

ADVISORY ON ENTITLEMENT TO VAT-ZERO RATING UNDER CREATE

PAGE NOS.

BIR REVENUE MEMORANDUM CIRCULAR
NO. 29-2022

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Amending Pertinent Portion of the Questions and Answers (Q&A) in Revenue Memorandum Circular (RMC) No. 24-2022 to Align Them with the Provisions of CREATE Act and its Implementing Rules and Regulations (IRR)

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Q & A No. 10 is revised to clarify that not only sales to registered export enterprises and domestic market enterprises (DMEs) within Ecozones and Freeport Zones are affected by the deferment of RR No. 9-2021.

Q10: RR No. 21-2021 was issued a few months after the issuance of RR No. 15-2021, which deferred the implementation of RR No. 9-2021. There is a possibility that affected taxpayers may have declared their sales to registered export enterprises as VAT zero-rated and domestic market enterprises (“DME”) within ecozones and freeports for the period July 1, 2021 up to the effectivity of RR No. 21-2021 on December 10, 2021. What happens if these are not qualified for VAT zero-rating based on the provisions of CREATE?

A10: During the period July 1 to December 9, 2021, sale transactions which were already declared as VAT zero-rated shall remain as such. The non-retroactivity rule applies as the revocation, modification or reversal will be prejudicial to the taxpayers affected.

If the affected taxpayer had already declared its sales transactions as subject to VAT, the options laid down in Q & A No. 8 and 9 of RR 24-2022 may be followed.

Q & A No. 17 is revised to inform taxpayers that entitlements of registered non-export locators (prior to CREATE Act) or DMEs located in Ecozones and Freeport Zones differ depending on the time of their registration.

Q17: What is the treatment on the sales by registered non-export enterprises or DMEs located in Ecozones and Freeport Zones?

A17: The following rules shall apply to the DME’s sales of goods and services depending on when the seller is registered either prior to or during the effectivity of CREATE:

If registered prior to CREATE:

- If the non-export locator is under the 5% Gross Income Tax (GIT) regime – The locator is a VAT-exempt entity. Sales, whether inside the Ecozones or Freeport Zones as well as from the customs territory, are VAT-exempt only to the extent of the registered activity. VAT passed on shall form part of its cost or expenses.

- If the non-export locator is under the Income Tax Holiday (ITH) with sales to registered export enterprises – Subject to VAT at zero-rate provided that the goods and services are directly and exclusively used in the registered business project or activity.
- If the non-export locator is under the Income Tax Holiday (ITH) with sales to non-export locators or DMEs within the Ecozones, Freeport Zones and enterprises from the customs territory – Subject to VAT.

If registered during CREATE:

- The sales to registered export enterprises are subject to VAT at zero-rate provided that the goods and services are directly and exclusively used in the registered business project or activity.
- The sales to DMEs within the Ecozones, Freeport Zones and enterprises from the customs territory are subject to VAT.

Q & A No. 31 and 33 are also revised.

Q31: What is required from the existing registered export enterprises that have already completed their ITH and already under the 5% GIT or SCIT regime but remained as VAT-registered entity?

A31: The following registered export enterprises is required to change its status from a VAT-registered entity to non-VAT:

- Those whose sales are generated only from the registered activity and have shifted from ITH to 5% GIT or SCIT regime must change its status within two (2) months from the expiration of their ITH; and
- Those enjoying GIT regime but are still VAT-registered at the time CREATE Act took effect must change its status within 2 months from the effectivity of this Circular.

If the taxpayer has activities other than those registered with the IPA that are subject to VAT, 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.

Q33: Is prior approval from the BIR needed to be secured by local suppliers of goods and/or services of registered export enterprises in order for their sales to be accorded VAT zero-rating under CREATE?

A33: Yes. VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in the registered project or activity of the registered export enterprise upon endorsement of the concerned IPA, in addition to documentary requirements of the BIR.

Absence of prior approval may result in the disallowance of the VAT zero-rated sale of the supplier.

For sales transactions qualified for VAT zero-rating but failed to secure an approved application with the BIR, prior application may not be required until March 9, 2022, or the effectivity of this RMC, subject to the three (3) documentary requirements enumerated in Q & A No. 37 of RR No. 24-2022.

Source:
Revenue Memorandum Circular No. 49-2022