REVENUE MEMORANDUM CIRCULAR NO. 152-2022 issued on December 7, 2022 clarifies further the transitory provisions for the Value-Added Tax (VAT) Zero-Rate incentives under Sections 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 Corporate Recovery and Tax Incentives for Enterprises Act Implementing Rules and Regulations (CREATE IRR).

Pursuant to Revenue Regulations (RR) No. 21-2021 and as clarified under Q & A No. 26 of Revenue Memorandum Circular (RMC) No. 24-2022, Registered Export Enterprises (REEs) whose incentives period have already expired are already subject to 12% 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, considering that RMC No. 24-2022 was issued only on March 9, 2022, confirming that the said transactions are indeed subject to VAT at 12%, affected suppliers are now in a quandary on whether or not they have to revert the sales from VAT zero-rated to subject to 12% VAT.

Taking into account that a retroactive application of RMC No. 24-2022 may prejudice the affected taxpayers, it is clarified that the above 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.

In case the purchaser is qualified for VAT zero-rate but was imposed 12% VAT by the seller for the said transitory period, the buyer and the seller may pursue any of the following procedures to correct the situation:

a. **Retain the transaction as subject to 12% VAT.** The seller shall still declare the sales as subject to 12% VAT. Consequently, the purchaser, if VAT-registered, can utilize the passed-on VAT as input tax and shall be deducted from output tax, if any. Should the purchaser be engaged in zero-rated activities, the same can be recovered through VAT refund pursuant to Section 112(A) of the Tax Code, as amended. If the purchaser is not a VAT-registered taxpayer, the 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.** Where the transactions have already been declared in the VAT return/s, the seller may amend the same after reimbursing/returning the VAT paid by the buyer that is an REE.

   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.

   On the part of the VAT-registered REE purchaser, the VAT return/s filed shall likewise be amended to reflect the reduced input VAT it previously declared in the VAT return/s.

   In this regard, the seller shall retrieve the VAT Sales Invoice/Official Receipt (SI/OR) originally issued to the REE buyer for cancellation and replacement with a zero-rated SI/OR. The seller shall prepare a list of VAT SI/OR cancelled, together with the corresponding zero-rated SI/OR replacement subject to validation of the BIR.

Q & A No. 31 of RMC No. 24-2022, as amended by RMC No. 49-2022, requires REEs who have completed their ITH and now under the 5% Gross Income Tax (GIT)/ Special Corporate Income Tax (SCIT) regime or those already enjoying the 5% GIT/SCIT upon the effectivity of CREATE Act but remained VAT-registered to change their registration to non-VAT within two (2) months from the expiration of the ITH incentive or effectivity of RMC No. 49-2022, whichever is applicable.

REEs that changed their status from "VAT" to "non-VAT" will not be subject to Percentage Tax (PT). The said requirement to change the registration from "VAT" to "non-

VAT" does not necessarily mean that these REEs are subject to PT. "PT" tax type 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 (BIR Form No. 1702/1702Q), subject to regular validation by the Revenue District Office or Large Taxpayer Audit Division where the REE is registered 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.

The REEs required to register as non-VAT taxpayer are still qualified and can enjoy their VAT zero-rate incentive on their local purchases of goods and services that are directly and exclusively used in their registered activity until the end of their incentive period. Note that as clarified under Q & A No. 26 of RMC No. 24-2022, REEs whose incentive periods have already expired will be subject to 12% VAT on the local purchases.