REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

EDC BURGOS WIND POWER CORPORATION, *Petitioner,*	**CTA *EB* NO. 2548** (CTA Case No. 9446)
	Present:
-versus-	**DEL ROSARIO**, *P.J.*, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, **MODESTO-SAN PEDRO**, **REYES-FAJARDO**, **CUI-DAVID**, **FERRER-FLORES**, *and* **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 3 1 2024 3:34 pm

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AMENDED DECISION

CUI-DAVID, J.:

For this Court's resolution is petitioner's ***Motion for Reconsideration (Re: Decision dated June 2, 2023)*** filed on June 20, 2023, with respondent's ***Opposition (Re: Motion for Reconsideration of the Decision dated 2 June 2023)*** filed on August 9, 2023.

Petitioner seeks reconsideration of the Court's *Decision* promulgated on June 2, 2023, with the following dispositive portion:

> **WHEREFORE**, premises considered, the Petition for Review is **DENIED**.
>
> Accordingly, the Decision dated March 12, 2021 and the Resolution dated October 28, 2021 of the Court in Division

are **AFFIRMED** with **MODIFICATION** as to the requirement of securing a COE from the DOE is concerned.

SO ORDERED.

Petitioner reiterates the arguments in its *Petition for Review* and maintains that the instant claim for refund or issuance of a tax credit certificate is anchored on Section 15 (g) of Republic Act ("**RA**") No. 9513 or the Renewable Energy Act of 2008 ("**RE Law**") and its implementing regulations and on Section 108 (B) (7) of the National Internal Revenue Code ("**NIRC**") of 1997, as amended, and that there is nothing in the said provisions that a Certificate of Compliance ("**COC**") issued by the Energy Regulatory Commission ("**ERC**") is necessary for its sales to be considered as zero-rated for value-added tax ("**VAT**") purposes.

Petitioner expounds that Section 108 (B) (7) in relation to Sections 110 (B) and 112 (A) and (C) of the NIRC of 1997, as amended, clearly provides that input VAT attributable to zero-rated sales of power generated through renewable sources may be the subject of a claim for refund. Further, it avers that Section 15 (g) of the RE Law expressly provides that sales of generated power via renewable energy shall be subject to zero percent (0%) VAT; thus, petitioner alleges that the Court erroneously applied the provisions of RA No. 9136 or the Electric Power Industry Reform Act ("**EPIRA**") of 2001 to the instant claim for refund. It submits that its availment of a VAT zero-rating status proceeds independently from the provisions of the EPIRA and need not comply with the latter's requirements. It reasons that RA No. 9337 or the VAT Reform Act, which took effect in 2005, expressly repealed the VAT zero-rating status of the sale of electricity under the EPIRA by subjecting the same to a 10% (now 12%) VAT but amended Section 108 of the 1997 NIRC by incorporating the sale of power or fuel generated through renewable sources into the list of zero-rated transactions. Petitioner believes that these developments effectively deleted the VAT zero-rating status on any sale of electricity previously granted under the EPIRA and that it is only under the 1997 NIRC, as amended, that grants such zero-rating status but now limited to the sale of power generated through renewable energy. Petitioner then concludes that these developments support its theory that the COC requirement under the EPIRA does not apply to petitioner's claim for refund and that the Court should have granted the amount claimed.

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In his *Opposition*, respondent points out that petitioner failed to show to the Court its entitlement to the instant claim for refund and was equally remiss in convincing the same that it satisfied all the documentary and evidentiary requirements at the administrative level. Respondent posits that an appeal to the Court over an unsuccessful administrative claim for refund necessitates the claimant to prove that the Bureau of Internal Revenue ("**BIR**") was wrong in denying such claim by specifically assailing the reason or basis for its denial. Respondent asserts that petitioner never proved during trial that the reason for the BIR's denial was not justified, and this failure alone is sufficient for the claim to be set aside by the Court.

Respondent also cites the oft-repeated principle that claims for refund are regarded as in derogation of sovereign authority and are to be strictly construed against the claimant and liberally in favor of the taxing authority.

We reconsider.

Petitioner is not required to present a ***Certificate of Endorsement (COE)*** *to prove that it is engaged in zero-rated sales.*

First, the Court maintains its ruling in the assailed *Decision* that a COE is not required. This issue is not novel. Indeed, the Court *En Banc* previously ruled[1] that a COE issued by the Department of Energy (DOE) is not necessary to qualify for the VAT zero-rating incentive under Section 108(B)(7) of the NIRC of 1997, as amended, in relation to Section 15 (g) of the RE Law and their implementing rules and regulations.

Section 15 (g) of RA No. 9513 accords RE Developers entitlement to the VAT zero-rating treatment of their sale of fuel or power generated from renewable sources of energy and their purchases of local supply of goods, properties, and services related to the development, construction, and installation of its plant facilities, *viz.*:

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[1] *Halliburton Worldwide Limited-Philippine Branch v. CIR*, CTA *EB* Case No. 2476 (CTA Case No. 9670), April 4, 2023; *Philippine Geothermal Production Company, Inc. v. CIR*, CTA *EB* Case Nos. 2455 & 2460 (CTA Case No. 9663), January 9, 2023; *Vestas Services Philippines, Inc. v. CIR*, CTA *EB* CASE No. 2479, (CTA Case No. 9544), October 14, 2022.

CHAPTER VII

GENERAL INCENTIVES

SECTION 15. *Incentives for Renewable Energy Projects and Activities.*— **RE Developers** or renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, **as duly certified by the DOE, in consultation with the BOI**, shall be entitled to the following incentives:

... ...

(g) Zero Percent Value-Added Tax Rate. — **The sale of fuel or power generated from renewable sources of energy** such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels**, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337**.

<u>**All RE Developers shall be entitled to zero-rated value-added tax on its purchases of local supply of goods, properties, and services needed for the development, construction and installation of its plant facilities.**</u> [*Emphasis supplied*]

Relatedly, the DOE, as the lead agency mandated to implement the provisions of RA No. 9513, issued DOE Circular No. DC2009-05-0008 or the Rules and Regulations Implementing RA No. 9513 (IRR). Section 18(A), (B), and (C) of the IRR of RA No. 9513 enumerates the conditions that an RE Developer must comply with to avail of the incentives provided therein, to wit:

SEC. 18. *Conditions for Availment of Incentives and Other Privileges.*—

A. Registration/Accreditation with the DOE

For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall register with the DOE through the Renewable Energy Management Bureau (REMB)**. The following certifications shall be issued:

(1) ***DOE Certificate of Registration*** **— issued to an RE Developer holding a valid RE Service/Operating Contract.**

... ...

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> ***B. Registration with the Board of Investments (BOI)***
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> ... ...
>
> ***C. Certificate of Endorsement by the DOE***
>
> **RE Developers**, and manufacturers, fabricators, and suppliers of locally produced RE equipment **shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a *per* transaction basis**. *[Emphasis supplied]*

Accordingly, the submission of a COE issued by the DOE is not required on a *per-transaction* basis for purposes of VAT-zero rating of the sale of fuel or power generated from renewable sources of energy. The submission of the COE is necessary only when a RE Developer intends to avail of the incentive of duty-free importation of RE machinery, equipment, and materials.

This is consistent with Section 15(b) of RA No. 9513,[2] DOE's definition of a Certificate of Endorsement under Section 2(b) of Department Circular No. DC2020-02-0005[3] and DOE's clarification in Section 18(C) of Department Circular No. DC2021-12-0042.[4]

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[2] Section 15. Incentives for Renewable Energy Projects and Activities.—

... ...

(b) Duty-free Importation of RE Machinery, Equipment, and Materials — Within the first ten (10) years upon the issuance of a certification of an RE developer, the importation of machinery, equipment, and materials and parts thereof, including control and communication equipment, shall not be subject to tariff duties: Provided, however, That the said machinery, equipment, materials, and parts are directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy operator to the point of use and covered by shipping documents in the name of the duly registered authorities: Provided, further, **That endorsement of the DOE is obtained before the importation of such machinery, equipment, materials, and parts are made**. [Emphasis supplied]

[3] b. Certificate of Endorsement — means the document issued by the DOE in accordance with Section 15(b) of RA No. 9513 endorsing the **application for duty-free importation of RE machinery, equipment, materials, and spare parts to the RE Developer/Operator, to exempt the Applicant from payment of tariff duties on the importation**. COE may also be issued pursuant to Section 21(a) of RA No. 9513, if applicable. [Emphasis and underscoring supplied.]

[4] Section 18. Conditions for Availment of Incentives and Other Privileges.

C. Certificate of Endorsement by the DOE

c. DOE ENDORSEMENT FOR AVAILMENT OF INCENTIVES AND DUTY-FREE IMPORTATIONS OF MACHINERY, EQUIPMENT, AND MATERIALS

RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be AUTOMATICALLY qualified to avail of the incentives provided for in the Act, OTHER THAN THE INCENTIVE OF DUTY-FREE IMPORTATION OF QUALIFIED MACHINERY, EQUIPMENT. MATERIALS, PARTS AND COMPONENTS. after securing a Certificate of Registration from the DOE.

RE DEVELOPERS THAT IMPORT RE EQUIPMENT, EQUIPMENT, MATERIALS, PARTS AND COMPONENTS SHALL SECURE A CERTIFICATE OF ENDORSEMENT FROM THE DOE, THROUGH THE REMB, ON A PER IMPORTATION BASIS. [Emphasis and underscoring supplied, capitalization theirs.]

Further, Section 3(B) of Revenue Regulations ("**RR**") No. 7-2022,[5] which implements the tax provisions of the RE Law, provides:

> *SECTION 3. Required Certifications/Accreditations from Appropriate Government Agencies for the Availment of the Tax Incentives.* — **RE developers** and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall secure the certifications/accreditations listed hereunder before any incentive provided for in the Act may be availed of.**
>
> ... ...
>
> **A. <u>Registration/Accreditation with the DOE</u>** — Existing and new RE Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall register with the DOE through the Renewable Energy Management Bureau (REMB). The following certifications shall be secured and submitted to the BIR:
>
> **<u>(1) DOE Certificate of Registration</u>** — ...
>
> (2) DOE Certificate of Accreditation — issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements as determined by the DOE, in coordination with the DTI.
>
> **B. Certificate of Endorsement by the DOE** — RE Developers shall secure the Certificate of Endorsement from the DOE prior to the first year of availment of the 10% corporate income tax rate incentive.
>
> Manufacturers, fabricators, and suppliers of locally produced RE equipment who **import** components, parts, and materials necessary for the manufacture and/or fabrication of RE equipment **shall secure a Certificate of Endorsement from the DOE, through the REMB, on a *per importation basis*.**
>
> **<u>C. Registration with the Board of Investments (BOI)</u>** — To qualify for incentives under the Act, RE developers, manufacturers, fabricators, and suppliers of locally-produced equipment shall register with the BOI.
>
> D. Certificate of ITH Entitlement (CE) — ... [*Emphases and underscoring supplied.*]

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[5] Tax Incentives Under the Renewable Energy Act of 2008 and the Policies and Guidelines for the Availment Thereof, 22 June 2022.

Though RR No. 7-2022 was not yet effective during the period of the refund claim, its issuance on June 22, 2022 reinforces the Court's conclusion that the COE is not a requirement for a RE Developer, like petitioner, to reap the benefit of VAT zero-rating under Section 108(B)(7) of the NIRC of 1997, as amended, in relation to Section 15(g) of RA No. 9513.

Further, the Supreme Court applied RR No. 7-2022 in the recent case of *CBK Power Co. Limited v. Commissioner of Internal Revenue (CBK Power)*,[6] viz.:

> While RR No. 7-2022 was issued on June 22, 2022 and does not cover CBK's claim in this case, **the BIR's contemporaneous interpretation of the registration requirement as a condition *sine qua non* for entitlement to the fiscal incentives under Republic Act No. 9513 also carries persuasive weight**. Thus, the express language of Republic Act No. 9513, **coupled with the DOE and the BIR's consistent contemporaneous interpretation**, leads to the conclusion that an RE Developer can only avail of the fiscal incentives under Republic Act No. 9513, including VAT at zero rate, after registration with the DOE and the DOE's issuance of the corresponding certificate, in addition to the other requirements provided in the DOE IRR and RR No. 7-2022. [*Emphasis and underscoring supplied.*]

Accordingly, as a RE Developer, petitioner must only present its **DOE and Board of Investments (BOI) Registration certificates** to be entitled to zero-rating under RR No. 7-2022. Petitioner is not bound to submit the DOE endorsement.

*Petitioner's claim for refund is based on RA No. 9513 and not on RA No. 9136; hence, it is not required to present a **Certificate of Compliance (COC)**.*

Petitioner's VAT refund claim is anchored on Section 15 (g) of RA No. 9513 or the Re Law, in relation to Section 108 (B) (7) of the NIRC of 1997, as amended, and <u>*not*</u> on RA No. 9136, or the EPIRA.

[6] G.R. No. 247918, February 1, 2023.

We have previously ruled that when the claim for refund of input VAT attributable to zero-rated sales is based on RA No. 9513, in relation to Section 108 (B) (7) of the NIRC of 1997, as amended and implemented by RR No. 7-2022, the taxpayer-claimant, as an RE Developer, need only to show that it has complied with the conditions laid down under RA No. 9513 and its IRR to avail of the VAT zero-rating incentive, *irrespective* of the requirements under the EPIRA, specifically the COC from the ERC.[7]

In *Commissioner of Internal Revenue v. Team Energy Corporation*[8] and *Team Energy Corporation v. Commissioner of Internal Revenue,*[9] the Supreme Court has made a distinction between a claim for refund of input VAT under the EPIRA and that made under the NIRC of 1997, as amended, insofar as the EPIRA requirement of securing a COC from the ERC is concerned. As ruled by the Supreme Court, where the zero-rated VAT incentive invoked is not based on the EPIRA, the taxpayer-claimant cannot be required to comply with the requirements under the EPIRA and the related provisions of RR No. 16-2005[10], particularly on the requirement to secure a COC from the ERC, to be entitled to VAT zero-rating on the sale of power or fuel generated through renewable sources of energy.

Considering the foregoing, and after a second hard look at the records of the instant case, We find that petitioner's VAT refund claim is based on Section 15 (g) of RA No. 9513, in relation to Section 108 (B) (7) of the NIRC of 1997, as amended and implemented by RR No. 7-2022; hence, it cannot be required to comply with the requirements under the EPIRA and the related provisions of RR No. 16-2005, particularly the requirement to secure a **COC** from the ERC.

Moreover, Section 3 of RR No. 7-2022, which implements the provisions of the RE Law, does not require petitioner to submit a COC to prove its entitlement to zero-rating. To reiterate, while RR No. 7-2022 was issued only on June 22, 2022, or long after petitioner filed its administrative claim for VAT refund/credit on March 30, 2016, the BIR's contemporaneous interpretation carries *persuasive weight*, as held in the *CBK Power* case; hence, We conclude that petitioner

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[7] *North Luzon Renewable Energy Corp. v. Commissioner of Internal Revenue,* CTA *EB* No. 2574 (CTA Case No. 9886), promulgated on June 1, 2023; *Commissioner of Internal Revenue v. CBK Power Company Limited,* CTA *EB* No. 2600 (CTA Case No. 9793), promulgated on June 14, 2023.
[8] G.R. Nos. 197663 & 197770, March 14, 2018.
[9] G.R. No. 230412, March 27, 2019.
[10] Consolidated Value-Added Tax Regulations of 2005.

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is not required to submit the COC from ERC, which is a requirement under the EPIRA.

Given the foregoing, there is a need to ascertain whether petitioner's claimed VAT zero-rated sales comply with the invoicing and substantiation requirements under Section 113 of the NIRC of 1997, as amended, and pertinent regulations. Hence, it is proper to remand the present case to the Court's Special Third Division to establish petitioner's compliance with the fourth, fifth, sixth, seventh, eighth, and ninth requisites[11] and to determine if petitioner's prayer for input VAT refund or issuance of a tax credit certificate may be granted.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration (Re: Decision dated June 2, 2023)* is **GRANTED**.

Accordingly, the dispositive portion of the Court's Decision dated June 2, 2023 in CTA *EB* No. 2548 is **AMENDED** as follows:

> **WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. The Decision dated March 12, 2021 and the Resolution dated October 28, 2021 of the Court in Division are **VACATED** and **SET ASIDE.**
>
> Accordingly, let this case be **REMANDED** to the Court's Third Division for determination of the refund due to petitioner, if any.
>
> **SO ORDERED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

[11] That petitioner is engaged in zero-rated or effectively zero-rated sales; for zero-rated sales under Section 108(B)(7) of the 1997 NIRC, as amended, the sale of power or the sale of fuel is generated or produced from renewable sources of energy; that the input taxes are not transitional input taxes; that the input taxes are due or paid; that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales, and that the input taxes have not been applied against output taxes during and in the succeeding quarters.

(With due respect, I join the Dissenting Opinion of Associate Justice Catherine T. Manahan)

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(with due respect, see Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

EDC BURGOS WIND POWER CORPORATION, *Petitioner,*	**CTA EB NO. 2548** (CTA Case No. 9446)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 3 1 2024

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DISSENTING OPINION

MANAHAN, *J.:*

I respectfully dissent from the majority opinion.

The majority rules that a Certificate of Compliance (COC) from the Energy Regulatory Commission (ERC) is not a requirement to accord a VAT Zero rating status on Renewable Energy developers because such is based on Republic Act (RA) No. 9513 or the Renewable Energy Act of 2008 ("RE Law") and not on R.A. 9136 or the Electric Power Industry Reform Act ("EPIRA Law"). The majority further rules that when a claim for refund of input VAT attributable to zero-rated sales is based on the RE Law in relation to Section 108 (B)(7) of the 1997 National Internal Revenue Code (NIRC), as amended, the claimant need only to show that it has complied with the conditions laid therein.

While I concur with the majority that the present claimant should comply with the requirements laid down in the RE Law to prove its VAT zero-rating status, I beg to differ with their conclusion that a COC is not one of those requirements.

I discuss.

Section 15(g) of the RE Law reads as follows:

> "CHAPTER VII
> GENERAL INCENTIVES
>
> SEC. 15. *Incentives for Renewable Energy Projects and Activities*. – **RE developers of renewable energy facilities**, including hybrid systems, in proportion to and to the extent of the RE component, **for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives**:
>
> xxx xxx xxx
>
> (g) Zero Percent Value-Added Tax Rate. – **The sale of fuel or power generated from renewable sources of energy** such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, **shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337**.
>
> All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.
>
> This provision shall also apply to 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." *(Emphases supplied)*

Based on the foregoing provision, it is clear, *inter alia*, that the sale of fuel or power generated from renewable sources of energy is subject to the zero percent (0%) VAT rate, pursuant to Section 108(B)(7) of the 1997 NIRC, as amended by RA No. 9337; that such incentive pertains to RE developers of renewable energy facilities, as duly certified by Department of Energy (DOE), in consultation with the Board of Investments (BOI).

Relative thereto, Sections 25 and 26 of the RE Law provide as follows:

> "SEC. 25. *Registration of RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment.* – **RE Developers** and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment **shall register with the Department of Energy, through Renewable Energy Management Bureau**. Upon registration, **a certification shall be issued to each RE Developer** and local manufacturer, fabricator and supplier of locally-produced renewable energy **to serve as the basis of their entitlement to incentives** provided under Chapter VII of this Act.
>
> SEC. 26. *Certificate from the Department of Energy.* – **All certifications required to qualify RE developers to avail of the incentives provided for under this Act shall be issued by the DOE through Renewable Energy Management Bureau**.
>
> The Department of Energy, through the Renewable Energy Management Bureau, shall issue said certification fifteen (15) days upon request of the renewable energy developer or manufacturer, fabricator or supplier: *Provided,* **That the certification issued by the Department of Energy shall be without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned**." *(Emphases supplied)*

To implement the foregoing provisions, Section 18 (under Part III, Rule 5) of DOE Circular No. DC2009-05-0008, otherwise known as the *Implementing Rules and Regulations (IRR) of RA No. 9513*, provides as follows:

> "SECTION 18. *Conditions for Availment of Incentives and Other Privileges.* —
>
> *A. Registration/Accreditation with the DOE*
>
> **For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers**, and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall register with the DOE, through the Renewable Energy Management Bureau (REMB)**. The following certifications shall be issued:
>
> > (1) ***DOE Certificate of Registration* — issued to an RE Developer holding a valid RE Service/Operating Contract.**

For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.

The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.

Any investment added to existing RE projects shall be subject to prior approval by the DOE.

(2) *DOE Certificate of Accreditation* — issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements to be determined by the DOE, in coordination with the DTI.

B. Registration with the Board of Investments (BOI)

The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment, **shall register with the BOI**.

The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.

C. *Certificate of Endorsement by the DOE*

RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis**.

The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; *Provided,* **That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR**.

xxx xxx xxx." *(Emphasis supplied)*

On the basis of the foregoing provisions, to avail of the incentive of VAT zero-rating on the sale of fuel or power generated from renewable sources of energy, all certifications must be obtained by the concerned RE Developer from the DOE, through its Renewable Energy Management Bureau. However, it is likewise clear that the issuance of the certification issued by the DOE in favor of any RE developer is still "*without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned.*"

In any event, as can be gleaned from Section 15(g) of the RE Law, the VAT zero-rating being granted to an RE developer is with reference to the 1997 NIRC, as amended, by RA No. 9337. Specifically, the provision being referred to is Section 108(B)(7) thereof, which reads as follows, to wit:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> xxx xxx xxx
>
> (7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels."

To implement the foregoing provision, Sections 4.108-3(f) and 4.108-5(b)(7) of RR No. 16-2005[1] provide as follows:

> "SEC. 4.108-3. *Definitions and Specifics Rules on Selected Services.* –
>
> xxx xxx xxx
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10% VAT on their gross receipts; *Provided,* **That sale of power or fuel generated through renewable sources of energy** such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels **shall be subject to 0% VAT**.

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[1] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

'***Generation companies***' **refers to persons or entities authorized by the Energy Regulatory Commission (ERC) to operate facilities used in the generation of electricity. For this purpose, generation of electricity refers to the production of electricity by a generation company or a co-generation facility pursuant to the provisions of the RA No. 9136 (EPIRA)**. They shall include all Independent Power Producers (IPPs) and NPC/Power Sector Assets and Liabilities Management Corporation (PSALM)-owned generation facilities.

xxx xxx xxx."

SEC. 4.108-5. *Zero-Rated Sale of Services*. -

xxx xxx xxx

(b) *Transactions Subject to Zero Percent (0%) VAT Rate*. - The following services performed in the Philippines by a VAT - registered person shall be subject to zero percent (0%) VAT rate:

xxx xxx xxx

(7) **Sale of power or fuel generated through renewable sources of energy such as**, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels; ***Provided*, however, that zero-rating shall apply strictly to the sale of power or fuel generated through renewable sources of energy**, and shall not extend to the sale of services related to the maintenance or operation of plants generating said power. *(Emphases and underscoring added)*

In the recently decided case of *CBK Power Company Limited vs. Commissioner of Internal Revenue*,[2] the Supreme Court emphasized that the RE Law recognizes that "further requirements may be imposed by the concerned agencies" charged with the administration of the fiscal incentives provided therein, and we quote, thus:

"Section 15 of Republic Act No. 9513 states that RE Developers pertain to those which are duly certified by the DOE. Moreover, Sections 25 and 26 provide that RE Developers, local manufacturers, fabricators, and suppliers of locally produced renewable energy equipment who register with the DOE shall be issued a certification by the Renewable Energy Management Bureau. This certification shall serve as basis for RE Developers to avail of the incentives identified under Republic Act 9513, including VAT zero rate.

[2] G.R. No. 247918, February 1, 2023.

> **It is also worth noting that the second paragraph of Section 26 categorically states that the certification issued by the Renewable Energy Management Bureau shall be 'without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned.' It was, therefore, incorrect for the CTA *En Banc* to conclude that the mere fact that an entity is an RE Developer automatically entitles such entity to the incentives provided in Republic Act No. 9513. The law is clear that apart from the registration requirement imposed under Sections 15, 25 and 26, concerned government agencies tasked with administering the incentives provided under Republic Act 9513 can impose additional requirements.**"

Accordingly, there being no deviation from the applicable laws and jurisprudence above-mentioned, I vote to affirm the assailed Decision promulgated on June 2, 2023 and deny herein petitioner's *Motion for Reconsideration (Re: Decision dated June 2, 2023).*

CATHERINE T. MANAHAN
Associate Justice