REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
National Office Building
Quezon City

Section 311 the Tax Code; Section 16 of RA No. 11534; Section 5, Rule 18 of IRR of RA No. 11534
VAT-436-2022
DEC 01 2022

PHILIPPINE ECONOMIC ZONE AUTHORITY
10th Floor, Double Dragon Center
West Building, DD Meridian Park
Macapagal Avenue
Pasay City, 1302

Attention: **BGen CHARITO B. PLAZA MNSA, PhD**
Director General

Gentlemen:

This refers to your request on behalf of the Philippine Economic Zone Authority ("**PEZA**") for reconsideration on the disapproval of the application for Value Added Tax ("**VAT**") zero rating on the local purchases of non-export enterprises registered with PEZA.

Background:

1. PEZA has registered other types of enterprises aside from Ecozone Export Enterprises and Ecozone IT Enterprises (i.e., Medical Tourism Ecozone Enterprises) (the "**Non-Export Enterprises**").

2. Prior to the effectivity of the Corporate Recovery and Tax Incentives for Enterprises ("**CREATE**") Act,[1] these Non-Export Enterprises were granted incentives, among others, VAT zero rating on their local purchases in accordance with the Cross-Border Doctrine as provided in Republic Act No. 7916[2] ("**PEZA Law**") and jurisprudence.

3. In support of the request, it was claimed that pursuant to Section 5, Rule 18 of the Implementing Rules and Regulations ("**IRR**") of the Corporate Recovery and Tax Incentives for Enterprises Act ("**CREATE Law**"),[3] all registered business enterprises

[1] Republic Act No. 11534, An Act Reforming the Corporate Income Tax and Incentives System, Amending for the Purpose Sections 20, 22, 25, 27, 28, 29, 34, 40, 57, 109, 116, 204 and 290 of the National Internal Revenue Code of 1997, as Amended, and Creating Therein New Title XIII, and for Other Purposes, March 26, 2021.
[2] An Act Providing for the Legal Framework and Mechanisms for the Creation, Operation, Administration, and Coordination of Special Economic Zones in the Philippines, Creating for This Purpose, the Philippine Economic Zone Authority (PEZA), and for Other Purposes, February 21, 1955.
[3] Revenue Memorandum Circular No. 83-2021, Circularizing the Implementing Rules and Regulations of Title XIII of Republic Act No. 8424 Otherwise Known as the "National Internal Revenue Code of 1997", As Amended by Republic Act No. 11534 or the "Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, July 12, 2021.

may continue to avail of the existing tax incentives until the expiration of the transitory period under Section 311 of the National Internal Revenue Code of 1997, as amended (**"Tax Code"**).

In reply, please be informed that Rule 18 of the IRR of CREATE Law states:

*"**RULE 18. Investments prior to the effectivity of the Act***

***SECTION 1. Projects or Activities Granted Only an ITH.** — Registered business enterprises whose projects or activities were granted only an ITH prior to the effectivity of this Act shall be allowed to continue with the availment thereof for the remaining period of the ITH as specified in the terms and conditions of their registration: Provided, That for those that have been granted the ITH but have not yet availed of the incentive upon the effectivity of this Act, they may use the ITH for the period specified in the terms and conditions of their registration.*

***SECTION 2. Projects or Activities Granted an ITH and are Entitled to the Five Percent (5%) Tax on Gross Income Earned.** — Registered business enterprises whose projects or activities were granted an ITH prior to the effectivity of this Act and that are entitled to the five percent (5%) tax on gross income earned incentive after the ITH be allowed to use the ITH for the period specified in the terms and conditions of their registration and thereafter, avail of the five percent (5%) tax on gross income earned incentive, subject to the 10-year limit for both incentives under this Act.*

***SECTION 3. Registered Business Enterprises Currently Availing of the Five Percent (5%) Tax on Gross Income Earned.** — Registered business enterprises currently availing of the five percent (5%) tax on gross income earned granted prior to the effectivity of this Act shall be allowed to continue availing the said tax incentive at the rate of five percent (5%) for ten (10) years.*

***SECTION 4. Allocation of Gross Income Earned.** — If applicable, the allocation of shares for LGUs and IPAs as specified in the latter's governing laws shall be observed and shall not result in the diminution of their respective shares.*

***SECTION 5. Non-income related tax incentives.** – All registered business enterprises that will continue to avail of their existing tax incentives subject to Section 1, 2 and 3 of this Rule, <u>may continue to enjoy the duty exemption until the expiration of the CAI/Admission Entry or until the expiration of the transitory period under Section 311 of the Code.</u> <u>Provided, That the VAT exemption on importation and 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 export enterprises during the period of registration of the said registered project or activity with the concerned IPA;</u> Provided further, That, transactions falling under Section 106(A)(2)(a)(3), (4), and (5) and Section 108(B)(1) and (5) of the Code, as amended, shall be subject to the twelve percent (12%) VAT pursuant to Revenue Regulations No. 09-2021. Provided finally, That excess input taxes attributable to zero-rated sales by VAT-registered RBEs, may at the RBE's option, be refunded or applied for a tax credit, subject to the guidelines provided under Revenue Regulation No. 13-2018, as amended.*

After the expiration of the transitory period under Section 311 of the Code and without prejudice to Rule 3 Section 3, all applicable taxes shall apply." (Underscoring supplied)

As mentioned in the foregoing provision, Section 311 of the Tax Code[4] reads as follows:

> *"**SEC. 311. Investments Prior to the Effectivity of This Act.** – Registered business enterprises with incentives granted prior to the effectivity of this Act[5] shall be subject to the following rules:*
>
> *(A) Registered business enterprises whose projects or activities were granted only an income tax holiday prior to the effectivity of this Act shall be allowed to continue with the availment of the income tax holiday for the remaining period of the income tax holiday as specified in the terms and conditions of their registration: Provided, That for those that have granted the income tax holiday but have not yet availed of the incentive upon the effectivity of this Act, they may use the income tax holiday for the period specified in the terms and conditions of their registration.*
>
> *(B) Registered business enterprises, whose projects or activities were granted an income tax holiday prior to the effectivity of this Act and that are entitled to the five percent (5%) tax on gross income earned incentive after the income tax holiday, shall be allowed to avail of the five percent (5%) tax on gross income earned incentive based on Subsection (C); and*
>
> *(C) Registered business enterprises currently availing of the five percent (5%) tax on gross income earned granted prior to the effectivity of this Act shall be allowed to continue availing the said incentive at the rate of five percent (5%) for ten (10) years."* (Underscoring supplied)

Prescinding from the above-cited provisions, while it is true that registered businesses or enterprises other than export enterprises may continue to avail the incentives granted to them before the effectivity of the CREATE Law (i.e., income tax holiday ("**ITH**"), five percent (5%) tax on gross income earned incentive after the ITH and other non-income related incentives), it is undisputed that these incentives excludes the VAT zero-rating on local purchases of non-export enterprises.

It bears stressing that Section 5, Rule 18 of the IRR of CREATE Law expressly states that the VAT zero-rating on local purchases incentive shall only apply to goods and services directly and exclusively used in the registered project or activity of the export enterprises during the period of registration of the said registered project or activity with the concerned investment promotion agencies.

Please note that it is a cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. Further, where a provision of law expressly limits its application to certain transactions, it cannot be extended to other transactions by interpretation. Conversely, courts may not enlarge nor restrict statutes if

[4] As amended by Section 16 of CREATE Law.
[5] The term "Act" refers to the CREATE Law.

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the provision contains no limitations in its operation or scope. Considering that the above-mentioned laws, rules and regulations are clear, there is no need for interpretation but mere application.

Such being the case, since Non-Export Enterprises are expressly excluded from the above provisions, your request for approval of the application of VAT zero rating on the local purchases of Non-Export Enterprises is hereby denied for lack of legal basis.

Please be guided accordingly.

Very truly yours,

ROMEO D. LUMAGUI, JR.
Commissioner of Internal Revenue
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