

**This MAP Tax Bulletin for September 2023 was contributed by
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JURISPRUDENCE

The NIRC does not require direct and entire attribution of input taxes to the zero-rated or effectively zero-rated sales before it may be made subject of a tax refund or claim for tax credit certificate

Commissioner of Internal Revenue v. Toledo Power Company, G.R. Nos. 255324 & 255353 (April 12, 2023)

- The term ‘attributable’, as applied to zero-rated or effectively zero-rated sales, simply means that the input VAT must be incurred on a purchase or importation which causes or relates to the zero-rated or effectively zero-rated sales, but not necessarily a part of the finished goods subject of such sales.
- According to the Supreme Court, based on this parameter, on one hand, the input taxes of taxpayers engaged purely in either zero-rated or effectively zero-rated transactions are presumably attributable to the zero-rated or effectively zero-rated activity as they are not engaged in any other category for VAT purposes. All its purchases of goods and services are made in relation to or caused by its zero-rated or effectively zero-rated activities. Otherwise, how else would the taxpayer utilize its purchases but for its main activity which, incidentally in this case, is a zero-rated or effectively zero-rated transaction?
- On the other hand, taxpayers engaged in mixed transactions must first categorize its input taxes. Those which can be directly and entirely attributed to VATable transactions, VAT-exempt transactions, zero-rated transactions, and effectively zero-rated transactions shall first be applied to the respective output tax resulting from such transaction. Thereafter, residual input taxes, shall be allocated to any one of the transactions proportionately on the basis of the volume of sales. Under the National Internal Revenue Code of 1997 (NIRC),

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the requirement of direct and entire attributability only applies in mixed transactions and only to the extent that input taxes can be attributed as a particular transaction.

- This interpretation is further supported by the definition of creditable input taxes under Section 110 of the NIRC – even if the purchases do not necessarily form part of the finished goods of a taxpayer, the input tax incurred can still be credited against the output tax if it is: (1) incurred or paid in the course of the VAT-registered taxpayer’s trade or business, and (2) supported by a VAT invoice issued in accordance with the invoicing requirements of the law.

The liability to pay import customs duties and taxes attaches upon the expiration of the bareboat charter authority and failure to re-export the foreign-owned vessel which secured a temporary certificate of Philippine registry with the MARINA pursuant to PD No. 760, as amended.

Sub-See Philippines Inc. and Northern Oriental Shipping, Ltd. v. Hon. Rey Leonardo B. Guerrero, in his official capacity as Commissioner of Customs and Atty. Elvira Cruz, in her capacity as District Collector of Customs, Port of Cebu, CTA Case No. 10102 (August 10, 2023)

- Presidential Decree (PD) No. 760, as amended, provides that foreign-owned vessels are temporarily given the rights and privileges of a vessel of Philippine Registry. It further provides that there must be a valid and subsisting temporary certificate of Philippine Registry from the Maritime Industry Authority (MARINA) to enjoy the rights and privileges of a vessel of Philippine registry, i.e., exemption from payment of import taxes and duties.
- Petitioners applied for a bareboat charter authority or a temporary certificate of Philippine registry from the MARINA. As petitioners were granted a bareboat charter authority, they were not required to pay the necessary customs duties and taxes pursuant to Section 1 of PD No. 760, as amended, subject to the following conditions: (1) posting of a bond equivalent to 150% of the customs duties and taxes, and (2) re-exportation or payment of the customs duties and taxes upon termination of the charter period. Considering petitioner’s failure to re-export the vessel after the expiration of the bareboat charter authority, the liability to pay the import duties already attached right after the expiration of the bareboat charter authority.
- Moreover, the subsequent posting and renewal of the re-export bond is of no moment as the bareboat charter authority had already expired.

Our tax laws do not absolutely prohibit the issuance of a second LOA for the same taxable year

Golden Donuts, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9676 (August 30, 2023)

- Petitioner alleges that Section 235 of the National Internal Revenue Code of 1997, as amended (NIRC) prescribes that the inspection of the books of accounts and other related accounting records of a taxpayer shall be made only once in a taxable year and that the respondent [Commissioner of Internal Revenue (CIR)] committed grave abuse of discretion for issuing a Letter of Authority (LOA) and a Run After Tax Evaders LOA for the same taxable year.
- According to the Court of Tax Appeals (CTA), our tax laws do not absolutely prohibit the issuance of a second LOA for the same taxable year. Section 235 of the NIRC provides that for income tax purposes, examination and inspection shall be made only once in a taxable year, however, it admits of exceptions – fraud, irregularity, or mistakes, among others. Revenue Memorandum Order (RMO) No. 27-2010 likewise sanctions the issuance of another LOA for the same taxable year even though the previous investigation had already been concluded upon the discovery of evidence of fraud in the course of a regular audit investigation. Moreover, in *CIR v.*

Gonzalez (G.R. No. 177279), the Supreme Court held that a prior terminated assessment cannot bar the issuance of a second LOA for the same taxable period if there is prima facie evidence of fraud. In this case, the prima facie evidence of fraud was the Memorandum issued by the Chief of the National Investigation Division, which is sufficient reason for the CTA to deny petitioner's claim that the CIR committed grave abuse of discretion in issuing another LOA for the same taxable year.

- In addition, petitioner's claim that the prior assessment has been closed and terminated has no basis as it did not present any Termination Letter or Authority to Cancel Assessment to evidence the cancellation of the assessment.

There is no CGT due but there is DST due in case of a subsequent mutual cancellation or revocation of the sales instrument embodying the transaction

Great Landho, Inc., TT&T Development, Inc., and Tama Properties Inc. v. Commissioner of Internal Revenue, CTA Case No. 10184 (August 4, 2023)

- Around after four (4) months after the execution of the Deed of Absolute Sale of lands treated as capital asset and before the titles on the properties could be transferred to the buyer, the parties mutually entered into a Revocation / Cancellation of Deed of Absolute Sale due to a change in management plans. Since the parties agreed to rescind the Deed of Absolute Sale, the sale transaction was not consummated and thus, no actual conveyance or transfer of real properties was made between them. Consequently, the seller derived no income subject to Capital Gains Tax (CGT). Therefore, petitioner has sufficiently established its entitlement to the refund of erroneously paid CGT on the said mutually rescinded sale.
- With regard to the documentary stamp tax (DST), the Supreme Court decision in *Philippine Home Assurance v. Court of Appeals and Commissioner of Internal Revenue (G.R. No. 119446)* provides that the DST must be paid upon the issuance of the instrument evidencing the transfer or conveyance of real property, regardless, whether the contract that gave rise to it is rescissible, void, voidable, or unenforceable. This is because DST is an excise tax imposed on the privilege to transfer or convey a real property through the execution of a Contract of Sale or a Deed of Absolute Sale and not upon the transfer or conveyance itself.
- The subsequent mutual cancellation or revocation of the instrument embodying the transaction to which the DST liability attaches does not have the effect of cancelling such liability because the parties had already exercised the privilege to transfer or convey their respective real properties upon the due execution of the Deeds of Absolute Sale. Thus, the subject DST payments cannot be considered erroneous and thus, petitioner failed to prove its entitlement to a refund thereof.

The non-issuance of the eLOA when a LOA has been issued does not violate a taxpayer's right to due process

Commissioner of Internal Revenue v. Altus Angeles, Inc., CTA EB No. 2524 (August 14, 2023)

- Under Revenue Memorandum Order (RMO) No. 69-2010, a Letter of Authority (LOA) shall be replaced by an eLOA. However, RMO No. 69-2010 does not state that the conduct of the audit would be invalidated if a new eLOA is not issued nor does it provide a blanket revocation of the manual LOA if the said manual LOA is not replaced with an eLOA. This is matter of form of the LOA and shall not affect a taxpayer's right to due process.

LAW

An Act Further Amending Republic Act No. 11213, Otherwise Known as the “Tax Amnesty Act”, as Amended by Republic Act No. 11569, by Extending the Period of Availment of the Estate Tax Amnesty until June 14, 2025, and for other Purposes

Republic Act No. 11956 (August 5, 2023)

This law took effect fifteen (15) days after its publication in the Official Gazette or newspaper of general circulation. The law was published in the Official Gazette last August 8, 2023.

As Circularized by the BIR through Revenue Memorandum Circular No. 83-2023 dated August 14, 2023 (Date of issue on August 14, 2023)

- Republic Act (RA) No. 11956, an act further amending Republic Act (RA) No. 11213, otherwise known as the “Tax Amnesty Act”, extends the availment period of the estate tax amnesty for another two years, or until June 2025, after the measure seeking such an extension lapsed into law following the inaction from President Ferdinand Marcos Jr.
- The tax amnesty program already expired last June 14, 2023, but the newly approved RA No. 11956 allows the settlement of the estate tax obligations until June 14, 2025.
- Among the salient provisions are as follows:
 - The extension covers the estate of decedents who died on or before May 31, 2022, whose estate taxes have remained unpaid or have accrued as of that date.
 - To avail of the estate tax amnesty, within June 15, 2023 until June 14, 2025, taxpayers shall file, either electronically or manually, with any authorized agent bank, Revenue District Office through the Revenue Collection Officer, or authorized tax software provider, a sworn Estate Tax Amnesty Return, in such forms as may be prescribed in the Implementing Rules and Regulations.
 - The payment of the amnesty tax shall be made, either electronically or manually, at the time the Return is filed with any authorized agent bank, Revenue District Office through the Revenue Collection Officer, or authorized tax software provider.
 - The proof of settlement of the estate, whether judicial or extrajudicial, shall only be required by the BIR for the issuance of Electronic Certificate Authorizing Registration (ECAR) for transfer of properties, not for the filing and payment of estate tax.
 - Payment by installment shall be allowed within two years from the statutory date for its payment without civil penalty and interest.

Amending Rule 18, Section 5 of the IRR of Title XIII of the NIRC, as amended by the Create Act

DOF-DTI Issuance dated August 8, 2023

These rules shall take effect immediately upon publication in a newspaper of general circulation. This was published in the Manila Bulletin last August 11, 2023.

- The Department of Finance (DOF) and the Department of Trade and Industry (DTI) have approved the amendment to the CREATE Act specifically to Rule 18, Section 5 to address the VAT issues faced by transitory registered business enterprises (RBEs).

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- Rule 18, Section 5 of the CREATE IRR is amended as follows:

Sections	Guidelines
<p>SECTION 2. Rule 18, Section 5 of the CREATE IRR – Non- Income Related Tax Incentives</p>	<ul style="list-style-type: none"> • All registered export and domestic enterprises that will continue to avail of their existing tax incentives subject to Sections 1, 2 and 3 of this Rule, may continue to enjoy the duty exemption, VAT exemption on importation, and VAT zero-rating on local purchases as provided in their respective IPA registrations; • The registered export enterprises as defined under Section 293(E) of the act whose income tax-based incentives have expired, may continue to enjoy VAT zero-rating on local purchases until the electronic sales reporting system of the Bureau of Internal Revenue under Section 237-A of the act is fully operational, or until the expiration of the transitory period referred to in Section 311(C) of the act, whichever comes earlier; • An RBE classified as DME which is located inside the economic or freeport zone during the transitory period will be allowed to register as a VAT taxpayer; • Duty exemption, VAT exemption on Importation, and VAT zero-rating on local purchases shall only apply to goods and services <u>directly attributable to and exclusively</u> used in the registered project or activity of said registered export enterprises.
<p>SECTION 3. -Applicability of these Rules</p>	<ul style="list-style-type: none"> • These Rules shall apply prospectively; Provided that DMEs inside the economic or freeport zone that will opt to register as VAT taxpayers shall not be allowed to claim VAT refund for transactions prior to the effectivity of these Rules.

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BIR MEMORANDUM

Reiteration on the Additional Documents being Required from Taxpayers that are Not Listed in the Checklist of Documentary Requirements for the processing of their requested transactions in the RDO

BIR MEMORANDUM dated August 2, 2023

- BIR's OIC - Deputy Commissioner Operations Group issued a memorandum dated 2 August 2023 to reiterate to all RDO officers and personnel that **only the required documents listed in the Checklist of Documentary Requirements** <https://www.bir.gov.ph/eappointment/files/RMC%20No.%2057-2020%20Annexes%20A1-A11P.pdf> shall be requested for submission by taxpayers for the processing of their requested transactions in the RDO. Requiring the submission of additional documents not listed in the CDR is a violation of Section 21(b) of Republic Act (RA) No. 11032 (Ease of Doing Business and Efficient Government Service Delivery Act of 2018).

BIR REVENUE REGULATIONS

Provides rules and regulations governing the imposition of Excise Tax on perfumes and toilet waters as provided under Section 150(b) of the Tax Code of 1997, as amended

Revenue Regulations No. 9-2023 dated April 11, 2023 (Published in Manila Bulletin on August 3, 2023)

- The BIR issued RR No. 9-2023, which prescribes the rules and regulations governing the imposition of **excise tax on perfumes and toilet waters** as provided under Section 150(b) of the National Internal Revenue Code (NIRC) of 1997, as amended.
- Among the salient sections of the RR are as follows:

Sections	Guidelines
SECTION 3. RATE AND BASE OF TAX	<ul style="list-style-type: none">For locally manufactured perfumes and toilet waters, the excise tax of twenty percent (20%) shall be based on the wholesale price, net of excise and value-added tax.For imported articles, the excise tax of twenty percent (20%) shall be based on the value of importation used by the Bureau of Customs (BOC) in determining tariff and customs duties, net of excise and value-added tax.
SECTION 4. PERSONS LIABLE TO EXCISE TAX	<p>A. Locally Manufactured Perfumes and Toilet Waters</p> <ul style="list-style-type: none">The excise tax shall be paid by the manufacturer or producer of such articles.Should the said products be removed from the place of production without payment of the excise tax, the wholesaler/distributor, retailer, owner or any person having possession thereof shall be liable for the excise tax due thereon. <p>B. Imported Perfumes and Toilet Waters</p>

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		<ul style="list-style-type: none"> · The excise taxes on imported articles shall be paid by the owner or importer to the BOC, in conformity with the regulations of the Department of Finance (DOF), and before the release of such articles from customs custody, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption. · In cases where tax-free articles are brought or imported into the Philippines by persons, entities, or agencies exempt from tax and are subsequently sold, transferred, or exchanged in the country to non-exempt persons, entities, or agencies, the purchaser or recipient of such goods shall be considered as the importer, and shall be liable for the excise tax due on such importation. 	
	<p>SECTION 5. TIME, PLACE AND MANNER OF FILING OF RETURN AND PAYMENT OF EXCISE TAX</p>	<p>A. Locally Manufactured Perfumes and Toilet Waters</p> <p>I. Filing of Tax Returns</p> <ul style="list-style-type: none"> · The return shall be filed and paid using eBIRForms or Form 2200-AN (Automobiles and Non-Essential Goods) via Electronic Filing and Payment System (eFPS), indicating the type of Tax marked as XG. <p>II. Payment of Excise Tax</p> <ul style="list-style-type: none"> · Shall be paid by the manufacturer or producer before removal from the place of manufacture/production and warehouse. Excise Tax herein imposed and based on selling price or other specified value of goods shall be referred to as "ad valorem tax." · In the event that the brand owner(s) uses or engages in a toll manufacturing or subcontracting service or agreement, to facilitate the production of the excisable products, payment of excise tax shall be paid by the brand owner itself who owns the product or formulation before removals from their toll manufacturer's or subcontractor's production premises. · In cases where labor or services are provided only by the toll manufacturer or subcontractor, payment of excise tax shall be filed and paid by the brand owner before the transfer of articles for bottling. <p>III. Place for Filing of the Return and Payment of Tax</p>	

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		<ul style="list-style-type: none"> · Bank duly accredited by the Commissioner under the jurisdiction of the Revenue District Office (RDO) where the person liable for the payment of the tax is registered or required to be registered. · In places where there are no duly accredited agent banks within the municipality or city, the Excise Tax return shall be filed with and any amount due paid to the duly authorized collection agent under the jurisdiction of the RDO or duly authorized treasurer of the city or municipality where the manufacturing or production plant is located or where the person in possession of untaxed perfumes and toilet waters is registered or required to be registered. · Large taxpayers duly notified by the Commissioner and other persons or entities who are required to file their tax returns and pay their internal revenue taxes through eFPS shall strictly comply with the existing rules and regulations governing eFPS with respect to the filing of Excise Tax returns and payment of Excise Taxes due on removals of perfumes and toilet waters. <p>B. Imported Perfumes and Toilet Waters</p> <ul style="list-style-type: none"> · Shall be paid by the importer to the BOC or its duly authorized representative prior to the release of such goods from customs custody. · In case a person is found in possession of untaxed locally manufactured or imported perfumes and toilet waters, the tax due thereon shall be paid immediately upon demand. This includes or covers any person, natural or juridical directly engaged in the reselling, retailing, marketing, on-line selling and distribution of perfumes and toilet waters. 	
	<p>SECTION 8. REGISTRATION REQUIREMENTS</p>	<p>Every person, whether individual or juridical entity, who intends to engage in business as manufacturer, producer, or brand owner availing the services of a toll manufacturer, subcontractor or importer-dealer of perfumes and toilet waters shall file an application in writing for a permit to engage in such business with the Commissioner of Internal Revenue through his duly authorized representative. The application shall be accompanied with copies of the documents as enumerated in the attached copy of the RR.</p>	
	<p>SECTION 9. MANUFACTURER'S/PRODUCER'S OR IMPORTER'S SWORN STATEMENT</p>	<p>The manufacturer/producer or importer shall file with the ELTRD a duly notarized manufacturer's/importer's sworn statement containing a list of all the brands of perfumes and toilet waters and variants, showing the corresponding</p>	

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	wholesale price and the suggested retail price for purposes of determining the unit cost or market value of each product manufactured and sold (Annex A)
SECTION 10. ATRIG REQUIRED FOR IMPORTATION	An application for ATRIG shall be filed through the National Single Window System and the duly notarized application together with the importation documents shall be submitted to the ELTRD for the processing and issuance of the ATRIG. Application for ATRIG shall be made prior to the release of such articles from customs custody.
SECTION 11. REQUIREMENTS BEFORE REMOVAL OF PERFUMES AND TOILET WATERS	Shall be accompanied with the corresponding Excise Tax Removal Declaration (ETRD) [BIR Form No. 2299], or any form to be prescribed by the BIR.
SECTION 12. EXPORTATION OF PERFUMES AND TOILET WATERS	All manufacturers of perfumes and toilet waters who intend to export the same shall file an application for a Permit to Export with the ELTFOD before the said products are removed from the place of production.
SECTION 18. BOOKS TO BE KEPT AND MAINTAINED	Shall keep ORBs and such other forms or records that may be required by the Commissioner, which may be kept within the place of production or importer's warehouse and shall at all times be made available for inspection by duly authorized internal revenue officers.

BIR REVENUE MEMORANDUM ORDERS

Amends RMO No. 23-2023 relative to the issuance of Tax Verification Notices (TVNs) in the processing of claims for Value-Added Tax (VAT) Credit/Refund except those under the authority and jurisdiction of the Legal Group Revenue Memorandum Order No. 28-2023 dated August 10, 2023 (Date of issue on August 10, 2023)

- Tax Verification Notice (TVN) shall be issued by the herein indicated Revenue Officials to authorize the verification of VAT credit/refund claims filed under Sections 112, 204 (C) and 229 of the Tax Code, as amended.

Processing Office	Revenue Official
Revenue District Office (RDO)	Revenue District Officer
VAT Audit Section (VATAS)	Assistant Regional Director
VAT Credit Audit Division (VCAD)	Division Chief
Large Taxpayer VAT Unit (LTVATAU)	Assistant Commissioner, LTS

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BIR REVENUE MEMORANDUM CIRCULARS

Prescribes the administrative requirements for importers and manufacturers of raw materials, apparatus or mechanical contrivances, and equipment specially used for the manufacture of heated tobacco products and vapor products

Revenue Memorandum Circular No. 78-2023 dated July 20, 2023 (Date of issue on August 4, 2023)

- Importers or manufacturers of raw materials, apparatus or mechanical contrivances, and equipment specially used for manufacture of Heated Tobacco Products (HTPs) and Vapor Products are required to comply with the following requirements:
 1. Application for a Permit to Operate as importer or manufacturer of raw materials, apparatus or mechanical contrivances, and equipment specially used for the manufacture of HTPs and vapor products – to be filed in writing addressed to the Commissioner of Internal Revenue, Attention: Chief, Excise LT Regulatory Division (ELTRD), together with the following basic supporting documents:
 - a. BIR Certificate of Registration (BIR Form No. 2303), including Payment Form (BIR Form No. 0605) evidencing payment of registration fee;
 - b. Copy of latest Income Tax Return duly filed with and received by the BIR, if applicable;
 - c. Location map, and plat and plan of the Production Plant/Warehouse, if applicable; and
 - d. Specifications (model/serial number) of the apparatus or mechanical contrivance, and equipment, if locally manufactured.
 2. Application with the ELTRD for Electronic Authority to Release Imported Goods (eATRIG) for every importation shall be done using the Philippine National Single Window System (<https://nsw.gov.ph/>). The basic documentary requirements include the following:
 - a. Bill of lading
 - b. Packing list
 - c. Commercial invoice
 - d. Import Entry and Internal Revenue Declaration (EIRD)
- Revenue Memorandum Order No. 14-2014 prescribes the procedures and guidelines for the processing and issuance of eATRIG for Excise Tax purposes.
- The raw materials specially used for the manufacture of HTPs and vapor products shall include, but not limited to: propylene glycol, vegetable glycerin, organic sweetener, artificial flavoring and nicotine.
- On the other hand, the devices specially used for the manufacture of HTPs and vapor products shall refer to, or comprise, any device or combination of devices designed or used to deliver the desired purpose, function, or effect of HTPs and vapor products. These devices or combinations thereof include, but are not limited to, a mechanical or electronic heating element (or atomizer), circuit, cartridge (or reservoir or pod), tank, mod, cartridge, or mouthpiece

Announces the availability of BIR Form Nos. 1600-PT, 1600-VT, 1602Q, 1603Q, 2551Q and 2552 in the Electronic Filing and Payment System (eFPS)

Revenue Memorandum Circular No. 79-2023 dated August 3, 2023 (Date of issue on August 8, 2023)

- Announces the availability of the following BIR Forms in the Electronic Filing and Payment System (eFPS):

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BIR Form No.	Description	Deadline of Filing/Payment
1600-PT	Monthly Remittance Return of Other Percentage Taxes Withheld	On or before the 10th day of the month following the month in which withholding was made.
1600-VT	Monthly Remittance Return of ValueAdded Tax Withheld	On or before the 10th day of the month following the month in which withholding was made.
1602Q	Quarterly Remittance Return of Final Income Taxes Withheld on Interest Paid on Deposits and Yield on Deposit Substitutes/Trusts/Etc.	Not later than the last day of the month following the close of the quarter during which withholding was made.
1603Q	Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits Paid to Employees Other than Rank and File	Not later than the last day of the month following the close of the quarter during which withholding was made.
2551Q	Quarterly Percentage Tax Return	Within 25 days after the end of each taxable quarter
2552	Percentage Tax Return for Transactions Involving Shares of Stock Listed and Traded the Local Stock Exchange or Through Initial and/or Secondary Public Offering	<ol style="list-style-type: none"> 1. For tax on sale of shares of stock listed and traded through the Local Stock Exchange (LSE) — within 5 banking days from date of collection. 2. For shares of stocks sold or exchanged through primary public offering — within 30 days from date of listing of shares of stock in the LSE; and 3. For tax on shares of stock sold or exchanged through secondary public offering — within 5 banking days from date of collection.

- All taxpayers who are mandated to use the eFPS shall file the above-mentioned returns and pay the corresponding taxes due, if any, using the eFPS facility, effective immediately

Clarifies issues relative to the implementation of Revenue Regulations No. 3-2023 and other related concerns on Value-Added Tax (VAT) zero-rate transactions on local purchases of the Registered Export Enterprises (REEs) and other entities granted with VAT zero-rate incentives under special laws and international agreements

Revenue Memorandum Circular No. 80-2023 dated August 9, 2023 (Date of issue on August 9, 2023)

- The BIR issued RMC No. 80-2023 to provide clarification on the provisions of RR No. 3-2023 and certain issues and concerns pertaining to transactions with other entities granted with VAT zero-rate incentives on local purchases under special laws and international agreements.
- The following issues/concerns are clarified as follows:

Issues/Concerns	Clarifications
On transactions with Registered Export Enterprise	
Q1: Effectivity Date of RR No. 3-2023	A1: RR No. 3-2023 took effect immediately following its publication in a newspaper of general circulation on April 28, 2023 .
Q2: Prior Approval for VAT zero-rate from the BIR upon the effectivity of RR No. 3-2023	A2: Upon the effectivity of RR No. 3-2023, local suppliers of REEs are no longer required to secure prior approval for VAT zero-rate with the BIR
Q3: Requisites for local purchase transaction of REE to qualify for VAT zero-rating	A3: The local purchase must be directly and exclusively used in the registered project or activity, and not included in the negative list provided in RR No. 3-2023

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	<p>Q4: Remedy of the REE-buyer if the goods/services purchased were included in the negative list but were used directly and exclusively used in the registered project or activity.</p>	<p>A: The REE is not precluded from further proving, with supporting evidence, to the concerned IPA that such goods and/or services are indeed directly and exclusively used in the registered project or activity.</p> <p>Upon determination that such goods and/or services are directly and exclusively used in the registered project or activity, a VAT zero-rate certificate shall be issued by the concerned IPA.</p>	
	<p>Q5: Documentary requirements needed to be secured by the local supplier of goods or services from the REE-buyer for VAT zero-rating purposes</p>	<p>A5: REE-buyer must provide a certified copy of the following documents to its local suppliers:</p> <ol style="list-style-type: none"> 1. VAT zero-rate certification issued by the concerned IPA; 2. COR issued by the BIR having jurisdiction where the goods are to be delivered; 3. COR issued by the concerned IPA stating all registered ecozone location; and 4. Sworn affidavit executed by the REE-buyer, stating that the goods and/or services are directly and exclusively used for the production of goods and/or completion of services to be exported or for utilities and other similar costs, the percentage of allocation be directly and exclusively used for the production of goods and/or completion of services to be exported, following the prescribed format under RMC 84-2023 and attached hereto as Annex "A". 	
	<p>Q6: Applications for VAT zero-rated which have been received prior to the effectivity of RR No.3-2023 but have not yet been acted upon by the concerned office of the BIR</p>	<p>A6: If the application is accompanied by VAT Zero-Rate Certificate issued by the concerned IPA, it 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 REE in its registered project or activity.</p>	
	<p>Q7: VAT Treatment on transaction that was already consummated prior to the effectivity of RR No. 3-2023, BUT without an approved application for VAT zero-rate</p>	<p>A7: Transactions that were entitled VAT zero-rating, but the seller failed to secure an approved Application for VAT Zero-Rate, such sale shall be subject to twelve percent (12%) VAT.</p>	
	<p>Q8: VAT treatment of a particular sale transaction if the application for VAT zero-rating was previously disapproved</p>	<p>A8: The transaction is subject to twelve percent (12%) VAT notwithstanding the issuance of RR No. 3-2023 since the BIR has already determined that the transaction is not qualified for VAT zero-rate.</p>	
	<p>Q9: Are transactions subjected to VAT due to disapproved applications for VAT zero-rate by the BIR be qualified for refund?</p>	<p>A9: The VAT-registered REE enjoying 5% GIT or SCIT may claim the corresponding input VAT from the said purchase, which can be utilized as deduction against future output VAT liability after the incentive period or may be claimed as VAT refund under Section 112 (B) of the Tax Code, as amended, in relation to Q&A No. 40 of RMC No. 24-2022.</p>	

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	<p>Q10: Elements to be considered for VAT zero-rating purposes during audit of transactions with REE</p>	<p>A10: The following must be considered in the evaluation of transaction subject for VAT zero-rate:</p> <ol style="list-style-type: none"> 1. The REE's place of business where the registered project or activity is being processed/rendered must be duly registered with the appropriate BIR office; 2. The REE must be duly registered with the IPA administering tax incentives; 3. A VAT Zero-Rate Certificate has been issued by the IPA to the REE; 4. The transaction occurred within the period the REE is entitled to VAT zero-rate incentives and is corroborated with a valid documentation to prove existence and legitimacy of the transaction; 5. The purchased goods and/or services must be delivered within the REE's registered head office/branch/freeport/ecozone/location granted with VAT zero-rated incentives; and 6. The transaction is indeed qualified for VAT zero-rating in accordance with the provisions of the Tax Code, and its implementing rules and regulations, revenue issuances. 	
	<p>Q11: Identification by the supplier that the goods and/or services being sold is directly and exclusively used in the registered project or activity of the REE</p>	<p>A11: The goods and/or services should be enumerated in Section III, Annex "A" of the prescribed template per RMC No. 36-2022. The aforementioned goods and/or services must likewise be declared in the REE's sworn undertaking.</p>	
	<p>Q12: Would HMO plans acquired for employees not directly involved in the REE's registered project or activity be accorded with VAT zero-rating?</p>	<p>A12: No, to reiterate the clarification made in RMC 137-2022, <i>the VAT zero-rating shall not extend to HMO plans procured for employees' dependents, as well as HMO plans for employees not directly involved in the operations of the registered projects or activities of the REEs.</i></p> <p>Accordingly, only those HMO plans acquired for employees directly involved in the operation of REE's registered project or activities and forming part of their compensation package shall be accorded with VAT zero-rating.</p>	
	<p>Q13: Requirement that the supplier of HMO plans need to secure detailed information on the plans acquired as prescribed in RMC No. 137-2022</p>	<p>A13: The supplier of HMO plans must still require the REE-buyer to provide a detailed information on the HMO plans acquired as prescribed in Annex A of RMC 137-2022 and maintain a database of the same.</p>	

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On transactions with entities granted with VAT Zero-Rate Incentives under Special Laws and International Agreements	
<p>Q14 and 15: Documentary requirements to be secured by local suppliers of other entities granted with VAT zero-rate incentives under special laws and international agreements</p>	<p>A14 and 15: Local suppliers of other entities granted with VAT zero-rate incentives under special laws and international agreements are not required to submit an application for VAT zero-rate.</p> <p>Alternatively, local suppliers of goods and/or services shall require the following documentary requirements:</p> <p>A. <u>For the Supplier of RE Developer</u></p> <ol style="list-style-type: none"> 1. COR issued by the BIR having jurisdiction over the RE Project; 2. COR issued by the BOI; and 3. COR issued by the DOE <p>It is emphasized that the VAT zero-rating shall apply only on the sale of goods, properties, and services, for the development, construction and installation of the RE Developer’s power plant facilities. This includes the whole process of exploring and developing renewable energy sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.</p> <p>B. <u>For the Supplier of Other Entities Under Special Law and International Agreements</u></p> <ol style="list-style-type: none"> 1. Certified copy of VAT Exemption Certificate/Ruling or equivalent document issued by the appropriate office of the BIR 2. Other documentary requirements as may be required under the special law and international agreement including its IRR
<p>Q16: Elements to be considered for VAT zero-rating purposes during audit of transactions with entity granted with VAT zero-rate incentives under special law and international agreement</p>	<p>A16: The following must be considered in the evaluation of transaction subject for VAT zero-rate:</p> <ol style="list-style-type: none"> 1. The location of the registered project of the entity granted with VAT zero-rate incentives under special law must be duly registered with the appropriate BIR office; 2. The entity granted with VAT zero-rate incentives under special law must be duly registered with the other government agency (OGA) administering tax incentives;

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		<ol style="list-style-type: none"> 3. The entity granted with VAT zero-rate incentives under special law or international agreement must have been issued by its concerned OGA administering tax incentives a VAT Exemption Certificate/BIR Ruling/equivalent certificate; and 4. The transaction is indeed qualified for VAT zero-rating in accordance with the provisions of the Tax Code, and its implementing rules and regulations, revenue issuances, special laws or international agreements; and is likewise corroborated with a valid documentation to prove existence and legitimacy of the transaction. 	
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- The **template for VAT Zero-Rate Certificate** to be issued by the concerned IPA to its compliant REEs is prescribed under RMC No. 36-2022 and attached as **Annexes “B-1” and “B-2”** for registered under CREATE and pre-CREATE, respectively.
- The **template for VAT Zero-Rate endorsement** of IPAs, which contains basic information needed in the audit in the investigation/verification by the concerned investigating office of the BIR, is attached as **Annex “C”** and shall be submitted to the BIR through the Assessment Service, *Attention: Audit Information Tax Exemption and Incentives Division*, in excel file format via aiteid_ies@bir.gov.ph, within twenty (20) days following the close of each taxable quarter.

Publishes the full text of the Memorandum of Agreement between the BIR and its multi-sectoral partners
Revenue Memorandum Circular No. 82-2023 dated August 9, 2023 (Date of issue on August 14, 2023)

- The Memorandum of Agreement (MOA) was executed between the BIR and its nine (9) multi-sectoral partners, namely: the Philippine Chamber of Commerce and Industry (PCCI), Tax Management Association of the Philippines (TMAP), Management Association of the Philippines (MAP), Financial Executives Institute of the Philippines (FINEX), Philippine Institute of Certified of Public Accountants (PICPA), Association of Certified Public Accountants in Public Service and Practice (ACPAPP), Association of Certified Public Accountants in Commerce and Industry (ACPACI), Philippine Exporters Confederation, Inc. (PHILEXPORT), and the Joint Foreign Chambers of the Philippines (JFC), with primary objective to engage in a regular dialogue and consultations to guide and to give advice on the drafting of Revenue Issuances, to facilitate and ensure compliance by the business sector.
- The Parties agree to cooperate, within the context of their respective mandates, policies and resources, and instruments, to contribute to the following key initiatives:
 1. Creation of a "BIR-Multi-Sectoral Working Group" which will be a mechanism for consultations regarding issues on tax administration;
 2. Sharing of knowledge and expertise on best practices on taxation policies and regulations and strategies on how the Philippine business tax system can be improved to make the Philippine business environment conducive and supportive of business growth and expansion;
 3. Advocacy for comprehensive, relevant, and lawful policies, plans, and regulations for tax administration.

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Announces the availability of the revised BIR Form No. 2200-M (January 2018 ENCS) v2

Revenue Memorandum Circular No. 84-2023 dated August 15, 2023 (Date of issue on August 15, 2023)

- The revised BIR Form No. 2200-M (Excise Tax Return for Mineral Products) [January 2017 (ENCS) v2] is already available for download in the BIR website under the BIR Forms-Excise Tax Return Section. However, the Form is not yet available in the Electronic Filing and Payment System (eFPS) and Electronic Bureau of Internal Revenue Forms (eBIRForms). Thus, eFPS/eBIRForms filers shall continue to use the BIR Form No. 2200-M [October 2002 (ENCS)] in the eFPS and in Offline eBIRForms Package v7.9.4 in filing and paying the Excise Tax due.
- Manual filers shall download the PDF version of the revised BIR Form No. 2200-M and fill-out all the applicable fields.

Circularizes the List of Qualified Personal Equity and Retirement Account (PERA) eligible products duly approved by the Securities and Exchange Commission (SEC)

Revenue Memorandum Circular No. 86-2023 dated August 17, 2023 (Date of issue on August 22, 2023)

- Circularizes the List of Qualified Personal Equity and Retirement Account (PERA) eligible products duly approved by the Securities and Exchange Commission (SEC)
 - Annex A - Government Securities (e.g., Treasury Bills and Treasury Bonds)
 - Annex B - Securities issued by the Bangko Sentral ng Pilipinas (BSP) Bills
 - Annex C - Corporate Bonds with an investible rating issued by an accredited Credit Rating Agency (e.g., Non-bank Issued Corporate Securities - Commercial Papers and Enrolled Securities - Corporate Bonds)
 - Annex D - Corporate Bonds issued by Banks in compliance with the requirements of the BSP (e.g., LTNCTD, TIER2, Bank Bonds, Digital Bond)
 - Annex E - REIT Shares
 - Annex F - PSE Dividend Yield Index Securities (as of February 2023)
 - Annex G - PSEi constituents/shares that are compliant with the PERA requisites of being non-speculative, readily marketable and with a track record of regular income payment to investors (as certified by PSE on 01 February 2023)
- Only income earned from the investments and re-investments of PERA assets in duly accredited/approved PERA investment products shall be exempt from Income Taxes under Rule 11 of the Rules and Regulations Implementing the PERA Act 2008 and Section 9 of Revenue Regulations No. 17-2011, as amended. Moreover, income from investments and reinvestments of PERA assets in government securities is likewise exempt from Income Taxes under the said provisions.

BIR REVENUE ADMINISTRATIVE ORDERS

Amends Revenue Administrative Order (RAO) Nos. 3-2014 and 5-2019, relative to the functions of Assessment Section, Collection Section, Client Support Section and Compliance Section under the Revenue District Office in the Revenue Region

Revenue Administrative Order No. 3-2023 (Date of issue on August 31, 2023)

- Amends Sections III.I.1, III.I.3 and III.I.4 of Revenue Administrative Order (RAO) No. 3-2014 and Section II.I.2 of RAO No. 5-2019 relative to the functions of the Assessment Section, Collection Section, Client Support Section and Compliance Section under the Revenue District Office in the Revenue Region.