

ADVISORY ON VAT PROVISIONS UNDER CREATE

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Clarifies Further the Transitory Provisions for the VAT Zero-Rate Incentives Under Section 294(E) and 295(D), Title XIII of the Tax Code, as amended, and as Implemented by Section 5, Rule 2 and Section 5, Rule 18 of the CREATE Act Implementing Rules and Regulations (CREATE IRR)	

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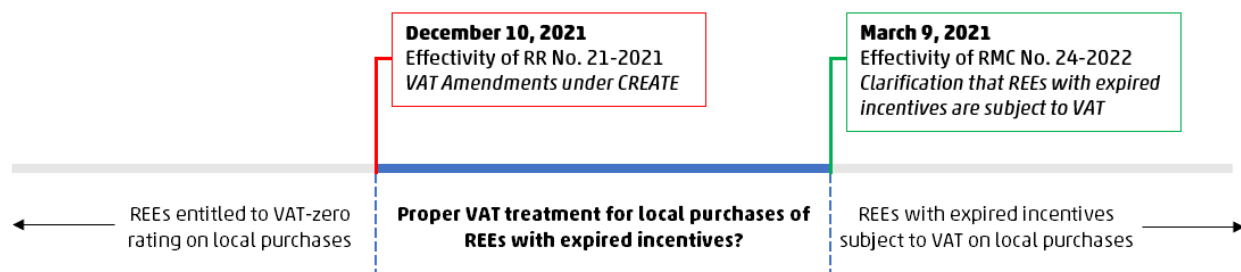
BUREAU OF INTERNAL REVENUE
REVENUE MEMORANDUM CIRCULAR
NO. 152-2022

ADVISORY

Clarifies Further the Transitory Provisions for the VAT Zero-Rate Incentives Under Section 294(E) and 295(D), Title XIII of the Tax Code, as amended, and as Implemented by Section 5, Rule 2 and Section 5, Rule 18 of the CREATE Act Implementing Rules and Regulations (CREATE IRR)

TRANSACTIONS THAT HAVE BECOME SUBJECT TO VAT DURING TRANSITORY PERIOD

Pursuant to [RR No. 21-2021](#) and as clarified by Q&A No. 26 of [RMC No. 24-2022](#), **Registered Export Enterprises (REEs) whose incentives period have already expired are already subject to VAT**. Thus, such entities are no longer qualified for VAT zero-rating on their local purchases starting from the effectivity of RR No. 21-2021 on December 10, 2021. However, RMC No. 24-2022 was only issued on March 9, 2022. Thus, there might be suppliers that declared their sales to unqualified RBEs as subject to VAT at 0% from December 10, 2021 to March 8, 2022.



1. *What is the effect on transactions that have become subject to VAT pursuant to RR No. 21-2021 and up to the clarification made in Q&A No. 26 of RMC No. 24-2022?*

- Transactions which transpired from the effectivity of RR No. 21-2021 on December 10, 2021 up to the day before the effectivity of RMC No. 24-2022 on March 8, 2022, **shall remain as VAT zero-rated**.

2. *In case the purchaser is qualified for VAT zero-rate, but was imposed 12% VAT by the seller for the said transitory period, what will be the procedures to correct the situation?*

- The buyer and the seller may pursue any of the following:

A. Retain the transaction as subject to 12% VAT.

Party	Treatment
Seller	Declare the sales as subject to 12% VAT
VAT-registered Purchaser	Utilize the passed-on VAT as input tax and shall be deducted from output tax If engaged in zero-rated activities, recovery through VAT refund pursuant to Section 122(A) of the Tax Code, as amended
Not a VAT-registered Purchaser	VAT paid shall be claimed as part of the cost of sales or expenses

B. Revert the transaction from VAT at 12% to VAT zero-rated.

Party	Treatment
Seller	<ol style="list-style-type: none"> 1. Amend the related VAT return after reimbursing/returning the VAT paid by the buyer that is an REE 2. Retrieve the originally-issued VAT SI/OR for cancellation and replacement with a zero-rated SI/OR 3. Prepare a list of cancelled and replacement SIs/ORs for validation by the BIR <p>The adjustment to sales shall only be to the extent of the reimbursed VAT to the REE. The resulting overpayment due to unutilized input tax credits, if any, may be recovered through VAT refund pursuant to Section 112(A) of the Tax Code, as amended, since the corresponding sale is reverted to VAT zero-rated.</p>
VAT-registered Purchaser	Amend the related VAT return to reflect the reduced input VAT

CHANGE OF STATUS FROM "VAT" TO "NON-VAT" REQUIREMENT

The following REEs are required to change their registration to non-VAT within two (2) months from expiration of the ITH incentive or effectivity of RMC No. 49-2022, whichever is applicable:

- i. REEs who have completed their ITH and now under the 5% GIT/SCIT regime; or
- ii. REEs already enjoying the 5% GIT/SCIT upon effectivity of CREATE but remained VAT-registered.

1. *Will Percentage Tax apply to REEs that changed from VAT to Non-VAT?*

- No. Percentage Tax should not be registered since these REEs are only subject to GIT/SCIT in lieu of all other internal revenue taxes. These taxpayers are only required to file and pay the corresponding tax due in their respective Annual or Quarterly Income Tax Returns, subject to regular validation by the RDO or Large Taxpayer Audit Division in order to verify whether no project or activity other than those that are registered under the 5% GIT/SCIT is being carried out by the REE. If found to be in violation, a corresponding assessment and penalties shall be imposed accordingly.

2. *Are these non-VAT REEs still qualified for the 0% VAT on their local purchases of goods and services that are directly and exclusively used in their registered activity?*

- Yes. These REEs can enjoy their VAT zero-rate incentive on their local purchases until the end of their incentive period. Note that REEs whose incentive periods have already expired will be subject to 12% VAT on local purchases.

Source:

[Revenue Memorandum Circular No. 152-2022](#)