REVENUE MEMORANDUM CIRCULAR NO. 49-2022 issued on April 20, 2022 amends pertinent portion of the Questions and Answers (Q & A) in Revenue Memorandum Circular (RMC) No. 24-2022 to align them with the provisions of Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act and its Implementing Rules and Regulations (IRR), to wit:

I. Not only sales to registered export enterprises and domestic market enterprises (DMEs) within Ecozones and Freeport Zones are affected by the deferment of Revenue Regulations (RR) No. 9-2021. Hence Q & A No. 10 of RMC No. 24-2022 is revised to read as follows:

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 the sales transactions covered in RR No. 9-2021 have been declared by the sellers as VAT zero-rated for the period July 1, 2021 up to December 9, 2021 or a day prior 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 the CREATE Act?

A10: This is an instance where the non-retroactivity rule under Section 246 of the Tax Code, as amended, can be applied inasmuch as this will be prejudicial to the taxpayers affected. Hence, the said transactions that have been considered by the seller as VAT zero-rated shall still remain as VAT zero-rated for the period July 1, 2021 to December 9, 2021.

However, for those affected taxpayers that have declared their transactions as subject to VAT, the options laid down in Q&A No. 8 and 9 may be followed.

II. Entitlements of registered non-export locators (prior to CREATE Act) or domestic market enterprises (DMEs as introduced in CREATE Act) located in Ecozones and Freeport Zones differ if they are registered prior to or during the effectivity of the CREATE Act. Hence, Q & A No. 17 of RMC No. 24-2022 is revised to read as follows:

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

A17: The following rules shall apply to the DME's sale of goods and services:

a. The seller is registered prior to CREATE:
    i. If the non-export locator is under the 5% Gross Income Tax (GIT) regime, the locator is a VAT-exempt entity; hence, shall treat its sales, whether inside the Ecozones or Freeport Zones as well as from the customs territory, as VAT-exempt only to the extent of the registered activity. The VAT passed on by its VAT-registered local suppliers shall form part of its cost or expenses.
    ii. If the non-export locator is under the Income Tax Holiday (ITH), sales to registered export enterprises are subject to VAT at zero-rate, provided the goods and services are directly and exclusively used in the latter's registered project or activity.
    iii. If the non-export locator is under the ITH, sales to non-export locators or DMEs within the Ecozones and Freeport Zones, as well as sales to enterprises from the customs territory are subject to VAT.

b. The seller is registered during the effectivity of CREATE:
   i. Sales to registered export enterprises are subject to VAT at zero-rate, provided the goods and services are directly and exclusively used in the latter's registered project or activity.
   ii. Sales to DMEs within the Ecozones and Freeport Zones, as well as sales to enterprises from the customs territory, are subject to VAT.

III. The answers in Q & A Nos. 31 and 33 of RMC No. 24-2022 are revised to read as follows:

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: Registered export enterprises whose sales are generated only from the registered activity and have shifted from ITH to 5% GIT or Special Corporate Income Tax (SCIT) regime shall within two (2) months from the expiration of their ITH, change their registration status from a VAT-registered entity to non-VAT. Likewise, registered export enterprises enjoying 5% GIT regime but are still VAT-registered at the time the CREATE Act took effect shall within two (2) months from the effectivity of this Circular change their registration status to non-VAT.

However, if the taxpayer has other activities other than those registered with the Investment Promotion Agency (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.

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Q33: Is prior approval from the BIR 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, as provided for under the CREATE?

A33: Yes. Sections 294(E) and 295(D), Title XIII of the Tax Code, as implemented by Section 5, Rule 2 of the amended CREATE IRR emphasize that VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in the registered project or activity of a registered export enterprise upon the endorsement of the concerned IPA, in addition to the documentary requirements of the BIR.

It is therefore of paramount importance to validate whether the said requisites are duly complied with before availment of the VAT zero-rate incentive by the supplier of the registered export enterprise. Absence of prior approval from the BIR may result in the disallowance of the VAT zero-rated sale of the supplier.

However, for 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, or the effectivity of this RMC, subject, however, to the three (3) documentary requirements enumerated in Q & A No. 37 hereof.