REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
**BUREAU OF INTERNAL REVENUE**
**Quezon City**

| |
|---|
| CREATE Law; IRR of CREATE Law; Republic Act No. 7916 and its IRR; |
| RMC No. 24-2022; RMC No. 49-2022; BIR Ruling No. 523-17 |
| OT-306-2022 |
| JUN 23 2022 |

**KING CAPUCHINO TAN & ASSOCIATES**
Rm 202 Belman Bldg.
78 Cordillera St., Corner Quezon Ave.
Quezon City, Metro Manila, Philippines

**Attention:** **ATTY. RUDOLPH S. CAPUCHINO**

Gentlemen:

This refers to your request on behalf of your client, Forever Vision Company Philippines, Inc. ("**FVCPI**"), for confirmation of your opinion that FVCPI's purchase of a parcel of land located within the Philippine Economic Zone Authority ("**PEZA**") is exempt from value-added tax ("**VAT**").

*Background*

1. FVCPI, with Taxpayer Identification No. [1] is: (a) a company organized and existing under the laws of the Philippines; (b) duly registered with the Securities and Exchange Commission ("**SEC**") with license number 27;[2] (c) engaged in the manufacture of optical lenses for eye glasses for export purposes; and (d) with office address at 74 Mindanao Avenue, Project 6, Quezon City, Second District National Capital Region (NCR), 1100.

2. On April 28, 2022, pursuant to PEZA Resolution No. 22-091, FVCPI's application for registration as an ecozone export enterprise engaged in the manufacture of optical lenses at the Cavite Technopark-Special Economic Ecozone ("**CT-SEZ**") was approved.

3. Under the said PEZA Resolution, FVCPI shall be entitled to: (a) five (5) years Income Tax Holiday ("**ITH**"); (b) 5% Special Corporate Income Tax ("**SCIT**") for ten (10) years after the enjoyment of the ITH; (c) duty exemption on importation of capital equipment, raw materials, spare parts, or accessories; and (d) VAT exemption on

---

[1] Per executed Deed of Absolute Sale between SNS Ecozone Properties Corporation and FVCPI dated June 1, 2022.

[2] Per Certificate of Incorporation dated November 18, 2021.

importation and VAT-zero rating on local purchases, all in accordance with the provisions of Republic Act No. 11534 ("**CREATE Law**"),[3] subject to the FVCPI's signing of the Registration Agreement with PEZA and compliance with the terms and conditions thereof.

4. On June 1, 2022, FVCPI entered into a deed of absolute sale with SNS Ecozone Properties Corporation ("**SNS**") relating to its purchase of a parcel of land with an aggregate area of 11,752 square meters, more or less, situated in Barrio of Sabang, Municipality of Naic, Province of Cavite, and covered by Transfer Certificate of Title No. (the "**Property**").

5. FVCPI intends to construct its office and warehouse building for the manufacture of optical lenses.

In reply, please be informed that Section 5, Rule 2 of the Implementing Rules and Regulations ("**IRR**")[4] of the CREATE Law provides that registered export enterprises are granted VAT zero-rating incentive on their local purchases of goods and services that are directly and exclusively used in its registered project or activity, to *wit*:

*"Rule 2*
*Tax and Duty Incentives*

*SECTION 5. Value-Added Tax (VAT) Zero-Rating and Exemption. – 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 export enterprises, during the period of registration of the said registered project or activity with the concerned IPA; ... xxx*

*The direct and exclusive use in the registered project or activity refers to raw materials, inventories, supplies, equipment, goods, services and other expenditures necessary for the registered project or activity without which the registered project or activity cannot be carried out."* (Underscoring supplied)

For this purpose, under Questions No. 13 and 14 of Revenue Memorandum Circular ("**RMC**") No. 24-2022,[5] the Bureau clarified that the phrase "direct and exclusive use" referred to as:

*"Q13: What is meant by direct and exclusive use in the registered project or activity?*

*A13: Direct and exclusive use in the registered project or activity refers to raw materials, supplies, equipment, goods, packaging materials, services,* ***including***

[3] An Act Reforming the Corporate Income Tax and Incentives System, Amending for the Purpose Sections 20, 22, 25, 27, 28, 29, 34, 40, 57, 209, 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.
[4] 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, June 22, 2021.
[5] Clarifying Issues Relative to Revenue Regulations (RR) No. 21-2021 Implementing the Amendments to the Value-Added Tax (VAT) Zero Rating Provisions Under Sections 106 and 108 of the National Internal Revenue Code of 1997 (Tax Code), in Relation to Sections 294(e) and 295(D), Title XIII of the Tax Code, Introduced by Republic Act 9R/A.) No. 11534 (CREATE Act); and Section 5, Rule 2 and Section 5, Rule 18 of the CREATE Act Implementing Rules and Regulations (CREATE IRR), February 23, 2022



9 h

***provision of basic infrastructure**, utilities, and maintenance, repair and overhaul of equipment, and other expenditures directly attributable to the registered project or activity **without which the registered project or activity cannot be carried out**."*

*xxx xxx xxx*

*Q14: What cost items fall under the "other expenditures" in the preceding question?*

*A14: These are costs that are indispensable to the project or activity, i.e., without which, the project or activity cannot proceed, and these include expenses that are necessary or required to be incurred depending on the nature of the registered project or activity of the export enterprise."* (Emphasis and underscoring supplied)

Based on the afore-quoted provisions, purchases of goods and services includes the provision of basic infrastructure and other expenditures that is/will be directly and exclusively used in or attributable to the registered project or activity.

Infrastructure, by definition, is wide and may pertain to facilities, buildings, road, bridges, irrigation, sewerage and drainage systems.[6] Thus, it can be inferred that the intention of the legislators is to include in the phrase "goods and services" any kind of infrastructure as long as the same is/will be directly and exclusively used in or attributable to the registered project or activity of an export enterprise.

Logically, and in the spirit of fairness and equality, considering that the law only qualifies as to the use of the property, it can be deduced that the above rule covers purchase of real properties such as land where the building and/or structure will be constructed, provided that such building and/or structure is/will be directly and exclusively used in or attributable to the registered project or activity of an export enterprise.

Applied in this case, considering that FVCPI's office and warehouse building for the manufacture of optical lenses will be constructed on the Property, it can be concluded that the Property is/will be directly and exclusively used in the registered project or activity of FVCPI.

Taking into account the foregoing, Questions no. 17 and 18 of RMC No. 24-2022, as amended by RMC No. 49-2022,[7] summarizes the rules on sales of goods and services (which, as discussed above, real properties) by non-export locators or domestic market enterprises ("**DMEs**") and registered export enterprises to registered export enterprises both before and during the effectivity of the CREATE Law, *viz*:

*Seller is registered prior to the effectivity of CREATE Law; Sale by Registered Non-Export Enterprises:*

1. Sales by a registered non-export enterprise (under 5% SCIT regime) to registered export enterprise, whether inside or outside the Ecozone and Freeport Zone, shall be 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.

[6] Section 5, Rule 1, Revised Implementing Rules and Regulations of Republic Act No. 9184, Otherwise Known as the Government Procurement Reform Act, 2016.
[7] Amending Pertinent Portion of the Questions and Answers (Q&A) in Revenue Memorandum Circular (RMC) No. 24-2022 to Align Them with the Provisions of CREATE Act and its Implementing Rules and Regulations (IRR), April 19, 2022.

2. Sales by a registered non-export enterprise (under ITH regime) to a registered export enterprise shall be subject to VAT at zero-rate, provided the goods and services are directly and exclusively used int eh latter's registered project or activity.

*Seller is registered during the effectivity of CREATE Law; Sale by Registered Non-Export Enterprises:*

3. 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.

*Sale by Registered Export Enterprises*

4. Sales by registered export enterprise (under ITH regime; VAT-registered) to another registered export enterprise is subject VAT at zero-rate, provided, the goods and services are directly and exclusively used in the latter's registered project or activity.

5. Sales by registered export enterprise (under 5% SCIT regime) the sale of goods and services, such as manufactured, assembled or process product or IT/BPO services to another registered export enterprise that will form part of the final export product or export service of the latter, of at least seventy percent (70%) of its total production or output, shall be VAT-exempt.

Consequently, this Office hereby rules that the sale of the Property by SNS to FVCPI, a registered export enterprise, shall be:

1. VAT-exempt, provided that:

    a. SNS is non-export enterprise registered prior to the passage of the CREATE Law and under the five percent (5%) SCIT regime; or

    b. SNS is a registered export enterprise under 5% SCIT regime.

    In lieu thereof, the same is liable to pay the five (5%) preferential rate on its gross income from said activities, pursuant to Section 1 (A) of Rule XIV, Rules and Regulations to Implement Republic Act No. 7916.[8]

2. Subject to VAT at zero-rate percent, provided that the same is/will be directly and exclusively used in the registered project or activity, and:

    a. SNS is a non-export enterprise registered prior to the passage of the CREATE Law and under the ITH regime;

---

[8] Rules and Regulations to Implement Republic Act No. 7916, IRR of RA 7916, May 17, 1995; Republic Act No. 7916, Special Economic Zone Act of 1995, February 24, 1995.

T-306-2022
JUN 23 2022

b. SNS is a non-export enterprise registered during the effectivity of the CREATE Law and under the ITH regime; or

c. If SNS is a VAT-registered export enterprise under ITH regime.

Further, while Section 196 in relation to Section 173 of the Tax Code, states provides that whenever one party to the taxable document enjoys exemption from the documentary stamp tax ("**DST**"), the other party thereto who is not exempt shall be the one directly liable for the tax, it should be noted that FVCPI and SNS, being both PEZA-registered, are exempt from the payment of DST on their transaction.[9] Hence, the sale of the Property is exempt from DST.

This ruling is issued on the basis of the foregoing facts as represented. However, if upon investigation it shall be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

**CAESAR R. DULAY**
*Commissioner of Internal Revenue*
051943

[9] BIR Ruling No. 523-17, November 9, 2017.