REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TRANS-ASIA RENEWABLE ENERGY CORPORATION (NOW KNOWN AS "GUIMARAS WIND CORPORATION"), *Petitioner,*	**CTA *EB* NO. 2314** (CTA Case No. 9516)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

x------------------------------------x

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2347** (CTA Case No. 9516)
	Present:
-versus-	**DEL ROSARIO,** *PJ,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
TRANS-ASIA RENEWABLE ENERGY CORPORATION (NOW KNOWN AS "GUIMARAS WIND CORPORATION"), *Respondent.*	Promulgated: JAN 17 2023 9:25am

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RESOLUTION

CUI-DAVID, J.:

For Resolution of this Court are:

1. Trans-Asia Renewable Energy Corporation's ("**Trans-Asia**") *Motion for Reconsideration (Re: Decision promulgated 17 May 2022)* filed on 3 June 2022;

2. Commissioner of Internal Revenue's ("**CIR**") *Motion for Reconsideration (Re: Decision promulgated 17 May 2022)* filed on 25 May 2022, and Trans-Asia's *Comment (Re: Motion for Reconsideration dated May 25, 2022)* filed on 4 July 2022.

On 17 May 2022, the Court *En Banc* promulgated a *Decision ("assailed Decision")* with the following dispositive portion:

> **WHEREFORE**, in light of the foregoing, the instant Petitions for Review are **DENIED** for lack of merit. Accordingly, the assailed Decision dated 3 January 2020 and the assailed Resolutions dated 1 July 2020 and 23 September 2020 in CTA Case No. 9516 are **AFFIRMED**.
>
> **SO ORDERED**.

TRANS-ASIA'S ARGUMENTS

Trans-Asia alleges that a Certificate of Endorsement from the Department of Energy ("**DOE**") is not required for its sales to be qualified for zero-rating under Section 108(B)(7) of the National Internal Revenue Code ("**NIRC**") of 1997, as amended, and under Section 15(g) of the Republic Act ("**RA**") No. 9513, otherwise known as the Renewable Energy Act of 2008 ("**RE Law**").[1] According to Trans-Asia, Section 18 of the RE Law does not require a DOE Certificate of Endorsement for every incentive provided under the said law.[2] Quoting the *Dissenting Opinion* of Associate Justice Jean Marie A. Bacorro-Villena on the assailed Decision, Trans-Asia further forwards that a DOE Certificate of Endorsement will be relevant only whenever a Renewable Energy Developer ("**RE Developer**") intends to avail of the income tax holiday ("**ITH**") or the duty-free importation provided under the RE Law.[3] Trans-Asia further quotes DOE's Citizen Charter Handbook [4] and DOE Department Circular No. DC2021-12-0042 in support of its argument.[5]

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[1] Motion for Reconsideration (MR), par. 6.
[2] *Id.*, par. 15.
[3] *Id.*, par. 17.
[4] *Id.*, par. 19.
[5] *Id.*, par. 20.

Trans-Asia further alleges that a Certificate of Compliance ("**COC**") under RA No. 9136 or the Electric Power Industry Reform Act of 2001 ("**EPIRA**") is not required, considering that it has consistently hinged its claim for refund under Section 15(g) of the RE Law and Section 108(B)(7) of the NIRC of 1997, as amended.[6] Trans-Asia forwards that the Court *En Banc* erred in concluding that its claim for refund was also based under the EPIRA.[7]

Trans-Asia argues that EPIRA covers generation companies, while the RE Law covers RE Developers, which according to Trans-Asia are distinct from each other.[8] Trans-Asia proceeds with citing the 2018 case of *Team Energy Corp. vs. Commissioner of Internal Revenue*[9] and the 2019 case of *Commissioner of Internal Revenue vs. Team Energy Corp.*,[10] which, according to Trans-Asia, discuss that there is a recognized distinction between claims for refund filed under the EPIRA and claims for refund based on the NIRC of 1997, as amended.[11]

Continuing its argumentation, Trans-Asia states that even if it assumes that the EPIRA is applicable, there is allegedly nothing in the EPIRA which provides that a COC is a precondition to entitlement to VAT zero-rating on sales of power generated from renewable energy sources;[12] and that it is merely a procedural requirement before a generation company can commence its commercial operations, which only seeks to confirm an entity's status as a generation company, but is not a condition *sine qua non* to be considered as such.[13]

In further supporting its claim, Trans-Asia posits that even if it assumes that the COC is required, its application for the issuance of a COC was already deemed approved by the ERC on 22 September 2014, and not only when ERC issued the COC on 1 June 2015.[14]

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[6] *Id.*, par. 25
[7] *Id.*, par. 26.
[8] *Id.*, par. 31.
[9] G.R. Nos. 197663 & 197770, 14 March 2018.
[10] G.R. No. 230412, 27 March 2019.
[11] MR, par. 32.
[12] *Id.*, par. 39.
[13] *Id.*, par. 43.
[14] *Id.*, pars. 47-48.

Trans-Asia further posits that the only requirements are (a) there is a sale of power or fuel; (b) the power or fuel is generated through renewable sources of energy; (c) the sale is made by a VAT-registered person; and (d) the sale was made in the Philippines,[15] which it has allegedly fully satisfied.[16] Thus, according to it, it is entitled to the grant of its claim for a refund in the total amount of P335,759,253.[17]

THE CIR'S ARGUMENTS

The CIR argues that no attributability was established between the input tax on purchases vis-à-vis the zero-rated sales of Trans-Asia. Similar to her Petition for Review, the CIR relied on the European VAT system as she argues that only the VAT paid for supplies in the business is creditable as input tax of a VAT-registered person. Thus, purchases must, in turn, relate to the supplies.

The CIR adds that to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer, or it must be directly used in the production chain. Further, there must be a showing of the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated.

Finally, the CIR relies on the rule that tax refunds are strictly construed against the taxpayer.

ISSUES

The issues can be reduced to the following:

1. Whether a Certificate of Endorsement is required for the availment of VAT zero-rating;

2. Whether a Certificate of Compliance is required for the availment of VAT zero-rating, and

3. Whether no attributability of its input VAT to zero-rated sales was established by Trans-Asia.

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[15] MR, par. 10.
[16] *Id.*, par. 11.
[17] *Id.*, par. 55.

RULING OF THE COURT *EN BANC*

A Certificate of Endorsement is required to avail of VAT zero-rating.

Trans-Asia contends that a DOE Certificate of Endorsement is not required for its sales to be qualified for zero-rating.[18] Trans-Asia's position is that a DOE Certificate of Endorsement will be relevant only whenever an RE Developer intends to avail of the ITH or the duty-free importation provided under the RE Law.[19]

We find this argument of Trans-Asia unmeritorious.

Trans-Asia's basis—*i.e.*, Section 2 of Department Circular No. DC2021-12-0042[20] of the DOE, amending Section 18(C) of DC No. DC2009-05-0008—only took effect fifteen (15) days following its publication in *Business World* and *Daily Tribune* on 10 January 2022.[21] There is no specific clause that the said circular shall be given retroactive effect.

The Supreme Court has consistently applied the prospectivity principle to administrative rulings and circulars. In *Sanchez vs. Commission on Elections*,[22] it was held that COMELEC Resolution No. 90-0590 directing the holding of recall proceedings had no retroactive application. In *Romualdez vs. Civil Service Commission*,[23] it was ruled that CSC Memorandum Circular No. 29, s. 1989 cannot be given retrospective effect to apply to an employee who was separated from the service before its effectivity.

We are convinced and thus reaffirm that a DOE Certificate of Endorsement is required in availing VAT zero-rating incentives covering the period of its claim for refund[24] as mandated by Section 18(C), Rule 5, Part III of the IRR of the RE Law.[25]

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[18] MR, par. 6.
[19] *Id.*, par. 17.
[20] Prescribing Amendments to Sections 13(E) and 18(C) of Department Circular No. DC2009-05-0008, Entitled Rules and Regulations Implementing Republic Act No. 9513, Otherwise Known as "The Renewable Energy Act Of 2008", December 24, 2021.
[21] "Department Circular No. DC2021-12-0042", https://www.doe.gov.ph/laws-and-issuances/department-circular-no-dc2021-12-0042?, accessed 12 September 2022.
[22] G.R. Nos. 94459-60, 24 January 1991.
[23] G.R. Nos. 94878-94881, 15 May 1991.
[24] Exhibit "P-10", Division Docket – Volume II, p. 720.
[25] SEC. 18. *Conditions for Availment of Incentives and Other Privileges.* - ...
C. *Certificate of Endorsement by the DOE*

A Certificate of Compliance is a requirement for the availment of VAT zero-rating.

We rule against Trans-Asia in relation to its arguments that it is not required to secure a COC to avail of the VAT zero-rating incentive.

Trans-Asia is hinging its claim on the fact that it is not availing of the VAT zero-rating under EPIRA but is based under Section 108(B)(7) of the NIRC of 1997, as amended, in relation to Section 15(g) of the RE Law. However, it likewise cites the 2018 case of *Team Energy Corp. vs. Commissioner of Internal Revenue*[26] and the 2019 case of *Commissioner of Internal Revenue vs. Team Energy Corp.*,[27] which, in turn, is based on Section 108(B)(3) of the NIRC of 1997.

First, We discuss the requirements under Section 108(B)(7) of the NIRC of 1997. As settled in the assailed Decision, if the claim for zero-rating is based on Section 108(B)(7) of the NIRC of 1997, it must be read in conjunction with Section 4.108-3(f) of Revenue Regulations ("**RR**") No. 16-2005,[28] which implements said provision. We quote the said section:

> SEC. 4.108-3. *Definitions and Specific Rules on Selected Services.-*
>
> ...
>
> (f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10%[29] 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**.

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.** (*Emphasis supplied*)

[26] G.R. Nos. 197663 & 197770, 14 March 2018.

[27] G.R. No. 230412, 27 March 2019.

[28] Prescribes the Consolidated Value-Added Tax Regulations of 2005 superseding RR No. 14-2005 (November 1, 2005).

[29] Now 12% under Revenue Memorandum Circular No. 7-2006.

> ***"Generation companies"*** refer 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.[30]

In turn, reading Section 4.108-3(f) of RR No. 16-2005 in relation to EPIRA, which it expressly refers to, reveals that Section 6[31] of the said law requires securing a COC.

Second, even if we assume that the claim for refund is based on Section 108(B)(3) of the NIRC of 1997[32] and not Section 108(B)(7) of the same law, a COC will still be required. Even if we primarily read the RE Law, Section 26[33] of said law does not preclude requirements that other concerned agencies of the government may impose, *i.e.*, the ERC and even the BIR through RR No. 16-2005.

Trans-Asia's reliance on *Team Energy Corporation vs. Commissioner of Internal Revenue*[34] and *Commissioner of Internal Revenue vs. Team Energy Corporation*[35] is misplaced. Both cases do not deal with the sale of renewable energy. A perusal of the cases reveals that this involves a sale to National Power Corporation ("**NPC**"). The cited cases do not involve an application of EPIRA precisely because the claim for refund is based **not on Team Energy Corporation's qualification** but **the character of the NPC as its *buyer***. Accordingly, the Supreme Court applied Section 13 of RA No. 6395 or the NPC Charter in ruling in favor of zero-rating of the sale of Team Energy Corporation.

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[30] Emphasis and underscoring supplied.
[31] SEC. 6. *Generation Sector*. - Generation of electric power, a business affected with public interest, shall be competitive and open. Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.
[32] SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties*. –
(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.
(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate
[33] SEC. 26. *Certification from the Department of Energy (DOE)*. — All certifications required to qualify RE developers to avail of the incentives provided for under this Act shall be issued by the DOE through the Renewable Energy Management Bureau.
The DOE, 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 DOE 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.
[34] G.R. Nos. 197663 & 197770, 14 March 2018.
[35] G.R. No. 230412, 27 March 2019.

This Court cannot simply dismiss documentary requirements that the executive agencies, having validly exercised their limited and delegated rule-making power, have set forth.

The application of Trans-Asia may not be deemed as "provisionally approved."

Trans-Asia likewise points out that even assuming a Certificate of Compliance is required, its sales should have still been considered zero-rated, considering that its application for a Certificate of Compliance has been provisionally approved before it started commercial operations.

Trans-Asia contends that the Revised Rules for Issuance of COCs provide the following:

> SEC. 1. *In General.* — All entities owning or if applicable, operating Generation Facilities shall apply for the issuance of a COC with the ERC, *Provided* all the requirements shall have been complied with including the technical inspection on the facilities, the ERC shall notify the entities with Generation Facilities of its action within sixty (60) calendar days from the conduct of the said technical inspection. In the event the ERC requires the submission of additional information, or orders the postponement of final action on an application on reasonable grounds, the 60-day period shall be reckoned from the date of complete submission of the required information or the lifting of the suspension of the final action on the application. The ERC shall deny the application should the applicant fail to submit all the information and other requirements within the period allowed, without prejudice to the re-filing of such application.
>
> **If an applicant has filed its application in accordance with the preceding paragraph but has not been issued a COC within the 60-calendar day period, its application shall be deemed provisionally approved.**[36]

Thus, according to Trans-Asia, considering that it filed its application for the issuance of a COC on 24 July 2014, its COC should have been considered as conditionally approved by the Court on 22 September 2014 despite the ERC issuing the said certificate only on 1 June 2015.

Trans-Asia's arguments do not convince.

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[36] Emphasis supplied.

Article XI[37] of the Revised Rules for Issuance of COCs provides that the Rules shall only take effect on the 15th day following its publication. We note that it was only on 17 October 2014 that it was published in the *Daily Tribune*,[38] and thus, the Revised Rules will only become effective on 1 November 2014.

At the time Trans-Asia filed its application on 24 July 2014, there was no deemed provisional approval on September 22, 2014, to speak of. As to whether the proviso regarding the provisional approval of applications will apply to Trans-Asia after the effectivity of the Revised Rules for Issuance of COCs on 1 November 2014, the same does not provide any retroactive effect. Thus, this Court is constrained to not deem Trans-Asia's application as approved, even provisionally, before 1 June 2015.

The Tax Code does not require that creditable input taxes be directly attributable to zero-rated sales.

The CIR argues that no attributability was established between the input tax on purchases vis-à-vis the zero-rated sales of Trans-Asia. Similar to her Petition for Review, the CIR relied on the European VAT system as she argues that only the VAT paid for supplies in the business is creditable as input tax of a VAT-registered person. Thus, purchases must, in turn, relate to the supplies.

The CIR adds that to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer, or it must be directly used in the chain of production. Further, there must be a showing of the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated.

This argument is a rehash of her *Petition for Review* and has been thoroughly discussed in the assailed Decision. We reiterate that there is nothing in Section 112 (A) of the NIRC of 1997, as amended, which requires that the input taxes subject of a claim for refund be directly attributable to zero-rated sales or effectively zero-rated sales. Input taxes that bear a direct or

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[37] ARTICLE XI EFFECTIVITY. These Revised Rules shall take effect on the fifteenth (15th) day following its publication in a newspaper of general circulation in the Philippines.
Let copies of these Revised Rules be furnished the University of the Philippines Law Center-Office of the National Administrative Register (UPLC-ONAR).
[38] "ERC Updates COC Rules for Generation Companies & Other Entities," https://www.erc.gov.ph/ContentPage/28327, accessed 12 September 2022.

indirect connection with a taxpayer's zero-rated sales satisfy the requirement of the law.

As such, we see no cogent reason to modify the *assailed Decision.*

WHEREFORE, in light of the foregoing, the *Motion for Reconsideration (Re: Decision promulgated 17 May 2022)* filed by Trans-Asia, and *Motion for Reconsideration (Re: Decision promulgated 17 May 2022)* filed by the CIR are **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

(I reiterate the position I have taken in the assailed Decision)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, please see my Separate Opinion)
CATHERINE T. MANAHAN
Associate Justice

(With due respect, I reiterate my Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

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Present:

Del Rosario, *P.J.*
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo,
Cui-David, and
Ferrer-Flores, JJ.

Promulgated:
JAN 1 7 2023
9:25am

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SEPARATE OPINION

MANAHAN, *J.:*

While I have previously joined the learned Dissenting Opinion of the Honorable Justice Jean Marie A. Bacorro-Villena, I wish to clarify my position that a Certificate of Compliance (COC) from the Energy Regulatory Commission (ERC) **is**

required to prove that Trans-Asia Renewable Energy (*Trans-Asia*) is engaged in zero-rated sales or effectively zero-rated sales through the **sale of power generated or produced from renewable sources or energy**.

Section 15(g) of RA No. 9513[1] (otherwise known as the "*Renewable Energy Act of 2008*") 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 added)*

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 NIRC of 1997, as amended by RA No. 9337; that such incentive pertains to RE developers of renewable energy facilities, as duly certified by Department of

[1] AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES.

Energy (DOE), in consultation with the Board of Investments (BOI).

Relative thereto, Sections 25 and 26 of RA No. 9513 provides 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. *Certification 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 <u>without prejudice</u> 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 and underscoring added)*

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 Republic Act 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 added)*

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, including biomass, all certifications must be obtained by the concerned RE Developer from the DOE, through its REMB. 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 RA No. 9513, the VAT zero-rating being granted to 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." *(Emphasis and underscoring added)*

To implement the foregoing provision, Sections 4.108-3(f) and 4.108-5(b)(7) of RR No. 16-2005[2] provide as follows:

> "SEC. 4.108-3. *Definitions and Specifics Rules on Selected Services.* –
>
> xxx xxx xxx

[2] SUBJECT: Consolidated Value-Added Tax Regulations of 2005. *am*

(f) Sale of electricity by generation, transmission, and distribution companies shall be subject to 10%[3] 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**.

'*Generation companies*' refers to persons or entities <u>authorized by the Energy Regulatory Commission (ERC)</u> to operate facilities used in the generation of electricity. For this purpose, <u>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)</u>. 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. <u>*Zero-Rated Sale of Services*</u>. -

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)*

Notably, there are two (2) kinds of RE Developers under Section 15 of RA No. 9513, namely, those involved in power generation (*i.e.*, electricity) and non-power applications (*i.e.*, heat) which are entitled to the named incentives therein.

[3] The VAT rate has been increased to 12%. Refer to Memorandum dated January 31, 2006 from the Executive Secretary, as circulated in Revenue Memorandum Circular No. 7-2006.

Sections 4(hh) and 4(nn) of RA No. 9513 define what are those classified as non-power and power applications, respectively, to wit:

> "Section 4. Definition of Terms. – As used in this Act, the following terms are herein defined:
>
> xxx xxx xxx
>
> (hh) "Non-power applications" refer to renewable energy systems or facilities that produce mechanical energy, combustible products such as methane gas, or forms of useful thermal energy such as heat or steam, that are not used for electricity generation, but for applications such as, but not limited to, industrial/commercial cooling, and fuel for cooking and transport;
>
> xxx xxx xxx
>
> (nn) "**Power applications" refer to renewable energy systems or facilities that produce electricity**;" (*Emphasis supplied*)

Relevantly, the RA No. 9513 also defines a generation company as:

> "Sec. 4. *Definition of Terms*. – As used in this Act, the following terms are herein defined:
>
> xxx xxx xxx
>
> (o) "Generation company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;
>
> xxx xxx xxx."

Thus, a renewable energy developer who generates power and sells the same is required to secure a COC from the ERC.

Catherine T. Manahan
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Associate Justice