines | Subject to 12% VAT | Good and services were delivered or rendered to export-oriented companies |
| PEZA RBE entitled to 5% GIT or SCIT | Persons doing business outside the Philippines | VAT Exempt | a. Goods must be subsequently exported<br>b. Service fees for processing, manufacturing, or repacking shall be indicated in the official receipts and VAT returns as a VAT exempt sale. |
| PEZA RBE entitled to 5% GIT or SCIT | Nonresident buyer | VAT Exempt | Raw materials or packaging material for delivery to local export-oriented enterprise to be used in the packaging, manufacturing, and repacking in the Philippines and paid in acceptable foreign currency |
| Registered export enterprise | Non-residents | a. Sales under ITH - VAT zero-rated<br>b. Sales under 5% SCIT - VAT exempt | a. RBEs shall remain VAT-registered until the expiration of the ITH for all its registered activities<br>b. Registered export enterprise is required within 2 months from expiration of ITH to change its status from VAT-registered to non-VAT.<br>*(Note: Under RMC 49-2022, if the taxpayer has other activities other than those registered with the IPA that are subject to VAT (i.e., VAT at 12% and 0%), it shall remain as a VAT taxpayer and shall report the sales in the VAT returns as VATable, zero-rated and/or VAT-exempt, as the case may be.)* |

## VI. Application for VAT zero-rating

- Prior approval from the BIR is needed to be secured by the local suppliers of goods/services of registered export enterprises in order for their sales to be accorded VAT zero-rating. Absence of prior approval from the BIR may result in the disallowance of the VAT zero-rated sale of the supplier. (Note: Under RMC 49-2022, sales transactions that are qualified for VAT zero-rating but failed to secure an approved application for VAT zero-rating with the BIR, prior application may not be required until March 9, 2022, subject, however, to the three (3) documentary requirements below.)

- The concerned Investment Promotion Agencies (IPA) shall issue annually a VAT zero-percent (0%) certification only to registered export enterprises. Such certification shall indicate the registered export enterprise:

i. registered export activity i.e., manufacturing, IT BPO;

ii. tax incentives entitlement under agreed terms and conditions with the validity period; and

iii. the applicable goods and services (or category thereof), i.e., raw materials, supplies, equipment, goods, packaging materials, services, including provision of basic infrastructure, utilities, and

maintenance, repair and overhaul of equipment, and other expenditures directly attributable to the registered project or activity without which the registered project or activity cannot be carried out.

- All IPAs are required to submit to BIR the list of RBEs which are categorized as export enterprise, for purposes of VAT zero-rating.

- Applications for VAT zero-rating shall include the following attachments:

1. Certificate of Registration and VAT Certification issued by concerned IPA as submitted to them by their registered export enterprise buyers;
2. A sworn affidavit executed by the buyer RBE, stating that the goods and/or services bought are directly and exclusively used in the registered project.
3. Other documents to corroborate entitlement to VAT zero-rating such as but not limited to duly certified copies of purchase order, job order or service agreement. sales invoices and/or official receipts, delivery receipts, or similar documents to prove existence and legitimacy of the transaction.

- In order to avail of the VAT zero-rating incentive, the registered export enterprise buyers, prior to the transaction, shall provide their suppliers with a photocopy of the BIR Certificate of Registration (BIR Form No. 2303), Certificate of Registration and VAT certification issued by the concerned IPA. In addition, the RBE shall provide their suppliers a sworn declaration stating that the goods and/or services being purchased shall be used directly and exclusively in the registered project.

VII. Refund by Local Suppliers and Recovery of Input VAT Passed on to Registered Export Enterprises

- The approved application for VAT zero-rating shall be submitted by the supplier-applicant of the buyer RBE upon filing of VAT credit or refund.

- If the local supplier inadvertently passed on VAT to the RBE on its purchases of goods and services directly and exclusively used in the registered project or activity, the RBE may contest the same and/or resolve with the local supplier the reimbursement of VAT paid, if any. The previously issued SI/OR to the registered export enterprise having VAT imposed must be surrendered/returned to the local supplier for cancellation and replacement.

- VAT paid or incurred for purchases not directly and exclusively used in the registered project or activity of the registered export enterprise are not allowed for VAT refund. However, the following options may be availed of:

i. If VAT registered and enjoying ITH, claim the passed-on VAT is input tax credit and apply against future output VAT liabilities; or

ii. Should there be no sales subject to VAT, accumulate the input tax credits and claim as VAT refund upon expiration of VAT registration (i.e. end of ITH period

and 5% SCIT incentive commences); or

iii. If non-VAT registered- charge to cost or expense account.

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